

RINCONADA TELEPHONE COMPANY, INC., PETITIONER, VS. HON. CARLOS R. BUENVIAJE, IRIGA TELEPHONE COMPANY, INC., AND FRANCISCO IMPERIAL, RESPONDENTS.

G.R. Nos. L-49241-42. April 27, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for certiorari and mandamus is directed against the order of respondent judge dated January 23, 1978, denying petitioner's right to appeal from his previous orders dated September 16 and 29, 1977 ordering the dismissal of Civil Cases No. IR-265 and IR-578 both entitled "Rinconada Telephone Co., Inc., Plaintiff v. Iriga Telephone Co., Inc., and Francisco Imperial, Defendants."

The record discloses the following factual backdrop:

For and in consideration of the sum of P12,500.00 in the form of shares of stocks totalling 125 at P100.00 per share, respondent Francisco Imperial, on July 30, 1971, orally conveyed to petitioner, a certificate of public convenience and necessity to operate a telephone company in Iriga City issued to him by the defunct Public Service Commission (now Land Transportation Franchising and Regulatory Board). After the agreement, petitioner started to operate under the strength of said certificate. It was only on October 14, 1971 that petitioner and respondent Imperial, executed the deed of sale pursuant to their earlier agreement.[1] On September 21, 1972, respondent Imperial again sold the same certificate to herein respondent Iriga Telephone Company, Inc. (ITELCO). This second sale was approved by the then Public Service Commission. By reason of the second sale, petitioner charged respondent Imperial of Estafa before the then CFI (now RTC) of Manila. Petitioner also filed with the then CFI of Iriga City two (2) actions against respondent Imperial, one for breach of contract with damages[2], docketed as Civil Case IR No. 265, and the other, for annulment of Deed of Sale with damages[3], docketed as Civil Case IR 578. Both cases were assigned to respondent judge and petitioner was represented by Atty. Luciano Maggay.

Because his guilt was not proven beyond reasonable doubt, respondent Imperial was absolved in the criminal case[4]. He then moved for the dismissal of the civil cases pending before respondent judge on the ground of res judicata[5]. Petitioner opposed the motion[6] but nevertheless respondent judge granted the same in two (2) orders dated September 16 and 29, 1977[7]. Petitioner, thru Atty. Benjamin Santos sought reconsideration[8] but respondent judge refused to reconsider the orders of dismissal[9]. Thus petitioner, thru the same counsel, filed a notice of appeal and appeal bond. Respondent Imperial opposed the appeal because the same was filed out of time. Respondent judge in an order dated January 23, 1978 denied the notice of appeal. In agreement with respondent Imperial, the trial court said:

"x x x. This is so for the order of dismissal dated September 18, 1977 (sic) was shown to have been received by Atty. Luciano Maggay for Rinconada Telephone Co. on October 11, 1977, and 28 days thereafter, or on November 8, 1978, Atty. Benjamin Santos, another counsel for the same party filed a Motion for

Reconsideration which was denied by proper order on January 23, 1978. The aforesaid latest order was received for Rinconada Telephone Co., Inc. through Atty. Maggay, who has been shown in the records to be still a counsel of record for the same party on February 2, 1978. Since the notice of Appeal and Appeal Bond appear to have been filed on April 19, 1978 and the Record on Appeal only on June 7, 1978, and not on February 4, 1978, which was the last and 30th day reglementary period for interposing the contemplated. x x x." (p. 58, Rollo)

Petitioner is now before Us claiming that respondent judge gravely abuse his discretion in denying it the right to appeal. Petitioner contends that it received court processes thru Atty. Santos when the latter entered his appearance in both cases by his filing of a notice of appearance and a motion for reconsideration of the orders of dismissal which he furnished the counsel of respondent Imperial. Specifically, it mentioned the order of respondent judge sent to Atty. Benjamin Santos considering the motion for reconsideration submitted for resolution[10]. It expressed amazement over the act of respondent judge in not sending to Atty. Santos a copy of the order denying the motion for reconsideration knowing fully well that the period to appeal therefrom would lapse without the knowledge of Atty. Santos, its new counsel. While admitting that its notice of appeal and appeal bond was filed out of time, petitioner considers such fact as the result of the collusion between respondent judge and respondent Imperial.

The right of a client to terminate his relations with his counsel is universally recognized (*Enos v. Casting*, 67 ALR 430). Such termination may be with or without cause (*Aro v. Narawa*, L-24146, April 28, 1969, 21 SCRA 1160). The right of a client to terminate the authority of his counsel includes the right to make a change or substitution at any stage of the proceedings. To be valid, any such change or substitution must be made: a) upon written application; b) with written consent of the client; c) upon written consent of the attorney to be substituted; d) in case the consent of attorney to be substituted cannot be obtained, there must be at least a proof of notice that the motion for substitution has been served upon him in the manner prescribed by the rules (Section 26, Rule 138, Rules of Court).

Undisputedly, there was no valid substitution in the cases at bar. Neither can it be said that Atty. Maggay formally withdrew as counsel for petitioner in the cases. Therefore, he continued to represent petitioner and he remained the counsel of record and was for all legal purposes, petitioners' attorney upon whom respondent court's processes may be served. When a party is represented by counsel, notice should be made upon the counsel of record (*Jalover v. Ytorriaga*, L-35989, October 28, 1977, 80 SCRA 100) at his given address in the absence of notice of change of address (*Lopez v. de los Reyes*, L-23671, January 30, 1970, 31 SCRA 214). Since he was the last to appear before any application for substitution was filed, Atty. Maggay remained responsible for the conduct of petitioner's cause (*Olivares v. Leola*, 97 Phil 352; *Aban v. Enage*, L-30666, February 25, 1983, 120 SCRA 778).

Despite the filing of Atty. Santos of a motion for reconsideration, copy of which he furnished the opposing counsel, Atty. Maggay is still considered counsel of record (*Aban v. Galope*, L-30666, February 25, 1983, 120 SCRA 778). Not having formally withdrawn as counsel, the order denying the notice of appeal and appeal bond was deemed properly served upon Atty. Maggay. Notice of the order to him was notice to petitioner and for all legal intents and purposes, the date of his receipt is considered the starting point from which the period to appeal prescribed by law starts to run (*Cubar v. Mendoza*, L-55035, February 23, 1983, 120 SCRA 768; *Baquiran v. Court of Appeals*, L-14551, July 31, 1961, 2 SCRA 873).

However, to the mind of the Court, there are circumstances present in these cases which warrant a relaxation of the foregoing rule and jurisprudence. It cannot be denied that respondent judge recognized Atty. Santos as petitioner's new counsel. This is apparent when the trial court sent Atty. Santos a copy of the order considering the motion for reconsideration for resolution and also when it referred to Attys. Maggay and Raneses as petitioner's

former counsels and Atty. Santos as the new counsel of petitioner in its order denying reconsideration. Having acknowledged Atty. Santos as the new counsel of petitioner, there is a clear case of negligence when said lawyer was not furnished copy of the order denying reconsideration as a copy of the order considering that motion for resolution was furnished to petitioner thru said lawyer.

In view of respondent judge's recognition of Atty. Santos as new counsel for petitioner without even a valid substitution or withdrawal of petitioner's former counsel, said new counsel logically awaited for service to him of any action taken on his motion for reconsideration. Respondent judge's sudden change of posture in insisting that Atty. Maggay is the counsel of record is, therefore, a whimsical and capricious exercise of discretion that prevented petitioner and Atty. Santos from taking a timely appeal from said order. Clearly, respondent judge committed grave abuse of discretion, amounting to lack of jurisdiction in denying petitioner's notice of appeal. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the administration of justice especially when such strict compliance was apparently relaxed by the trial court itself. If the rules are intended to insure the orderly conduct of litigation it is because of the higher objective they seek which is the protection of substantive right of the parties (*Serina v. CA*, G.R. No. 28661, February 21, 1989). As was held in several cases:

"... Because there is no vested right in technicalities, in meritorious cases, a liberal, not literal, interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the intent and purpose of the rules which is the proper and just determination of litigation. Litigations, should as much as possible, be decided on their merits and not on technicality. Dismissal of appeals purely on technical grounds is frowned upon, and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very aims. As has been the constant rulings of this Court, every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, free from the constraints of technicalities. . . ." (*Fonseca v. Court of Appeals*, G.R. No L-36035, August 30, 1988; *Hernandez v. Quitain*, G.R. No. L-48457, November 29, 1988; 168 SCRA 99).

ACCORDINGLY, the writs prayed for are GRANTED. Respondent trial court is hereby ordered to allow the appeal of petitioner from the orders dismissing Civil Cases No. IR-265 and IR-578.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[1] p. 17, Rollo.

[2] p. 9, Ibid.

[3] p. 13, Ibid.

[4] p. 26, Ibid.

[5] p. 20, Ibid.

[6] p. 31, Ibid.

[7] pp. 34-40, Ibid.

[8] p. 43, Ibid.

[9] p. 55, Ibid.

[10] p. 55, Ibid.

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