

J. M. TUASON & CO., INC., REPRESENTED BY ITS MANAGING PARTNER, GREGORIO ARANETA, INC., PLAINTIFF AND APPELLEE, VS. FELICIANO DE LA CRUZ, DEFENDANT AND APPELLANT.

G. R. No. L-4883. March 25, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

On April 14, 1950, judgment in this case was rendered by the Court of First Instance of Quezon City in favor of the plaintiff. On June 23, 1950, the defendant presented his "Record on Appeal", "Notice of Appeal" and "Motion for Extension of Time to File Appeal Bond". On June 24, 1950 the Court denied the appeal on the ground that it was untimely. On or about June 28, 1950, copy of the denial order was served on plaintiff's attorney of record, Antonio Barredo.

On November 20, 1950, Feliciano de la Cruz, thru new counsel, requested for relief under Rule 38, asserting that his failure seasonably to appeal was due to mistake or excusable negligence consisting in his attorney's impression that the 30-day period expired, in the succeeding month, on the same date he was served copy of the decision, so that having received the decision on May 23, 1950 Attorney Barredo mistakenly thought the reglementary period ended June 23, 1950.

However, the court, declaring that the motion for relief had been filed beyond the sixty-day period prescribed by the Rules, refused to act favorably on the matter.

Hence this appeal. There is no question that the order denying relief is appealable[1].

Now, under section 3 of Rule 38 petitions of this kind must be made within sixty days after the petitioner had learned of the order disapproving his appeal. Supposing that such period began only when Feliciano de la Cruz came personally to know the order on September 19, 1950—and not when his lawyer was notified on June 28, 1950[2]—inasmuch as Judge Ceferino de los Santos expressly found, and the Clerk of Court certified, that the petition for relief was filed on November 20, 1950, (i.e., 62 days) it was obviously belated. Statements in the printed Record on Appeal prepared by appellant himself, to the effect that the petition was submitted on November 18 may not prevail. For one thing, had it been submitted on November 18, 1950, the petition could not have referred expressly to an "order of November 20, 1950."

At any rate this Tribunal is not disposed to reverse the trial Judge's exercise of his discretion in the litigation[3], what with the absence of a sworn statement of Attorney Barredo confirming the alleged mistaken belief, or of an explanation why such affidavit could not be obtained and presented.

The order appealed from is hereby affirmed, with costs. So ordered.

Paras, C. J., Feria, Pablo, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] Phil. Mfg. vs. Imperial 47 Phil., 810; Govt. vs. Cabangis 49 Phil., 107; Medran vs. Court of Appeals 83 Phil., 164.

[2] Many members of this Court are inclined to hold that the 60-day term began on June 28, 1950.

[3] Coombs vs. Santos 24 Phil., 446, etc., Moran Comments on the Rules of Court 1952 Ed. Vol. 1, p. 783.

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