

PRUDENTIAL CONSTRUCTION, INC., PETITIONER, VS. HONORABLE COURT OF APPEALS AND MABUHAY INSURANCE AND GUARANTY CO., INC., RESPONDENTS.

G.R. No. L-45155. August 26, 1977

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

On May 28, 1976, respondent Court of Appeals granted private respondent as defendant-appellant an extension of ninety (90) days from May 22, 1976 within which to file appellant's brief "with a warning that no further extension will be granted."

However, on August 23, 1976, private respondent was given an additional extension of fifteen (15) days from August 20, 1976 within which to file appellant's brief.

Appellant's brief was actually filed on September 4, 1976. Twenty-six (26) days thereafter or on September 30, 1976, respondent Court of Appeals issued the following resolution:

"No appellee's brief having been filed within the reglementary period, the Court RESOLVED TO SUBMIT the case for decision without appellee's brief"

which was received on October 7, 1976 by herein petitioner, who filed on October 25, 1976 a motion for reconsideration of said resolution, which motion was denied on November 5, 1976.

Under Section 11 of Rule 46 of the Revised Rules of Court, private respondent, as appellant, had an initial period of forty-five (45) days within which to file its brief. Add the first extension of ninety (90) days and the additional extension of fifteen (15) days, private respondent was given a total of one hundred fifty (150) days or five (5) months within which to file its brief.

Under Section 7 of Republic Act No. 5434 - which is not shown to be applicable to the case at bar as this law refers to appeals from the Court of Agrarian Relations, Secretary of Labor, Land Registration Commission, the Securities and Exchange Commission, Social Security Commission, Civil Aeronautics Board, the Patent Office, and the Agricultural Inventions Board - appellant had only thirty (30) days as its initial period within which to file its brief and was given actually one hundred thirty-five (135) days or about four months and a half within which to file its brief, after adding thereto the two extensions of ninety days and fifteen days respectively.

With the record not showing that petitioner-appellee received a copy of appellant's brief, the respondent Court of Appeals resolved to consider the case as submitted on the erroneous impression that petitioner as appellee, failed to file its brief within the reglementary period, twenty six (26) days from the filing of appellant's brief. The grave injustice inflicted on petitioner as appellee, is thus patent, which was aggravated by the denial of appellee's motion for reconsideration of respondent Court's resolution of September 30, 1976, despite the fact that petitioner specified in its motion for reconsideration that appellant's brief was filed on September 4, 1976 and that it had not received copies of appellant's brief as of October 25, 1976 when it filed its motion for reconsideration. The

respondent Court of Appeals acted with precipitate haste and thereby committed a grave abuse of discretion.

WHEREFORE, THE ORDERS DATED SEPTEMBER 30, 1976 AND NOVEMBER 5, 1976 ARE HEREBY SET ASIDE AND RESPONDENT COURT OF APPEALS IS HEREBY DIRECTED TO GRANT TO HEREIN PETITIONER THE PERIOD ALLOWED BY THE RULES WITHIN WHICH TO FILE APPELLEE'S BRIEF. NO COSTS.

SO ORDERED.

Teehankee, (Chairman), Muñoz Palma, Martin, Fernandez, and Guerrero, JJ., concur.

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