

ALFRED HAHN, ET AL., PLAINTIFFS AND APPELLEES VS. YSMAEL & CO., INC., ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-8993. October 29, 1956

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal from an order dated 27 November 1953 dismissing an appeal for failure to file the appeal bond within the reglementary period and from another dated 16 January 1954 denying motion for relief.

On 22 September 1953 judgment was rendered by the Court of First Instance of Manila in Ciyil Case No. 14624, Alfred Hahn et al., plaintiffs vs. Juan Ysmael & Co., Inc., et al., defendants, for the plaintiffs. On 3 October, the defendants received notice of the judgment; on 5 October they filed a notice of appeal; on 24 October, the amended record on appeal; and on 14 November, the appeal bond of P60. On 13 November the plaintiffs moved for the dismissal of the appeal, the appeal bond having been filed beyond the reglementary period of thirty days from notice of the judgment. On 27 November, over the objection of the defendants, the Court dismissed the appeal upon the ground invoked by the plaintiffs. A motion for relief on the ground of excusable neglect in not filing the appeal bond on time was denied. Defendants have appealed from both orders.

The appeal bond was filed on 14 November 1953, or twelve days after the expiration of the thirty-day period within which to perfect an appeal by the filing of a notice of appeal, appeal bond and record on appeal: Following the rule laid down in *Alvero vs. dela Rosa*, 76 Phil 428; *Peralta vs. Solon*, 77 Phil. 610; *Medran vs. Court of Appeals*, 46 Off. Gaz. 4277; *Rural Progress Administration vs. Temporosa*, 46 Off. Gaz. 5450; *Salva vs. Palacio*, 90 Phil., 731; *Espartero vs. Ladaw*, 49 Off. Gaz. 1439; and *Mallare vs. Panahon*, 52 Off. Gaz. 219, the order dismissing the appeal cannot be disturbed.

As to relief under Rule 38, even granting that counsel for the defendants was overburdened with work which he did not anticipate, yet the reason given for his failure to file the appeal bond within the reglementary period, to wit: "because I desired to favor my clients not to make an early disbursement of payment * * * " is so flimsy that the trial court correctly overruled it.

The orders appealed from are affirmed, with costs against the appellants.

Paras, C, J., Montemayor, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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