

VICTORIO DAISUG, PETITIONER, VS. HON. COURT OF APPEALS, AND FLORO SACAY, VICTORIA DUCA-LANG AND FRUC-TOSO DUCALANG, RESPONDENTS.

G.R. No. L-31400. August 31, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal via certiorari from the resolution of the Court of Appeals in its CA-G. R. No. 37318-R, dated September 16, 1969, reading as follows:

"The Rollo of this case reveals that on July 12, 1969 we granted defendant-appellant a period of thirty (30) days (in-stead of the forty (40) days prayed for by appellant in his motion for first extension dated June 28, 1969) from July 2, 1969 to file appellant's brief or until August 1, 1969. On August 5, 1969, or four (4) days after the period autho-rized by this Court to appel-lant to file his brief has ex-pired, defendant-appellant, through counsel, registry mailed a motion praying for a second extension of 30 days from August 11, 1969.

"WHEREFORE, the motion of defendant-appellant dated Aug. 5, 1969 praying for a second extension of 30 days, having been filed four (4) days after the period sought to be extended has expired, is hereby denied and the present appeal of defendant-appellant is ordered dismissed.

"SO ORDERED.

JOSE S. RODRIGUEZ

"WE CONCUR:

NICASIO A. YATCO JOSE N. MENDOZA"

It appears that in Civil Case No. 646-0 of the Court of First Instance of Leyte, which is for the recovery of possession and partition of several par-cels of land plus damages, judgment was rendered in favor of therein plaintiffs, now private respondents, and against the defendant, herein petitioner, on November 18, 1965. On December 20, 1965, petitioner filed a "Motion to Set Aside the Judgment and To Grant Defendant a New Trial" which the court a quo denied in its order of December 28, 1965. From that order, petitioner appealed to the Court of Appeals where said appeal was docketed as CA-G.R. No. 37318?R.

When the case was already in the appellate court and after the period for filing appellant's brief had started, the then counsel for petitioner was appointed Judge of the Court of First Instance of Bohol, for which reason he formally withdrew his appearance as such counsel and asked for time, 45 days from notice of the court's resolution, for petitioner to look for new counsel and to file the brief because he anticipated that the new counsel would need an ad-ditional period to file the same. In a resolution dated April 21, 1969, the Court of Appeals granted withdrawing counsel's motion and gave petitioner the period of 45 days prayed for. Copy of said resolution was received by petitioner on May 19, 1969. On June 10, 1969, or twenty-two (22) days after receipt of the said resolution by petitioner's withdrawing counsel, a new lawyer formally entered his appearance as counsel

for petitioner in the case. Nineteen days thereafter or on June 29, 1969, said new counsel filed his own motion for extension of time to file petitioner's brief, specifying that the extension period be of FORTY (40) DAYS to start from July 2, 1969. Acting on this motion, on July 12, 1969, the Court of Appeals re-solved as follows:

"Upon motion by defendant-appellant, the Court RESOLVED TO GRANT a first extension of 30 days from July 2, 1969 within which to file appellant's brief."

Four (4) days after the expiration of the ex-tended period granted in the above-quoted resolution, but before said new counsel could receive copy there-of and know therefrom that he had been granted only thirty days, the same counsel filed another motion for extension of time within which to file his brief; and, allegedly, it was only in the latter part of that day (11:00 a.m.) that he received copy of the above resolution, hence his "Manifestation" of even date asking the court that the additional 30-day pe-riod requested in his later motion for extension be made to start from August 1, 1969 and not from Aug-ust 11, 1969 as stated therein. Subsequently, and without even inquiring about the fate of these mo-tions, counsel filed on August 20 and September 8, respectively, two other motions for extension, the former for 20 days from August 29 and the latter for 10 days from the expiration of the last extension. In the meanwhile, on September 8, 1969, the same date he filed his last motion, the Vera Printing Press actually filed printed copies of the brief with the appellate court. Evidently, counsel did not hear from the court until October 1, 1969, when he received a copy of the appealed resolution aforequoted. He moved for reconsideration, but the same was denied; hence the present petition wherein it is claimed that:

"I. THE HONORABLE COURT OF APPEALS ERRED IN ORDERING THE DISMISSAL OF PETITIONER'S APPEAL IN CA-G. R. No. 37318-R, CONSIDERING THAT BEFORE THE RECEIPT OF PETITIONER OF THE RE-SOLUTION OF HIS FIRST MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF GRANTING HIM THIRTY (30) DAYS INSTEAD OF FORTY DAYS AS PRAYED FOR IN THE MOTION, PETITIONER HAD AL-READY MAILED HIS SECOND MOTION FOR EXTENSION OF TIME TO FILE SAID APPELLANT'S BRIEF;

"II. THAT THE HONORABLE COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE OF THE APPEAL CONSIDERING THAT ON SEP-TEMBER 8, 1969, PETITIONER HAD FILED HIS BRIEF WITH THE SAID COURT AND THE ORDER OF DISMIS-SAL WAS ONLY MADE MORE THAN A WEEK AFTER, OR ON SEPTEMBER 16, 1969; and

"III. THAT PETITIONER'S EVI-DENCES ARE STRONG, AND IF HIS APPEAL WILL BE GIVEN DUE COURSE, THE DECISION OF THE TRIAL COURT WOULD MOST PROBABLY BE REVERSED, OR SET ASIDE, AND THE CASE BE REMANDED TO THE TRIAL COURT FOR THE FURTHER RECEPTION OF EVIDENCE OF THE PETITIONER."

We find no merit in the petition. The situation here presented closely resembles the following factual setting found by this Court in *Razalan vs. Concep-cion*:^[1]

"On February 4, 1968, petition-ers filed a motion for extension of 30 days to file said brief. In a resolution, dated February 10, 1968, petitioners were granted said extension, beginning 'from February 23, 1968.' On March 21, 1968, petitioners moved for a se-cond extension of 30 days from March 23, 1968, to file said brief, but the Court of Appeals granted merely an extension of 20 days beginning from March 24, 1968 - and, accordingly, ending on April 13, 1968. Notice of the resolution to this effect was is-sued by the Court of Appeals on April 4, 1968, but it was not mailed until April 17, 1968. Pe-titioners claim to have received this notice on April 23, 1968. Three (3) days prior thereto, or on April 20, 1968, they moved for a third extension of 30 days from April 22, 1968, to file their brief. This motion was received by the Court of Appeals on April 27, 1968. It having been, in legal contemplation, filed on April 20, 1968, or seven (7) days after the expiration of the second ex-tension of 20 days granted by the Court of Appeals, the same dismis-sed the appeal taken by petition-ers herein.

"A reconsideration of the resolution of dismissal having been denied, petitioners commenced the present action against the Conceptions and the Court of Appeals, upon the ground that the latter had acted with grave abuse of discretion in dismissing their (petitioners') aforementioned appeal. This contention is predicated upon the fact that notice of the resolution of the Court of Appeals, dated April 4, 1968, granting them a second extension of 20 days from March 24, 1968, had not been mailed until April 17, 1968, or four (4) days after the expiration of said extension on April 13, 1968, and was not received by them until April 23, 1968, or 10 days after the expiration of said period."

Upon these facts, We then ruled that:

"Pursuant to Section 15 of Rule 46 of the Rules of Court, '(e)xtension of time for the filing of briefs will not be allowed, except for good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended.' Petitioners' motion for a second extension states that their brief 'has already been finally drafted, the same is now with a printing press for printing.' The brief filed by petitioners on May 9, 1968, consisted of 39 pages only, including its table of contents. Any practising lawyer knows that twenty (20) days are more than sufficient to complete the printing of a brief of such length, including its proofreading. Still, petitioners filed it, neither within said period of 20 days nor within the 30 days requested by them.

"Besides, in *Yabut vs. Ventura* (77 Phil. 493, 495. Italics ours.), this Court held:

'There was no justification for defendants-appellants' attorney to take for granted that he would be given, or had been given, the entire period of extension he had asked for. Neither the pertinent provision of the Rules of Court nor the practice of this court could have inspired reassurance of a favorable action on his motion to its full extent. Far from favoring automatic or indiscriminate granting of extensions of time to file brief, the rule and the policy of this Court on the matter bear a marked tendency to make such concessions sparingly. Section 16 of Rule 48 of the Rules of Court provides that "extension of time for the filing of brief will not be allowed, except for good and sufficient cause." And the policy of many years' standing of this court is to grant no more than 15 days for first extension and 10 days for second extension.'

"This view has been reiterated in a number of subsequent cases, some of which are cited on the margin (*Re-public vs. People's Surety and Insurance Company*, L-16780, May 31, 1961; *National Lumber & Hardware Co. v. Velasco*, 106 Phil. 1098; *Wack Wack Golf & Country Club v. Court of Appeals*, 106 Phil. 501; *Benares Montelibano vs. Benares*, 103 Phil. 106; *Parina v. Cobangbang*, L-8398, March 21, 1956)."

In the case at bar, petitioner's original period to file his brief started before his original counsel asked for permission to withdraw, and upon the request of said counsel, petitioner was given an additional period of forty-five (45) days from notice within which to look for new counsel and file his brief. After twenty-two (22) days of this period had elapsed, a new counsel entered his appearance, only to file nineteen days thereafter, what was virtually already a second motion for extension of the period to file petitioner's brief. He asked for forty (40) days from July 2, 1969, or, in effect, a total period of sixty-three (63) days from the date of his first appearance.

Under these circumstances, We cannot say that the Court of Appeals acted so improperly or has so far departed from the accepted and ordinary course of judicial proceedings as to call for the exercise of the power of supervision of this Court. On the contrary, the appellate court merely acted pursuant to the afore-quoted doctrine in *Razalan*. Besides, in issuing the questioned resolutions, the appellate court merely adhered, even in a manner more liberally in favor of petitioner, to said court's general en banc Resolution No. 8 of January 3, 1963, quoted in respondent's brief, (pp. 4-5) prescribing uniform rules for the extension of the time for filing of briefs as follows:

"A first extension of thirty (30) days;

"A second extension of twenty (20) days;

"A third extension of ten (10) days;

"A fourth extension of five (5) days; etc."

As already pointed out above, petitioner's motion of June 29, 1969, was virtually for a second extension on his behalf, hence, counsel ought to have known that under Resolution No. 8 just quoted, he could not expect the Court to give him an extension of more than twenty (20) days. And even if it may be argued that it was the first extension the new counsel was asking for, still his maximum would have been only thirty (30) days instead of the forty (40) days he had asked. Aside from the fact that, as just explained, counsel not only did not have any basis for expecting that the Court would grant his motion for 40 days, rather, he ought to have known the terms of above Resolution No. 8, under which the maximum he could be given is 30 days, We want to reiterate and emphasize Our ruling expressed in the cases cited in *Rasalan*, aforequoted, that no party should assume that his motion for extension will be granted, for, to start with, notwithstanding the rules of convenience such as above-mentioned Resolution No. 8 of the Court of Appeals, the granting of any extension of time to parties for compliance with any rule or order is not a matter of right but of sound judicial discretion. The Court notes that in spite of its above-cited repeated pronouncements, there are still parties who would regard them lightly. Naturally, such attitude can only be condemned and such parties must suffer the consequences of their indifference.

We have gone over the record on appeal and even the briefs of the parties in the Court of Appeals, and We do not find therein any circumstance which could warrant some measure of liberality or leniency to petitioner. Quite the other way, the decision of the trial judge decried the fact that not only had petitioner failed to comply with orders of the Court intended to accelerate proceedings but had also succeeded in postponing the hearings for at least fifteen times on more or less trivial grounds. Nor is there any clear showing here by petitioner of any substantial error committed by the trial judge in his judgment.

IN VIEW OF ALL THE FOREGOING, the resolution of the Court of Appeals appealed from is affirmed, with costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

Dizon, J., did not take part.

[1] L-29374, February 18, 1970, 31 SCRA 611, 612-613.

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