

JOSE L. MOYA, PLAINTIFF AND APPELLANT, VS. JOHN BARTON, DEFENDANT, AND APPELLANT.*CIF-No. 7527. July 18, 1946*

Ponente: FERIA, J.

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In civil case No. 7527 of the Court of First Instance of Rizal entitled Jose L. Moya vs. John Barton, judgment was rendered in favor of plaintiff and against defendant, and the latter was notified thereof on February 14, 1946. On March 14, 1946, that is, 28 days after notice, defendant filed a motion for new trial which was denied, and the order denying said motion was served upon said defendant on April 1, 1946. The latter filed on April 2, 1946, a notice of appeal and an appeal bond, and at the same time a motion requesting an extension of 5 days within which to file his record on appeal, on the ground that it was impossible for him to have the same typewritten and filed in one day or on April 3, the last day of the period fixed by law, and the court granted the motion on the same day it was presented. The defendant-appellant filed his appeal on time, and the case is now pending before this Court.

A motion for dismissal of defendant's appeal has been filed by plaintiff in this Court on the ground that (1) the lower court had no power to extend the period for filing the record on appeal, and that (2) plaintiff-appellee was not notified of defendant's motion for extension of time to file it and the motion was not set for hearing.

As to the first ground, without deciding whether or not the period within which an appellant must file his notice of appeal and appeal bond may be extended by the court, we are of the opinion that the court has power and discretion to extend the period for filing the record on appeal in the interest of justice, if it appears that the appellant has not sufficient time to prepare and file it within the period limited by law, either because the remaining period is very short, or the record on appeal voluminous, or because of some other justifiable reason, provided the motion for extension is filed before the expiration of the period fixed by law. The law must be construed liberally and reasonably. It goes without saying that a motion, pleading or other paper filed within the extended period legally or validly granted by a court, is a motion filed within the period fixed by law.

This conclusion is corroborated by the provision of sec. 7 of Rule 41 which empowers a court to order the amendment of a record on appeal if appellee's objection to it is well taken, and to grant appellant time within which to submit or file the amended record on appeal, for if appellant may secure indirectly an extension of time by filing an incomplete or defective record on (3) appeal, there is no reason why he can, not obtain such extension, or the court grant it, directly. It is a legal maxim that what can not be done directly can not be done indirectly. Therefore what can be done or granted indirectly can be done or granted directly.

It is also supported by analogy by the previous ruling of this Court, specially in the case of Lim vs. Singian (37 Phil. 817) and Layda vs. Legaspi (39 Phil. 83) in which it was held that the court had power to extend the period of ten days within which to present the bill of exceptions, notwithstanding the provision of Sec. 143 of the Code of Civil Procedure to the effect that the bill of exceptions must be filed within ten days from notice of his intention to

present it.

With respect to the other ground, sec. 2 of Rule 27 provides that "every written motion other than one which may be heard ex-parte * * * shall be filed with the court and served upon the parties affected thereby." Taking in to consideration that the extension of time applied for may be shorter than the time required to have a motion set for hearing and acted on by the court, and that the court has, as above stated, discretion to grant the petition, the motion for extension filed in the present case may be considered as one which may be heard ex-parte. The lower court did not err, therefore, in granting the petition for extension ex-parte.

The motion for dismissal of appeal is denied.

Moran, C.J., Paras, Pablo, Perfecto, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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