

PABLO V. PUBLICO, PETITIONER-APPELLANT, VS. METRO DRUG CORPORATION, THE HON. W. L. CORNEJO, CITY JUDGE, CITY COURT OF MANILA AND THE CITY SHERIFF OF MANILA, RESPONDENTS-APPELLEES.

G.R. No. L-27659. April 30, 1970

Ponente: FERNANDO, J.

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FERNANDO, J.:

The disposition of this petition for certiorari and mandamus by the lower court did not entail any difficulty. The facts as stipulated by petitioner and private respondent Metro Drug Corporation revealed that there was a late filing of the notice of appeal. Under the circumstances, the action taken by respondent City Judge W. L. Cornejo, dismissing the appeal, was in accordance with law. There was no grave abuse of discretion to warrant the issuance of a writ of certiorari against him. Neither would mandamus lie as petitioner could not show any clear legal right disregarded. So the lower court ruled in the decision of January 11, 1967, now on appeal. We affirm.

In the stipulation of facts submitted by the parties in this petition for certiorari and mandamus, it was disclosed that in a case before one of the branches of the City Court of Manila, presided by respondent Judge, petitioner was the defendant and respondent Metro Drug Corporation was the plaintiff; that on July 15, 1965 petitioner was declared in default for his failure to file answer and to appear for trial; that on July 28, 1965 petitioner filed a motion to lift such order of default; that on November 16, 1965 respondent Judge rendered a decision without such default order being reconsidered; that on November 29, 1965 petitioner received a copy of the default decision of the respondent Judge dated November 16, 1965; that on December 13, 1965, the 14th day after petitioner was served a copy of the default decision dated November 16, 1965, petitioner filed a motion for reconsideration of the decision; that on January 6, 1966 the respondent judge issued its order denying petitioner's motion for reconsideration; that on January 11, 1966 petitioner received a copy of the order of the respondent Judge, dated January 6, 1966, denying petitioner's motion for reconsideration; that on January 15, 1966 petitioner filed his notice of appeal and appeal bond with the respondent court; and that on January 22, 1966 respondent Judge dismissed petitioner's appeal.

In the decision now on appeal, the lower court stated that the only issue before it, considering what was stipulated "is whether or not the respondent Judge abused his discretion in dismissing the petitioner's appeal filed on January [15], 1966." [1] Why there was no such abuse of discretion was therein explained thus: "It appears that on November 29, 1965, the petitioner received a copy of the decision of respondent Judge dated November 16, 1965, and that on December 13, he filed a petition for reconsideration. On that date, fourteen days had already elapsed from the time the petitioner received a copy of the decision of the respondent judge. On January 6, 1966, the respondent judge issued an order denying the petitioner's motion for reconsideration, a copy of which was received by the petitioner on January 11, 1966. The petitioner, therefore, then had only one day more left within which to file his notice of appeal. However, he filed his notice of appeal, together with the appeal bond only on January 15, 1966, or three days late. It is obvious, therefore, that on the date the petitioner filed his notice of

appeal and appeal bond, the judgment rendered by the respondent court had already become final and executory; hence, the respondent judge was justified in dismissing the petitioner's appeal. It may be argued that in the notice of appeal it is stated that the appellant is also appealing from the order denying his motion for reconsideration. This, in the opinion of the court, is without merit and does not improve the situation of the petitioner for the reason that since he can not be permitted to do indirectly that which he can not do directly, he can not, by including in his notice of appeal a statement that he is appealing also from the order of the respondent court denying his motion for reconsideration, indirectly appeal from the judgment rendered by the respondent court which had already become final and executory."^[2]

Even the most cursory appraisal of the above decision would render manifest why this appeal is not to be attended with success. The facts were stipulated. From the dates of the respective pleadings as admitted by petitioner, now appellant, it is clear that the notice of appeal was not filed until after four days from the date notice of the denial of the motion for reconsideration was received. Petitioner had only one day left for doing so as he waited until the fourteenth day before submitting his motion for reconsideration. Clearly then it was filed out of time. As we stated in a recent decision: "[The] appeal here was taken beyond the reglementary period. It must be dismissed."^[3]

Appellant, notwithstanding the apparent hopelessness of the task before him, would impugn the above decision by assigning as the alleged first error committed that the lower court would thus render illusory not his appeal from the decision but his appeal from the order denying his motion for reconsideration, questioning the order of default. To state his proposition is to demonstrate its lack of merit. As stipulated by him, he did not submit his motion for reconsideration of the decision until December 13, 1965, the 14th day after he was served a copy of the decision. He further admitted that it was only on January 15, 1966, three days after the expiration of the reglementary period, did he file his notice of appeal, which could only mean from the decision as above rendered. Moreover, to allow such a mode of viewing the matter would be to sanction, as the lower court stated, an "appeal from the judgment rendered * * * which had already become final and executory." That, no court should allow.

The second alleged error is equally undeserving of any undue attention. He would find fault with the lower court in not lifting the order of default or setting aside the default judgment when, as is indisputable, the notice of appeal was filed out of time. When respondent Judge decided that it could not be allowed, he instituted this petition for certiorari and mandamus, which rightfully was denied by the lower court. What else could the lower court do? There is no basis then for this alleged error. The third one assigned, namely, that the lower court should not have dismissed the petition, therefore, is likewise bereft of any support in law.

WHEREFORE, the decision of the lower court of January 11, 1966 dismissing the petition for certiorari and mandamus is affirmed. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Teehankee, and Villamor, JJ., concur. Barredo, J., on leave.

[1] Decision, Record of the Case, p. 77.

[2] Ibid., pp. 77-78.

[3] King v. Joe, L-23617, Aug. 26, 1967; 20 SCRA 1117. Cf. Villareal v. Franco, 95 Phil. 565 (1954) and Dacanay v. Pabalan, L-18263, April 23, 1963, 7 SCRA 708.

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