

**PRODUCERS BANK OF THE PHILIPPINES, PETITIONER, VS.
HONORABLE COURT OF APPEALS, ASIA TRUST DEVELOPMENT
BANK, RAINELDA A. ANDREWS, SAMSON FLORES, ALFONSO LEONG,
JR., RHODORA D. LA...**

G.R. No. 126620. April 17, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

In this Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Producer's Bank of the Philippines ("petitioner" for brevity) assails the September 19, 1996 Resolution[1] of the Court of Appeals in CA-G.R. CV No. 50016 which dismissed petitioner's appeal for being filed out of time. The Court of Appeals decreed thus:

"WHEREFORE, finding the Motion to Dismiss Appeal to be meritorious, the same is granted. The appeal is DISMISSED.

SO ORDERED."[2]

The Antecedent Facts

On March 29, 1988, petitioner through its former counsel, Atty. Antonio M. Pery, filed a Complaint to recover the sum of P11,420,000.00 from Asia Trust Development Bank ("Asiatrust" for brevity) and the Central Bank of the Philippines ("CBP" for brevity) before the Regional Trial Court of Makati, Branch 147 ("RTC" for brevity). Thereafter, petitioner filed an amended complaint, impleading additional defendants.[3]

Petitioner sought to recover the proceeds of several treasury bills amounting to P11,420,000.00. According to petitioner, said proceeds were fraudulently credited to the demand deposit account of Asiatrust with the CBP and withdrawn by Milagros B. Nayve, Elizabeth C. Garcia and Alberto Limjoco, Sr.

It appears that petitioner owned several treasury bills. On the respective maturity dates of these bills, petitioner caused these bills to be delivered to the CBP. The bills were initially received by Manuel B. Ala, petitioner's rediscounting clerk together with a letter of transmittal and a receipt for the bills addressed to the CBP. Mr. Ala turned over the bills together with the accompanying documents to Rogelio Carrera for delivery to the CBP. Alberto Limjoco, Sr., Elizabeth C. Garcia and Milagros B. Nayve[4] came into possession of these bills which they in turn delivered to Rainelda A. Andrews and Rhodora B. Landrito[5]. Petitioner alleged that Andrews and Landrito failed to ascertain the lawful ownership of the bills, and caused their transmittal and delivery to the CBP, through a letter signed by Eduardo G. Escobar and Alfonso Leong, Jr..[6] The proceeds of the bills were credited to the account of Asiatrust which approved the manager's check applications and facilitated payment to the bearers of the bills. Petitioner discovered that the proceeds of the bills were not credited to its demand deposit

account with the CBP. Upon such discovery, petitioner informed the CBP which furnished petitioner with a copy of the acknowledgment from Asiatrust of receipt of the bills and that the proceeds were credited to the account of Asiatrust. Petitioner claimed that Rainelda A. Andrews, Samson Flores, Alfonso Leong, Jr., Rhodora D. Landrito, Joseph Chua, Ramon Yu and Eduardo G. Escobar were negligent in the performance of their duties and responsibilities as officers of Asiatrust as they failed to exercise reasonable care and caution to determine the true ownership of the bills before allowing the proceeds to be paid to Milagros B. Nayve, Elizabeth C. Garcia and Alberto Limjoco, Sr. Petitioner sought to hold Asiatrust solidarily liable with the other defendants for the payment of the value of the treasury bills and for damages. Subsequently, the complaint was dismissed as against the CBP on motion of petitioner on the ground that the latter had lifted petitioner's conservatorship and allowed the return of the management and assets to petitioner's Board of Directors. The CBP's lifting of the conservatorship was conditioned upon petitioner's dropping of all its cases pending against the CBP.

The defendants filed their respective Answers, after which the issues were joined and trial on the merits ensued.

On August 30, 1993, the law firm of Quisumbing, Torres and Evangelista ("QTE" for brevity) entered its appearance for petitioner in substitution of Atty. Antonio M. Pery.

Petitioner's handling counsel, Atty. Alvin Agustin T. Ignacio ("Atty. Ignacio" for brevity) of QTE arrived late during the hearing held on May 17, 1995. On motion of Asiatrust's counsel, the RTC issued an Order on the same day dismissing the case for lack of interest to prosecute.

On June 9, 1995, Atty. Ignacio filed a motion to reconsider the Order dated May 17, 1995, explaining that his late arrival at the hearing was due to the unexpected heavy traffic at Roxas Boulevard in front of Baclaran Church. He also offered his apologies to the RTC for his unintended tardiness. QTE received a copy of the Order dated August 1, 1995 denying the motion for reconsideration on August 11, 1995. At that time, Atty. Ignacio was indisposed for allegedly suffering from "fatigue and stress". It was only on August 25, 1995 that Atty. Ignacio found out that the Order denying the motion for reconsideration was received by the law firm on August 11, 1995. He filed a Notice of Appeal on August 25, 1995.

On November 13, 1995, Asiatrust, et al. filed a Motion to Dismiss Appeal with the Court of Appeals. On March 8, 1996, QTE filed its Comment to the Motion to Dismiss Appeal.

In the Resolution dated September 19, 1996, the Court of Appeals granted the motion to dismiss petitioner's appeal.

Ruling of the Court of Appeals

In granting the motion to dismiss appeal, the Court of Appeals held in part:

"xxx. We hold that the failure of plaintiff-appellant to file the Notice of Appeal on time was inexcusable negligence. These are the reasons:

One. In paragraph 7.28 of the Comment (to the Motion to Dismiss), plaintiff-appellant states that –

"On 11 August 1995 at 3:00 pm., plaintiff-appellant received a copy of the Order dated 1 August 1995 denying its motion for reconsideration of the dismissed order."

Since, the last day for plaintiff-appellant to file the Notice of Appeal was August 12, 1995, why did it not file the Notice of Appeal right away considering that its preparation and mailing could not take two hours? If counsel for plaintiff-appellant did not take advantage of the two remaining office hours on August 11, 1995, why did it not file the Notice of Appeal at anytime, the following day, August 12? In failing to do that, the law firm counsel was guilty of gross and inexcusable negligence.

TWO. If the counsel for plaintiff-appellant did not know that the last day to file the Notice of Appeal was on August 12, 1995, why did it not ask the handling lawyer about it? There was no impediment to do that because the handling lawyer was not comatose. The counsel was inexcusably negligent for failing to make that inquiry.

THREE. The handling lawyer knew that if the Motion for Reconsideration would be denied – as in fact it was – he would have only a day after receipt of the order of denial to file a notice of appeal. Why did he not forewarn his law firm about such fact so that even in his absence, the latter could file said notice? Assuming that the handling lawyer was really sick, his ailment which was allegedly just “fatigue and stress” was not at all serious much less incapacitating. In fact he was not even hospitalized for he was just advised to rest for at least two weeks. With all the communication facilities in Metro-Manila, there was no reason for said counsel – even if sick – not to have gotten in touch with his law firm to check on the result of his Motion for Reconsideration. It was, therefore, inexcusable negligence for him to have failed doing that which an ordinarily prudent lawyer would have done.

The inexcusable negligence of plaintiff-appellant’s counsel is made more glaring by the fact that the Notice of Appeal was late not only by 2 or 4 days but all of 13 days.

We are not unaware of the rule that technicality should not smother the right of a litigant to a day in court. But the Supreme Court instructs us that strict adherence to reglementary periods fixed in the Rules of Court is necessary to ensure the efficient and orderly disposition of cases (*Panes v. Court of Appeals*, 120 SCRA 509). We cannot also close Our eyes to the rule that perfecting an appeal within the period permitted by law is not only mandatory but jurisdictional and the failure to perfect the appeal on time renders the judgment of the court final and executory. (*Bank of America, Gerochi, Jr.* 230 SCRA 9; *Philippine Commercial International Bank v. Court of Appeals*, 229 SCRA 560). Well rooted is the principle that once a decision becomes final the appellate court is without jurisdiction to entertain the appeal (*Sumbillo v. IAC*, 165 SCRA 232; *Hensy Zoilo Llido v. Marquez*, 166 SCRA 61).”

Hence, the instant petition.

The Issue

Petitioner now comes before us with the following assignment of error:

THE RESPONDENT COURT OF APPEALS ERRED IN FINDING THAT THE ACTS OF PETITIONER’S PREVIOUS COUNSEL, QUISUMBING, TORRES AND EVANGELISTA, SHOULD BIND THE PETITIONER, DESPITE THE FINDINGS IN ITS RESOLUTION THAT THE LAW FIRM COUNSEL WAS GROSSLY AND INEXCUSABLY NEGLIGENT.

The threshold issue in this petition for review on certiorari is whether the Court of Appeals erred in dismissing an appeal that was filed 13 days late despite its own findings that petitioner’s counsel was grossly negligent.

Petitioner argues that a client should not be bound by counsel’s gross and inexcusable negligence. Petitioner admits that its handling counsel, Atty. Ignacio of QTE, committed two blunders: first, he failed to arrive on time during one of the hearings allegedly due to the traffic at Roxas Boulevard in front of Baclaran Church; second, he failed to file the notice of appeal within the reglementary period due to “fatigue and stress”. Petitioner further admits that Atty. Ignacio offered a “flimsy excuse” for his tardiness and an “out of this world excuse” for his failure to file the notice of appeal on time. Petitioner, however, submits that such gross negligence and mistake of counsel should not bind the client in line with the case of *Legarda vs. Court of Appeals*.^[7] Petitioner enumerates the similarities between the *Legarda* case and its own, as follows:

“First, like the petitioner in the *Legarda* case, petitioner herein was not negligent in choosing a counsel to

represent them in the case. The former engaged the services of former law school dean, Dean Antonio Coronel, while the latter engaged the service of the well known and reputable law firm, Quisumbing, Torres and Evangelista which is associated with Baker and McKenzie of the United States, as counsels to their respective cases.

In fact, the diligence of petitioner can be shown by the fact that it even replaced its first counsel, Atty. Antonio Pery in favor of Quisumbing, Torres and Evangelista, hoping that by hiring the services of that law firm the case would be handled better and would have a better chance of winning. Unfortunately, such hope was dampened by the gross negligence and blunders committed by the law firm.

Second, just like in the case of Legarda, the previous counsel of the petitioner committed two blunders. In the case of the former, counsel failed to file an answer in the trial court and failed to timely appeal the case to the appellate courts, while in the latter case, counsel caused the dismissal of the case by arriving late at the trial date and also by failing to timely perfect an appeal to the Court of Appeals.

Third, in both cases the Court of Appeals has found that both counsels committed negligence. The only difference would be that in the case of Legarda, the Court of Appeals only held that there was only pure and simple negligence on the part of Dean Antonio Coronel, while in the case at bar, the Court of Appeals found that there was gross and inexcusable negligence on the part of Quisumbing, Torres and Evangelista Law Firm.

Thus, the Court of Appeals committed an error in stating that: "The plaintiff appellant has to bite the bullet for it cannot shake itself of the inexcusable negligence of its counsel" (Alabanza. vs. Intermediate Appellate Court, 204 SCRA 304), because of its own findings that there was a gross and inexcusable negligence on the part of the previous counsel. The applicable decision of the Supreme Court to the case at bar should be the case of Legarda vs. Court of Appeals. (195 SCRA 418)."

The Court's Ruling

The petition is bereft of merit. We uphold the dismissal of the appeal by the Court of Appeals.

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. The exception to this rule is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. In which case, the remedy then is to reopen the case and allow the party who was denied his day in court to adduce his evidence.[8] However, a thorough review of the instant case reveals that petitioner cannot seek refuge or obtain reprieve under these principles.

Legarda case is not applicable

Petitioner's reliance on the Legarda case which was promulgated on March 18, 1991 is clearly misplaced. In said case, the Court declared that petitioner's counsel, Atty. Antonio Coronel, a well-known practicing lawyer and dean of a law school, committed not just ordinary or simple negligence, but reckless and gross negligence which deprived his client of her property without due process of law. According to the Legarda decision-

"xxx, the negligence of the then counsel for petitioner when he failed to file the proper motion to dismiss or to draw a compromise agreement if it was true that they agreed on a settlement of the case; or in simply filing an answer; and that after having been furnished a copy of the decision by the court he failed to appeal therefrom or to file a petition for relief from the order declaring petitioner in default."[9]

was so gross and inexcusable that it should not bind his client. The Court declared that the counsel's acts or omissions "consign (the client) to penury" because "her lawyer appeared to have abandoned her case not once but repeatedly." The Court noted that counsel's "lack of devotion to duty is so gross and palpable that this Court must come to the aid of his distraught client." Thus, the Court held as null and void the decisions of the trial and appellate courts against Atty. Coronel's client and ordered, among other things, the reconveyance of the property

in her favor.

However, the decision in said case was not yet final in 1991. The private respondent therein filed a timely motion for reconsideration. In granting the motion for reconsideration, the Court en banc held:

“Under the Gancayco ruling, the order of reconveyance was premised on the alleged gross negligence of Legarda’s counsel which should not be allowed to bind her as she was deprived of her property `without due process of law.’

It is, however, basic that as long as a party was given the opportunity to defend her interests in due course, she cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. The chronology of events shows that the case took its regular course in the trial and appellate courts but Legarda’s counsel failed to act as any ordinary counsel should have acted, his negligence every step of the way amounting to “abandonment,” in the words of the Gancayco decision. Yet, it cannot be denied that the proceedings which led to the filing of this case were not attended by any irregularity. The judgment by default was valid, so was the ensuing sale at public auction. If Cabrera was adjudged highest bidder in said auction sale, it was not through any machination on his part. All of his actuations that led to the final registration of the title in his name were aboveboard, untainted by any irregularity.”

x x x

Neither Cathay nor Cabrera[10] should be made to suffer for the gross negligence of Legarda’s counsel. If she may be said to be “innocent” because she was ignorant of the acts of negligence of her counsel, with more reason are respondents truly “innocent.” As between two parties who may lose due to the negligence or incompetence of the counsel of one, the party who was responsible for making it happen should suffer the consequences. This reflects the basic common law maxim, so succinctly stated by Justice J.B.L. Reyes, that “. . . (B)etween two innocent parties, the one who made it possible for the wrong to be done should be the one to bear the resulting loss.” In this case, it was not respondents, but Legarda, who misjudged and hired the services of the lawyer who practically abandoned her case and who continued to retain him even after his proven apathy and negligence.

The Gancayco decision makes much of the fact that Legarda is now “consigned to penury” and, therefore, this Court “must come to the aid of the distraught client.” It must be remembered that this Court renders decisions, not on the basis of emotions but on its sound judgment, applying the relevant, appropriate law. Much as it may pity Legarda, or any losing litigant for that matter, it cannot play the role of a “knight in shining armor” coming to the aid of someone, who through her weakness, ignorance or misjudgment may have been bested in a legal joust which complied with all the rules of legal proceedings.”

In sum, the court did not relieve the client from the consequences of her counsel’s negligence and mistakes considering that she was given an opportunity to defend her interests in due course. Certainly, it cannot be said that she was denied due process. Consequently, the Legarda case does not support petitioner’s cause.

No Denial of Due Process

Contrary to petitioner’s stance, the Legarda case supports the view that petitioner was not denied its day in court. The Constitution mandates that “(n)o person shall be deprived of life, liberty, or property without due process of law x x x .”[11] The right to due process of law has been interpreted to mean as follows:

“The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one’s defense. `To be heard' does not mean only verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.”[12] (Emphasis supplied)

Verily, so long as a party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process. In petitioner's case as in the Legarda case, the chronology of events shows that the case took its regular course in the trial court.

On December 8, 1992, petitioner presented its first witness, Mr. Manuel B. Ala, the Accounting Clerk of its Accounting Department. He was cross-examined by CBP, Nayve and Garcia on February 10, 1993. On March 1, 1993, petitioner presented its second witness, Ms. Josie Fernandez, the Security Custodian of its Treasury Bills. On July 5, 1993, petitioner presented its third witness, Atty. Leopoldo Cotaco, head of its Department of Security and Internal Affairs. At this hearing, only counsels of Nayve and Garcia were present. The counsels of CBP and Asiastrust were absent. On August 25, 1993, the direct testimony of Atty. Leopoldo Cotaco was terminated. On August 30, 1993, QTE entered its appearance in substitution of Atty. Antonio M. Pery. On September 8, 1993, QTE moved for the postponement of the cross-examination of Atty. Cotaco since it had only recently entered its appearance. On September 16, 1993, petitioner moved to dismiss the complaint against CBP on the ground that the latter had lifted the conservatorship and allowed the return of the management and assets to petitioner's Board of Directors. The motion was granted in an Order dated September 28, 1993. The hearings on November 17 and 24, 1993 were postponed upon petitioner's motion since former counsel, Atty. Antonio M. Pery, refused to turn over the records and files of the case due to a dispute over legal fees. The hearings were reset to February 21 and March 9 and 16, 1994. On February 18, 1994, petitioner again moved that the hearing scheduled on February 21, 1994 be reset for the same reason. The hearings on March 9 and 16, 1994 were likewise postponed due to former counsel's adamant refusal to turn over the files. The hearings were reset to May 18 and 25, 1994. By May 18, 1994, petitioner's former counsel still refused to turn over the files of the case, prompting petitioner to request for another postponement. The hearings were reset to July 6, 20 and August 15, 1994. The hearing scheduled on July 6, 1994 was postponed on the ground that there was no proof of service of the notice of hearing to counsels for the defendants. The hearing scheduled on July 20, 1994 was postponed by Asiastrust on the ground that its counsel was not available for said hearing. The hearings were reset to August 31 and September 19, 1994. The hearing scheduled on August 15, 1994 was cancelled. The hearing on August 31, 1994 was reset to September 19, 1995 because there was no proof of service of the notice of hearing on counsels. The hearing on September 19, 1994 was also reset to November 21, 1994 for lack of proof that the contending counsels received the notice of hearing for said date. On November 16, 1994, Asiastrust filed an urgent motion to postpone the hearing on November 21, 1994, due to unavailability of its counsel. Consequently, the hearings were reset to January 30 and February 15, 1995. However, the hearing on said dates were cancelled since the presiding judge was indisposed, and reset to May 17, 1995. As mentioned earlier, petitioner's handling lawyer, Atty. Ignacio of QTE arrived late during the hearing on May 17, 1995 allegedly due to the unexpectedly heavy traffic on Roxas Boulevard in front of Baclaran Church. On motion of Asiastrust's counsel, the trial court issued the Order dismissing the case for lack of interest to prosecute.

Upon said dismissal, petitioner's counsel filed a timely motion for reconsideration. The same was denied by the trial court. However, it must be emphasized that petitioner was not left without any relief. Upon the denial thereof, the situation could have been easily remedied by filing a notice of appeal within the reglementary period^[13] considering that a dismissal for failure to prosecute is an adjudication on the merits.^[14] As correctly pointed out by Asiastrust, all that is required is a singled-paged, pro forma notice of appeal, the accomplishment of which does not require a high degree of legal skill. Despite this, counsel failed to file its notice of appeal on time and the proffered excuse that he was suffering from "stress and fatigue" while highly unacceptable, does not amount to gross, palpable, pervasive and reckless negligence so as to deprive counsel's client its day in court. As the proceedings in the trial court all the way up to the appellate court would show, petitioner was not deprived of due process.

Indeed, by failing to file its appeal within the reglementary period, it could not be successfully argued that petitioner was deprived of its day in court.

Time and again it has been held that the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[15] The party who seeks to avail of the same must comply with the requirements of the rules.[16] Failing to do so, the right to appeal is lost.[17]

The Court has had several occasions to hold that “rules of procedure, especially those prescribing the time within which certain acts must be done, have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions. Thus, we have held that the failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional.[18]

Neither could petitioner plead leniency in the application of the rules considering that the period to appeal is prescribed not only by the Rules of Court but also by statute, particularly Sec. 39 of Batas Pambansa Blg. 129 which provides –

Sec. 39. Appeals. – The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: Provided, however, That habeas corpus, the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from x x x x

Clearly, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal has the effect of rendering the judgment final and executory. Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite date fixed by law.”[19]

Counsel for petitioner committed simple negligence

We also find that the negligence of the law firm engaged by the petitioner to litigate its cause was not gross but simple negligence. Petitioner capitalizes on the following “blunders” of the law firm to establish gross negligence: (1) arriving late during the hearing on May 17, 1995 and (2) filing the notice of appeal thirteen (13) days late. Tardiness is plain and simple negligence. On the other hand, counsel’s failure to file the notice of appeal within the reglementary period did not deprive petitioner of due process of law.

We also do not miss the fact that petitioners were represented by a law firm which meant that any of its members could lawfully act as their counsel during the trial.”[20] As such, “[w]hen a client employs the services of a law firm, he does not employ the services of the lawyer who is assigned to personally handle the case. Rather, he employs the entire law firm. In the event that the counsel appearing for the client resigns, the firm is bound to provide a replacement.”[21] Petitioner cannot now complain of counsel’s errors. It has been held that “[l]itigants, represented by counsel, should not expect that all they need to do is sit back, relax and await the outcome of their case. x x x[22].” Especially in this case, where petitioner has a legal department to monitor its pending cases and to liaise with its retained counsel. To agree with petitioner’s stance would enable every party to render inutile any adverse order or decision through the simple expedient of alleging gross negligence on the part of its counsel. The Court will not countenance such a farce which contradicts long-settled doctrines of trial and procedure.[23]

Hence, there is no justifiable reason to exempt petitioner from the general rule that clients should suffer the

consequences of the negligence, mistake or lack of competence of the counsel whom they themselves hired and had the full authority to fire at any time and replace with another even without any justifiable reason.[24]

In sum, this is not a case where the negligence of counsel is one that is so gross, palpable, pervasive and reckless which is the type of negligence that deprives a party of his or her day in court. For this reason, the Court need no longer concern itself with the merits of petitioner's causes of action nor consider the propriety of the dismissal of the case by the trial court for lack of interest to prosecute. The Court is bound by the trial court's judgment which had become final and executory due to the simple negligence of the petitioner's counsel in allowing the reglementary period to lapse without perfecting the appeal.

WHEREFORE, there being no reversible error committed by the Court of Appeals, the petition for review on certiorari is DENIED and the assailed Resolution dated September 19, 1996 dismissing the appeal is AFFIRMED.

SO ORDERED.

Vitug, (Acting Chairman), Panganiban, and Sandoval-Gutierrez, JJ., concur.
Melo, J., (Chairman), abroad, on official leave.

[1] Penned by Justice Hilarion L. Aquino and concurred in by Justices Hector L. Hofileña and Romeo A. Brawner.

[2] Rollo, p. 45.

[3] Included were the following: Rainelda A. Andrews, Samson Flores, Alfonso Leong, Jr., Rhodora D. Landrito, Joseph Chuam, Ramon Yu, Eduardo G. Escobar, Milagros B. Nayve, Elizabeth C. Garcia, Alberto Limjoco, Sr., Gloria E. Menpin, Esperanza Florendo; Original Records in Civil Case No. 88-463, Regional Trial Court of Makati, Branch 147.

[4] For the second cause of action, Limjoco and Garcia only.

[5] For the third cause of action, Landrito only.

[6] For the second and third causes of action, Leong together with Samson Flores.

[7] 195 SCRA 418 (1991).

[8] People's Homesite & Housing Corp. vs. Tiongco, 12 SCRA 471 (1964); Escudero vs. Dulay, 158 SCRA 69 (1988); De Guzman vs. Sandiganbayan, 256 SCRA 171 (1996).

[9] See p. 427.

[10] Private respondents therein.

[11] Section 1, Article III, Constitution.

[12] Salonga vs. Court of Appeals, 269 SCRA 534 (1997).

[13] Section 2, Rule 41 of the Old Rules provide as follows:

SEC. 2. Judgments or orders subject of appeal. – Only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgments or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other.

A judgment denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that its is not supported by the evidence or it is contrary to law.

A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38.

[14] Sec. 13, Rule 17 of the Old Rules of Court provide:

SEC. 3. Failure to prosecute. – If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court.

[15] Ortiz vs. Court of Appeals, 299 SCRA 708 (1998).

[16] Ibid.

[17] Ibid.

[18] Rosa Yap Paras and Valente Dy Yap, vs. Judge Ismael O. Baldado and Justo De Jesus Paras, G.R. No. 140713, March 8, 2001.

[19] Almeda vs. Court of Appeals, 292 SCRA 587 (1998).

[20] Five Star Bus Company, Inc. vs. Court of Appeals, 313 SCRA 367 (1999).

[21] Rilloraza, Africa, De Ocampo and Africa vs. Eastern Telecommunications, Inc., 309 SCRA 566 (1999).

[22] Bernardo vs. Court of Appeals, 275 SCRA 413 (1997) citing Greenhills Airconditioning and Services, Inc. vs. NLRC, 245 SCRA 384.

[23] Salonga, supra.

[24] Salva vs. Court of Appeals, 304 SCRA 632 (1999).

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