

**FEDERICO PINEDA, MAGDALENA G. PINEDA, AND FERNANDO
MAGLASANG, PETITIONERS, VS. THE COURT OF APPEALS, HON.
VICENTE P. BULLECEER, IN HIS CAPACITY AS JUDGE, COURT OF
FIRST INSTANCE ...**

G.R. No. L-38196. July 22, 1975

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari against the Court of Appeals assailing its decision in CA-G. R. No. SP-02647, Federico Pineda, et al. vs. Hon. Vicente Bullecer, etc. et al., which dismissed a petition for mandamus filed by petitioners seeking to compel the trial court to give due course to their appeal disallowed by said court. Actually, this should have been a petition for review, but the Court has opted to consider it as a special civil action in order to expedite its disposition, considering the issue involved is simple and does not really require observance of the more elaborate and longer procedure of review.

The issue submitted for Our resolution and the factual milieu backgrounding it are fully stated in the decision of the appellate court thus:

"The petition substantially alleges that on June 5, 1970, the private respondents, as a result of a vehicular accident, filed Civil Case No. 180 against the petitioners in the Court of First Instance of Davao Oriental, presided by the respondent Judge Vicente P. Bullecer, for recovery of damages; that, after the issues have been joined, Civil Case No. 180 was called for pre-trial on September 25, 1970; that, due to the failure of the petitioners herein (defendants therein) to appear during the pre-trial, they were declared in default and private respondents (plaintiffs therein) were allowed to present their evidence ex parte; that on November 6, 1970, respondent Judge rendered a decision in said Civil Case No. 180, ordering petitioners to pay private respondents the total amount of P92,000.00 which decision was received by the petitioners herein on October 28, 1971; that on November 24, 1971, petitioners herein filed in said Civil Case No. 180 a motion for new trial and or to lift order of default, which was granted by the respondent Judge in an order dated March 16, 1972; that, on October 18, 1972, private respondents herein elevated to the Supreme Court by way of certiorari the order of respondent Judge dated March 16, 1972, granting petitioners' motion for new trial in said Civil Case No. 180; that, on December 22, 1972, the Supreme Court resolved to refer the said petition for certiorari to this Court, where the same was docketed as C.A.G.R. No. SP-01641-R; that, after the responsive pleadings were filed, this Court under date of August 13, 1973, rendered a decision in said petition for certiorari (CA-G.R. No. SP-01641-R), setting aside the order of respondent Judge in Civil Case No. 180, granting petitioners herein a new trial; that, the said decision of this Court in CA-G.R. No. SP-01641-R, was received by petitioners herein, who were respondents in said case on September 17, 1973; that, on October 1, 1973, petitioners herein as defendants in Civil Case No. 180, filed a Notice of Appeal, an Appeal Bond in cash in the amount of P120.00, and a Record on Appeal, elevating to this Court by way of appeal, the decision of the respondent Judge in Civil Case No. 180 dated November 6, 1970, a copy of the Record on Appeal is attached as Annex A; that, respondent Judge in an order dated October 4, 1973, disallowed the appeal of petitioners herein in Civil Case No. 180 on the ground that the appeal was filed out of time, a copy of said order is attached as Annex C; that,,

petitioners, as defendants in Civil Case No. 180, had up to October 5, 1973, within which to perfect their appeal in said case, based on the following computation: when petitioners filed a motion for new trial on November 24, 1971, to the decision of the respondent Judge in Civil Case No. 180 which was received by petitioners on October 28, 1971, three (3) days still remained of the 30-day period to perfect an appeal. This 3-day period, which was suspended by the motion for new trial began to run again when the decision of the Court of Appeals in CA-G.R. No. SP-01641-R, dated August 13, 1973, became final, 15 days from receipt thereof. Since petitioners received a copy of the said decision of this Court on September 17, 1973, the same should have become final on October 2, 1973, and the day following said finality, the remaining 3-day period of petitioners to perfect their appeal in Civil Case No. 180, commenced to run again, ending on October 5, 1973. The filing therefore by petitioners herein of their Notice of Appeal, Appeal Bond and Record on Appeal in Civil Case No. 180 on October 1, 1973, was well within the period for perfecting the appeal.

"The only issue submitted to us for determination is whether the running of the period of appeal should be reckoned from September 17, 1973, or October 5, 1973." (Pages 15-17, Record.)

In resolving the issue thus stated against petitioners, the Court of Appeals adopted in toto the reasoning of the trial judge which reads as follows:

"After examination of the grounds and the records in this case, it is conceded and found by this Court that when the defendants had filed their Motion For New Trial on November 24, 1971 after 27 days had elapsed from receipt of the Decision, they have only three (3) more days within which to perfect an appeal on the Decision of this Court. The filing of the motion for new trial interrupted the period to appeal and it was only on September 17, 1973 when that period started to run again as it was the date they have received a copy of the Decision of the Court of Appeals. In other words, the defendants had only up to September 20, 1973 within which to perfect their appeal in this case. The records do not show that they have done the same. To the mind of this Court the 15-day period alluded to by the defendants refers to the period within which they could bring an appeal on the Decision of the Court of Appeals by way of certiorari to the Supreme Court. Since the decision appealed from is the decision of this Court, such 15-day period is of no consequence in this case." (Page 18, Record.)

We are of the considered opinion that manifestly such ratiocination of the Court of Appeals and the trial court does not conform with the rules and the applicable principles of remedial law on the effects of orders granting a new trial upon the original judgment. Withal, from another point of view, it appears to Us that the impugned decision of the appellate court has unjustifiably and baselessly ignored the need to await for the finality of its own previous decision reversing the order of new trial of the trial court. There can be no question that it would have been premature on the part of the trial court to have acted pursuant to such reversal decision without the same having become final and executory. Indeed, petitioners are eminently correct in contending in their brief that:

"If we compute the remaining period to appeal in Civil Case No. 180 from September 17, 1973 when petitioners received a copy of the resolution of respondent Court of Appeals, then we will have an incongruous situation wherein the main decision in Civil Case No. 180 shall have become final and executory even before the decision of the Court of Appeals became final and executory. Plainly stated, to hold otherwise would result in a situation where the decision of the respondent Court of First Instance in Civil Case No. 180 would become final on September 21, 1973 while the decision of the Court of Appeals bearing on the same matter would become final on October 2, 1973.

"We respectfully submit that the provision of the Rules of Court on appeal could not possibly allow such a situation.

To graphically illustrate this incongruity, let us assume for the sake of argument that on September 23, 1973 or five days after petitioners received a copy of respondent Court of Appeals' resolution, but before the latter's finality, petitioners moved for a reconsideration of said resolution or elevated the matter to this Honorable

Court on appeal by certiorari; and assuming arguendo, that the resolution of respondent Court of Appeals was either reconsidered or set aside by this Honorable Court, what happens then to the supposed finality of the decision in Civil Case No. 180 on September 21, 1973? The answer is obvious. To sustain the respondent Court of Appeals on this issue, would be to practically limit the remedies available in favor of the petitioners in Civil Case No. 180 as well as in CA-G.R. No. SP-01641-R. After the receipt of the petitioners of the resolution of the Court of Appeals in CA-G.R. No. SP-01641-R, petitioners still had the remedy of moving for the reconsideration of the order or elevating the matter to this Honorable Court by certiorari, within fifteen days from receipt of the copy of said questioned resolution. If however, the decision of the lower court in Civil Case No. 180 should be considered final even before the finality of the resolution of the Court of Appeals, then the remedies afforded to the petitioners would be moot and academic." (Pages 47--48, Record.).

By express provision of Section 5 of Rule 37, "(i)f a new trial be granted in accordance with the provisions of this rule, the original judgment shall be vacated and the action shall stand for trial de novo..." This means that once the court grants a new trial, its former judgment ceases as a matter of law and whatever happens or is done subsequently resulting in a reversal of the grant of new trial cannot restore it to its original status. Legally speaking, the effect of the order withdrawing the grant of new trial is that the original judgment shall be deemed as having been repromulgated. In other words, since the original judgment had already been vacated, the reconsideration of the grant of new trial does not in turn vacate the said grant, although the original judgment is given a new life. In a basically similar situation, We ruled in *Lucas vs. Mariano*,^[1] thus:

"As may be noted, the main premise of the above order declaring the court's previous order of dismissal, dated September 16, 1965, of petitioners' complaint final and executory is His Honor's finding that petitioners appeal has not been taken within the reglementary period, not so much in relation to the original order of dismissal of September 16, 1965 but to the order of December 1, 1966, which reconsidered, upon motion of respondents, an earlier order of His Honor, dated September 6, 1966, setting aside the September 16, 1965 order of dismissal and setting the case for pre-trial, preparatory to a trial on the merits. The theory of His Honor is that petitioners should have appealed from the order of December 1, 1966, which they received on December 13, 1966, on December 14, 1966, at the latest, since said order merely reinstated that of September 16, 1965, and inasmuch as petitioners had already consumed the thirty (30) days for the purposes of a reconsideration of or an appeal from the last-mentioned order, they could not have anymore additional period for the same period in relation to the order of December 1, 1966, notwithstanding that the order of September 16, 1965 had been actually set aside, the case had been set for pre-trial and only subsequently dismissed again per said order of December 1, 1966.

Such a view is, of course, plainly incorrect. The observation of respondent judge that the order of September 16, 1965 'was not materially changed by this Court's Order dated December 1, 1966 which later order only reinstated without any substantial change the former order' overlooks the consideration that the September 16, 1965 order of dismissal was actually set aside by his own order of September 6, 1966 and the case was even set by him anew for pre-trial. In other words, the order of September 6, 1966 had the effect of wiping away completely the previously ordered dismissal of the case. Incidentally, such was the reasoning previously followed by His Honor in the order of September 22, 1967 denying respondents' motion for the dismissal of petitioners' appeal and for the issuance of a writ of execution. It is obvious, therefore, that the reconsideration of the order of September 6, 1966 could not have resulted automatically in the reinstatement of the status of dismissal in consequence of the order of September 16, 1965, and if after a restudy, the judge deemed it proper to order again a dismissal, this later dismissal must be considered as a newly appealable order and the period for its appeal must be correspondingly computed from the date of its service as prescribed by the rules. And specially must it be so, since petitioners' notice of appeal dated May 15, 1967 makes no mention at all of the order of September 16, 1965 and refers only to the dismissal order of December 1, 1966 and to that of April 17, 1967 denying petitioners' motion for reconsideration thereof."

In the case at bar, since We are dealing with a reversal of an order of new trial by the appellate court, it is but

logical that the foregoing ruling should be applied in relation to the decision of the appellate court, as if it were an order of reconsideration of the trial court itself.

It is, therefore, evident that the herein petition must be granted. We hold that the period for appeal of the petitioners is thirty days from the entry of final judgment in CA-G.R. No. SP-01641-R, the decision of the Court of Appeals that reversed the order of new trial of the lower court. And it appearing that petitioners completed their appeal on October 1, 1973, even before the decision of the Court of Appeals had become final; their appeal was timely and should have been allowed to given due course.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. No. SP-02647 is hereby set aside and the trial court is ordered to in turn set aside its order dismissing the appeal of petitioners and in lieu thereof order that the same be given due course, if all other requisites therefor are in order. Costs against private respondents.

Fernando, (Chairman), Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] 44 SCRA 501.

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