

ANTONIO VILLASIS, MATERNIDAD V. VILLASIS AND SANTIAGO ORENDAIN, PETITIONERS, VS. HONORABLE COURT OF APPEALS, ELEUTERIO VILLASIS AND LAURA S. VILLASIS, RESPONDENTS.

G.R. NO. L-34369. September 30, 1974

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court in dismissing the petition and affirming the appellate court's dismissal of petitioners-appellants' appeal for failure to file appellants' brief finds that petitioners have shown no valid and justifiable reason for their inexplicable failure to file their brief and have only themselves to blame for their counsel's utter inaction and gross indifference and neglect in not having filed their brief for a year since receipt of due notice to file the same.

The case originated in the Antique court of first instance where after due trial judgment was rendered in favor of respondents-plaintiffs upholding their action for quieting of title with recovery of possession and damages.

Petitioners-defendants appealed the adverse judgment to the Court of Appeals. On June 25, 1970, petitioners as appellants received notice through their counsel Benjamin M. Valente to submit the appellants' brief within the reglementary forty-five day period to expire on August 9, 1970.

On August 10, 1970 (the last day of the reglementary period, August 9 being a Sunday), petitioners' counsel, Atty. Valente, filed a motion to withdraw as counsel due to his having been employed as technical assistant in the Supreme Court, with a prayer that appellants' newly engaged counsel be given sufficient time to file their brief. Said new counsel, Atty. Esdras F. Tayco, filed on August 18, 1970 his appearance with the appellate court.

On August 27, 1970, the appellate court received respondents-appellees' motion to dismiss the appeal dated August 5, 1970 for appellants' failure to file their brief within the reglementary period.

On September 12, 1970, the appellate court required both counsels of appellants, Atty. Valente (whose withdrawal it held in abeyance until he filed a proper motion in verified form with the signed conformity of the clients as per its resolution of August 18, 1970) and Atty. Tayco to comment on the dismissal motion.

Withdrawing counsel Valente filed his manifestation dated September 28, 1970 alleging inter alia that he had not received a copy of the dismissal motion and could not therefore comment thereon and submitting therewith the signed conformity of his clients to his withdrawal and reiterating his prayer for the court to grant his withdrawal and to grant appellants sufficient time to file their brief. New counsel Tayco filed no comment whatsoever.

The appellate court granted withdrawing counsel's motion to withdraw per its resolution of October 9, 1970 but meanwhile issued no resolution on the appellees' motion to dismiss the appeal.

On June 25, 1971 or after the lapse of more than eleven (11) months (or to be more exact, 319 days) without appellants having filed their brief at all, the appellate court's special sixth division^[1] issued its resolution granting the dismissal motion and dismissing the appeal on the ground stated by appellees in their motion that appellants

had failed to file their brief within the reglementary 45-day period.

It was only then that new counsel Tayco apparently stirred from almost a year of inaction and filed a motion dated July 13, 1971 for reconsideration of the dismissal of the appeal on the ground that he as a new counsel had not received the notice to file brief. The appellate court per its resolution of August 17, 1971 denied the motion for reconsideration, pointing out that "Attorney Tayco's appearance was entered [on August 18, 1970] after the period for filing brief had already expired [on August 10, 1970]."[2]

New counsel Tayco filed a second motion for reconsideration on September 10, 1971 still without having filed appellants' brief, which the appellate court[3] denied per its resolution of October 6, 1971.

Hence, the present appeal by certiorari wherein petitioners are represented by their third counsel, Atty. Augusto A. Kimpo, vice Atty. Tayco.

The appeal is patently without merit.

New counsel Tayco's claim in his motion for reconsideration that he had not received the notice to file brief borders on the frivolous. Such notice to file brief had been received by his predecessor-counsel who Valente and is binding on him as the successor. A new counsel who accepts a case in midstream is presumed and obliged to acquaint himself with all the antecedent processes and proceedings that have transpired in the record prior to his takeover. It is noteworthy that Atty. Tayco makes no claim that he was unaware that notice to file brief had been duly served on Atty. Valente and that the period would expire on August 10, 1970 and that Atty. Valente had asked in his two withdrawal motions that he (Tayco) as new counsel be granted "sufficient time" to file the brief.

Here the notice to file brief had been received on June 25, 1970 to expire on August 10, 1970. The appellate court did not dismiss the appeal at appellees' instance for failure of appellants to file brief until one year later as per its resolution of June 25, 1971 or until almost eleven months after the expiration of the reglementary period on August 10, 1970.

The appellate court gave appellants all the time and opportunity to duly prosecute their appeal by filing their brief in the interval to no avail. It asked both counsels per its resolution of September 12, 1970 (which in effect granted appellants the sufficient time asked by Atty. Valente in his withdrawal motion to file their brief) to comment on the dismissal motion but withdrawing counsel Valente claimed he could not file any comment as he had not received the motion while new counsel Tayco ignored the court's resolution and filed no comment and filed no brief.

Even going by new counsel Tayco's mistaken notion that he was entitled to a new notice to file brief, the appellate court's resolution of September 12, 1970 requiring his comment on the motion to dismiss appeal for failure to file appellants' brief was tantamount to such notice and he should then have prepared and filed the brief within forty-five days thereafter. But as already pointed out, he never filed the appellants' brief during the interval of almost 11 months that the appellate court took before it finally dismissed the appeal per its resolution of June 25, 1971. During all this period and even during the three months that followed when he filed two motions for reconsideration, he presented no earnest of prosecuting the appeal by at least filing the brief even at that late date but contented himself with a perfunctory prayer in his second motion that "appellants be allowed to file their brief".

The appellate court committed no error therefore in dismissing the appeal. Petitioners-appellants have shown no valid and justifiable reason for their inexplicable failure to file their brief and have only themselves to blame for their counsel's utter inaction and gross indifference and neglect in not having filed their brief for a year since receipt of due notice to file the same. They could not even claim ignorance of the appellate court's notice to file

brief since it had required withdrawing counsel Valente to secure their written conformity before granting his withdrawal as counsel, and certainly they must have ascertained from him as well as new counsel the status of their appeal – which accounts for Atty. Valente's repeated prayers in his two motions for withdrawal for the granting of sufficient time for new counsel to file the brief. They had almost a year thereafter to make sure that their new counsel did attend to their appeal and did file the brief.

The case of *Alonso vs. Rosario*[4] cited by petitioners is clearly inapplicable. There, appellants had filed an opposition to the motion to dismiss their appeal (filed by appellee just five days after the notice to file brief was served) asking that they be allowed to file the brief after notice of denial of the motion, and when the appellate court denied both the dismissal and the extension, they moved for reconsideration and for at least 15 days to file their brief, but the court therein both denied reconsideration and dismissed the appeal as well for failure to file brief within the reglementary period. Within five (5) days of such dismissal, appellants nevertheless filed their brief. This Court in reinstating the appeal held that "the period consumed during the pendency of the motion to dismiss should be excluded from the period given to petitioners to submit their brief, and if this is done, the brief submitted by them on April 17, 1957 may be deemed presented in due time."

It is manifest that there are two basic differences in this case: here, the motion to dismiss the appeal was filed precisely on the ground of failure to file the brief after the expiration of the 45-day reglementary period and no question of suspension of the period arises, whereas there, the appellee questioned appellants' right to appeal when only 5 days of their 45-day period had elapsed such that the rule[5] that a motion to dismiss "interrupts the time to plea" was applied by this Court by analogy; and here, petitioners-appellants never filed their brief while there appellants immediately filed their brief within 5 days of notice of dismissal of their appeal.

It may parenthetically be noted that aside from petitioners' bare assertion of merit in their appeal, the Court has not been shown that to reinstate the appeal would serve any purpose and not just be a futile waste of time, since petitioners have never submitted their brief nor their proposed assignment of errors against the trial court's verdict. To cap it all, petitioners in praying for a reversal of the appellate court's dismissal of their appeal, pray that they be given an extension of fifteen (15) days from notice of the decision within which to file the appellants' brief (at last!). Such laches and lassitude on their part serve but to confirm the correctness of the appellate court's dismissal of their appeal.

ACCORDINGLY, the petition at bar is dismissed with costs against petitioners.

Makalintal, C.J., Castro, Esguerra, and Munoz Palma, JJ., concur.
Makasiar, J., on leave.

[1] Soriano, J. acting chairman and Reyes, A. and Reyes, L.B., members.

[2] Notes in brackets supplied.

[3] With regular chairman Alvendia, J., presiding vice Soriano, J.

[4] 105 Phil. 654, 657 (1959).

[5] Rule 8, section 4, now Rule 16, section 4 of the Revised Rules of Court.

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