

**CRESENCIO MONTICINES, PEDRO COMETA AND LOPE CORDOVA,
PETITIONERS, VS. HON. COURT OF APPEALS AND MARCELO CORAL,
RESPONDENTS.***G.R. No. L-35913. September 04, 1973*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4e3a91e00009/>**FERNANDO, J.:**

This Court, for obvious reasons, has in the past displayed no hesitancy in denying due course to a petition of this character to set aside an order of dismissal of respondent Court of Appeals for failure of appellants to file their brief. It was not so minded to follow such a practice this time. It did so because all things considered, as will presently appear, there could be a grave abuse of discretion by respondent Court. The challenged order, it was alleged, did not only suffer from the corrosion of substantial legal error, but, what is worse, was also infected with the virus of arbitrariness. It is the due process aspect of this assailed resolution, undoubtedly impressed with significance not only for the immediate parties but also to jurisprudence, that did turn the scale. After an even fuller scrutiny of the respective contentions of the parties, this Court, for reasons to be set forth, sets aside the challenged order.

The petition for review before this Court, filed on December 21, 1972, is self-explanatory. Petitioners,[1] three in number, were defendants-appellants before respondent Court.[2] Then came the following allegations: "3. That on October 11, 1972, the undersigned counsel for the defendants-appellants in said appealed case received a copy of a Resolution of the Court of Appeals dated October 7, 1972 dismissing the appeal on the ground that the appellants failed to file their brief within the period fixed in the Resolution of June 14, 1972 * * *; 4. That the Court of Appeals dismissed the said appeal *motu proprio* without sending first a notice to the defendants-appellants of the action to be taken by the Court in accordance with the ruling of the Supreme Court in *Salvador vs. Reyes*, 85 Phil. 12; 5. That the Resolution of June 14, 1972 granted the defendants-appellants in the appealed case an extension of 90 days within which to file the appellants' brief which would expire on September 1, 1972; 6. That on October 16, 1972, the counsel for the defendants-appellants, now herein petitioners, filed with the Court of Appeals a "Motion for Reconsideration and to Admit Printed Brief * * * alleging among other things— (a) That during the months of July and August, 1972, he was in the province of Laguna and Quezon attending to the properties left by his deceased father more particularly the flooded ricefields and other properties, (b) That as a result of his having gone to and from the flooded areas, he contracted illness and since then has been suffering from acute rheumatism with slight cardiac trouble and could hardly walk and since the middle of August 1972, has been under medical treatment * * *; (c) That he has been advised by his attending physician to have physical and mental rest; (d) That in view of his illness he was not able to finalize, polish and type the draft of the brief for printing; (e) That having a little relief of his illness, he immediately corrected, typed the brief into final form and gave it to the printer for printing; (f) That the brief for the Defendants-Appellants is now printed and is being respectfully submitted to this Honorable Court; (g) That his failure to comply with the directive of this Honorable Court within the period fixed in the Resolution of June 14, 1972 was due to accident and

circumstances beyond control; (h) That the appeal interposed by the Defendants-Appellants is meritorious and if the same is given due course and decided on the merits, there is a fair chance of modification if not total reversal of the judgment appealed from; (i) That justice would be more subserved if the appeal be reinstated and given due course. 7. That the medical certificate duly subscribed and sworn to before a notary public dated October 13, 1972 * * * reads as follows: '[To whom it may concern]: This is to certify that Atty. Tomas V. Barnes is at present under my treatment since the middle of August until at present suffering of Acute Rheumatism with slight Cardiac trouble. He is under my advice to have a physical and mental rest until he can walk normally without any pain. He will be subjected to ECG * * * to determine if the heart is already in a normal condition. He will be further advised if he can resume his normal work.' 8. That on October 23, 1972, the Court of Appeals in a Resolution * * * denied the aforementioned motion for reconsideration and to admit printed brief, a copy of which was received by the counsel for the petitioners on October 27, 1972." [3] After which it was asserted in the petition: "9. That on November 11, 1972, the counsel for the petitioners filed a motion for reconsideration with leave of court * * * praying that the Court of Appeals reconsiders its Resolution dated September 30, 1972 and October 23, 1972 and reinstates the appeal, accepts the printed defendants-appellants' brief already filed and gives due course to the instant appeal. * * * 10. That the Court of Appeals denied the motion for reconsideration in its Resolution dated November 18, 1972 * * * a copy of which was received by counsel for petitioner on November 21, 1972. * * * 11. That the respondent Court of Appeals committed a grave abuse of discretion in dismissing the appeal *motu proprio* without having first served a notice upon the defendants-appellants as held by this Honorable Court in *Salvador vs. Reyes*, 85 Phil. 12, and in not reinstating the appeal in CA-G.R. No. 43174-R. 12. That the petitioners have no plain, speedy and adequate remedy in the ordinary course of law, except the instant recourse. 13. That the appeal is meritorious as could be seen in the brief for the defendants-appellants, sufficient copies of said brief are furnished this Honorable Court. We adopt by reference our arguments therein as our arguments in support of our instant petition." [4] The prayer was for this Court to give "due course to the instant petition; [require] the respondents to answer and after due hearing, [vacate] the questioned Resolutions and [order] the reinstatement of appeal and admission of the printed defendants-appellants brief in CA-G.R. No. 43174-R." [5]

In a resolution dated December 29, 1972, respondents were required to file a comment on the above petition. The comment was duly forthcoming. It was filed on January 24, 1973. As was to be expected, respondents denied that the dismissal of the appeal of petitioners was accompanied by a grave abuse of discretion. Such a contention was sought to be bolstered by the assertions that respondent Court had usually granted one non-extendible period of ninety days and that the *Salvador* decision "is applicable only in criminal cases, * * *; [and finally], the matter of the illness of counsel could not have prevented him or any of his associates from preparing and filing the Brief on time, and their failure to do so, constitutes gross negligence on the part of defendants-appellants; * * *." [6] Soon after the briefs for both parties were filed, that for petitioners on April 4, 1973 and that for respondents on June 28, 1973.

On the above facts, uncontested and incontestable, we have, as set forth at the outset, decided to reverse the challenged resolutions and to give an opportunity for defendants-appellants to pursue their appeal.

1. It cannot be denied that during the months of July and August, 1972, a series of typhoons did visit the Philippines, bringing in its wake disastrous floods. Nor is it disputed that counsel for defendants-appellants had to attend to the properties left by his deceased father in the provinces of Laguna and Quezon to ascertain the extent of the damage thus caused. As a consequence of which, so it was alleged, and again it was not questioned, he suffered from acute rheumatism and slight cardiac trouble, necessitating, in the opinion of his physician, complete physical and mental rest. That was the cause of his failure to "finalize, polish and type" in time the draft of the brief he had prepared for his clients. [7] In his motion for reconsideration, however, of October 16, 1972, he did submit such printed brief which, on its face, did bear the signs of a thorough preparation, the questions raised

therein of fraud and the remedy sought, namely, reconveyance, hardly open to the charge of being devoid of significance. Certainly then, here is a case that falls squarely within the concept of *caso fortuito* or *force majeure*.^[8] Moreover, defendants-appellants cited our decision in *Salvador vs. Reyes*,^[9] where, in a criminal case, respondent Court, while admittedly having discretion to dismiss an appeal *motu proprio*, was required to have a notice of such dismissal served upon appellant. While not strictly in point, such a ruling reflects a principle that is more in keeping with the due process requirement, for thereby a statutory right to appeal is not frustrated by a failure to file a brief which, under certain occasions, and this is one of them, could be traceable to *force majeure*. It would appear, therefore, that justice in this instance would have been served had no such dismissal of the appeal been ordered, especially so as the brief had been submitted to respondent Court as far back as October 16, 1972. It could even be said with some degree of assurance that had there been a reconsideration of such an order, perhaps by this time this litigation could have been ready for adjudication by respondent Court.

2. Nor is this all. Such a conclusion is fortified by an equally relevant consideration. This is one instance where a failure of this particular litigation being passed upon by an appellate court may be fraught with undesirable consequences for a state policy enshrined in the fundamental law. This is of course not to affirm that such would necessarily be the result. It is only to stress that such a dire contingency could be avoided if the challenged resolution were set aside. Ordinarily the client would be bound by the failure of his counsel to comply with what is expected of him.^[10] This is a case however that should be taken out of the operation of such a rule. What is before the courts is a land controversy. Defendants-appellants rely on long-continued possession. The parcels they occupy may be considered minuscule, but that appears to be all the worldly goods with which they are endowed. This is another instance then of that gross disparity in wealth, the effects of which could be aggravated if there is not even that feeling of security arising from an alleged occupancy of more than forty years for one of the defendants-appellants and more than thirty-six years as to the other two. Even that of course may not suffice if a greater superior legal right could be shown. One, however, is entitled to the full protection of the law, whether at the stage of trial or on appeal. If it were otherwise, the long festering sore in the body-politic arising from quarrels over land may become much worse. The Court is not to be misunderstood as implying in any sense that the appealed decision is erroneous. There is no such implication. All that is intended to be conveyed is that if they are deprived of the opportunity to be heard on appeal under the circumstances disclosed, they may labor, even if incorrectly, under the sense of grievance of there being one law for the rich and another for the poor. Precisely that is a discontent sought to be removed under the expanded social justice provision of the Constitution.^[11] Even more indicative of such a constitutional goal is this mandate: "The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution."^[12]

Nor does the mere fact that respondent-appellee Marcelo Coral could show a certificate of Torrens Title in his favor conclude the matter, the question of fraud having been seasonably raised and the remedy of reconveyance sought. Only recently, in *Philippine Commercial and Industrial Bank vs. Villalva*,^[13] this Court had occasion to state; "There is, however, a countervailing doctrine, certainly not of lesser weight, that mitigates the harshness of the iron-clad application of the principle attaching full faith and credit to a Torrens certificate. It is inspired by the highest concept of what is fair and what is equitable. It would be a sad day for the law if it were to be oblivious to the demands of justice. The acceptance accorded the Torrens system of registration would certainly be impaired if it could be utilized to perpetrate fraud and chicanery. If it were thus, then no stigma would attach to a claim based solely on a narrow and literal reading of a statutory prescription, devoid of any shadow of moral right. That is not the juridical norm as recognized by this Court. Deceit is not to be countenanced; duplicity is not to be rewarded. Witness the favor with which jurisprudence has looked on the action for reconveyance as well as the recognition of the constructive trust. There is thus the stress on rectitude."^[14] This is a doctrine that has its roots in the past

and is supported by a long line of decisions notable for their number and unanimity.[15] All circumstances being considered, therefore, and the need for dispensing justice according to law impressed with a force to which the judiciary must bend, respondent Court of Appeals did grievously err in issuing the challenged resolution of dismissal and therefore cannot be sustained.

WHEREFORE, the resolution of respondent Court of Appeals of October 7, 1972 dismissing the appeal in this case as well as the resolution of October 23, 1972 denying the motion for reconsideration filed by defendants-appellants and its resolution of November 18, 1972 to the same effect are hereby nullified and set aside, and respondent Court is ordered to allow the appeal in this case to take its due course.

Makalintal, Acting C.J., Zaldivar, Makasiar, Antonio, and Esguerra, JJ., concur.

Ruiz Castro, J., concurs fully in the separate opinion of Justice Barredo.

Barredo, J., concurs in separate opinion.

Teehankee, J., I concur in line with the considerations stated in my separate opinion in *Sison vs. Gatchalian*, L-34709, June 15, 1973.

[1] Petitioners are Cresencio Monticines, Pedro Cometa and Lope Cordova.

[2] Petition, par. 2. The case before respondent Court is CA-G.R. No. 43174-R entitled *Marcelo Coral vs. Cresencio Monticines, et al.*

[3] *Ibid.*, pars. 3-8, pp. 1-3. The petition enclosed the Resolution, the Motion for Reconsideration and to Admit Printed Brief, and the Denial of the Motion for Reconsideration as Annexes A, B and C.

[4] *Ibid.*, pars. 9-13, pp. 3-5.

[5] *Ibid.*, p. 5.

[6] Comment, p. 2.

[7] Petition, par. 6 (d), p. 2.

[8] Cf. *Dioquino vs. Laureano*, L-25906, May 28, 1970, 33 SCRA 65. Citing *Republic vs. Luzon Stevedoring Corp.*, L-21749, Sept. 29, 1967, 21 SCRA 279, where Justice J.B.L. Reyes, in his usual scholarly fashion, discussed the amplitude of the doctrine citing in support of his view the treaties of Facio and Mazeaud.

[9] 85 Phil. 12 (1949).

[10] Cf. *Isaac vs. Mendoza*, 89 Phil. 279 (1951); *Flores vs. Phil. Alien Property Administrator*, 107 Phil. 773 (1960); *Valerio vs. Secretary of Agriculture*, L-18587, April 23, 1963, 7 SCRA 719; *Mina vs. Pacson*, L- 17828, Aug. 31, 1963, 8 SCRA 774; *Ramos vs. Potenciano*, L-19436, Nov. 29, 1963, 9 SCRA 589; *Joven-De Jesus vs. Phil. National Bank*, L-19299, Nov. 28, 1964, 12 SCRA 477; *Rivera vs. Vda. de Cruz*, L-21545, Nov. 27, 1968, 26 SCRA 58.

[11] According to Section 6 of Article II of the Revised Constitution: "The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits."

[12] Section 12, Article XIV of the Revised Constitution.

[13] L-28194, November 24, 1972, 48 SCRA 31.

[14] *ibid.*, p. 39.

[15] Cf. *Quimson vs. Suarez*, 45 Phil. 901 (1924); *Atkins Kroll and Co., Inc. vs. Domingo*, 46 Phil. 362 (1924); *Gustilo vs. Maravilla*, 48 Phil. 442 (1925); *Vargas vs. Tancio*, 67 Phil. 308 (1939); *Jimenez vs. De Castro*, 67 Phil. 398 (1939); *Parsons Hardware Co., Inc. vs. Court of Appeals*, 69 Phil. 411 (3 940); *Hernandez vs. Katigbak Vda. de Salas*, 69 Phil. 744 (1940); *Palma vs. Cristobal*, 77 Phil. 712 (1946); *Azurin vs. Quitariano*, 81 Phil. 261 (1948); *Director of Lands vs. Martin*, 84 Phil. 140 (1949); *Manlincon vs. De Vera*, 86 Phil. 115(1950); *Arceo vs. Varela*, 89 Phil. 212 (1951); *De Lara vs. Ayroso*, 95 Phil. 185 (1954); *Sapto vs. Fabiana*, 103 Phil. 683 (1958); *Vda. de Carvajal vs. Coronado*, L-23250, Nov. 12, 1966, 18 SCRA 635.

CONCURRING OPINION

BARREDO, J.:

As I view this case, the only question before Us is whether or not, under the facts alleged by Atty. Tomas Barnes, his failure to file the brief for the appellants in the Court of Appeals may be overlooked or tolerated on the ground of fraud, accident, mistake or excusable neglect. I cannot discern any due process aspect in this issue. Neither do I feel in any manner justified, in the premises, to look into the merits of petitioners' position in the dismissed appeal. I have always held such matter to be irrelevant in cases of the nature now before Us.

On whether or not the delay of counsel was due to fraud, accident, mistake or excusable neglect, I regret to make the observation that the main opinion is overconsiderate to Atty. Barnes, having in mind existing jurisprudence which frowns upon complete inattention of a party, and more so of a lawyer, to conditions imposed by the rules or by a court order or resolution, as evidenced in the case at bar by the failure of Atty. Barnes to advise the court on time as to why non-compliance by him might occur. The policy-rule of the Court of Appeals allowing only one unextendible extension of 90-days for the filing of briefs is not absolute in the face of a meritorious showing of fraud, accident, mistake or excusable neglect, for these are universal and age-long circumstances that have always been considered as entitling a party to relief from the otherwise legal consequences thereof. The circumstances alleged in the pleadings before Us do not to my mind warrant a deviation from the very reasonable rule We have always adhered to that the corresponding court should at least be given due notice in time of the difficulties from which a party is suffering and by reason of which he foresees inability to comply with its order or with the rules. If Atty. Barnes was well enough to correct, type in final form and send the brief to the printer, pending receipt of the order of the Court of Appeals dismissing the appeal, I see no reason why he could not have informed the court earlier of the reasons why he feared he would be unable to meet the court's deadline. In other words, what I deplore is that counsel has not shown that he seriously took note of and concerned himself with the expiry date, September 1, 1972, of which he was undeniably aware. He does not say he overlooked it - from aught that appears, he simply ignored it, and then tried to make-up his excuses after the appeal had already been ordered dismissed.

As to whether or not, whatever be the merits of his client's cause, they should suffer the fate of their lawyer's inexcusable conduct, I might say this is not the first time such an unfortunate denouement has been considered by the Court as irrelevant. However, since the expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter, and there are enough members of the Court who believe that it was arbitrary on the part of the Court of Appeals to have just cast aside the explanation of Atty. Barnes, without investigating thoroughly the veracity thereof, I opt to err, if it is an error to lean on the

side of liberality in the light of the foregoing considerations, and, hence, I concur in the result.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.