

AGRICULTURAL & INDUSTRIAL MARKETING, INC., AMON TRADING CORPORATION AND FELIXBERTO C. AZICATE, PETITIONERS, VS. HONORABLES COURT OF APPEALS, ALFREDO S. REBUENO, JUDGE OF THE COU...

G.R. No. L-39518. November 02, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for review on certiorari of the resolution of respondent Court of Appeals dated August 21, 1974 in CA-G.R. No. SP-03269 which dismissed petitioners' petition for review under Republic Act 6031 for being filed late. The petition was denied for lack of merit in the resolution of this Court dated November 18, 1974,[1] but on motion for reconsideration, was given due course as per resolution dated January 17, 1975.[2]

Records show that this case originated in the Municipal Court of Tigaon, Camarines Sur, presided by respondent judge Remigio Dizon, as Civil Case No. 288, arising from a complaint for damages filed by private respondent Felix A. Fuentebella against the herein petitioners for an alleged breach of warranty on a "DEUTZ" diesel electric generating set which private respondent bought from petitioner Agricultural and Industrial Marketing, Inc. For failure of herein petitioners to appear during the initial hearing of the case on February 28, 1973, and upon motion of private respondent, the former were declared in default. A decision was rendered by respondent Judge Dizon on May 14, 1973 in favor of private respondent Fuentebella and against petitioners.

Petitioners appealed the municipal court's decision of default to the Court of First Instance of Camarines Sur presided by respondent judge Alfredo S. Rebueno, docketed as Civil Case No. T-522. After considering private respondent's motion to dismiss appeal and petitioners' opposition thereto, an order dated March 28, 1974 was issued by respondent judge Rebueno dismissing petitioners' appeal on the ground that defendants (petitioners herein) having been declared in default in the Municipal Court of Tigaon, and having failed to file a motion to set aside the order of default, petitioners have not regained their lost standing in court and consequently, have no right to appeal.

From the order of respondent judge Rebueno denying petitioners' motion for reconsideration of the order of March 28, 1974, petitioners went to the Court of Appeals on August 8, 1974 on a petition for review under Republic Act 6031 since the case was originally cognizable by the municipal court. Respondent Court of Appeals issued a resolution on August 21, 1974 dismissing the petition for review on the ground that "it was filed eight (8) days late."

A motion for reconsideration was filed by petitioners but the same was denied by respondent Court of Appeals in its resolution dated September 30, 1974. Hence, this present recourse, petitioners alleging that although they admit that the late filing of the petition for review was their (petitioners) error, nevertheless in exceptionally meritorious cases, the court can suspend its own rules in order to subserve the interest of substantial justice. Petitioners have cited the following considerations which allegedly constitute strong compelling reasons to

warrant this Court's suspension of its rules to prevent a grave miscarriage of justice, namely:

a)

the judgment by default of respondent judge Dizon included Amon Trading Corporation and Felixberto C. Azicate, when they are not even parties to the alleged breach of warranty;

b)

the generating set which was the subject of private respondent's complaint in the municipal court of Tigaon had already been repaired and placed in operating condition; and

c)

the judgment by default of the municipal court of Tigaon was predicated on a null and void order of default, the latter order having been prematurely issued in view of the pendency of petitioners' motion to dismiss which had been left unresolved in spite of its having been filed on time.

None of the above considerations appears substantiated in the record before Us. Nor are they sufficient to warrant deviating from the rule as to the decision rendered by the Court of First Instance becoming final upon the expiration of the period to appeal or file a petition for review without the appeal having been perfected, or the petition for review having been filed within said period. More specifically, petitioners' third consideration to the effect that they cannot be declared in default because there was a timely motion to dismiss filed still to be resolved, deserves scant consideration. As admitted by petitioners,[3] said motion to dismiss did not contain any notice of time and place of hearing, and the notice of hearing was directed to the Clerk of Court of Municipal Court of Tigaon, Camarines Sur, and merely states that the same be submitted for resolution of the Honorable Court upon receipt hereof. For failing to comply with the requirement of Sections 4, 5, and 6 of Rule 15 of the Rules of Court,[4] the motion is fatally defective. It is a mere scrap of paper which should not be accepted for filing, and even if filed, it is not entitled to judicial cognizance, for it presents no question or matter which the Court can decide or consider.[5]

Petitioners having categorically admitted to have failed to timely file a petition for review, for purposes of appeal, to respondent Court of Appeals, from the adverse decision of the Court of First Instance of Camarines Sur, the Court of Appeals committed no error in dismissing petitioners' petition for review. It is beyond question that the perfection of an appeal, or the filing of petition for review, within the statutory or reglementary period is mandatory and jurisdictional; and that failure to so perfect an appeal renders final and executory the questioned decision and deprives the appellate court of jurisdiction to entertain the appeal.[6] The lapse of the appeal period deprives the courts of jurisdiction to alter the final judgment, and the prevailing party becomes entitled as a matter of right to its execution, and for the court, it becomes its ministerial duty to order the execution of judgment.

This doctrine is based upon a fundamental public policy that litigants should know exactly when they may obtain execution and consider the case terminated and hence, a strict observance of the reglementary period within which to exercise the statutory right of appeal has been considered as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business.[7]

WHEREFORE, the resolution of the Court of Appeals of August 21, 1974 is affirmed and the instant petition for review by way of certiorari is hereby dismissed. Without pronouncement as to costs.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

[1] p. 47, Rollo.

[2] p. 71, Id.

[3] See pp. 2-3, Reply Brief of Petitioners; p. 88, Rollo.

[4] Cledera vs. Sarmiento, 39 SCRA 552.

[5] Manakil vs. Revilla, 42 Phil. 81.

[6] See Luzon Stevedoring Corp. vs. Reyes, 71 SCRA 655; Galima vs. Court of Appeals, 16 SCRA 140; Espartero vs. Ladau, 92 Phil. 704; Miranda vs. Guanzon, 92 Phil. 168.

[7] Alvero vs. dela Rosa, 76 Phil. 428.

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