

COMMERCIAL UNION ASSURANCE COMPANY LIMITED AND NORTH BRITISH & MERCANTILE INSURANCE COMPANY LIMITED, PETITIONERS, VS. LEPANTO CONSOLIDATED MINING COMPANY AND THE HONORABLE COURT...

G.R. No. L-43342. October 30, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review on certiorari[1] of the resolution of the Court of Appeals dated February 26, 1976[2] in CA-G.R. No. 55948-R entitled "Lepanto Consolidated Mining Company vs. Commercial Union Assurance Co., Ltd., et al." denying petitioners' motion for reconsideration of the resolution of November 25, 1975 which actually set aside its earlier decision of May 23, 1975.

The facts of the case are recited in the decision of the Court of Appeals dated May 23, 1975:

"Records of the case show that copy of the order of the lower court dated May 29, 1974 dismissing the complaint in Civil Case No. 18911 entitled 'Lepanto Consolidated Mining Co. vs. Commercial Union Assurance Company, Ltd. and North British and Mercantile Insurance Co., Ltd.' was received by plaintiff-appellant on June 7, 1974.

"On June 28, 1974, plaintiff-appellant filed its notice of appeal and appeal bond. On the same day, it filed a motion for extension of 30 days counted from July 7, 1974 within which to submit its record on appeal.

"In its order dated July 3, 1974, the lower court granted appellant 30 days extension of time from July 7, 1974 within which to file its record on appeal.

"Thereafter, on July 12, 1974, defendants filed its opposition to motion for extension of time to file Record on Appeal on the ground that plaintiff's motion for extension of time did not comply with Section 5, Rule 16 of the Rules of Court which provides:

'Section 5. Contents of Notice. - The notice shall be directed to the parties concerned and shall state the time and place for the hearing of the motion.'

and contends that since the notice is addressed to the Clerk of Court, and not to the parties, and merely states that the same be submitted 'to the Court for its consideration and resolution immediately upon receipt hereof' the motion was a mere scrap of paper and should not have been considered at all.

"As it turned out however the opposition was denied by the lower court in its order dated July 19, 1974.

"On July 20, 1974, a motion for reconsideration of the Order dated July 3, 1974 and a motion to dismiss appeal were filed by the defendants alleging, among other things, that the lower court committed error when it granted plaintiff's motion for extension of time to submit record on appeal because said motion was acted upon by the lower court without any proof of service and that said motion for extension is a mere scrap of paper and does not toll the running of the period to appeal, for it failed to indicate the place, the time and date of hearing of the motion as required by sections 4, 5 and 6 of Rule 15 of the Rules of Court.

"The lower court, on August 7, 1974, denied defendant's motion for reconsideration and thereupon approved plaintiff's appeal."

On October 25, 1974, defendants-appellees Commercial Union Assurance Co., Ltd. and North British & Mercantile Insurance Co., Ltd. filed before the Supreme Court a petition docketed as L-39194 for certiorari and mandamus against the trial judge, the Court of Appeals and Lepanto, with a prayer for a temporary restraining order against the Court of Appeals to cease and desist from taking any action on the appeal interposed by plaintiff, docketed as CA-G.R. No. 55948-R. In their petition in L-39194, Commercial Union Assurance Co., Ltd. and North British & Mercantile Insurance Company Limited alleged, under the heading Preliminary Statement of the Case, the following:

"This is a petition for certiorari with prohibition, assailing the legality of 2 Orders issued by the Court of First Instance of Rizal, Branch XXII, presided over by the Hon. Judge Nicanor Sison. The first is an Order, dated July 3, 1974, granting respondent Lepanto Consolidated Mining Company (Lepanto for brevity's sake) an extension of 30 days from July 7, 1974 to file its record on appeal; the second is the Order dated August 7, 1974, approving respondent's appeal.

"Petitioners respectfully maintain that respondent Court had no legal authority to consider and to act upon respondent Lepanto's Motion for Extension of Time to Submit Record on Appeal, dated June 28, 1974, in that the Motion did not comply with Secs. 4, 5 and 6 of Rule 15 and under prevailing jurisprudence, Lepanto's motion was a mere scrap of paper as a consequence of which its filing did not stop the period to appeal from running.

"As a consequence of the foregoing, respondent Court had no legal authority to approve the record on appeal because the period to appeal had lapsed (as is more fully set forth hereinafter) and the trial court lost jurisdiction over the case.

"Since respondent Court acted in excess of its jurisdiction in issuing the Orders of July 3, 1974 and August 7, 1974, petitioners now come to this Honorable Court upon a plea that the Court of First Instance of Rizal should, by a writ of prohibition, be prevented from elevating the record on appeal filed by respondent Lepanto to the Honorable Court of Appeals, or, in the alternative, if the matter has already been elevated to the Court of Appeals, that the latter court be prevented from adjudicating or taking any action on the appeal of respondent Lepanto.

"In either case, petitioners respectfully maintain that Lepanto's appeal from the Order of the trial court, dated May 29, 1974, dismissing the complaint became final and executory, no valid appeal therefrom having been made by Lepanto."

In the Prayer, the same petitioners prayed as follows:

"WHEREFORE, it is respectfully prayed of this Honorable Court that a writ of prohibition be issued commanding the respondent Court of First Instance of Rizal, Branch XXII, presided over by the Hon. Judge Nicanor S. Sison, the Clerk of Court, or its representatives, to cease and desist from giving due course to the appeal, it appearing that respondent court acted without lawful authority or in grave abuse of discretion amounting to lack of jurisdiction; and in the event that respondent Court has already elevated the record on appeal filed by respondent Lepanto to the Court of Appeals, that this Honorable Court issue a writ of prohibition commanding respondent Court of Appeals to cease and desist from taking any further proceedings in Civil Case (CFI-Rizal) No. 18911.

Petitioners further pray that this Honorable Court reverse the Orders of the Court of First Instance of Rizal, dated July 3, 1974 and August 7, 1974, and order the dismissal of the appeal."

On November 2, 1974, the Supreme Court dismissed the said petition, this wise:

"L-39194 (Commercial Union Assurance Company Ltd., et al. vs. Court of Appeals, et al.). - Considering the allegations contained, the issues raised and the arguments adduced in the petition for certiorari with prohibition, as well as respondents' comment thereon and petitioners' reply to said comment, the Court Resolved to DISMISS the petition for lack of merit."

Petitioners Commercial Union Assurance Co., Ltd. and North British & Mercantile Insurance Co., Ltd. did not file any motion for reconsideration, hence the aforesaid minute resolution became final in December, 1974.

Thereafter, in the appeal of Lepanto, Commercial Union Assurance Company Limited and North British & Mercantile Insurance Company Limited filed on April 4, 1975 with the Court of Appeals a motion to dismiss Lepanto's appeal docketed as CA-G.R. No. 55948-R, arguing that:

a) Lepanto's motion for extension of time to submit record on appeal was a mere scrap of paper for non-compliance with Rule 15, Sections 4, 5 and 6, Rules of Court and the trial court had no jurisdiction to act on, much less grant, the motion; and

b) Since the record on appeal was filed during the extension period which had been unauthorizedly granted, the

appeal was not seasonably perfected and the trial court's order of May 29, 1974 dismissing the complaint became final and unappealable.

Lepanto opposed on April 15, 1975 the motion to dismiss its appeal, alleging that -

a) Commercial Union Assurance Company Limited and North British & Mercantile Insurance Company Limited's motion to dismiss was barred by the prior final decision of the Supreme Court in L-39194; and

b) The motion for extension of time to submit record on appeal was within the trial court's discretion to grant.

In its decision dated May 23, 1975, the Court of Appeals sustained Commercial Union Assurance Company Limited and North British & Mercantile Insurance Company Limited's arguments and dismissed the appeal.

Lepanto filed a motion for reconsideration of the decision of May 23, 1975 and submitted the following propositions of law:

I. The prior dismissal by the Supreme Court, "for lack of merit", of appellees' petition for certiorari with prohibition in L-39194 (Commercial Union Assurance Company, Ltd. et al. vs. Court of Appeals, et al.), bars dismissal by the Court of Appeals of Lepanto's appeal on the same grounds raised by appellees, and finally decided by the Supreme Court, in L-39194.

II. The extension of time granted by the trial court to appellant for submission of the record on appeal was validly granted, despite the circumstance that the notice of hearing of the motion, otherwise seasonably filed, was addressed to the clerk of court and requested him to submit it for the court's resolution upon receipt.

On November 25, 1975, the Court of Appeals promulgated a resolution which found Lepanto's second ground as meritorious. As regards the first ground, however, the Court of Appeals held:

"We are not prepared to disturb our finding and conclusion on the first error assigned in this motion for reconsideration. The question has been extensively discussed and threshed out in the said decision."

The dispositive portion of said resolution reads as follows:

"WHEREFORE, finding merit in the motion for reconsideration our decision (of May 23, 1975) is hereby set aside and defendants-appellees' motion to dismiss filed on April 4, 1975 is hereby DENIED."

Commercial Union Assurance Company Ltd. and North British & Mercantile Insurance Company Ltd. moved for reconsideration of the resolution of November 25, 1975. This motion for reconsideration was denied "for lack of merit" by the Court of Appeals on February 26, 1976.

Hence, Commercial Union Assurance Company Ltd. and North British & Mercantile Insurance Company Ltd. filed this petition for review on certiorari of the resolution of February 26, 1976.

According to the petitioner, the respondent Court of Appeals erred: (1) In practically ruling that a motion for extension of time to file record on appeal belongs to that class of motions which may be heard and granted ex parte; (2) In practically holding that a "record on appeal" and "pleadings" stand on the same legal footing; that what is applicable jurisprudence to one is equally applicable to the other; (3) In finding that the ruling in *Amante*

vs. Sunga has superseded the Andrada case and brought to life the Moya doctrine.

On the other hand, the position of the private respondent in resisting the motion for dismissal before the Court of Appeals is based on the following propositions: 1. The prior dismissal "for lack of merit" in L-39194 of the petition for certiorari and prohibition is a bar to dismissal of the appeal by the Court of Appeals; 2. The trial court had jurisdiction to grant ex parte, on the basis of an ex parte motion, extension of the period for the submission of the record on appeal. Private respondent further raises a third issue, namely: 3. Is an appellee, or a private respondent, precluded from sustaining, through a cross-assignment of error, the judgment or order sought to be reviewed by appeal or by special civil action?

On the first principal question of res judicata, private respondent contends that the dismissal for lack of merit in the minute resolution of the Supreme Court in L-39194 (Commercial Union Assurance Co., Ltd., et al. vs. CA, et al.) which was a special civil action for certiorari with prohibition praying for the issuance of a writ of prohibition commanding the Court of Appeals to cease and desist from taking any further proceeding in the appeal of Lepanto in CA-G.R. No. 55948-R, which minute resolution had become final and executory, barred the Court of Appeals from dismissing the appeal on the principle of res judicata.

The application of the rule of res judicata depends on whether a minute resolution of the Supreme Court is or is not an adjudication on the merits of the petition.

On this point, the respondent Court of Appeals acting on the motion for reconsideration filed by Lepanto, ruled that such minute resolution was not a judgment on the merits since the petition was not given due course, and no answer was required thereon, and that res judicata does not obtain since the minute resolution was "no declaration of the law as to the respective rights and duties of the parties based on the ultimate facts disclosed by the pleadings and evidence and upon which the right of recovery depends." The appellate court further said that the minute resolution did not state "the facts and the law on which it is based," citing Art. 10, Sec. 9, Constitution of the Philippines; Sec. 1, Rule 36 of the Rules of Court.

We reject this view of the appellate court because the Court of Appeals does not have the competency to assume that the Supreme Court, in dismissing the petition in L-39194 merely passed upon the legal propriety of the petition as an available remedy under Sec. 1, Rule 65 of the Rules of Court. Neither can the appellate court assume that the Supreme Court had taken in mind as the reason for ordering its dismissal the comment filed therein that anyway the appeal can be taken up before the Court of Appeals.

As the minute resolution itself explicitly and categorically stated, this Court had considered the allegations contained, the issues raised and the arguments adduced in the petition for certiorari as well as respondent's comment therein and petitioner's reply to said comment. Hence, it is not to be assumed that Our action was based only on the comment of the respondent therein.

The practice of the Supreme Court in disposing of petitions for review by dismissing them for lack of merit in minute resolutions is a practice that has been patterned after the United States Supreme Court wherein petitions for review are often merely ordered "dismissed"; it has helped the Court in alleviating its heavy docket. (Novino, et al. vs. CA, et al., 8 SCRA 279). In the aforecited case of Novino, the Supreme Court, speaking thru Chief Justice Bengzon, said:

"In connection with identical short resolutions, the same question has been raised before; and We held that these "resolutions" are not "decisions" within the above constitutional requirement. They merely hold that the petition for review should not be entertained in view of the provisions of Rule 46 of the Rules of Court and

even ordinary lawyers have all this time so understood it. The petition to review the decision of the Court of Appeals is not a matter of right but of sound judicial discretion and so there is no need fully to explain the court's denial. For one thing, the facts and the law are already mentioned in the Court of Appeal's opinion."

In *In re Almacen*, 31 SCRA 562, 574, this Court, thru now Chief Justice Fred Ruiz Castro, said:

"We underscore the fact that cases taken to this Court on petitions for certiorari from the Court of Appeals have had the benefit of appellate review. Hence, the need for compelling reasons to buttress such petitions if this Court is to be moved into accepting them. For it is axiomatic that the supervisory jurisdiction vested upon this Court over the Court of Appeals is not intended to give every losing party another hearing."

In *Mendoza vs. CFI*, 51 SCRA 369, this Court speaking thru Justice Fernando, held that a minute resolution cannot be stigmatized as in any wise failing to abide by the constitutional command. In a separate concurring opinion, Justice Barredo explained succinctly that Sec. 9, Art. 10 of the Constitution requiring that "every decision of a court of record shall clearly and distinctly state the facts and the law on which it is based, but which additionally provides that the Rules of Court shall govern the promulgation of minute resolutions, in effect means that it is in the power of the Supreme Court to determine in every given case whether or not a minute resolution is sufficient to serve the best interests of justice even if the same shall amount to a final decision thereof."

These pronouncements of the Court are as clear and well-established as the practice long applied by the Tribunal to remove any and all doubts as to the constitutional validity of minute resolutions. Accordingly, We hold that the Court of Appeals erred in considering that Our minute resolution of dismissal for lack of merit in L-39194 was not an adjudication on the merits of the petition. By such dismissal, a re-litigation of the issues therein raised is barred under the rule of *res judicata*.

The other principal questions to be resolved in the Petition at bar are: (1) whether the appeal was perfected on time notwithstanding the fact that the record on appeal was filed within the period prayed for in respondent's *ex parte* motion for extension of time; and (2) whether the *ex parte* motion for extension of time to submit the record on appeal was not fatally defective and its grant by the trial court not contrary to law.

The applicable and pertinent provisions of the Rules of Court are found in Rule 15, Sections 4, 5 and 6, which provide as follows:

"Sec. 4. Notice - Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion.

"Sec. 5. Contents of notice. - The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion.

"Sec. 6. Proof of Service, to be filed with motion. - No motion shall be acted upon by the court, without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected."

The manner and period for taking an appeal from the Court of First Instance to the Court of Appeals is provided

under Rule 41, Section 3 of the Rules of Court which states:

"Section 3. How appeal is taken. - Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37.

But where such a motion has been filed during office hours of the last day of the period herein provided, the appeal must be perfected within the day following that in which the party appealing received notice of the denial of said motion."

Petitioners argue and contend that "the order of the lower court dated May 29, 1974 dismissing Lepanto's complaint in Civil Case No. 18911 had already become final and executory in view of Lepanto's failure to perfect its appeal within 30 days from notice of the order of dismissal (Section 3, Rule 41, Rules of Court). While Lepanto may have seasonably filed its notice of appeal and appeal bond within the reglementary period, its failure to file the record on appeal within the same period forever barred it from assailing the order of dismissal. Lepanto's filing, in the meantime, of a defective motion for an extension of time to file the record on appeal, which the lower court granted despite the fact that it had no jurisdiction to act on the same except to deny it, could not have operated to give Lepanto an additional period to perfect its appeal."

Continuing, petitioners maintain that since the notice of Lepanto's "Motion for Extension of Time to Submit Record on Appeal" was not directed to the parties concerned but to the lower court's clerk of court, since the said "motion" was not served upon petitioners at least three (3) days before the hearing thereof, and since there was no proof of service of the notice for its hearing, its mere filing did not toll or suspend the running of the 30-day period to perfect the appeal. The lower court's affirmative action on the basis of the defective "motion" did not cure the flaw; Lepanto's "motion" was defective per se and could not have invested the court a quo with jurisdiction to take cognizance of the same, much more grant affirmative relief thereof. Petitioners cite as authority the case of *Andrada, et al. vs. Court of Appeals*, 60 SCRA 379, where the Supreme Court said:

"This court has repeatedly made it clear not only that a notice addressed to the Clerk of Court requesting him to 'set the foregoing motion for the consideration and approval of this Honorable Court immediately upon receipt hereof' does not comply with the requirements of Section 5 of Rule 15, but also that subsequent action of the court thereon does not cure the flaw, for a motion with a notice fatally defective is a 'useless piece of paper.'"

Petitioners further rely on the pronouncement of the Supreme Court in the case of *Fulton Insurance Co. vs. Manila Railroad Company*, 21 SCRA 975, thus:

"The present provision of Section 2, Rule 37 construed in relation to sections 4, 5 and 6 of Rule 15 of the Rules of Court provides that a written notice of a motion for new trial shall be served by the movant on the adverse party stating the time and place of hearing thereof, and the court shall not act upon the motion without proof of such notice. Said provision repealed the provision of section 146 of the old Code of Civil Procedure and the rulings founded therein, (*Soriano vs. Ramirez*, 44 Phil. 519; *Ignacio vs. Sison and Navarro*, 56 Phil. 451), to the effect that the notice must be served by the court on the adverse party (*Moran*, Rules of Court, Vol. II, 1963 Ed., p. 212). The notice therein required is now mandatory, and the failure of herein appellee to give notice of

the time and place of hearing of the motion it filed in the court below, was indeed fatal to its cause."

On the other hand, private respondent contends that the grant ex parte of the motion for extension of time to submit the record on appeal was valid; that while a motion, generally, shall be served upon all parties concerned at least three days before the hearing thereof, pursuant to the first sentence of Section 4 of Rule 15, yet the second sentence of the same section expressly allows the court to hear a motion on shorter notice for good cause and specially on matters which the court may dispose of on its own motion; that, while the first part of Section 6 enjoins the court from acting on a motion unless proof of service is first shown, yet the latter part of the same section excepts from the injunction motions the resolution of which would not adversely affect the substantial rights of the other parties. And under Section 2 of Rule 13, a motion for extension of time to submit the records on appeal may be heard and granted ex parte. This section states:

"Sec. 2. Papers to be filed and served. - Every order required by its terms to be served, every pleading subsequent to the complaint, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected thereby x x x."

Private respondent relies on *Moya vs. Barton*, 76 Phil. 831 (1946) for the doctrine that a motion for extension of time, as long as it is filed within the period sought to be extended, is within the court's sound discretion to grant or deny and, thus, may be filed ex parte and granted without the usual formalities applicable to motions in general. Said the Supreme Court in this case:

"x x x We are of the opinion that the court has power and discretion to extend the period of filing the record on appeal in the interest of justice, if it appears that the appellant has no sufficient time to prepare and file it within the period limited by law, either because the remaining period is very short, or the record on appeal voluminous, or because of some other justifiable reasons, provided the motion for extension is filed before the expiration of the period fixed by law. The law must be construed liberally and reasonably. It goes without saying that a motion, pleading or other paper filed within the extended period legally or validly granted by a court, is a motion filed within the period fixed by law.

"x x x (T)he motion for extension filed in the present case may be considered as one which may be heard ex parte. The lower court did not err, therefore, in granting the petition for extension ex parte."

The case of *Que Tiac vs. Republic*, 43 SCRA 56, promulgated January 31, 1972 is also cited by the private respondent which reiterated the doctrine in the *Moya* case when it sustained the validity of an extension for the filing of a record on appeal, notwithstanding that the request for extension was by telegram merely and not by formal motion and there was admittedly no notice to the adverse party of the place, time and date of hearing. In this case, the Supreme Court said:

"The lower court disallowed the appeal upon the theory that the telegraphic message incorporating the first motion for extension was not a formal motion, for which reason, and because there was no proof of service upon the other party and no notice of hearing, it was not entitled to be dealt with as a motion. Said request for extension of time was addressed, however, to the discretion of the court, which may act thereon ex parte. In the case at bar, His Honor, the trial judge, did so and granted, not only said request but, also, the subsequent motion for an additional extension of time. Inasmuch as said two (2) orders granting extensions of time were

not null and void ab initio, the lower court committed a grave abuse of discretion, amounting to excess of jurisdiction, in disallowing the record on appeal filed by the Government within the period thus extended."

In September, 1973, the Supreme Court promulgated the case of *Berkenkotter vs. Court of Appeals*, 53 SCRA 228, which involved the filing of a record on appeal. The doctrine enunciated in this case is as follows:

"If the motion for extension filed within the reglementary period is not acted upon and the extension period asked for lapses without the record on appeal having been filed, the motion does not suspend the running of the period to appeal and the right to appeal is lost. However, if the motion is granted, the extension requested is tacked to the original period, even if the favorable order is issued after the expiration of the latter. In any event, the record on appeal must be filed within the extension asked, for once said period expires and no record on appeal has yet been filed, the court loses jurisdiction to approve the extension unless the delay is due to fraud, accident, mistake or excusable neglect."

"The period within which the record on appeal and appeal bond should be perfected and filed, may, however, be extended by order of the court, upon application made, prior to the expiration of the original period."

"The mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the petitioner if the record on appeal filed within the requested period was approved by the court a quo. The approval thereof carries with it the approval of the motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal."

"Although there is no vested right in technicalities, in meritorious cases, a liberal (not literal) interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the intent and purpose of the rules - the proper and just determination of a litigation."

The facts of this case (*Berkenkotter*) are as stated in the opinion of the Court penned by Justice Esguerra:

"In the case at bar, petitioner filed his record on appeal within the period of time requested and although no order of approval nor denial of the ex parte motion for extension was issued, the Order of the Court on November 14, 1972, approving the notice of appeal, appeal bond and record on appeal amounts to and should be construed as a ratification or approval of the motion for extension. It has always been the view of this Court that the period within which the record on appeal and appeal bond should be perfected and filed, may, however, be extended by order of the court, upon application made, prior to the expiration of the original period. (*Galima, et al. v. Court of Appeals, et al.*, L-21046, January 31, 1966; *Alvero dela Rosa*, 76 Phil. 428; *Vivo v. Arca*, L-21589, April 30, 1965; *Caisip v. Cabangon*, L-14684, August 26, 1960; *Sy It v. Tiangco*, L-18376, February 27, 1962). What decisively matters is that the motion for extension of time to file the record on appeal is filed before the expiration of the 30-day period prescribed by the rules. In *Valero v. Court of Appeals, et al.*, L-36667, June 29, 1973, this Court, through Mr. Justice Barredo, sustained the petitioner's claim that the record on appeal was filed within the extended period given to her upon motion filed before the expiration of the reglementary period but approval of which was granted thereafter. It may not be amiss to state here that although there is no vested right in technicalities (*Alonso v. Villamor*, 16 Phil. 315), in meritorious cases like the present case a liberal (not literal) interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the intent and purpose of the rules -- the proper and just

determination of a litigation (Ronquillo vs. Marasigan, 5 SCRA 312). x x x"

The recent cases of *Amante vs. Suñga*, L-40491, May 28, 1975, 64 SCRA 192 and *Pimentel vs. Court of Appeals*, L-39423 & L-39684, June 27, 1975, 64 SCRA 475 are finally cited by private respondent in support of its position. In *Amante vs. Suñga*, supra, the Court, speaking through Justice Antonio, said:

"The motion for extension of time within which a party may plead is not a litigated motion where notice to the adverse party is necessary to afford the latter an opportunity to resist the application, but an ex parte motion 'made to the court in behalf of one or the other of the parties to the action, in the absence and usually without the knowledge of the other party or parties.' As 'a general rule, notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand that his rights be not affected without an opportunity to be heard . . .'

"It has been said that 'ex parte motions are frequently permissible in procedural matters, and also in situations and under circumstances of emergency; and an exception to a rule requiring notice is sometimes made where notice or the resulting delay might tend to defeat the objection of the motion'.

"x x x The granting of extension to plead is a matter addressed to the sound discretion of the court. x x x

"In the case at bar, respondent private corporation was not deprived of any substantial right by reason of the alleged defect of notice in petitioner's motion praying for an extension of time to plead. There are motions that may be heard and granted ex parte, and a motion for extension of time to file an answer belongs to such class. It was, therefore, error for the court a quo to set aside its Order granting extension to petitioner within which to file his pleading."

In *Pimentel vs. Court of Appeals*, supra, the facts show that the decision of the trial court was received by appellant on September 25, 1973; the notice of appeal was filed on October 13, 1973; the cash appeal bonds and an ex parte motion for extension of time to file the records on appeal was filed on October 22, 1973; the trial court issued on October 23, 1973 an order granting a 30-day extension from October 25, 1973 to submit the records on appeal; on November 19, 1973, the records on appeal were served and filed; on January 24, 1974, the trial court approved the corrected records filed within the period allowed for the correction; and the Supreme Court, speaking through Justice Makasiar, said that "the notice of appeal, records on appeal and appeal bonds have been filed within the reglementary period." (p. 477).

In resolving the principal issue in the case at bar, whether the appeal interposed by private respondent was perfected on time although the record on appeal was filed within the period prayed for in an ex parte motion for extension of time, which motion was not served to the adverse party but was addressed to the Clerk of Court requesting him to submit it for the court's resolution upon receipt thereof, the most fundamental consideration in the mind of the Court is that which will best serve the ends of justice and assist the parties to obtain a just, speedy and inexpensive determination of the action or proceeding pursuant to and in compliance with Rule 1, Section 2, which provides:

"Sec. 2. Construction. - These rules shall be liberally construed in order to promote their object and to assist

the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."

This is the overriding and paramount rule which guides every doctrine and pronouncement of this Court in construing the provisions of the Rules of Court. While the earlier cases pertinent to the issue command mandatory compliance with Sections 4, 5 and 6 of Rule 15 of the Rules of Court, the weight of the authorities recently promulgated by the Supreme Court culminating in *Amante v. Suñga*, 64 SCRA 192 and *Pimentel v. Court of Appeals*, 64 SCRA 475 tend towards liberally giving every litigant the assistance in obtaining a fair, expeditious and reasonable determination of his rights as he seeks recourse to the court of law for justice without technicalities and without strict adherence to the letter of the Rules, thereby promoting their objective. "The new rules are really simple and liberal and, in the language of Professor Sunderland, 'the purpose which they seek to accomplish to eliminate technical matters by removing the basis for technical objections, to make it difficult as impossible for cases to go off on procedural points, and to make litigation as inexpensive, as practicable and as convenient, as can be done.'" (Vol. XIII, *University of Cincinnati Law Review*, No. 1) (*Co Tiamco vs. Diaz, etc.*, 75 Phil. 672, 681).

The ex parte motion of private respondent for extension of time to file the record on appeal does not appear to be a litigated or a contentious motion. There is no claim that the motion was intended to delay the appeal; on the contrary, it appears to be grounded on a reason which is not only reasonable and fair, the same being "due to demands on the professional time of the (undersigned) counsel" but also was satisfactory to the trial court that the said motion did not affect the substantive rights of the adverse party and, therefore, the Court may act on the same even without proof of service thereof on the adverse party (*Cochingyan, Jr. vs. Cloribel*, 76 SCRA 361) pursuant to Section 6, Rule 15 of the Rules of Court which provides:

"Sec. 6. Proof of service, to be filed with motion. - No motion shall be acted upon by the court, without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected."

Accordingly, We agree with the contention of the private respondent and the ruling of the Court of Appeals in its Resolution dated Nov. 25, 1975 which sustained the view that the record on appeal filed by the private respondent within the period prayed for in its motion ex parte for extension of time to file the record on appeal, was submitted within the reglementary period and that the trial court has the power and authority to act on the same in accordance with the law, provided the ex parte motion was filed within the original period prescribed by the Rules.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is denied, with costs against the petitioner.

SO ORDERED.

Teehankee, (Chairman), Makasiar, and Fernandez, JJ., concur.

Muñoz Palma, J., concurs in the result.

[1] Treated as special civil action per resolution of July 19, 1976.

[2] Seventh Division; Gaviola, J., Chairman, Gancayco and Serrano, JJ., members.

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