

FRANCISCO ALLAM, ET AL., PETITIONERS VS. VALENTINA ACOSTA, NIEVES BULAN, ET AL., RESPONDENTS.*G.R. No. L-20242. January 31, 1964*

Ponente: BARRERA, J.

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This is a petition for certiorari filed by Francisco Allam, et al., to annul the resolutions of the Court of Appeals in CA—G.R. No. L-29551-R, allegedly for being in abuse of discretion.

From the decision of the Court of First Instance of Isabela (in Civil Case No. 1070), therein defendants Valentina Acosta, et al., instituted an appeal to the Court of Appeals, which was docketed as CA—G.R. No. 29551-R. On June 22, 1961, the Clerk of the Court of Appeals notified appellant's counsel of record (Atty. Inigo B. Tejada of Cabatuan, Isabela) of its receipt of the record on appeal from the lower court, and advised said counsel to remit the sum of P198.75 to cover the docketing fee and the estimated cost of printing the record on appeal. As appellants failed to remit the said amount within the prescribed period, appellees Francisco Allam, et al, moved for the dismissal of the appeal, which motion was granted by resolution of the Court of Appeals of September 4, 1961.

On September 23, 1961, Atty. Vicente T. Velasco, Jr. of Manila entered his appearance as counsel for appellants and, on the same day, filed a motion for reconsideration of the appellate court's resolution dismissing the appeal. It was claimed that the delay in the remittance of the cost of printing the record on appeal was due to the excusable negligence or. mistake of appellants, which was specified in said motion. On October 7, 1961, this motion was granted, and the resolution dismissing the appeal was reconsidered.

Under date of November 7, 1961, separate notices to file appellants' brief in 45 days were sent to Attys, Velasco and Tejada. On December 15, 1961, and upon motion of Atty. Velasco, the respondent court granted appellants an extension of 30 days from January 4, 1962, within which to file their brief. On January 25, 1962, however, Atty. Velasco asked for leave to withdraw as counsel, for the reason that differences had arisen between him and appellants, which would result in his failure to submit the brief on time. This motion as well Atty. Tejada's, original attorney of record, also for withdrawal of appearance on behalf of appellants, were granted by the Court of Appeals on February 21, 1962. At the same time, and on appellants' own motion, the latter were allowed a second extension of 30 days from February 5, within which to file their brief.

On March 5, 1962, or 2 days before the expiration of the extended period, another set of counsel (Attys. Aurelio S. Ramones and Silvestre Br. Bello of Ilagan, Isabela) entered their appearance for appellants, and requested for another extension to file the latter's brief. Again, this motion was granted and a third extension of 20 days, from March 7, 1962, was allowed.

On March 26, 1962, or 1 day before the expiration of the period as previously extended, Attys. Carbonell and Perfecto (of Manila) appeared as new counsel for appellants, and petitioned that the said appellants, who had dispensed with the services of Messrs. Ramones and Bello, be given another 45 days to file their brief. By

resolution of March 28, 1962, the Court of Appeals granted this petition, and appellants were allowed another (fourth) extension of 45 days from March 27, 1962 to file said brief.

On April 14, 1962, appellees sought for a reconsideration of the said resolution of March 28, and prayed for the dismissal of the appeal, for failure of appellants to file their brief within the reglementary period. This motion was denied by the appellate court on May 15, 1962, with the statement that appellants' brief was already filed with said court on May 10, 1962, within the 45 days extension already granted. Appellees, thus, filed the instant petition for certiorari, alleging that the Court of Appeals acted with grave abuse of discretion in allowing the appellants four extensions of the period within which to file their brief.

Under Section 16, Rule 48, of the Rules of Court, extension of time for the filing of brief may be allowed for good and sufficient cause, if the motion for extension is filled before the expiration of the time sought to be extended.

In the instant case, it may be conceded that the motions for further extension of the prescribed period, to file appellants' brief were filed before the original or extended period had elapsed. However, it is observed that the uniform reason or cause given for such prayers for extensions of the prescribed time, was the change of appellants' counsel. To our mind, the change of counsel herein, taking into account the number thereof and manner in which it was effected—at least S times and occurring when the period to file the brief is about to expire—does not seem to constitute a cause or reason good and sufficient enough to justify the several extensions of the period granted by respondent court in this case. While it is the client's privilege to dispense with the services of his counsel, and the court may at its discretion take into account such fact, the manner in which this privilege was exercised in this case resulting in the prolongation of the prescribed 45-day period to more than 170 days, could not but call our attention. This is especially so if we are to take cognizance of the fact that by its resolution of June 27, 1951, the Court of Appeals had resolved that, "as a matter of policy only one (1) extension of not more than thirty (30) days for the filing; of briefs should be allowed."

The foregoing observation notwithstanding, the herein petition for certiorari has to be dismissed. It appearing that appellants' brief was already filed (on May 10, 1962,) even assuming that there had been some undue exercise of discretion by respondent court in the instant case, the same cannot now be considered of such serious character and gravity, as to warrant the dismissal of the appeal pending therein.

Wherefore, the petition is hereby dismissed, without pronouncement as to costs. SO ORDERED.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

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