

B. R. SEBASTIAN ENTERPRISES, INC., PETITIONER, VS. HON. COURT OF APPEALS, EULOGIO B. REYES, NICANOR G. SALAYSAY, IN HIS CAPACITY AS PROVINCIAL SHERIFF OF RIZAL; AND ANTONIO MARI...

G.R. No. L-41862. February 07, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for prohibition and mandamus, with prayer for preliminary injunction, to review the Resolution dated 10 November 1975 of respondent Court of Appeals in C.A.-G.R. No. 53546-R denying petitioner's motion to reinstate its appeal, earlier dismissed for failure to file the Appellant's Brief.

The material operative facts of this case, as gathered from the pleadings of the parties, are not disputed.

Eulogio B. Reyes, now deceased, filed an action for damages with the then Court of First Instance (now Regional Trial Court) of Rizal, Pasay City Branch, against the Director of Public Works, the Republic of the Philippines and petitioner herein, B.R. Sebastian Enterprises, Inc. The case was docketed as Civil Case No. 757-R.[1]

On 7 May 1973, the trial court rendered a decision finding petitioner liable for damages but absolving the other defendants.[2]

Petitioner, thru its counsel, the law firm of Baizas, Alberto and Associates, timely appealed the adverse decision to the respondent Court of Appeals, which docketed the case as C.A.-G.R. No. 53546-R.[3]

During the pendency of the appeal, the plaintiff-appellee therein, Eulogio B. Reyes, died. Upon prior leave of the respondent Court, he was substituted by his heirs -- Enrique N. Reyes, Felicisima R. Natividad, Donna Marie N. Reyes and Renne Marie N. Reyes -- who are now the private respondents in this present petition.

On 19 February 1974, petitioner, thru its then counsel of record, received notice to file Appellant's Brief within 45 days from receipt thereof. It had, therefore, until 5 April 1974 within which to comply.

Counsel for petitioner failed to file the Brief; thus, on 9 July 1974, respondent Court issued a Resolution requiring said counsel to show cause why the appeal should not be dismissed for failure to file the Appellant's Brief within the reglementary period.[4] A copy of this Resolution was received by counsel for petitioner on 17 July 1974.[5]

As the latter failed to comply with the above Resolution, respondent Court, on 9 September 1974, issued another Resolution this time dismissing petitioner's appeal:

"It appearing that counsel for defendant-appellant failed to show cause why the appeal should not be dismissed (for failure to file the appellant's brief within the reglementary period which expired on April 5, 1974) within the period of 10 days fixed in the resolution of July 9, 1974, copy of which was received by said counsel on July 17, 1974; x x x"[6]

On 28 September 1974, petitioner, this time thru the BAIZAS LAW OFFICE, filed a motion for reconsideration[7] of the resolution dismissing its appeal alleging that as a result of the death of Atty. Crispin Baizas, senior partner in the law firm of BAIZAS, ALBERTO & ASSOCIATES, the affairs of the said firm are still being settled between Atty. Jose Baizas (son of Crispin Baizas) and Atty. Ruby Alberto, the latter having established her own law office; furthermore, Atty. Rodolfo Espiritu, the lawyer who handled this case in the trial court and who is believed to have also attended to the preparation of the Appellant's Brief but failed to submit it through oversight and inadvertence, had also left the firm.

In its Resolution of 9 October 1974, respondent Court denied the motion for reconsideration, stating that:

"Upon consideration of the motion of counsel for defendant-appellant, praying, on the grounds therein stated, that the resolution of September 9, 1974, dismissing the appeal, be set aside, and that appellant be granted a reasonable period of time within which to file its brief: considering that six (6) months had elapsed since the expiration of the original period and more than two and one-half (2-½) months since counsel received copy of the resolution requiring him to show cause why the appeal should not be dismissed for failure to file brief; Motion Denied." [8]

No action having been taken by petitioner from the above Resolution within the period to file a petition for review, the same became final and executory, and the records of the case were remanded to the court of origin for execution.

The trial court issued a writ of execution on 21 October 1975.[9] Pursuant thereto, respondents Provincial Sheriff and Deputy Sheriff attached petitioner's Hough Pay Loader with Hercules Diesel Engine and issued on 5 November 1975 a Notice of Sheriff's Sale, scheduling for Friday, 14 November 1975 at 10:00 o'clock in the morning, the auction sale thereof.[10]

On 6 November 1975, petitioner filed with respondent Court a Motion to Reinstate Appeal with Prayer for Issuance of a Writ of Preliminary Injunction[11] dated 5 November 1975, and containing the following allegations;

- "1. That late as it may be, this Honorable Court has the inherent power to modify and set aside its processes, in the interest of justice, especially so in this case when the case was dismissed on account of the untimely death of Atty. Crispin D. Baizas, counsel of BRSEI (B.R. Sebastian Enterprises, Inc.).
2. That to dismiss the case for failure to file the appellant's brief owing to the untimely death of the late Atty. Crispin D. Baizas would be tantamount to denying BRSEI its (sic) day in court, and is, therefore, a clear and unmistakable denial of due process on the part of BRSEI.
3. That to reinstate BRSEI's appeal would not impair the rights of the parties, since all that BRSEI is asking for, is a day in court to be heard on appeal in order to have the unfair, unjust and unlawful decision, set aside and reversed."

The respondent Court denied the said motion in its Resolution of 10 November 1975:[12]

"x x x it appearing that appellant was represented by the law firm of Baizas, Alberto & Associates, and while Atty. Baizas died on January 16, 1974, his law firm was not dissolved since it received the notice to file brief on February 19, 1974, and the copy of the Resolution of July 9, 1974, requiring appellant to show cause why the appeal should not be dismissed was received by the law firm on July 17, 1974 and no cause was shown; x x x"

Hence, on 13 November 1975, petitioner filed the original petition[13] in this case against the Court of Appeals; Eulogio B. Reyes, Nicanor G. Salaysay, as Provincial Sheriff of Rizal, and Antonio Marinas, as Deputy Sheriff.

The petition likewise prayed for the issuance of a Temporary Restraining Order.

In the Resolution of 13 November 1975, this Court required respondents to comment on the petition within ten (10) days from receipt thereof, and issued a Temporary Restraining Order.[14]

On 12 January 1976, respondents filed a Partial Comment on the Petition with a Motion to Suspend the Proceedings[15] on the ground that respondent Eulogio B. Reyes is already dead and his lawful heirs had already been ordered substituted for him during the pendency of the appeal before the respondent Court of Appeals.

In the Resolution of 21 January 1976, this Court ordered petitioner to amend its petition within ten (10) days from receipt of notice, and suspended the filing of respondents' Comment until after the amendment is presented and admitted.[16]

In compliance therewith, petitioner filed on 9 February 1976 a Motion for Leave to Admit Amended Petition to which it attached the said Amended Petition.[17] The amendment consists in the substitution of Eulogio B. Reyes with his heirs.

This Court admitted the Amended Petition[18] and required the respondents to file their Comment within ten (10) days from notice thereof, which they complied with on 5 April 1976.[19] Petitioner filed its Reply to the Comment on 29 April 1976.[20]

In the Resolution of 12 May 1976, this Court denied the petition for lack of merit:[21]

"L-41862 (B.R. Sebastian Enterprises, Inc. vs. Court of Appeals, et. al.). - Considering the allegations, issues and arguments adduced in the amended petition for review on certiorari of the decision of the Court of Appeals, respondents' comment thereon, as well as petitioner's reply to said comment, the Court Resolved to DENY the petition for lack of merit."

However, on 31 May 1976, petitioner filed a motion for its reconsideration[22] claiming that since it was deprived of the right to appeal without fault on its part, the petition should be given due course.

Respondents submitted on 22 July 1976 their Comment[23] to said Motion for Reconsideration.

On 10 September 1976, this Court resolved to reconsider[24] its Resolution of 12 May 1976 and required both parties to submit simultaneously their respective Memoranda within thirty (30) days from notice thereof.

Petitioner submitted its Memorandum on 5 November 1976[25] while respondents submitted theirs on 22 November 1976.[26] On 29 November 1976, this Court deemed the present case submitted for decision.[27]

The sole issue to be addressed is whether or not the respondent Court of Appeals gravely abused its discretion in denying petitioner's motion to reinstate its appeal, previously dismissed for failure to file the Appellant's Brief.

Petitioner, in its Memorandum, extensively expounds on respondent Court's authority to reinstate dismissed appeals and cites as basis thereof the decision of this Court in *Heirs of Clemente Celestino vs. Court of Appeals, et al.*,[28] Indeed, in said case, this Court affirmed the resolution of the Court of Appeals -- reinstating an appeal after being dismissed for failure by the appellants therein to file their brief, and after entry of judgment and remand of the records to the lower court -- and cancelled the entry of judgment, requiring the lower court to return the records to the Court of Appeals and admit appellant's brief. Said case, however, had a "peculiar or singular factual situation" which prompted the Court of Appeals to grant the relief and which this Court found sufficient to justify such action. As this Court, through Associate Justice Ramon Aquino, said:

"We are of the opinion that under the peculiar or singular factual situation in this case and to forestall a miscarriage of justice the resolution of the Court of Appeals reinstating the appeal should be upheld.

That Court dismissed the appeal of the Pagtakhsans in the mistaken belief that they had abandoned it because they allegedly failed to give to their counsel the money needed for paying the cost of printing their brief.

But presumably the Appellate Court realized later that fraud might have been practised on appellants Pagtakhsans since their oppositions were not included in the record on appeal. In (sic) sensed that there was some irregularity in the actuations of their lawyer and that Court (sic) itself had been misled into dismissing the appeal.

Counsel for the Pagtakhsans could have furnished them with copies of his motions for extension of time to file brief so that they would have known that the Court of Appeals had been apprised of their alleged failure to defray the cost of printing their brief and they could have articulated their reaction directly to the Court. Counsel could have moved in the Appellate Court that he be allowed to withdraw from the case or that the Pagtakhsans be required to manifest whether they were still desirous of prosecuting their appeal or wanted a mimeographed brief to be filed for them (See *People vs. Cawili*, L-30543, August 31, 1970, 34 SCRA 728). Since counsel did none of those things, his representation that the appellants had evinced lack of interest in pursuing their appeal is difficult to believe.

If the appellate court has not yet lost its jurisdiction, it may exercise its discretion in reinstating an appeal, having in mind the circumstances obtaining in each case and the demands of substantial justice (*Alquiza vs. Alquiza*, L-23342, February 10, 1968, 22 SCRA 494, 66 O.G. 276; *C. Vda. de Ordoveza vs. Raymundo*, 62 Phil. 275; *Chavez vs. Ganson*, 108 Phil. 6).

But even if it has already lost jurisdiction over the appeal by reason of the remand of the record to the lower court, it, nevertheless, has the inherent right to recall the remittitur or the remand of the record to the lower court if it had rendered a decision or issued a resolution which was induced by fraud practised upon it. Such a right is not affected by the statutory provision that after the record has been remanded, the appellate court has no further jurisdiction over the appeal (5 Am Jur 2nd 433 citing *Lovett vs. State*, 29 Fla. 384, 11 So. 176; 84 ALR 595; *State vs. Ramirez*, 34 Idaho 623, 203 Pac. 279)."

In the instant case, no fraud is involved; what obtains is simple negligence on the part of petitioner's counsel, which is neither excusable nor unavoidable. Petitioner thus failed to demonstrate sufficient cause to warrant a favorable action on its plea.

As held in *Chavez, et al. vs. Ganson, et al.*,^[29] and reiterated in *Negros Stevedoring Co., Inc. vs. Court of Appeals*,^[30] We said:

"Granting that the power or discretion to reinstate an appeal that had been dismissed is included in or implied from the power or discretion to dismiss an appeal, still such power or discretion must be exercised upon a showing of good and sufficient cause, in like manner as the power or discretion vested in the appellate court to allow extensions of time for the filing of briefs. There must be such a showing which would call for, prompt and justify its exercise (sic). Otherwise, it cannot and must not be upheld."

To justify its failure to file the Appellant's Brief, petitioner relies mainly on the death of Atty. Crispin Baizas and the supposed confusion it brought to the firm of BAIZAS, ALBERTO & ASSOCIATES. It says:^[31]

"Petitioner, thru its president Bernardo R. Sebastian, engaged the services of Atty. Crispin D. Baizas to handle its defense in Civil Case No. 757-R; however, it appears that Atty. Baizas entered petitioner's case as a case to be handled by his law firm operating under the name and style 'Crispin D. Baizas & Associates.' Hence, the Answer to the complaint, Answer to Cross-Claim, and Answer to Fourth-party Complaint filed for petitioner in said case, evince that the law firm 'Crispin D. Baizas & Associates' represents petitioner in the action.

After rendition of the assailed Decision of the trial court, petitioner's counsel appears to have changed its firm name to 'Baizas, Alberto & Associates.' The appeal was thus pursued for petitioner by the law firm 'Baizas,

Alberto & Associates.'

On January 16, 1974, Atty. Crispin D. Baizas died as a result of a brief heart attack. In consequence (sic) of his death, the law firm 'Baizas, Alberto & Associates' was in a terribly confused state of affairs. In effect, said law firm was dissolved. Atty. Ruby Alberto formed her own law office and other associates left the dissolved law firms (sic) joining other offices or putting up their own. Atty. Jose Baizas, son of deceased Crispin D. Baizas, took over the management of what may have been left of his father's office, it appearing that some, if not many, cases of the defunct office were taken over by the associates who left the firm upon its dissolution.

But, none of the former partners and associates/assistants of the dissolved law firm filed the required appellant's brief for herein petitioner in its appealed case before the respondent Court of Appeals. No notice was served upon petitioner by any of the surviving associates of the defunct law firm that its appellant's brief was due for filing or that the law office had been dissolved and that none of the lawyers therein formerly connected desired to handle the appealed case of petitioner. x x x

The circumstances that the law firm 'Baizas, Alberto & Associates' was dissolved and that none of the associates took over petitioner's case, and no notice of such state of affairs was given to petitioner who could have engaged the services of another lawyer to prosecute its appeal before respondent Court, constitutes (sic) an UNAVOIDABLE CASUALTY that entitles petitioner to the relief prayed for. On the other hand, the non-dissolution of said law firm 'Baizas, Alberto & Associates' will not defeat petitioner's claim for relief, since, in such event, the said firm had ABANDONED petitioner's cause, which act constitutes fraud and/or reckless inattention the result of which is deprivation of petitioner's day in court. In the above-mentioned Yuseco case, this Honorable Court had emphatically and forcefully declared that it will always be disposed to grant relief to parties aggrieved by perfidy, fraud, reckless inattention and downright incompetence of lawyers, which has the consequence of depriving their day (sic) in court."

We find no merit in petitioner's contentions. Petitioner's counsel was the law firm of BAIZAS, ALBERTO & ASSOCIATES and not merely Atty. Crispin Baizas. Hence, the death of the latter did not extinguish the lawyer-client relationship between said firm and petitioner.

In *Gutierrez & Sons, Inc. vs. Court of Appeals*,^[32] the appeal filed by the law firm of BAIZAS, ALBERTO & ASSOCIATES on behalf of respondent therein was dismissed for failure to comply with the requisites enumerated in the Rules of Court; the excuse presented by said counsel was also the death of Atty. Crispin Baizas. This Court held therein that:

'The death of Attorney Baizas was not a valid excuse on the part of his associates for not attending to Alvendia's appeal, supposing arguendo that his office was solely entrusted with the task of representing Alvendia in the Court of Appeals. Attorney Espiritu (not Attorney Baizas) was the one actually collaborating with Viola in handling Alvendia's case. He did not file a formal appearance in the Court of Appeals.'

Undoubtedly, there was inexcusable negligence on the part of petitioner's counsel in failing to file the Appellant's Brief. As revealed by the records, petitioner's counsel, the BAIZAS, ALBERTO & ASSOCIATES law firm, received the notice to file Brief on 19 February 1974. It failed to do so within the 45 days granted to it. Said law firm also received a copy of the respondent Court's Resolution of 9 July 1974 requiring it to show cause why the appeal should not be dismissed for failure to file the Brief within the reglementary period. Petitioner chose not to comply with it, thus compelling the respondent Court to issue on 9 September 1974 a Resolution dismissing the appeal, a copy of which the former also received. Then on 28 September 1974, the BAIZAS LAW OFFICE moved for a reconsideration of the said Resolution which respondent Court denied in its Resolution of 9 October 1974. Nothing more was heard from petitioner until after a year when, on 6 November 1975, it filed the instant petition in reaction to the issuance of a writ of execution by the trial court following receipt of the records from the respondent Court.

The "confusion" in the office of the law firm following the death of Atty. Crispin Baizas is not a valid justification for its failure to file the Brief. With Baizas' death, the responsibility of Atty. Alberto and his Associates to the petitioner as counsel remained until withdrawal by the former of their appearance in the manner provided by the Rules of Court. This is so because it was the law firm which handled the case for petitioner before both the trial and appellate courts. That Atty. Espiritu, an associate who was designated to handle the case, later left the office after the death of Atty. Baizas is of no moment since others in the firm could have replaced him. Upon receipt of the notice to file Brief, the law firm should have re-assigned the case to another associate or, it could have withdrawn as counsel in the manner provided by the Rules of Court so that the petitioner could contract the services of a new lawyer.

In the Negros Stevedoring case, *supra.*, this Court held:

"The negligence committed in the case at bar cannot be considered excusable, nor (sic) is it unavoidable. Time and again the Court has admonished law firms to adopt a system of distributing pleadings and notices, whereby lawyers working therein receive promptly notices and pleadings intended for them, so that they will always be informed of the status of their cases. The Court has also often repeated that the negligence of clerks which adversely affect the cases handled by lawyers, is binding upon the latter."

Compounding such negligence is the failure of the BAIZAS LAW OFFICE, which filed on 28 September 1974 the motion to reconsider the Resolution of 9 September 1974, to take any further appropriate action after the respondent Court denied said motion on 9 October 1974. The appearance of said counsel is presumed to be duly authorized by petitioner. The latter has neither assailed nor questioned such appearance.

The rule is settled that negligence of counsel binds the client.[33]

Moreover, petitioner itself was guilty of negligence when it failed to make inquiries from counsel regarding its case. As pointed out by respondents, the president of petitioner corporation claims to be the intimate friend of Atty. Crispin Baizas; hence, the death of the latter must have been known to the former.[34] This fact should have made petitioner more vigilant with respect to the case at bar. Petitioner failed to act with prudence and diligence; thus, its plea that they were not accorded the right to procedural due process cannot elicit either approval or sympathy.[35]

Based on the foregoing, it is clear that there was failure to show a good and sufficient cause which would justify the reinstatement of petitioner's appeal. Respondent Court of Appeals did not then commit any grave abuse of discretion when it denied petitioner's motion to reinstate its appeal.

WHEREFORE, the Petition is hereby DISMISSED and the temporary restraining order issued in this case is lifted.

Costs against petitioner.

IT IS SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Rollo, 76; 141.

[2] *Id.*, 77.

[3] *Id.*

- [4] Rollo, 79.
- [5] Appendix "K" and paragraph X, Amended Petition.
- [6] Appendix "B", Id.
- [7] Op. cit., 101.
- [8] Rollo, 105; Appendix "F", Amended Petition.
- [9] Id., 302.
- [10] Id., 106; Appendix "G", op cit.
- [11] Id., 110; Appendix "H", Id.
- [12] Rollo, 126; Appendix "I", Amended Petition.
- [13] Id., 1.
- [14] Rollo, 51.
- [15] Id., 63-65.
- [16] Id., 72.
- [17] Id., 73-75.
- [18] Rollo, 128.
- [19] Id., 139.
- [20] Id., 174.
- [21] Id., 180.
- [22] Id., 183.
- [23] Id., 204-206.
- [24] Rollo, 241.
- [25] Id., 273.
- [26] Id., 295.
- [27] Id., 311.
- [28] G.R. No. L-38690, 12 September 1975, 67 SCRA 22.
- [29] 108 Phil. 9.
- [30] 162 SCRA 371.**
- [31] Rollo, 274-276; 283-284.

[32] 61 SCRA 87, 91.

[33] Manila Electric Co. vs. Court of Appeals, 187 SCRA 200.

[34] Rollo, 306.

[35] Florendo vs. Florendo, 27 Phil. 432; Reyes vs. Court of Appeals, 189 SCRA 46.

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