

FRANCISCA S. RABINA, WENCESLAO RABINA AND ESPERANZA SACRAMENTO, PETITIONERS, VS. HON. COURT OF APPEALS, MERCEDES UMALI, ALFONSO GONZALES AND SANTOS GONZALES, RESPONDENTS.

G.R. No. L-41062. March 31, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

This is a petition for review on certiorari of the respondent Court's[1] resolution dated April 14, 1975 denying petitioners' "Urgent Motion for extension of time to file mimeographed record on appeal" and dismissing the appeal in CA-G.R. No. 56485-R;[2] the resolution dated May 9, 1975 denying the motion of petitioners for an extension of time to file a motion for reconsideration; the resolution dated June 10, 1975 denying the petition to reinstate the appeal; and the resolution dated July 9, 1975 denying the motion for reconsideration of the resolution denying the reinstatement of appeal, which this Court has resolved to treat as a Special Civil Action in a resolution dated January 26, 1976.

Petitioners, through Special Attorney Rosario R. Rapanut of the Citizens Legal Assistance Office (CLAO), Department of Justice, alleged that on March 7, 1975, they filed a motion for extension of 30 days from March 8, 1975[3] within which to file a mimeographed record on appeal in CA-G.R. No. 56485-R on the ground that the clerical staff of the Special and Appealed Cases Division of the Citizens Legal Assistance Office was so undermanned that it could hardly cope with the volume of work therein such as the preparation of records on appeal, briefs in other appealed cases, petitions for review, certiorari, prohibition, relief from judgment and other pleadings which at the time were all due and urgent.

On March 12, 1975 the respondent Court granted the motion with warning.[4]

On April 8, 1975, the last day of the extended period petitioners filed an "Urgent Motion" for another extension of ten (10) days[5] from April 8, 1975 within which to file their mimeographed record on appeal, alleging therein that the stenciled pages of their record on appeal were then ready for mimeographing; that some of the pages of the record on appeal were already mimeographed, but considering however, that only one mimeograph machine in the office was functioning because the other machine was out of order and considering that defendants' (petitioners' herein) record on appeal is about 70 pages, and there were other briefs and petitions with all the annexes to prepare, they were constrained to ask for another extension.

On April 14, 1975, the respondent Court denied the "Urgent Motion" for another extension in a resolution the dispositive portion of which reads as follows:

"RESOLVED, there being previous warning when granted 30 days extension and this should have been enough.—

DENIED: APPEAL DISMISSED."[6]

Subsequently, petitioners filed a motion for extension of time to file a motion for reconsideration[7] of the foregoing order, on the ground "that there (were) only two (2) lawyers (then) in the office assigned to handle not only appealed cases from all over the country but also special civil cases." Said motion for reconsideration was denied by the respondent Court on May 9, 1975.[8]

On June 2, 1975 petitioners filed a petition to reinstate the appeal[9] but the same was denied.[10] A motion for reconsideration of the order of denial of the petition to reinstate appeal was likewise denied by the respondent Court.[11]

Hence, this instant petition.

The main issue in this petition is whether the respondent Court committed a grave abuse of discretion in denying petitioners' second motion for last extension to file a mimeographed record on appeal in CA-G.R. No. 56485-R.

In one case[12] where the petitioners therein were directed by the Court of Appeals to file their record on appeal within 60 days from receipt of notice[13] and they filed a motion for extension of thirty (30) days (their first motion) which was granted with a warning that they may file printed or mimeographed but not typewritten record on appeal and later they filed the second and last motion for extension of 15 days from December 28, 1973, the last day for filing the record on appeal under the first extension and said motion was denied and the appeal dismissed, this Court ruled against the peremptory dismissal of the appeal by pressing upon the doctrine laid down in *Limon v. Candido*[14] which reads:

"It is true that the allowance or denial of motions for postponement and the setting aside of orders previously issued rest principally upon the sound discretion of the court to which the same are addressed; but such discretion should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case the ends of justice and fairness would be served thereby. When no substantial rights are affected and the intention to delay is not manifest, * * *, it is sound judicial discretion to allow the same. (*Panganiban v. Vda. de Sta. Maria*, G.R. No. L-25529, Feb. 29, 1969)."

* * * * *

There is no showing that the rights of the herein private respondent would be adversely affected by such second extension of only fifteen (15) days. It is obvious that the motion for second and last extension was not intended to delay the case, which is underscored by the fact that herein petitioners actually filed their record on appeal on January 11, 1974, well within the 15-day period prayed for."

In *Maqui v. Court of Appeals*,[15] this Court had reiterated the caveat we have enunciated in *Philippine National Bank v. Philippine Milling Co., Inc.*,[16] to the effect that "Rule 50, Section 1 of the Revised Rules of Court[17] which provides specific grounds for dismissal of appeal manifestly "confers a power and does not impose a duty. What is more it is directory, not mandatory." This Court reasoned out:

"A rigid adherence to the technical rules of procedure disregards the fundamental aim of procedure to serve as an aid to justice, not as a means for its frustration (*Economic Ins. Co. v. Uy Realty Co.*, 34 SCRA 744, 749) and the objective of the Rules of Court to afford litigants just, speedy and inexpensive determination of their controversy. Thus, excusable imperfections of form and technicalities of procedure or lapses in the literal or rigid observance of a procedural rule or non-jurisdictional deadline provided therein should be overlooked and brushed aside as trivial and indecisive in the interest of fair play and justice when public policy is not involved, no prejudice has been caused the adverse party and the court has not been deprived of its authority or jurisdiction. (*Alonzo v. Villamor*, 16 Phil. 315)."

Moreover, the fact that the respondent Court declared in an unmistakable language the first grant of extension as "with warning", the same did not mean, to borrow the language of this Court, that it is said court's "ministerial

duty to dismiss the appeal and remand the case for execution to the court of origin" since it had the "discretion to dismiss or not to dismiss (the) appeal" and that "said discretion must be of sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." [18] A circumstance that lends credit to the sincerity of the counsel for the petitioners in prosecuting the case is the fact that she filed the mimeographed record on appeal seven (7) days from the deadline of the first extension but within the period sought for in the second and last extension. It is obvious that petitioners had no intention to delay the case and therefore should have merited the leniency of the respondent Court.

WHEREFORE, the appealed orders are hereby set aside and declared null and void and the respondent Court ordered to reinstate the appeal and admit the record on appeal filed by petitioners in the aforecited case.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] THIRD DIVISION composed by Gatmaitan, J., Chairman, and C. Pascual and F. Chanco, JJ., as members.

[2] Entitled "Mercedes Umali, et al. vs. Francisca S. Rabina, et al."

[3] Annex "A", Petition for Review, p. 32, Rollo.

[4] Annex "B", Ibid, at p. 35.

[5] Annex "C", Ibid, at p. 36.

[6] Annex "D", Ibid, at p. 39.

[7] Annex "E", Ibid, at p. 40.

[8] Annex "F", Ibid, at p. 42.

[9] Annex "G", Ibid, at p. 43.

[10] Annex "H", Ibid, at p. 47.

[11] Annex "J", Ibid, at p. 52.

[12] *Margate v. Court of Appeals*, G.R. No. L-28355, June 19, 1974, 57 SCRA 396.

[13] This is specifically provided under Sec. 5, Rule 46 of the Revised Rules of Court.

[14] G.R. No. L-22418, April 28, 1969, 27 SCRA 1166.

[15] G.R. No. L-41609, February 24, 1976.

[16] 26 SCRA 712 - (Involving filing of appellant's brief).

[17] "Section 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

* * * * *

(b) Failure to file, within the period prescribed by these rules, the notice of appeal, appeal bond or record on appeal;

* * * * *"

[18] Philippine National Bank v. Philippine Milling Co., Inc., *supra*, as reiterated in *Maqui v. Court of Appeals*, see footnote 15, *supra*.

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