

**ASTA MOSKOWSKY, PETITIONER, VS. HON. COURT OF APPEALS,
ANTONIO DORIA, EDGARDO ALCARAZ AND EVANGELINE DORIA,
RESPONDENTS.**

G.R. No. 104222. March 03, 1994

Ponente: NOCON, J.

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NOCON, J.:

Petitioner Asta Moskowsky claims that the appellate court gravely abused its discretion when it admitted the private respondents' brief (as appellants therein) which she claims was filed out of time. And she points to the fact that private respondents' motions for extension of time to file appellants' brief were filed after the expiration of the time sought to be extended. The private respondents deny this claim. Records of the case disclose that in private respondents' peculiar case the last days when their motions were filed just happened to fall always on holidays. In which case the private respondents had no recourse but to file their motions on the very first business days after the holidays. Can such filing by the private respondents be sustained by this Court? Keeping faith with earlier decisions by the Court, we rule in favor of private respondents.

The facts of this case are simple enough.

In Civil Case No. 51369 of the Regional Trial Court of Pasig Branch 161, Metro Manila entitled: "Asta Moskowsky vs. Antonio Doria," a decision was rendered on November 16, 1989 in favor of petitioner.

Said decision was appealed by private respondents and the records were elevated to the Respondent Court of Appeals which docketed the appeal as CA.G.R. CV No. 30210.

Acting on a motion for extension of time to file appellants' brief filed by the private respondents, the Respondent Court in a resolution dated August 15, 1991 granted a non-extendible period of ninety (90) days within which to file appellants' brief or until November 1, 1991.

On November 4, 1991, the private respondents through counsel filed an "Urgent Motion for a Final Extension of 20 days to File Brief. "

On even date, the petitioner, through counsel, filed a Motion to Dismiss Appeal on the ground that no appellants' brief had yet been filed despite the lapse of the reglementary period on November 1, 1991.

On November 25, 1991, the private respondents filed an "Urgent Motion for Five (5) Days to file Brief."

On December 3, 1991 the private respondents filed a "Motion to Admit Appellants' Brief. "

In a Resolution dated December 19, 1991, the Respondent Court of Appeals resolved to admit Appellants' Brief.

On January 6, 1992, petitioner filed a Motion for Reconsideration arguing that the period within which to submit Appellants' Brief has expired and the admission of the Appellants' Brief is contrary to Sec. 15 Rule 46 of the Rules.

In a Resolution dated February 19, 1992, the Respondent Court of Appeals denied the Petitioner's Motion for Reconsideration.[1]

Hence, petitioner filed this instant petition.

Petitioner strongly argues that the filing of the "Urgent Motion For A Final Extension Of 20 Days" on November 4, 1991 did not operate to alter the expiration of the reglementary period which was November 1, 1991. She states that the twenty-day period should be counted from November 1, 1991 and the same would expire on November 21, 1991. The filing of the "Urgent Motion For Five (5) Days To File Brief" on November 25, 1991 was, therefore, four (4) days late. The subsequent "Motion To Admit Appellants' Brief" filed December 3, 1991 was therefore filed out of time. As of November 22, 1991 there was no longer any period to be extended as the decision of the trial court became final and executory as of said date. The Court of Appeals therefore, committed grave abuse of discretion in allowing the motions to be filed in violation of Section 15, Rule 46, Rules of Court, as said motions were not filed before the expiration of the time sought to be extended.

In reply, the private respondents aver that:

"In the instant case all motions filed by respondents for extension of time to file their brief before the Honorable Court of Appeals invariably stated the periods of time prayed for within which to file the same. For example, in the urgent motion for a final extension of twenty (20) days (Annex "C" of petition) respondents informed the court that the last day for private respondent to file their brief is November 4, 1991 which is a fact because November 1, November 2 and November 3 were all non-working days, and prayed that they may be granted another extension of twenty (20) days. Necessarily, the twenty days should begin on November 4, 1991.

"Again in the urgent motion for five (5) days to file brief (Annex 'E' of petition) private respondents ask for an extension of five (5) days from November 25, 1991. And the Court of Appeals, in the interest of justice and equity, for indeed our courts are not only courts of justice but also courts of equity, impliedly granted these motions. xxx"[2]

Section 15, Rule 46, Rules of Court, reads as follows:

"Sec. 15. Extension of time for filing brief. - Extension of time for the filing of briefs will not be allowed, except for good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended."

Private respondents' former counsel, Emeterio T. Balguna, filed on August 2, 1991, an "Urgent Ex-Parte Motion For Extension of Time To File Brief"[3] for a period of ninety (90) days counted from August 3, 1991. Said ninety-day period would end on November 1, 1991. November 1 is a regular holiday. Then President Aquino declared November 2, 1991 as a special holiday. The next day, November 3, 1991 turned out to be a Sunday. The next business day was, therefore, November 4, 1991 - a Monday. Instead of filing a brief, private respondents - this time, through new counsel, filed a motion for a twenty-day extension to file a brief on November 4, 1991 in the following tenor:

"1. That due to the recurring illness, original counsel for defendant-appellant Emeterio T. Balguna has withdrawn as counsel for defendant-appellant and the matter of filing appellant's brief has been endorsed to me by the said defendant-appellant;

"2. That the undersigned counsel has been informed that the last day for defendant-appellant to file his brief is today, November 4, 1991;

"3. That the undersigned counsel was given the records only 10 days ago and for which reason he will need time to study the records and file appellant's brief;

"4. That he will need another extension of twenty (20) days from today within which to file appellant's brief;

"5. That this motion is not intended to unduly delay the termination of this case." [4]

The law for pretermission of holidays is that "Where the day, or the last day, for doing any act required or permitted by law falls on a regular holiday or special day, the act may be done on the next succeeding business day." [5]

The abovementioned motion was, therefore, filed on time, i.e., the motion for the extension sought was filed before the expiration of the time sought to be extended.

The next question is: when should the extended period requested for commence to run?

A similar question was posed in *Vda. de Capulong vs. Workmen's Insurance Co., Inc.* [6] where the issue as formulated by the Court was as follows:

"The issue presented in this case is quite simple. The private respondent received a copy of the decision against it on January 4, 1969. On February 3, 1969, the last day for perfecting its appeal, it filed a motion for an extension of 'at least thirty (30) days from the receipt of the Order of this Honorable Court within which to file the Record on Appeal.' The late Judge Federico C. Alikpala of the Court of First Instance of Manila, who rendered the decision, issued an order on February 4, 1969, granting an extension but only for ten days and without indicating when it would commence. This order was received by the private respondent on February 7, 1969, and seven days later, on February 14, 1969, it filed the record on appeal.

"The question is: Was the record on appeal filed on time, that is, within the extension? Or more to the point, when should the 10-day extension start to run?" [7]

Here, the Court held as follows:

"Regarding the date when the 10-day extension should begin, it is true that as a rule the extension should be tacked to the original period and commence immediately after the expiration of such period. But that rule will not apply in the case at bar because the private respondent specifically moved that it be given 'at least thirty days from receipt of the order' of the court allowing such extension." [8]

Similarly, since private respondents specifically manifested that they "will need another extension of twenty (20) days from today within which to file appellants' brief" and the "today" (November 4, 1991) was the date of the filing of the motion, there was then authority for private respondents to fix the commencement (of the extended period requested) from November 4, 1991.

The same goes for the motion for another five days to file brief. The twentieth day from November 4, 1991 fell on a Sunday and the brief was therefore to be filed on November 25, 1991. But, instead of the brief, the private respondents filed the abovementioned motion for extension of time to file brief wherein they manifested that they would need five (5) days from the filing of said motion - the 25th of November, 1991, to file said brief.

Five days from November 25, 1991 is November 30, 1991 (Bonifacio Day) - one of the regular holidays of each year. [9] The next day, December 1, 1991, was a Sunday. The brief had to be filed the next day, December 2, 1991, it being the first business day which was neither a regular holiday or a special day.

The private respondents filed a "Motion To Admit Appellants' Brief" on December 3, 1991 - one (1) day after due date with the following reasons:

"That the last day for him to file appellant's brief was yesterday, December 2, 1991. However, due to typing errors committed by the typist on some pages of the brief, undersigned counsel had to ask that said pages be retyped and for which reason, he was not able to file the brief yesterday;

"That he is now filing the said appellant's brief, today, December 3, 1991." [10]

A similar one (1) day delay occurred in *Javier vs. Court of Appeals*, [11] and here the Court ruled that:

"The one (1) day delay in the filing of the said motion for extension can justifiably be excused, considering that aside from the change of counsel, the last day for filing the said motion fell on a holiday following another holiday, hence, under such circumstances, an outright dismissal of the petition would be too harsh. Litigations should, as much as possible, be decided on their merits and not on technicalities. In a number of cases, this Court, in the exercise of equity jurisdiction, has relaxed the stringent application of technical rules in order to resolve the case on its merits. Rules of procedure are intended to promote, not to defeat, substantial justice and, therefore, they should not be applied in a very rigid and technical sense." [12]

The theme of private respondents' new counsel in the motions for extension of time to file brief was that he had just been hired as counsel by the private respondents for which reason he needed time to go over the records of the case and check his facts very well before submitting the private respondents' brief - which included submitting the same without any errors in its typing.

And since "Rules of procedure are intended to promote, not to defeat, substantial justice and, therefore, they should not be applied in a very rigid and technical sense," we therefore respect the appellate court's assessment of the good faith it perceived on the part of private respondents' new counsel when it granted the motion to admit appellants' brief.

WHEREFORE, the petition is hereby DENIED for lack of merit. The case is hereby REMANDED to the appellate court for further proceedings. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Rollo, pp. 4-5.

[2] *Ibid.*, p. 113.

[3] Annex "B", Petition; Rollo, p. 23.

[4] Rollo, p. 25.

[5] Section 28, Chapter 7, Book I, EO 292 (S'87)

[6] 178 SCRA 314.

[7] 178 SCRA 316.

[8] At p. 319.

[9] Section 26[1A], Chapter 7, Book I, EO 292 [S'87].

[10] Rollo, p. 28.

[11] 183 SCRA 171.

[12] At pp. 177-178.

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