

ESCOLASTICO DE GUZMAN, PETITIONER, VS. NUMERIANO CUEVAS, SR., AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-28717. June 29, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The issue in this petition is whether or not the Court of Appeals acted with grave abuse of discretion in denying the petitioner's motion for extension of time within which to pay the docketing fee for his appeal.

There is no dispute over the facts of this case. Private respondent Numeriano Cuevas, Sr., accepts as correct the following statement of facts and of the case found in the petitioner's brief:

"In the case of Numeriano Cuevas, Sr. vs. Escolastico de Guzman which was tried and decided by the Court of First Instance of Cavite docketed in said court as Civil Case No. N-772, herein petitioner Escolastico de Guzman was the defendant therein and against whom the judgment was rendered. He perfected his appeal to the Court of Appeals well within the reglementary period for the purpose of having the decision of the Court below be reviewed by the appellate court (pars. 1 and 2, Petition).

"On November 3, 1967, counsel for the appellant received a notice from the Court of Appeals requiring the appellant to pay within 15 days from receipt thereof the docketing fee in said case (CFI-No. 772 Cavite) in the sum of P48.00 and additional amount of P5.00 or a total of P53.00 (par. 3, Id.).

"In view of the recurrence of appellant's chronic lung ailment which necessitated expenses for medical treatment, the appellant, through counsel, filed within the 15-day period or on November 15, 1967, a motion for extension of 10 days within which to pay the docketing fee (par. 4, Id.; Annex A to the Petition). Without waiting for the resolution of the Court of Appeals on said motion, the appellant paid the amount of P53.00 docketing fee to the respondent Court as per postal money order No. I-413796 (par. 5, Id.) which was well within the 10-day period prayed for. Nevertheless, on November 27, 1967, the Third Division of the Court of Appeals in a minute Resolution denied the motion for extension to pay the docketing fee (par. 7, Id.; Annex B to the Petition). Appellant, through counsel, filed a motion for reconsideration (Annex C to the Petition) praying that the Resolution of the Court of Appeals "of November 27, 1967" be reconsidered; that the docketing fee be admitted and that the appeal be given due course on the following grounds:

1. Appellant's failure to pay the docketing fee within the reglementary period (but a motion for extension to pay was filed on time) was neither due to inadvertence or negligence but due to 'force majeure' or unavoidable incident – that is the incapacitatedness of the appellant;
2. That the appellant up to the present is still under treatment for chronic lung ailment as evidenced by the attached medical certificate attached as Annex "A";
3. That appellant has incurred a great deal of his earnings for his medical expenses even to the extent of prejudicing the livelihood of his family;
4. That appellant have earnestly urged the filing of the motion for extension filed with this Court on November

15, 1967; to give him more time to raise the amount;

5. That on November 23, 1967, five days beyond the reglementary period but five (5) days earlier of the period sought to be extended, appellant was able to raise the necessary amount of P53.00 and therefore, repaired immediately to the clerk's office to pay the aforesaid docketing fee." (Par. 8, Id.).

"Acting on said motion for re-consideration, the Third Division of the respondent Court on December 26, 1967 promulgated a Resolution (Annex D to the Petition) denying the motion basing the denial on a Resolution of the Court of Appeals en banc dated July 28, 1949 stating that 'no extension of time for the payment of docketing fee will be entertained' (par. 9, Id.).

"On January 17, 1968, the appellant filed another motion for reconsideration praying that the resolution of the Court of December 26, 1967 be set aside and that the docketing fee tendered under Postal Money Order No. I-413796 in the amount of P53.00 be admitted and that the appeal be given due course (par. 11, Id.; (Annex E to the Petition). x x x

xxx xxx xxx

"The aforesaid motion for reconsideration was denied. Hence, the instant recourse."

On November 3, 1967, the petitioner received the notice requiring him to pay the docketing fee within 15 days. On November 15, 1967, he filed a motion for a ten-day extension within which to pay the required fee. On November 23, 1967, or well within the prayed for ten days extension, the docketing fee was paid.

We find the petition meritorious.

The petitioner explained to the respondent - Court of Appeals why he was constrained to move for a ten-day extension. He also cited various cases, among them CA-G.R. No. 40079-R, CA-G.R. No. 39897-R, and CA-G.R. No. 40534-R where the respondent court granted extensions of time to pay docketing fees on September 20, 1967, July 31, 1967 and December 18, 1967 respectively. Resolutions of the court admit-ting late payments and giving due course to the appeals were also appended to his motion for reconsi-deration dated January 15, 1968.

The Third Division of the Court of Appeals gave no reason for its dismissal of the petitioner's appeal except to fall back on a July 28, 1949 reso-lution that "no extension of time for the payment of docketing fee will be entertained" and insist on a rigid and mandatory compliance with the 19 years old resolution.

In *Lopez v. Court of Appeals* (75 SCRA 401) where the motion for extension of time to pay was filed after the last day to pay docket fee had passed, We took note of the petitioner's explanations and ruled:

"x x x The payment of the appeal docket fee is not a requirement for the protection of the prevail-ing party, and non-compliance therewith within the time pres-cribed causes no substantial prejudice to anyone. It is patent that the delay in the payment was not due to laches or to a desire to delay or defeat the ends of justice. To apply to petitioners the legal require-ments strictly, would not only tend to block the right of review to which a party is entitled under the law, but also would amount to a complete departure from what We said in the cases of *Philippine National Bank vs. Philippine Milling Co., Inc., et al.* (26 SCRA 712, 715) and reiterated in *Maqui & Maqui vs. Court of Appeals, et al.* (L-41609, Feb. 24, 1976) that the provision of Section 1, Rule 50 of the Revised Rules of Court, which provides specific grounds for dis-missal of appeal 'manifestly confers a power and does not impose a duty. What is more, it is directory, not mandatory.' Hence, it should be exercised with a great deal of circumspection, considering all the attendant circumstances."

The rule is that the allowance or denial of motions for extensions of time is mainly addressed to the sound discretion of the court but such dis-cretion must be exercised wisely and prudently, never capriciously with a view to substantial justice. (*Cucio v. Court of Appeals*, 57 SCRA 68). The exercise must be compatible with the

right of litigants to have an opportunity to be heard and the best interests of justice. (Gregorio v. Court of Appeals, 72 SCRA 120, 124). 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. (Maqui v. Court of Appeals, 69 SCRA 368, 374.)

WHEREFORE, the petition for a writ of certiorari is granted. The resolutions of the Court of Appeals dated November 27, 1967, December 26, 1967, and February 7, 1968 are set aside. The respondent court is ordered to accept the docketing fee of P53.00, to docket the case, and give due course to the appeal. Costs against the private respondent.

Teehankee, (Chairman), Makasiar, Plana, Vasquez, and Relova, JJ., concur.
Melencio-Herrera, J., on leave.

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