

**PASTORA GASPAY, FRANCISCA RAMOS, MALO CORME, VALERIANO BENGIO, PEDRO CASTILLO AND LUIS FELIZCO,  
PETITIONERS-APPELLANTS, VS. THE HON. CESAR SANGCO, JUDGE  
OF THE CITY COURT OF MANI...**

*G.R. No. L-27826. December 18, 1967*

Ponente: FERNANDO, J.

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**FERNANDO, J.:**

Citing the pertinent provision of the Rules of Court,[1] respondents-appellees moved for the dismissal of the appeal on the ground that the brief of petitioners-appellants "makes no specific assignment of errors and does not contain any page references to the record as required by the rules \* \* \*." In support of such a motion to dismiss, respondents-appellees state that the requirement for an assignment of error under the Rules of Court as well as the provisions on a statement of the case and a statement of facts "are not mere ornaments in the brief. They are intended to expedite the business of the appellate court, aid the justices in the investigation of the matters submitted, and facilitate prompt and orderly disposition of cases. They must, therefore, be complied with if not strictly - at least substantially." [2]

Petitioners-appellants, having been given an opportunity to comment on the above motion to dismiss, filed their opposition. Thus: "When the appellants brought the original case of certiorari with the lower court, the same was decided on the sole question of whether or not the Motion for Reconsideration of appellants filed with the city court was pro forma. As the trial court rendered judgment against appellants, the latter elevated their case to this Court raising the same and only legal question as put up by them in the lower court. Having in mind therefore the rules of brevity as the primordial element in a brief, the appellants did not find it necessary to include an assignment of error in their brief, for the simple reason that there is only a single issue raised thereof as indicated in the heading 'Arguments'. The appellants respectfully maintain that their brief has substantially complied with the requirements of the New Rules of Court." [3]

If the question presented by the appeal were substantial and the alleged error into which respondent Judge was alleged to have fallen in dismissing the appeal on the ground that the motion for reconsideration is pro forma manifest, then perhaps the above opposition would be persuasive and the motion to dismiss appeal denied. Such is not the case however.

The five-page brief submitted on September 22, 1967, by petitioners-appellants was deficient. It did not have as appendix, the decision of the court below questioned in this petition for certiorari. Only after counsel for petitioners-appellants was reminded of his duty to do so and after 18 days from receipt of the brief was there such compliance. A perusal of both brief and the lower court decision leads to the conclusion that the appeal is devoid of merit and should be dismissed.

No effort of persuasive character was made in the brief of petitioners-appellants to show that the City Court of Manila in holding that the motion for reconsideration was pro forma acted illegally, much less arbitrarily. It is

understandable why. In the order of the Court of First Instance of Manila, where a petition for certiorari, mandamus and prohibition was filed to test the validity of the action taken by the city court in holding the motion for reconsideration pro forma, such motion was carefully scrutinized. The two grounds on which it was based, namely, lack of previous notice to the defendants, petitioners-appellants herein to vacate, this being an ejectment case, and non-payment of rentals as constituting a ground for ejectment there being an alleged condonation of their unpaid rentals in arrears, were duly considered.

As to the defense of non-payment of rentals which was reiterated in the motion for reconsideration, the decision of the Court of First Instance appealed from stated the following: "Defendants pretend that they were not given notice to vacate the premises before plaintiff filed the complaint for ejectment against them. It appears, however, that due notice was served upon them as early as February of 1966, but that they refused to receive the same, hence plaintiff wrote to them, inviting them to an amicable conference in its office, which they attended. This they did not refute, which shows to the satisfaction of the Court that there was indeed notice. There is, therefore, bad faith on the part of petitioners, hence they cannot now be heard to invoke lack of notice. They refused to receive the notice, and they refuse to acknowledge the fact of notice. No person is entitled to profit from his wrong act of commission or omission." [4]

Concerning the defense of condonation, this is what appears in the lower court decision: "Now, respecting this alleged condonation of unpaid rents. Defendants-petitioners allege that plaintiff condoned their unpaid rents, therefore it is now in estoppel to invoke nonpayment of rent as ground for their ejectment. This is untenable because there is no proof of condonation, and even if true, it would only show gracious condonation of debt which defendants could not or would not pay anyway in the light of this action, and it is preposterous and revolting to good human conscience for the defendants-petitioners now to turn around and blame plaintiff for its liberality to them. Shortcoming deserved no premium, and good deeds are inflicted punitive action." [5]

What other conclusion can there be in the light of the above than to hold such a motion for reconsideration as being pro forma as set forth in the decision of the lower court dismissing this petition for certiorari now on appeal to this Court. "Clearly, there is nothing to it, no material allegation of any essence to persuade a reasonable judicial mind to change its decision, for the two pretended grounds of lack of notice and of supposed estoppel through condonation of unpaid rent, lack merit." [6]

When a motion for new trial or for a reconsideration may be considered as pro forma, has been aptly discussed in former Chief Justice Moran's work. Thus: "For this reason, where a motion for a new trial is filed under the third paragraph of the preceding section and fails to 'point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions,' it shall be treated as a motion pro forma intended merely to delay the proceedings and it shall not interrupt or suspend the period of time for the perfection of an appeal. However, where the motion for reconsideration was based on a claim that the finding of the trial court as to the authenticity of the disputed signature was not justified by the evidence submitted, which is the testimony of the expert witness denying such authenticity, it was held that the motion points out sufficiently why the finding of the court is not justified by the evidence, and is not a pro forma motion hence it suspends the period for perfecting an appeal. The rules have been liberalized in a recent case where a motion for reconsideration pointed out specifically the findings of the trial court that were not supported by evidence but without making express reference to such evidence, but it also pointed out the conclusions which were contrary to law reserving his right to submit written or oral argument; our Supreme Court considered that the motion was a substantial compliance with the rule." [7]

Petitioners-appellants would invoke the two cases cited by former Chief Justice Moran, *Elnar v. Santos*, [8] and

Ylanan v. Mercado.[9] Neither case strengthens what is inherently a groundless appeal. In the Elnar case,[10] the motion for reconsideration points two errors allegedly committed by the trial court, one on a question of fact and another on a question of law. As to the former, petitioner pointed out the findings or conclusions by the court which in his opinion "are not supported by the evidence, although he does not make any express reference to such evidence, and as to the latter, he also points specifically the findings or conclusions which, in his opinion are contrary to law." Moreover, there was a reservation of his right to submit written or oral argument to substantiate his motion within such period of time as the trial court might grant him, a request which was ignored by the court denying outright his motion for reconsideration. Under the circumstances, this Court held: "We believe that the above averments when considered in the light of the de-cision on the merits may be considered substantial compliance with the rule and may come under the exception pointed out by former Chief Justice Moran. Here is where we may properly apply the principle that the rules shall be liberally construed in order to promote the interest of justice."

In Ylanan v. Mercado,[11] the opinion likewise made clear, why unlike in this case, the motion for reconsideration could not rightly be considered pro forma. According to the opinion penned by the then Justice Labrador: "The only ques-tion at issue in this Court is whether the motion for recon-sideration filed in the municipal court is a pro forma motion. The question must be decided in the negative. The motion was based on the claim that the finding of the trial court as to the authenticity of the disputed signature to Exhibit A was not justified by the evidence submitted, which is the testimony of the expert witness denying such authenticity. This is a motion which points out why the finding of the court is not justified by the evidence, and is clearly not a pro forma motion for new trial or reconsideration. The Court of First Instance erred in holding that it did not suspend the period for perfecting the appeal."

All relevant matters having been brought to the attention of this Court and the brief for petitioners-appellants having been accorded the weight, or lack of it, which it deserves and there being a motion to dismiss appeal, based on Section 16 of Rule 46 of the Rules of Court made applicable to this Court by Section 1, Rule 56, which has not been followed, there is more than sufficient justification for the final disposition of this litigation.

WHEREFORE, such motion to dismiss the appeal is granted, and the appeal is hereby dismissed with costs against petitioners-appellants.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

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[1] Section 16, Rule 46 made applicable to this case by Section 1 of Rule 56.

[2] Motion to Dismiss Appeal, p. 2.

[3] Opposition to Motion to Dismiss Appeal, p. 1.

[4] Order, May 26, 1967, p. 3.

[5] Ibid, at pp. 3-4.

[6] Ibid, at p. 4.

[7] Moran, Comments on the Rules of Court, Vol. II, 1963 ed., pp. 213-214.

[8] L-13113, August 13, 1959.

[9] 94 Phil. 769 (1954).

[10] L-13113, August 13, 1959.

[11] 94 Phil. 769 (1954).

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