

URBANO OLAVARIO ET AL., PETITIONERS, VS. JUAN T. VILLANUEVA, RESPONDENT

G.R. No. L-2752. December 29, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal by certiorari from a decision of the Court of Industrial Relations reversing the decision of the Tenancy Law Enforcement Division of the Department of Justice and authorizing and sanctioning the ejectment or dismissal of the now petitioners and appellants from their landholdings. For answer the respondent alleges, besides several defenses on the merits, that the appeal was not "perfected within the fifteen-day period provided for by law," and asks for its dismissal.

A perusal of the record of the Court of Industrial Relations and of the appellants' memorandum shows that copy of the appealed decision was received by the petitioners on November 18, 1948; that a motion for reconsideration was mailed on November 18, 1948; that copy of the resolution of the Court of Industrial Relations denying that motion was delivered to the petitioners on January 18, 1949; that notice of appeal was filed on January 21, 1949; and that the petition for certiorari, docketed in the Supreme Court on February 1, 1949, was according to the petitioners, registered for mailing on January 29, 1949. Computation of the period on the basis of the material dates gives this result: Between January 18, when the attorney for the petitioners was notified of the adverse resolution on his motion for reconsideration, and January 29, when counsel put his petition for certiorari in the mail, there was a complete interval of ten days. In other words, excluding January 18, the application for certiorari was mailed on the eleventh day, well beyond his ten days to appeal.

The applicable provision is not section 1 of Rule 44 of the Rules of Court, as both parties seem to believe, but Commonwealth Act No. 559, amending Commonwealth Act No. 103 and passed after the promulgation of the Rules of Court, which Act provides that petition to review on certiorari a decision of the Court of Industrial Relations shall be filed within ten days from notice of the decision. (*Manila Trading & Supply Co. vs. Philippine Labor Union*, 71 Phil., 578.)

Without therefore deciding any of the questions on the merits raised in the pleadings, the petition for certiorari should be and is dismissed, with costs against the petitioners.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Padilla, Reyes, and Torres, JJ., concur.

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