

PHILIPPINE AIR LINES, INC., PETITIONERS, VS. HON. FRANCISCO ARCA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BR. 1, AND ARTURO T. SANTOS, RESPONDENTS.

G.R. No. L-22729. February 09, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for certiorari to reverse and set aside an order of respondent Judge F. Arca of the Court of First Instance of Manila, entered in its Civil Case No. 54545, that set aside a previous order dismissing the petition for relief of Arturo T. Santos, reinstated the case and set the same for hearing.

The material antecedents of the case are the following:

Petitioner herein, Philippine Air Lines, Inc. (PAL for short), had obtained in the Municipal Court of Manila (Case No. 103992) a judgment against Arturo T. Santos for P1,500.00, plus P300.00 attorneys' fees and costs. Copy of the decision was received by defendant Santos on April 2, 1963, and on April 10, 1963 said party filed a motion for reconsideration through counsel.

On April 20, 1963, the Municipal Court denied Santos' motion for reconsideration. Notice of the denial was served on defendant's counsel on April 27, 1963.

On May 14, 1963, PAL petitioned for execution; and on May 20, 1963 the Court caused the issuance of a writ of execution.

On July 19, 1963, Arturo Santos applied to the Court of First Instance of Manila for relief from the judgment rendered against him by the Municipal Court, averring that the latter's order denying his motion for reconsideration had only come to the knowledge of his counsel on July 11, 1963 "due to accident, mistake or excusable negligence" in that, as stated in the annexed affidavit of merit, Leonardo Magat, clerk of the law office of Santos' attorneys, after receiving the said order, and because of the absence of Attorney De la Cruz "affiant placed the aforesaid order in his desk"; that said clerk was stricken with influenza and "was absent from office the next week or from April 20 to May 4, 1963", and failed to give said order to Attorney De la Cruz. Santos asked for a preliminary injunction, which the court granted.

PAL moved to dismiss the petition on the ground that the excuse shown was flimsy and that the petition for relief had been filed beyond the sixty-day period allotted for the purpose by section 3 of Rule 38 of the Rules of Court.

The Court of First Instance, acting favorably on the motion of PAL, ordered the dismissal of the petition, with costs against petitioner Santos, on January 30, 1964.

A first motion for reconsideration filed by Santos was denied on March 2, 1964; whereupon, petitioner Santos gave notice of appeal. But before the same was perfected, and upon a second motion for reconsideration, supported by affidavits of the doctor, who claimed to have treated Magat, and of Attorney Enrico de la Cruz to the

effect that he only came to know for the first time of the (Municipal Court's) order of July 11, 1963, and despite PAL's opposition, the court reconsidered and set aside the order of dismissal and set the case for hearing.

Thereupon, unable to obtain reconsideration of this last order, petitioner resorted to this Court, alleging grave abuse of discretion in the setting aside of the original order of dismissal of the petition for relief.

We find merit in PAL's petition. The excuse offered by respondent Santos as reason for his failure to perfect in due time his appeal from the judgment of the Municipal Court, that counsel's clerk forgot to hand him the court notice, is the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed by the Rules of Court. The uncritical acceptance of this kind of commonplace excuses, in the face of the Supreme Court's repeated rulings that they are neither credible nor constitutive of excusable negligence (*Gaerlan vs. Bernal*, G.R. No. L-4039, 29 January 1952; *Mercado vs. Judge Domingo*, G.R. No. L-19457, 17 December 1966) is certainly such whimsical exercise of judgment as to be a grave abuse of discretion.

Even assuming the truth of the allegations in the affidavit of clerk Leonardo Magat (Annex G of the petition for relief), the court below should have noted that upon the return to duty of the clerk on May 4, 1963, after his one week's illness, respondent's appeal period had not yet fully elapsed, since the 15 days from the service of the notice on April 28 did not expire until May 13, 1963; and no excuse is shown why counsel, who was aware of the Municipal Court's adverse decision on the merits, failed to search Magat's desk during his absence, or make apposite inquiries from the clerk immediately upon his return. The failure to do so betrays a lack of diligent supervision and attention on the part of counsel that in no way can be accepted as excusable neglect. The evasion of duty becomes more apparent when it is further considered that no inquiries were apparently made at all from clerk Magat until July 11: for respondent Santos alleges that he or his counsel only learned of the denial of the motion for reconsideration on that date, when the sheriff levied upon Santos' movables. It is also to be borne in mind that no doctor's certificate of Magat's illness was attached to the original petition for relief dated July 19, 1963; that such a medical certification was not produced until the filing of the second motion for reconsideration of Santos on March 11, 1964, eight months after the petition for relief; that, in the meantime, respondent court had occasion to observe in the original order of January 30, 1964 granting the motion to dismiss the petition that -

"this Court, on January 9, 1964, ordered both counsel to furnish proof of their respective contentions, but instead of supplying proof, they filed long arguments and affidavits that did not help the Court in any way",

a deficiency weighing more heavily on the party applying for relief, upon whom lies the burden of proving that its negligence was excusable.

In the face of all these facts and circumstances, we have no alternative but to find that in reversing its denial of relief on the strength of a second motion for reconsideration, which added nothing that could not have been alleged in the petition and in the first motion for reconsideration previously rejected, the respondent judge revealed a simple-minded willingness to swallow a story patently concocted to delay as much as possible the satisfaction of a judgment against respondent Santos. This indiscriminating credulity does not conform to what is to be expected of a judicial mind.

It is, likewise, a salutary rule to hold a second or ulterior motion for reconsideration to be merely pro forma when it merely advances facts or arguments that were already available when the preceding motion for reconsideration was submitted. Such succeeding motions should not interrupt any procedural period fixed by the Rules of Court. By requiring litigants and counsel to be exhaustive in their motions and pleadings and avoid repetitiveness, courts may eventually reduce the unnecessary delays that are the curse of judicial litigation since time immemorial.

WHEREFORE, the writ prayed for is granted, and the Court of First Instance of Manila is directed to dismiss the petition for relief in its Case No. 54545 filed by respondent Arturo T. Santos. The latter shall pay the costs in both instances.

SO ORDERED.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

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