

RAQUAEL[] B. REYES-NAKANISHI, PETITIONER, VS. ROSALIE A. GREGORIO, RESPONDENT.

Ponente: BATO, JR., J.

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BATO, JR., J.:

For our consideration is herein petitioner's Motion to Admit Attached Petition for Review[1] and the petition for review[2] filed on April 16, 2013 assailing the following issuances of the Regional Trial Court (RTC) of Parañaque City, Branch 257: (1) Decision[3] dated December 17, 2012 affirming in toto the Decision[4] of the Metropolitan Trial Court (MeTC) dated July 1, 2011 which rendered judgment against petitioner; and (2) Order[5] dated February 27, 2013 denying petitioner's motion for reconsideration thereto.

The instant case stemmed from a complaint for damages filed by plaintiff Rosalie A. Gregorio (respondent, herein) against defendant Raquel B. Reyes-Nakanishi (petitioner, herein) filed before the MeTC and docketed as Civil Case No. 2008-18. The factual backdrop of the case, as narrated by the MeTC, follow:

X x x On or about October 16, 2007, at 8:00 in the morning, plaintiff was walking along St. Francis St., San Agustin Village, Barangay Moonwalk, Parañaque City, together with her daughter Alysa Santos, 7 years of age, from Rodriguez St. towards Sta. Lucia St. Just before reaching Sta. Lucia St., they encountered defendant who was walking on the other side of the street; she crossed the street and confronting plaintiff pointing her finger at her breast shouting angrily saying “Bakit ka ba daan ng daan dito ha” as plaintiff answered “Bakit bawal ba dumaan dito”, she handed to her daughter her umbrella and plastic bags containing the market items. Immediately defendant boxed plaintiff in (sic) the face, and scratched her face and neck and pushed her backward and while she was about to lose her balance, she grabbed at defendant's front dress. Defendant kicked plaintiff in the body and when she fell on the canal defendant immediately sat on plaintiff pushing her face at the same time into the dirty and foul smelling water all the while shrieking that she would kill plaintiff. Alfredo Balbona rushed to the scene and was able to separate defendant from plaintiff and whom he later helped stand up. This was witnessed by a certain Elias Engy, Roger de los Reyes and Domingo Mancilla and other bystanders and passers-by. Plaintiff immediately returned home and took a bath and changed her dress. Plaintiff went together with Donnie Boy Santos, 22 years of age, to the Parañaque Community Hospital where she was examined and medically treated x x x.[6]

On July 1, 2011, the MeTC rendered judgment in favor of the respondent and against the petitioner, viz.:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, Raquel B. Reyes-Nakanishi to wit:

- To pay moral damages in the amount of P20,000.00;
- To pay exemplary damages in the amount of P20,000.00;
- To pay attorney's fees in the amount of P10,000.00 and the costs of suit.

SO ORDERED.[7]

Petitioner filed an appeal before the RTC which rendered its judgment on December 17, 2012, affirming in toto the decision of the MeTC. Petitioner's motion for reconsideration thereto suffered the same fate as it was denied in the RTC Order[8] dated February 27, 2013, to wit:

Since the Motion for Reconsideration filed raised arguments that the Court has already taken up and discussed in the Decision, in other words, they are mere rehash of what the Court has already discussed and there are no new matters raised, the Motion is denied.

SO ORDERED.[9]

Petitioner received a copy of the afore-quoted Order on March 15, 2013. On March 22, 2013, petitioner filed a Motion for Extension of Time to File Appellant's Brief[10] (should be a petition for review as it was filed pursuant to Section 1, Rule 42 of the Revised Rules of Court). The said motion prayed for an additional fifteen (15) days within which to file the petition.

In our Resolution[11] dated April 3, 2013, we granted the motion and gave petitioner until April 15, 2013 to file the intended petition.

Notwithstanding the clear tenor of the said resolution, petitioner nonetheless filed the instant motion on April 16, 2013 or one (1) day after the expiration of the extended period granted by this Court praying that we admit her petition for review albeit filed late.

The motion must fail.

At the outset, we opt to emphasize that the premise that underlies all appeals is that they are merely privileges which arise from statute; therefore, they must be exercised in the manner prescribed by law.[12] The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost.[13]

The period for filing a petition for review is explicitly provided under Section 1, Rule 42 of the 1997 Revised Rules of Civil Procedure, viz.:

Sec. 1. How appeal taken; time for filing. — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to extend fifteen (15) days.

The above provision is clear – that the petitioner has fifteen (15) days from notice of the adverse RTC decision or denial of her motion for reconsideration within which to file a petition for review with this Court. Further, the said provision provides that upon filing of a motion for extension and payment of the appellate docket and other lawful fees within the reglementary period, this Court may grant an additional period of fifteen (15) days only within which to file the petition for review. And as a general rule, no further extension shall be granted except for the most compelling reason and in no case to extend fifteen (15) days.

Here, we granted petitioner's motion for extension with the qualification that she “. . . is given an additional

period of fifteen (15) days only from March 30, 2013 or until April 15, 2013 within which to file the intended petition.”[14]

In the instant motion, petitioner justifies the belated filing of her petition contending that it was because her “counsel finished preparation and editing of the final copy of the instant Petition for Review with all its attachments, shortly before 5:00 pm of April 15, 2013 x x x unfortunately however, the post office was already closed when the office staff arrived for mailing of the same.” Petitioner begs for the indulgence of the Court praying that the petition, albeit filed late, be admitted and given due course.

We are not persuaded.

It must be stressed that no party has a right to an extension of time to comply with an obligation within the period set therefore by law.[15] The granting of an extension, including the duration thereof, lies within the sound discretion of the court, to be exercised in accordance with the attendant circumstances of each case.[16] Thus, the movant is not justified in assuming that an extension sought will be granted, or that it will be granted for the length of time suggested by him.[17]

It must be equally stressed that procedural rules setting the period for perfecting an appeal or filing an appellate petition are generally inviolable. It is doctrinally entrenched that appeal is not a constitutional right but a mere statutory privilege. Hence, parties who seek to avail of the privilege must comply with the statutes or rules allowing it.[18] These rules, particularly the statutory requirement for perfecting an appeal within the reglementary period laid down by law, must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business.[19] Deviations from the rules cannot be tolerated. The rationale for this strict attitude is not difficult to appreciate. These rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, these rules need to be followed by appellants with greater fidelity.[20] Moreover, the perfection of an appeal within the reglementary period is not only mandatory but jurisdictional, so that the failure to do so renders the questioned decision final and executory and deprives the appellate court of jurisdiction to alter the final judgment, much less to entertain the appeal.[21] Just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party has the correlative right to enjoy the finality of the decision in his favor.[22]

Although, We are fully aware of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits and of dispensing with technicalities whenever compelling reasons so warrant or when the purpose of justice requires it, however, it is consistently reiterated, that the power conferred upon the Court of Appeals to dismiss an appeal is discretionary[23] and not merely ministerial. It is equally reiterated that with that affirmation comes the caution that such discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[24] As aptly stated in *Bank of America, NT & SA vs. Gerochi, Jr.*, viz.:

True, in few highly exceptional instances, we have allowed the relaxing of the rules on the application of the reglementary periods of appeal. We cite a few typical examples: In *Ramos vs. Bagasao*, 96 SCRA 395, we excused the delay of four days in the filing of a notice of appeal because the questioned decision of the trial court was served upon appellant Ramos at a time when her counsel of record was already dead. Her new counsel could only file the appeal four days after the prescribed reglementary period was over. In *Republic vs. Court of Appeals*, 83 SCRA 453, we allowed the perfection of an appeal by the Republic despite the delay of six days to prevent a gross miscarriage of justice since the Republic stands to lose hundreds of hectares of land already titled in its name and had since then been devoted for educational purposes. In *Olacao vs. National Labor Relations Commission*, 177 SCRA 38, 41, we accepted a tardy appeal considering that the subject matter in issue had theretofore been judicially settled, with finality, in another case. The dismissal of the appeal

would have had the effect of the appellant being ordered twice to make the same reparation to the appellee.

The case at bench, given its own settings, can not come close to those extraordinary circumstances that have indeed justified a deviation from an otherwise stringent rule. Let it not be overlooked that the timeliness of an appeal is a jurisdictional caveat that not even this Court can trifle with.

Thus, anyone seeking exemption from the stringent application of the rule on perfection of appeal has the burden of proving that exceptionally meritorious instances exist which warrant such departure.

Unfortunately here, petitioner failed to discharge this burden. Petitioner has not shown any cogent and/or compelling reason for this Court to be liberal in the application of the rules.

For one, the explanation proffered by the petitioner for the late filing is flimsy, self-serving and not compelling enough to warrant a relaxation of an otherwise stringent application of the rules. Counsel's averment that he finished preparing the petition on April 15, 2013 or only on the last day of the extended period granted, is an admission of counsel's negligence which is far from excusable. Also, it highlights not only counsel for petitioner's incompetency in handling petitioner's case but also his inefficiency in developing a system for keeping track of important matters such as the period of time left to file an appeal.

Moreover, it may not be amiss to point out that petitioner is represented by the law firm of Tabaquero Albano Lopez & Associates. As pointed out in *Balgami vs. Court of Appeals*,^[25] “[w]hen a client employs the services of a law firm, he does not employ the services of the lawyer who is assigned to personally handle the case. Rather, he employs the entire law firm.” Thus, any member of the law firm could have prepared and filed the petition for review within the extended period granted by the Court if petitioner's assigned counsel was indisposed allegedly due to her “daily court appearances as well as voluminous paper works on other equally important cases.”^[26]

For another, apart from being filed beyond the expiration of the extended period granted by this Court, petitioner's petition for review is saddled with the following defects:

- copies of pleadings and other material portions of the record as would support the allegations of the petition are not attached, such as: (a) respondent's Complaint; (b) petitioner's Answer and counterclaim; (c) respondent's Reply and Answer to petitioner's counterclaim; (d) both parties' respective Position Papers filed before the MeTC; (e) petitioner's Memorandum of Appeal filed before the RTC; (f) petitioner's Motion for Reconsideration of the RTC Decision dated December 17, 2012; and (g) all other pleadings filed before the lower courts. Here, only the assailed decisions and/or order of the RTC and MeTC are attached to the petition.

As aptly stated in *Atillo vs. Bombay*, 351 SCRA 361, the purpose of submitting the pleadings or material portions of the record of the case would support the allegations in the petition to enable the CA to determine at the earliest possible time the existence of prima facie merit in the petition.

- the petition failed to indicate the full names of the parties to case; and

- the attached Verification and Certification of Non-forum Shopping^[27] is defective as it failed to incorporate an assurance from the petitioner that the allegations therein are true and correct of her own personal knowledge or based upon authentic records as specifically provided under Section 4, Rule 7 of the Rules of Court. Thus, a pleading required to be verified which contains a verification based on “information and belief” or upon “knowledge, information and belief” or lacks a proper verification shall be treated as an unsigned pleading.^[28]

Section 2, Rule 42 of the Rules of Court details the form and contents required for the sufficiency in form and substance of a petition for review, thus:

Sec. 2. Form and contents. - The petition shall x x x (a) indicate the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents x x x (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts x x x, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

X x x

x x x

x x x

The failure of the petitioner to comply with any of the foregoing requirements is sufficient ground for the dismissal of the petition pursuant to Section 3, Rule 42, viz.:

Sec. 3. Effect of failure to comply with requirements. - The failure of the petitioner to comply with any of the foregoing requirements regarding x x x the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Finally, although the Court has in a number of instances relaxed procedural rules in order to serve substantial justice,[29] and may deign to veer away from the general rule, it may do so only if, on its face, the appeal appears to be absolutely meritorious. There is, however, no reason to do so in this case.

We have perused the rollo of this case and we find no grave error committed by the RTC in affirming in toto the decision of the MeTC. Both the RTC and the MeTC were unanimous in their findings that the petitioner is liable for damages because the respondent was able to establish her claims: (a) that she was attacked and assaulted by the petitioner – per Affidavit of Alfredo Balbona and Domingo R. Mancilla who alleged that they witnessed the said incident which happened on October 16, 2007; and (b) that she suffered injuries, as a result thereof – as supported by the Medical Certificate and the pictures respondent offered as evidence of the extent of the injuries she sustained. As held by the MeTC:

It must be noted that the plaintiff was able to establish that she was attacked and assaulted by the defendant herein. The Sinumpaang Salaysay (which was deemed as her direct testimony) shows that defendant punched her on the face, scratched and kicked the latter (par. 4 of Exhibit A). Per medical certificate (Exhibit C), the plaintiff suffered abrasions and contusions on the different parts of her face. The extent of her injuries as shown by the medical certificate, reinforced further by the pictures showing the injury on her face confirms (Exhibit H) that she was indeed manhandled by defendant. From the records, the occurrence of the incident is corroborated by the Affidavit of Alfredo Balbona (Exhibit F) and Domingo R. Mancilla (exhibit G) who asserted that they witnessed the scuffle.

Based on the affidavit of Mancilla, he saw the defendant crossed (sic) the street and approached (sic) the plaintiff. He thought they were friends but they fought instead. He saw that the plaintiff was at the losing end of the fight when Balbona interfered and broke the same. He stated that defendant punched the plaintiff's face and when the latter fell to the ground, defendant went (sic) on top of her and repeatedly scratched her face. (see par 2 and 3 of the Sinumpaang Salaysay marked as Exhibit G).[30]

On the other hand, as pointed out by both courts, petitioner failed to provide any evidence to rebut respondent's claim for damages.

All told, under the circumstances prevailing in this case, this Court opts not to exercise its discretionary appellate jurisdiction to entertain the petition.

WHEREFORE, petitioner's Motion to Admit Attached Petition for Review is DENIED. The petition for review

filed only on April 16, 2013 or beyond the expiration of the extended period granted by this Court is hereby DISMISSED outright.

SO ORDERED.

Zalameda and Diy, JJ., concur.

[*] Should be Raquel, as appearing in the MeTC and RTC Decisions, rollo, Annex “A” and “B”, respectively.

[1] Rollo, pp. 9-10.

[2] Rollo, pp. 11-21.

[3] Rollo, pp. 26-32.

[4] Rollo, Exhibit “B”, pp. 21-25.

[5] Rollo, Exhibit “C”, p. 33.

[6] Rollo, Exhibit “A”, p. 21.

[7] Ibid., p. 25.

[8] Rollo, Exhibit “C”, p. 33.

[9] Ibid.

[10] Rollo, pp. 3-6.

[11] Rollo, p. 8.

[12] De Liano vs. Court of Appeals, G.R. No. 142316, November 22, 2001.

[13] Dimarucot vs. People of the Philippines, G.R. No. 183975, September 20, 2010.

[14] Resolution dated April 3, 2013, rollo, p. 8.

[15] Diman vs. Alumbres, G.R. No. 131466, November 27, 1998.

[16] Republic vs. Imperial, Jr., 303 SCRA 127 (1999).

[17] Sta. Rita vs. Court of Appeals, 247 SCRA 484, 489, August 21, 1995.

[18] Land Bank of the Phils. vs. Ascot Holdings and Equities, Inc., G.R. No. 175163, Oct. 19, 2007.

[19] Heirs of the Late Flor Tungpalan vs. Court of Appeals, 460 SCRA 392, 397 (2005).

[20] Casim vs. Flordeliza, 374 SCRA 386, 395.

[21] Sublay vs. NLRC, G.R. No. 130104, January 31, 2000.

[22] Cuevas vs. Bais Steel Corp., 391 SCRA 192, 202 (2002).

[23] Aguam vs. Court of Appeals, G.R. No. 137672, 332 SCRA 784, 789.

[24] PNB vs. Philippine Milling Co., Inc., G.R. No. L-27005, 26 SCRA 712, 715.

[25] G.R. No. 131287, December 9, 2004 citing Rilloza, Africa, De Ocampo and Africa vs. Eastern Telecommunications, Inc., 309 SCRA 566 (1999).

[26] Rollo, p. 9.

[27] Petition, p. 21.

[28] Sec. 4, Rule 7, 1997 Revised Rules of Court, as amended in A.M. No. 00-2-10-SC, effective May 1, 2000.

[29] Cuevas vs. Bais Steel Corporation, G.R. No. 142689, October 17, 2002.

[30] Decision dated July 1, 2011, rollo, Exhibit “A”, p. 24.

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