

ARISTEO T. FERAREN, PETITIONER-APPELLANT, VS. REMEDIOS SANTOS, JUDGE SERAFIN SALVADOR, BRANCH XIV, COURT OF FIRST INSTANCE OF RIZAL, ZACARIAS M. CUNANAN, DEPUTY SHERIFF OF RIZAL...

G.R. No. L-41323. April 27, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the judgment of the Court of Appeals which became final and executory because the counsel for the losing party did not claim from the post office the registered mail containing the copy of the resolution denying his motion for reconsideration.

The Court of Appeals in its decision dated December 20, 1974 in *Feraren vs. Santos*, CA-G.R. No. 52724-R ordered Aristeo T. Feraren to deliver a certain Volkswagen car to Remedios Santos and to pay her as damages ten pesos a day from September 22, 1967 up to the time of delivery plus P1,000 as attorney's fees.

A copy of that decision was served on December 26, 1974 on Felipe Ponce, Feraren's counsel. Ponce withdrew from the case and he was replaced by Mendez, Mendez & Associates who on January 8, 1975 entered their appearance as Feraren's new counsel and filed a motion asking for an extension of thirty days within which to file a motion for reconsideration.

The Court of Appeals in its resolution of January 13, 1975 approved Ponce's withdrawal from the case and granted Feraren's new lawyers the thirty-day extension with the warning that no further extension would be granted. The Mendez law office received a copy of that resolution by registered mail.

Lawyer Pershing L. Mendez asked for another thirty-day extension which was reluctantly granted by the Court of Appeals in its resolution of February 14, 1975 in this wise: "Motion is apparently not well-founded because appellee's (Feraren's) counsel is a law firm with several members. However, granted as a last chance." Feraren's lawyers received a copy of that resolution also by registered mail.

Feraren's motion for reconsideration, which was filed on March 11, 1975, was denied for lack of merit in the resolution dated March 14, 1975 (Per Gatmaitan, J., with Reyes and Plana, JJ., concurring).

A copy of that resolution, like the two prior resolutions, was sent by registered mail in the Manila central post office on March 21, 1975 to Mendez, Mendez & Associates at their address of record, 1740 Sisa Street, Sampaloc, Manila. Two notices dated March 21 and 26 regarding that registered mail were sent to the Mendez law office at that address.

However, that particular registered mail was returned to the Court of Appeals with the notation stamped on the envelope: " Return to Sender Unclaimed". Also stamped on the envelope were the words "March 26 Second Notice" and "Entry Registry April 2, 1975".

The officer-in-charge of the central post office in Manila informed the Court of Appeals that the said registered mail was returned to the Court's representative on April 2, 1975 after two notices were sent to the Mendez law office and the mail was not claimed (p. 61, Rollo).

On the assumption that the judgment became final on March 31, 1975, entry of judgment was made and the record was remanded to the lower court on May 21, 1975. Copies of the entry of judgment were mailed to the lawyers of the parties.

On June 5, 1975, Pershing L. Mendez, Feraren's counsel, filed a manifestation (motion) wherein he prayed for the recall of the entry of judgment on the ground that his motion for reconsideration had not yet been resolved; hence, the judgment "could not become final and executory".

The Court of Appeals in its minute resolution dated June 19, 1975 denied the motion for the recall of the entry of judgment because, as already stated, the motion for reconsideration had already been resolved.

On July 1, 1975, lawyer Mendez filed a manifestation (motion) wherein he prayed that he be allowed to appeal "as a consequence of the denial of the motion for reconsideration". He said that he had not received a copy of the resolution denying his motion for reconsideration. The Court of Appeals in its resolution dated July 14, 1975 did not grant that prayer. A copy of that resolution was received by Mendez by registered mail on July 23, 1975.

Lawyer Mendez did not assail that resolution immediately in this Court. More than a month later, or on September 5, 1975, after a writ of execution was served on Feraren, he filed in this Court this petition for certiorari, prohibition and mandamus wherein he prayed that he be allowed to appeal and that the lower court be enjoined from executing the judgment of the Court of Appeals.

Lawyer Mendez alleged in that petition and in his affidavit that in his office at his residence there was always someone to attend to correspondence and that he did not leave the city during the period when the notice of registered mail was supposedly sent to his law office. His office clerk made a similar affidavit.

However, the fact remains that the postmaster certified that although two notices were sent to Mendez's office, the registered mail in question was not claimed at the Manila central post office (p. 83, CA Record).

The rule is that if the addressee of registered mail fails to claim it from the post office within five days from the date of the first notice of the postmaster, service becomes effective at the expiration of that five-day period (Sec. 8, Rule 13, Rules of Court).

Between the denial of a lawyer that he received the first notice of registered mail and the postmaster's certification that said notice was sent, the postmaster's claim should be believed because it is his official duty to send notices of registered mail. The presumption is that official duty was regularly performed. (*Grafil vs. Feliciano*, L-27156, June 30, 1967, 20 SCRA 616 citing *Enriquez vs. Bautista*, 79 Phil. 220, 222).

"It is the duty of a practising lawyer to so arrange matters that official or judicial communications sent by mail will reach him promptly. Failing to do so, he and his client must suffer the consequences of his negligence." (*Islas vs. Platon and Ona*, 47 Phil. 162).

It has been held that the failure to claim registered mail of which notice had been duly given by the postmaster is not excusable negligence that would warrant the reopening of a decided case (*Pielago vs. Generosa*, 73 Phil. 654).

Feraren's grievance is that he was prevented from appealing to this Court. This case was heard on oral argument on November 24, 1975. The merits of the decision of the Court of Appeals were discussed at that hearing.

An examination of Feraren's motion for reconsideration in the Court of Appeals reveals that he raised therein only the factual issue that he had proven by clear and convincing evidence that he was the owner of the disputed car. He did not raise any substantial legal issues.

Even if we allow Feraren to file a petition for review in this Court, the likelihood is that his appeal would not be meritorious because under Rule 45 of the Rules of Court he and this Court are bound by the factual findings of the Court of Appeals. An appeal to this Court is given due course as a rule only when it involves important legal issues.

We find that the Court of Appeals did not gravely abuse its discretion in not allowing Feraren to appeal to this Court.

WHEREFORE, the petition is dismissed for lack of merit. The temporary restraining order is dissolved. No costs.

SO ORDERED.

Barredo, (Chairman), De Castro, Ericta, and Escolin, JJ., concur.

Concepcion, Jr., J., no part.

Abad Santos, J., on leave.

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