

**ABELARDO BAUTISTA AND ROBERTO TAN TING,
PETITIONER-APPELLEES, VS. FEDERICO O. BORROMEIO, INC.,
HONORABLE CESAR C. CRUZ, JUDGE OF THE MUNICIPAL COURT OF
MANDALUYONG, RIZAL AND JES...**

G.R. No. L-26002. October 31, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Respondents-appellants seek to overturn the decision of the Court of First Instance of Rizal of January 6, 1966 granting petitioners-appellees' petition for relief from judgment, setting aside the July 23, 1965 decision of the Municipal Court of Man-daluyong, Rizal, in Civil Case 1365 and ordering a new trial.

The background facts are as follows:

On September 15, 1964, the Ford truck of petitioner Roberto Tan Ting driven by Abelardo Bautista, the other petitioner, and the Volkswagen delivery panel truck owned by respondent Federico O. Borrromeo, Inc. (hereinafter called Borrromeo) were involved in a traffic accident along Epifanio de los Santos Avenue. In said traffic accident, Quintin Delgado, a helper in Borrromeo's delivery panel truck, sustained injuries which resulted in his instantaneous death. Borrromeo had to pay Delgado's widow the sum of P4,444 representing the compensation (death benefit) and funeral expenses due Delgado under the Workmen's Compensation Act.

On June 17, 1965, upon the averment that the said vehicular accident was caused by petitioners' negligence, Borrromeo started suit in the Municipal Court of Mandaluyong, Rizal to recover from petitioners the compensation and funeral expenses it paid to the widow of Quintin Delgado.[1]

At the scheduled hearing of the case on July 23, 1965, neither petitioners nor their counsel appeared. Borrromeo was thus allowed to present its evidence ex parte. On the same day, July 23, 1965, the municipal court rendered judgment in favor of Borrromeo and against the petitioners in the principal sum of P4,444, and P500 attorneys' fees, and costs. Respondents aver that this judgment has been executed and satisfied.

On August 6, 1965, petitioners received copy of the municipal court's decision.

On August 13, 1965, petitioners moved to set aside the decision. On August 14, 1965, this motion was denied.

On August 16, 1965, copy of this order of denial was sent by registered mail to counsel of petitioners. Said counsel did not receive this registered mail and the mail matter was returned to the court unclaimed. However, said counsel learned of this denial on September 2, 1965 allegedly "in the course of his investi-gation."

Petitioners filed a notice of appeal dated September 2, 1965. They, however, paid the appellate docket fee and deposited their cash appeal bond only on September 28, 1965. Their appeal was consequently turned down by the municipal court, for the reason that the deposit of the bond and the payment of the docket fee were done after the lapse of the reglementary period.

Nothing was done by petitioners until October 26, 1965, when they lodged a petition for relief from the inferior court's judgment in the Court of First instance of Rizal.[2] They there claimed excusable negligence for the failure of petitioners' counsel to appear in the July 23, 1965 hearing at the municipal court and asserted that they had a good and substantial defense in that "there was no contractual relationship between the parties, whether ex-press or implied." They sought preliminary injunction, prayed for trial de novo on the merits. A restraining order was at first issued by the court; but the prayer for preliminary injunction was eventually denied.

Respondents' answer contended that the petition for relief was filed out of time; that petitioner's counsel's failure to attend the hearing of July 23, 1965 does not constitute excusable negligence; and that the affidavits attached to the petition do not show good and substantial defense.

Petitioners thereafter moved for judgment on the pleadings. No objection thereto was interposed by respondents. The lower court then rendered the judgment mentioned in the first part of this opinion.

A move to reconsider failed. Hence, this appeal.

We vote to reverse the lower court's judgment for the following reasons:

1. The petition for relief from judgment under Rule 38 of the Rules of Court is unavailable to petitioners.

A basic precept is that when another remedy at law is open to a party, he cannot sue out a petition for relief under Rule 38.[3] Thus, a petition for relief is not a substitute for appeal. It has been held that where a defendant could have appealed - but did not appeal - from the decision of the inferior court to the Court of First Instance but instead filed a petition for relief, his petition was inappropriate as it "would amount to reviving his right to appeal which he had irretrievably lost through the gross inaction of his counsel." [4]

Here, petitioners learned of the municipal court judgment on August 6, 1965, when they received a copy of its decision. They moved to set aside that judgment on August 13, 1965. At that time, a petition for relief could not be availed of because the judgment of the municipal court had not yet become final.[5] But, on September 2, 1965, petitioners learned of the court's order of August 14, 1965 denying their motion to set aside. They could have appealed. Because, nothing in the record suggests that the notices to petitioners to take delivery of the registered envelope - containing the inferior court's resolution denying petitioners' motion to set aside the decision - were ever served on said petitioners. On the contrary, Teresita Roxas, secretary of petitioners' counsel, in her affidavit dated October 23, 1965, Annex E of the petition for relief, categorically denied receipt of any such notice, thus: "That I have not received any registry notice corresponding to a registered mail at the Manila Post Office containing an order by the Municipal Court of Mandaluyong, Rizal, dated August 14, 1965." [6]

But petitioners did not perfect their appeal to the Court of First Instance on time - they paid the appellate docket fee and deposited their appeal bond only on September 28, eleven (11) days late. Clearly, their failure to seasonably appeal was through their own fault.

And, when they did file a petition for relief on October 26, 1965, it was way beyond the sixty-day period from August 6, 1965, the time they first learned of the judgment to be set aside, as required by Section 3, Rule 38 of the Rules of Court.

We, accordingly, rule that petitioners' petition for relief must fail.

2. Petitioners failed to make out a case of excusable negligence for counsel's non-attendance at the July 23, 1965 hearing.

Their counsel, Atty. Leopoldo V. Repotente, Jr., explains his failure to attend the hearing in this wise - "he relied on the assurance of his associate, Atty. Lucenito N. Tagle, that the latter will attend to the case for him since on

that same date he (Atty. Repotente) had another case before the City Court of Quezon City." In his sworn statement, Atty. Tagle in turn stated that he was unable to attend the hearing despite his promise to do so because, in his own words, "when I transferred to my new office at A & T Building Escolta, Manila, the record of this case was misplaced, mislaid or otherwise lost by my helpers and was not among those turned over to my possession" and "it was only a few days after the date of hearing on July 23, 1965, that I found the record of this case in one of the drawers of my table in my former office and it was only then that I realized my failure to attend the hearing on July 23, 1965, x x x."

We cannot view such negligence of petitioners' two attorneys as excusable. There was no plausible reason for Repotente to entrust the hearing of the case to another lawyer. His lame excuse was that he requested Tagle to attend the hearing of said case for him because he had another hearing at the City Court of Quezon City. This is unworthy of serious consideration. For, as respondents aver - and this is not denied by petitioners - the hearing of July 23, 1965 before the municipal court was set in open court during the initial date of hearing held on July 1, 1965 after Atty. Repotente consulted his calendar. When Repotente agreed in open court to set the trial of the case for July 23, 1965, it may very well be presumed that his other case in Quezon City was not yet calendared for hearing. He could not have, in good faith, agreed to set the case for hearing on the day on which he had another previously scheduled trial. Further, he failed to notify his clients of the hearing set for July 23, 1965; they also failed to appear thereat. Certainly, Repotente's inadvertence cannot be labeled as excusable.

Nor may Atty. Tagle offer as excuse the fact that the record of the case "was misplaced, mislaid or otherwise lost". This is a stereotyped excuse. It is resorted to by lawyers in order to win new trial of the case and thereby move farther away the day of reckoning. To be remembered is that the life of each case is in its record. If the record of the case was misplaced, mislaid or lost, he should have nevertheless attended the scheduled hearing and requested for a postponement by reason thereof. But he did not. Appropriate it is to recall here that a prudent lawyer keeps a separate record or diary of hearings of cases he handles and of his professional engagements. A lawyer's schedules of hearings - intended as a reminder - are not noted by the lawyer in his record of the case. That would be useless for the purpose.

There is then no excusable negligence to which the petition for relief can cling.

3. Even on the merits, petitioners' case must fall.

Borromeo paid the widow of its employee, Quintin Delgado, compensation (death benefit) and funeral expenses for the latter's death while in the course of employment. This obligation arises from law - Section 2 of the Workmen's Compensation Act.[7] The same law in its Section 6 also provides that "[i]n case an employee suffers an injury for which compensation is due under this Act by any other person besides his employer, it shall be optional with such injured employee either to claim compensation from his employer, under this Act, or sue such other person for damages, in accordance with law; and in case compensation is claimed and allowed in accordance with this Act, the employer who paid such compensation or was found liable to pay the same, shall succeed the injured employee to the right of recovering from such person what he paid: x x x." [8]

It is evident from the foregoing that "if compensation is claimed and awarded, and the employer pays it, the employer becomes subrogated to and acquires, by operation of law, the worker's rights against the tortfeasor." [9]

No need then there is to establish any contractual relationship between Quintin Delgado and herein petitioners. Indeed, there is none. The cause of action of respondent corporation is one which does not spring from a creditor-debtor relationship. It arises by virtue of its subrogation to the right of Quintin Delgado to sue the guilty party. Such subrogation is sanctioned by the Workmen's Compensation Law aforesaid. It is as a subrogee to the rights of its deceased employee, Quintin Delgado, that Borromeo filed a suit against petitioners in the Municipal

Court of Mandaluyong, Rizal.[10]

For the reasons given, the appealed decision of January 6, 1966 under review is hereby reversed and the petition for relief is hereby dismissed.

Costs against petitioners-appellees.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

[1] Civil Case 1365, entitled "Federico O. Borromeo, Inc., Plaintiff, versus Abelardo Bautista and Roberto Tan Ting, Defendants."

[2] Civil Case 8976, entitled "Abelardo Bautista and Roberto Tan Ting, Petitioners, versus Federico O. Borromeo, inc., Honorable Cesar C. Cruz, Judge of the Municipal Court of Mandaluyong, Rizal and Jesus Bautista, Deputy Sheriff of Manila as Special Sheriff, Respondents."

[3] Fajardo vs. Bayona, 98 Phil. 659, 662, citing Palomares vs. Jimenez, 90 Phil. 773, 775-776; Alquesa vs. Cavada (1961), 3 SCRA 428, 430-431.

[4] Javellana vs. Lutero (1967), 20 SCRA 717, 722. See also: Palomares vs. Jimenez, supra, at p. 776; Smith, Bell & Co., Ltd. vs. Philippine Milling Co., L-12827, February 29, 1960.

[5] Quirino vs. Philippine National Bank, 101 Phil. 705, 706-708. See also: Anuran vs. Aquino, 38 Phil. 29, 34-37; Veluz vs. Justice of the Peace of Sariaya, 42 Phil. 557, 562-563; Prudential Bank & Trust Company vs. Macadaeg, 105 Phil. 791, 794; Punzalan vs. Papica, L-13804, February 29, 1960; Suzara vs. Caluag (1962), 4 SCRA 1060, 1062; Concurring Opinion of Mr. Justice Dizon in Balite vs. Cabangon (1967), 20 SCRA 122, 125.

[6] R.A., p. 18.

[7] "SEC. 2. Grounds for compensation. - When an employee suffers personal injury from any accident arising out of and in the course of his employment, or contracts tuberculosis or other illness directly caused by such employment, or either aggravated by or the result of the nature of such employment, his employer shall pay compensation in the sums and to the person hereinafter specified. x x x."

[8] Emphasis supplied.

[9] Esguerra vs. Muñoz, 104 Phil. 582, 585. See also: Clareza vs. Rosales (1961), 2 SCRA 455, 457-458.

[10] See also: Article 2176, Civil Code, which reads: "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter". (i.e., Chapter 2, Title XVII, Book IV, Civil Code).

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