

SERAPION PADASAS AND DAMASA DASOY, PETITIONERS, VS. HON. COURT OF APPEALS, SEVENTH DIVISION, HON. JOSE N. LEUTERIO, CHAIRMAN, HON. CRISOLITO PASCUAL AND HON. FRANCISCO MA. CHAN...*G.R. NO. L-38071. April 25, 1974*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/aeff98f8e622/>**FERNANDO, J.:**

There is on the part of petitioners in this certiorari proceeding a vigorous plea for an opportunity to have their appeal, dismissed by respondent Court, passed upon on the merits.[1] They do not deny that the ground for dismissal, their failure as appellants to file their brief on time, is ordinarily not open to objection. They do rely, however, on the excuse that forces beyond their control did preclude its timely submission. For them then, there is an element that borders on the unjust, if as a result respondent Court would be deaf to their motion to set aside such order so that the case could be considered on the merits, a step that seems more than advisable as such a brief is now filed with it. Otherwise, they contend that there would be a failure to abide by the compelling mandate of procedural due process with its stress on fairness. There is much to be said for such an approach, especially in view of *Monticines vs. Court of Appeals*,[2] decided less than a year ago. Thus we find ourselves in agreement and grant the remedy prayed for.

The facts are not open to dispute. Petitioners are appellants in a case pending before respondent Court, having appealed from an adverse decision of the Court of First Instance of Aklan in Civil Case No. 1235, entitled, "Serapion Padasas and Damasa Dasoy, plaintiffs vs. Pedro Flores and Olympia C. Flores, defendants" for recovery of possession and ownership) with mandatory injunction. The appealed case was docketed as CA-G.R. No. 52267-R, with petitioners as plaintiffs-appellants and private respondents as defendants-appellees.[3] As appellants, they were required by respondent Court to submit their printed brief within forty-five (45) days from notice, later on extended for an additional ninety (90) days, the same to fall due on November 2, 1973.[4] On October 23, 1973, petitioners filed a motion for a second extension for a period of at least twenty (20) days from November 2, 1973, accompanied by an affidavit of the printer, the Macar Printing Press of Kalibo, Aklan, wherein it was stated that due to pressure of work, the printing of the brief for petitioners could not be finished on or before November 2, 1973.[5] The motion was denied by respondent in a resolution of October 31, 1973.[6] There was on November 14, 1973, a verified petition for reconsideration filed by petitioners accompanied by the affidavit of the printer, Macar Printing Press of Kalibo, wherein it appeared that while the typesetting of the brief had been completed and the partial printing thereof accomplished, there was unavoidable delay in its being finalized due to intermittent power failure and the oil shortage. Nonetheless, the printing press was exerting extra-human efforts by even utilizing manual power to operate their presses beyond ordinary working hours to supplement and hasten the completion of such printing job. It was then set forth that the brief for appellants could be finished and submitted to respondent Court on or before the expiration of the last requested extension of twenty (20) days.[7] In the meanwhile, pending receipt of respondent Court's resolution to the foregoing petition for

reconsideration, petitioners sent by registered mail forty (40) printed copies of their brief on November 22, 1973, through the Banga, Aklan Post Office under registry receipt No. 554.[8] Respondent Court, however, in a resolution of November 23, 1973, denied petitioner's motion for reconsideration. Said resolution reads: "The telegraphic motion of counsel for the plaintiffs-appellants praying on the grounds therein stated, for the reconsideration of the resolution dated October 31, 1973, denying appellants' petition for another extension of 20 days from November 2, 1973, within which to file appellants' brief, is [denied]."[9] Thereafter in a resolution of December 12, 1973, respondent Court of Appeals dismissed the appeal.

Petitioners then filed this suit for certiorari alleging that under the circumstances, the dismissal of its appeal did amount to a grave abuse of discretion. The facts on which the petition was based could not very well be denied by private respondents, who, in their comments considered as answer, would stress that the period granted petitioners was more than sufficient for the purpose of filing their printed brief. No attempt was made, as it would be futile, to refute the certification of the printer that the delay was due to the intermittent power failure and oil shortage. Moreover, the fact that the brief had been printed and was filed with the respondent Court was glossed over. The higher interest of justice dictated by a sense of fairness with which procedural due process is identified, as last manifested in the aforesaid Monticines decision, justifies as set forth at the outset, the stand of petitioners.

In Monticines, the facts reveal that there was a resolution *motu proprio* of the Court of Appeals dated October 7, 1972 dismissing an appeal on the ground of the failure of appellants to file their brief within the period fixed in a previous resolution. Then on October 16, 1972, the counsel for such appellants filed a motion for reconsideration, alleging among other things that during the months of July and August, 1972, he had to go to the provinces of Laguna and Quezon to attend to the properties left by his deceased father, more particularly the flooded rice fields, as a result of which he contracted illness and suffered from acute rheumatism with slight cardiac trouble necessitating since the middle of August 1972, medical treatment. With the prescription of his attending physician that he should avoid both physical and mental effort, he was not able to finalize and send for printing the brief for appellants. He was able, however, to take advantage of an improvement in his physical condition to have such brief printed and to submit the same to the Court of Appeals as part of such motion for reconsideration. The Court of Appeals was, however, adamant, resulting in a petition for certiorari as in this case.

On such facts, this Court in its opinion setting aside the resolution of the Court of Appeals dismissing the appeal and reinstating the same, set forth the grounds for the decision thus: "It cannot be denied that during the months of July and August, 1972, a series of typhoons did visit the Philippines, bringing in its wake disastrous floods. Nor is it disputed that counsel for defendants-appellants had to attend to the properties left by his deceased father in the provinces of Laguna and Quezon to ascertain the extent of the damage thus caused. As a consequence of which, so it was alleged, and again it was not questioned, he suffered from acute rheumatism and slight cardiac trouble, necessitating, in the opinion of his physician, complete physical and mental rest. That was the cause of his failure to 'finalize, polish and type' in time the draft of the brief he had prepared for his clients. In his motion for reconsideration, however, of October 16, 1972, he did submit such printed brief which, on its face, did bear the signs of a thorough preparation, the questions raised therein of fraud and the remedy sought, namely, reconveyance, hardly open to the charge of being devoid of significance. Certainly then, here is a case that falls squarely within the concept of *caso fortuito* or *force majeure*. Moreover, defendants-appellants cited our decision in *Salvador vs. Reyes*, where, in a criminal case, respondent Court, while admittedly having discretion to dismiss an appeal *motu proprio*, was required to have a notice of such dismissal served upon appellant. While not strictly in point, such a ruling reflects a principle that is more in keeping with the due process requirement, for thereby a statutory right to appeal is not frustrated by a failure to file a brief which, under certain occasions, and this is one of them, could be traceable to *force majeure*. It would appear, therefore, that justice in this instance would have been served had no such dismissal of the appeal been ordered, especially so as the brief had been submitted to

respondent Court as far back as October 1972. It could even be said with some degree of assurance that had there been a reconsideration of such an order, perhaps by this time this litigation could have been ready for adjudication by respondent Court.[10] There was a concurring opinion by Justice Barredo wherein he stated the following: "As to whether or not, whatever be the merits of his client's cause, they should suffer the fate of their lawyer's inexcusable conduct, I might say this is not the first time such an unfortunate denouement has been considered by the Court as irrelevant. However, since the expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter, and there are enough members of the Court who believe that it was arbitrary on the part of the Court of Appeals to have just cast aside the explanation of Atty. Barnes, without investigating thoroughly the veracity thereof, I opt to err, if it is an error to lean on the side of liberality in the light of the foregoing considerations, and, hence, I concur in the result." [11]

The present case is on a stronger ground. No doubt can be entertained as to the veracity of causes of the failure of the printer to complete the brief within the allotted time. Moreover, prior to the expiration of the period granted petitioners-appellants, they did seasonably file a motion for reconsideration stating, clearly the reasons for the need for such additional period. While respondent Court was not required to grant such motion, still the dismissal of the appeal was not necessarily called for as thereafter it was fully acquainted with the circumstances of intermittent power failure and oil shortage that precluded the completion of the printing job. What is more, pending receipt of a resolution on its part as to what action to take on the motion for reconsideration to set aside the dismissal of the appeal, the printed brief was actually filed with it. Nothing would be lost and the right to a hearing on appeal would be afforded full respect if under the circumstances, the failure on the part of petitioners-appellants was deemed excusable. Thereby the time-honored maxim *audi alteram partem* would be once again vindicated.

WHEREFORE, the resolution of respondent Court of December 12, 1973 dismissing the appeal for failure to file brief is nullified and set aside and such appeal is deemed reinstated with all the consequences which according to law should accompany such reinstatement of the dismissed appeal. Without pronouncement as to costs.

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] In addition to Seventh Division of respondent Court of Appeals composed of justices Jose N. Leuterio, Chairman, and Crisolito Pascual and Francisco Ma. Chanco as members, Pedro Flores and Olympia C. Flores are named as private respondents.

[2] G.R. No. L-35913, September 4, 1973, 53 SCRA 14.

[3] Petition for Certiorari, par. 2.

[4] Ibid, pars. 3-4.

[5] Ibid, par. 5.

[6] Ibid, par. 6.

[7] Ibid, par. 7.

[8] Ibid, par. 8.

[9] Ibid, par. 9.

[10] G.R. No. L-35913, September 4, 1973. 53 SCRA 14, 18-19.

[11] Ibid, 23-24.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.