

ARNOLD GINETE, FLOR GINETE, ASSISTED BY JOSE BONTIGAO, AND NORA GINETE, ASSISTED BY RICARDO SABAYLE, PETITIONERS, VS. HON. COURT OF APPEALS, JOSEFINA RIBAYA-GINETE, VICTOR AND A...*G.R. No. 127596. September 24, 1998*

Ponente: ROMERO, J.

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Before this Court is a Petition for Review assailing four (4) Resolutions of the Court of Appeals. The June 16, 1995 Resolution[1] dismissed petitioners' appeal for their failure to file Appellants' Brief despite the extension given. The December 8, 1995[2] Resolution ordered entry of judgment on the ground that the June 16, 1995 Resolution had already become final and executory, there being no Motion for Reconsideration filed contesting the dismissal of the appeal. The January 26, 1996 Resolution[3] ordered the release of entry of judgment while the December 18, 1996 Resolution[4] denied petitioners' Omnibus Motion for Reconsideration and reiterated the order of release of entry of judgment.

The issue is basically one of ownership and succession involving seven parcels of land with an area of 59 hectares, all located in Bulan, Sorsogon. The resolution of said issue, however, hinges on the proper determination of paternity and filiation of the contending parties.

Petitioners Arnold Ginete, Flor Ginete assisted by Jose Bontigao, and Nora Ginete assisted by Ricardo Sabayle were plaintiffs in a Complaint for Annulment of Sale and for Partition filed against private respondents Josefina Ribaya-Ginete, Victor and Alex, both surnamed Ginete, Eudarlio B. Valencia[5] and Mirafe Bellen-Valencia.[6]

There are two conflicting versions as to the original ownership of said parcels of land. On the one hand, petitioners allege that the subject lots were originally conjugal properties of the deceased spouses Mauricio Ginete and Aniceta Ginga who had six children, one of whom was Onofre (or Odelon) Ginete, now deceased. Petitioners claim to be legitimate children of the late Onofre Ginete by his first wife, Beatriz Tamboong.

According to petitioners, when Mauricio Ginete died, his surviving heirs submitted a project of partition[7] wherein the subject lots were apportioned to Onofre (Odelon) Ginete. During the lifetime of Onofre and after the death of his first wife Beatriz Tamboong, petitioners occupied some of the lots at the instance of the former.

On the other hand, private respondents contend that the subject lots originally belonged solely to Aniceta Ginga who subsequently sold two of the seven lots to private respondent Josefina Ribaya-Ginete, the second wife of Onofre (Odelon). After Onofre's (Odelon's) death, Aniceta sold another lot to Onofre's (Odelon's) acknowledged natural children. Then, Josefina Ribaya-Ginete redeemed three lots from one Rufina Gacis and thereafter sold the same to private respondent Mirafe Bellen Valencia, Aniceta's daughter by her second husband and Odelon's half-sister. Said lots were subsequently titled in the name of Mirafe Valencia married to Eudarlio Valencia.

After hearing both sides, the trial court, on June 29, 1992, ruled in favor of private respondents and declared them owners of the entire 59 hectares of subject lots. Petitioners were ordered to pay private respondents P50,000.00 as moral damages; and P15,000.00 as attorney's fees and necessary litigation expenses. In addition, petitioners were ordered to pay actual damages of P183,600.00 representing the value of the coconuts and/or proceeds of the fruits from the parcels (or portions) they have been occupying since 1975 up to 1992, specifically parcels 2, 3 (portion), 4, 5 and 6 plus P10,200.00 per annum effective 1993 until they finally vacate and turn over the possession thereof to private respondents and to the pay the costs.

Having received the above decision on September 22, 1992, petitioners had until October 7, 1992 to file a notice of appeal. Petitioners eventually filed a notice of appeal on October 5, 1992.[8] Said notice was acted upon and given due course by Presiding Judge Ireneo B. Escandor on October 8, 1992[9] in view of the retirement of Judge Alparce on June 30, 1992. However, Judge Escandor inhibited himself and withdrew his October 8, 1992 order[10] giving due course to the appeal for an unspecified reason. Instead, Judge Simon S. Encinas acted upon and gave due course to the appeal on January 26, 1993.[11]

The Court of Appeals, however, dismissed the appeal in a June 16, 1995 Resolution for failure of petitioners to file appellants' brief. Petitioners' counsel received the resolution on July 3, 1995. As such, the last day for the filing of a motion for reconsideration would have been on July 18, 1995. Corrollarily, said resolution would have attained finality on July 19, 1995.

On August 1, 1995, petitioners filed their Appellants' Brief. A Motion for Reconsideration dated July 18, 1995 was allegedly filed together with the Appellants' Brief but received by the Court of Appeals only on December 29, 1995. On December 8, 1995, the Court of Appeals ordered entry of judgment and expunction of Appellants' Brief after verifying that no Motion for Reconsideration was filed with the Court of Appeals. Nor was an appeal to the Supreme Court filed.

Petitioners moved to reconsider the December 8, 1995 Resolution of the Court of Appeals. On January 26, 1996, the Court of Appeals ordered the release of entry of judgment after a verification report dated January 16, 1996 revealed that only the Appellants' Brief was received on August 31, 1995 but without the Motion for Reconsideration. On December 18, 1996, the Court of Appeals denied petitioners' motion for leave to file and admit incorporated omnibus motion for reconsideration and reiterated its order to release entry of judgment.

Believing that they have a meritorious case and claiming that they would be unjustly deprived of their rightful share in the inheritance if their appeal is not reinstated in the Court of Appeals, petitioners filed this instant petition for review on the following grounds:

1. The Court of Appeals abused its discretion in considering petitioners' appeal abandoned and consequently dismissed for their failure to file their appellants' brief, overlooking the fact that their failure to file the same was due to the gross negligence of their former counsel, whose negligence should not be binding on them.
2. The Court of Appeals' dismissal of petitioners' appeal was based on technicality thereby denying the rights of petitioners as plaintiffs-appellants to prosecute their case before said appellate court so that it can be decided on the merits and not on its technicality aspect.
3. The entry of judgment ordered by the Court of Appeals to be entered in this case was erroneous and premature considering that petitioners actually filed their motion for reconsideration of the June 16, 1995 order dismissing petitioners' appeal.
4. The suspension of the rules in the instant case is warranted so that petitioners' appeal with the appellate court could be reinstated and proceed in due course in order not to deprive the petitioners of their rightful shares of their inheritance which they were unlawfully deprived of by the private respondents.

Petitioners claim that their counsel, who happened to be the third, declined to continue with the case for fear of antagonizing the respondent-spouses who are judges. The same held true with their second counsel and was the main reason for the refusal of other lawyers to accept petitioners' case. Hence, allegedly the reason for their failure to file appellants' brief within the reglementary period.

The petition is impressed with merit.

Private respondents lay stress on the jurisprudentially-established rule that the timely perfection of an appeal is not only mandatory but likewise jurisdictional. It is private respondents' position that there are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review, for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of the right must comply with the statute or rules. The rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business. Furthermore, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional and the failure to perfect the appeal renders the judgment of the court final and executory. As a losing party has the right to file an appeal within the prescribed period, so also the winning party has the correlative right to enjoy the finality of the resolution of his/her case.[12]

Private respondents' argument is misleading for the above-discussed statutory requirement is not applicable to the instant case. Records show that the notice of appeal was filed within the reglementary period.[13] As such, it was seasonably filed.

In *Carco Motor Sales v. Court of Appeals*,[14] this Court held that:

"As held by the Court in *Gregorio v. Court of Appeals* (70 SCRA 546 [1976]), '(T)he expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter and may be waived by the parties. Even after the expiration of the time fixed for the filing of the brief, the reviewing court may grant an extension of time, at least where no motion to dismiss has been made. Late filing or service of briefs may be excused where no material injury has been suffered by the appellee by reason of the delay or where there is no contention that the appellee's cause was prejudiced.'" (Emphasis supplied)

Thus, a distinction should be made between failure to file a notice of appeal within the reglementary period and failure to file brief within the period granted by the appellate court. The former would result in the failure of the appellate court to obtain jurisdiction of the appealed decision resulting in its becoming final and executory upon failure to move for reconsideration. The latter would simply result in the abandonment of the appeal which could lead to its dismissal upon failure to move for its reconsideration. Consequently, the appealed decision would become final and executory but prior thereto, the appellate court shall have obtained jurisdiction of the appealed decision.

In the instant case, petitioners simply failed to file the Appellants' Brief within the extended period accorded to them after the appellate court had obtained jurisdiction of the case.

Nevertheless, this Court will not countenance the failure of petitioners' counsel to observe the reglementary period to file appellants' brief. Counsel are sworn to protect the interest of their clients and in the process, should be knowledgeable about the rules of procedure to avoid prejudicing the interests of their clients or worse, compromising the integrity of the courts. Ignorance of the procedural rules on their part is tantamount to inexcusable negligence.

The matter before this Court, however, does not even call for counsel's knowledge of procedural rules but merely

his managerial skill in keeping track of deadlines for filing necessary pleadings, failing which, he can opt to withdraw from the case in order not to prejudice further his client's interest.

Failure of petitioners' former counsel to file the Appellants' Brief within the reglementary period constitutes gross negligence in violation of the Code of Professional Responsibility. In *Perla Compania De Seguros, Inc. v. Atty. Benedicto G. Saquilabon*,^[15] this Court held:

"An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. (*Del Rosario v. Court of Appeals*, 114 SCRA 159) A failure to file brief for his client certainly constitutes inexcusable negligence on his part. (*People v. Villar*, 46 SCRA 107) The respondent has indeed committed a serious lapse in the duty owed by him to his client as well as to the Court not to delay litigation and to aid in the speedy administration of justice. (*People v. Daban*, 43 SCRA 185; *People v. Estocada*, 43 SCRA 515)." (Italics supplied)

While, certainly, an Appellants' Brief was filed, it was admittedly filed beyond the reglementary period. Such lapse indubitably prejudiced the interest of petitioners since it unduly delayed the resolution of this case on the merits before the Court of Appeals. As it is, it has taken more than twenty (20) years since the case was first filed on July 19, 1978 and the merits of the appeal are yet to be resolved before the Court of Appeals.

Considering that the bone of contention consists of fifty-nine hectares of alleged inherited lands, it cannot be presumed that petitioners were disinterested in pursuing the case. They hired counsel precisely to handle all the legal matters and to protect their interests. No duty was imposed upon them to remind their counsel to file Appellants' Brief.

Failure of petitioners' former counsel to file Appellants' Brief clearly manifests his negligence which became more pronounced when he was granted an extended period of time within which to file the brief. Ordinarily, such negligent act or omission on the part of counsel would, as a rule, have bound his clients. Under the prevailing circumstances and in the interest of justice and equity, this Court cannot strictly apply the same rule in the case before it.

This Court may suspend its own rules or exempt a particular case from its operation where the appellate court failed to obtain jurisdiction over the case owing to appellant's failure to perfect an appeal. Hence, with more reason would this Court suspend its own rules in cases where the appellate court has already obtained jurisdiction over the appealed case. This prerogative to relax procedural rules of the most mandatory character in terms of compliance, such as the period to appeal has been invoked and granted in a considerable number of cases.^[16]

Thus, in *Republic v. Court of Appeals*,^[17] although the appeal was perfected six days after the expiration of the reglementary period, this Court ordered the Court of Appeals to entertain the same, as the Republic stood to lose close to 300 hectares of land already titled in its name and used exclusively for educational purposes.

In the instant case, petitioners stand to lose their alleged rightful share in the inheritance consisting of fifty-nine hectares of land just because their former counsel failed to file the Appellants' Brief within the reglementary period.

To deprive petitioners of their share in the inheritance due to the negligence of their counsel coupled with their submissions of the trial court's failure to appreciate and consider some of their evidence, documentary at that, are sufficient demonstrations of the merits of their case.

While this Court would not readily accept petitioners' allegation that the trial court's decision was drafted by one of the private respondents who happened to be the Executive Judge exercising supervisory functions over the branch where the instant case was being heard, it cannot be overlooked that this particular situation may have

engendered some justifiable suspicion in the mind of petitioners. While such an allegation, coupled with the allegation that another intervenor was also a judge,[18] as well as the belief that the reason they kept on changing their lawyers was because their lawyers were intimidated by private respondents who were judges, or that the lawyers themselves refused to accept their case, are bereft of concrete proof, still they may not entirely be without merit. In fact, the Appellants' Brief, belatedly filed with the Court of Appeals, as well as the Motion for Reconsideration, was signed by petitioners themselves claiming that the lawyer who drafted the same refused to sign his name.

The above circumstances, taken cumulatively, are sufficient demonstration of the merits of their case, hence must be given due course if only to dispel from the minds of petitioners, as well as the public, the image of partiality of our courts, as well as to determine definitively the ownership over the subject parcels of land.

Justice Teehankee, in his concurring opinion in *Republic v. Court of Appeals*, stated, thus:

"The precedent of *Paulino v. Court of Appeals* (80 SCRA 257 [1977]) where the Court ordered the giving of due course to an appeal notwithstanding that the same was admittedly filed two days beyond the reglementary period and had been therefore rejected by the appellate court is fully applicable to the case at bar. We cited therein *inter alia* the demands of substantial justice and the presence of special circumstances for giving due course to the appeal and reiterated that '(T)he underlying principle in the administration of justice and application of the rules is substantial justice and fair play. As restated by the Court in *Obut v. Court of Appeals* (70 SCRA 546 [1976]), '(W)e cannot look with favor on a course of action which would place the administration of justice in a straight jacket for then the result would be a poor kind of justice if there would be justice at all. Verily, judicial orders, such as the one subject of this petition, are issued to be obeyed, nonetheless a non-compliance is to be dealt with as the circumstances attending the case may warrant. What should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities.'"[19] (Italics supplied)

Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, as we are now constrained to do in instant case.[20]

Thus, this court is not averse to suspending its own rules in the pursuit of the ends of justice. "x x x. For when the operation of the Rules will lead to an injustice we have, in justifiable instances, resorted to this extraordinary remedy to prevent it. The rules have been drafted with the primary objective of enhancing fair trials and expediting justice. As a corollary, if their application and operation tend to subvert and defeat, instead of promote and enhance it, their suspension is justified. In the words of Justice Antonio P. Barredo in his concurring opinion in *Estrada v. Sto. Domingo*, "(T)his Court, through the revered and eminent Mr. Justice Abad Santos, found occasion in the case of *C. Viuda de Ordoveza v. Raymundo*, to lay down for recognition in this jurisdiction, the sound rule in the administration of justice holding that 'it is always in the power of the court (Supreme Court) to suspend its own rules or to except a particular case from its operation, whenever the purposes of justice require it . . .'"[21]

The Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. As applied to instant case, in the language of Justice Makalintal,

technicalities "should give way to the realities of the situation." [22]

Private respondents' reliance on technicalities should be placed in proper perspective lest it lead to a great injustice and an abuse of the rules of procedure which are primarily established to protect the rights of the parties. Technicality should not be relied upon to subject and defeat substantive rights of the other party. "Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." [23]

The emerging trend in the rulings of this Court is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice. [24]

This Court, likewise, has held that "(W)here compelling circumstances are cited by the appellant that would warrant an examination and review by the appellate court as the reviewer of the findings of fact made by the trial court, 'a liberal application of the rules becomes imperative and conversely, an overstrict or rigid enforcement of the reglementary period for the filing of briefs, extensions of which for justifiable reasons are after all addressed to the sound discretion of the court, is to be shunned and avoided lest a grave miscarriage of justice be committed'." [25]

Further, this Court has declared that "the higher interests of justice and fairness justify the setting aside of respondent court's peremptory dismissal of petitioner's appeal for failure to file appellant's brief within the original reglementary period due to a cause not entirely attributable to its fault or negligence and that the exercise of the Court's "inherent right" to reinstate an appeal that was dismissed as the result of fraud, mistake or unavoidable casualty is fully justified under the circumstances of the case at bar." [26]

In the case at bar, the lawyer's negligence without any participatory negligence on the part of petitioners is a sufficient reason to set aside the resolutions of the Court of Appeals. Aside from matters of life, liberty, honor or property which would warrant the suspension of the rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (1) the existence of special or compelling circumstances, (2) the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (4) a lack of any showing that the review sought is merely frivolous and dilatory, [27] (5) the other party will not be unjustly prejudiced thereby.

On the whole, the principal considerations in giving due course to an appeal by suspending the enforcement of statutory and mandatory rules are substantial justice and equity considerations. But the above-cited elements should likewise be considered for the appeal to be reinstated and given due course.

Lest this Court be misinterpreted, the statutory requirement that when no motion for reconsideration was filed within the reglementary period, the decision attains finality and becomes executory in due course is to be strictly enforced. This Court has held that the necessity for such a requirement is considered an indispensable interdiction against needless delays and for the orderly discharge of judicial business. [28] The essential rationale behind this statutory requirement is expressed by this court in *Legarda v. Court of Appeals*, [29] thus:

"The necessity of giving finality to judgments that are not void is self-evident. The interest of society imposes it. The opposite view might make litigations more unendurable than the wrong (they are) intended to redress. It would create doubt, real or imaginary, and controversy would constantly arise as to what the judgment or order was. Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were instituted was to put an end to controversies. When judgments of lower courts gain finality, they, too, become inviolable, impervious

to modification. They may, then, no longer be reviewed, or in any way modified directly or indirectly, by a higher court, not even by the Supreme Court. In other words, once a judgment becomes final, the only errors that may be corrected are those which are clerical."

From the foregoing, it can be inferred that the purposes for such a statutory requirement are two-fold: first, to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business, and; second, to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist.

Obviously, the first purpose is in line with the dictum that justice delayed is justice denied. But said dictum presupposes that the court properly appreciates the facts and the applicable law to arrive at a judicious decision. The end should always be the meting out of justice.

As to the second purpose, controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time. It must be adjudicated properly and seasonably to better serve the ends of justice and to place everything in proper perspective. In the process, the possibility that errors may be committed in the rendition of a decision cannot be discounted.

To be sure, this Court will not disturb a final and executory judgment even at the risk that errors may have been committed in its rendition as long as due process was observed. It has been held that as long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process.[30]

Due process means giving every contending party the opportunity to be heard and the Court to consider every piece of evidence presented in their favor. In the instant case, there is no dispute that petitioners were given every opportunity to be heard. In fact, this was never presented as an issue before the lower court. What was made an issue before the Court of Appeals was the misappreciation of facts and misapplication of laws despite clear and uncontroverted evidence. In effect, petitioners claim that they would be deprived of their rightful shares of their inheritance if their appeal is not reinstated and the findings of fact made by the lower court are not reviewed.

In this Court's perusal of the records of the case, it appears that the lower court disregarded and misappreciated certain documents presented by petitioners in proving filiation as allowed by the Civil Code and the Rules of Court. Second, it seems to have misapplied the established presumptions in cases of marriage and filiation. Third, the forgery of the signature of the Notary Public in one of the questioned Deeds of Sale appears to have been clearly established by petitioners and unsatisfactorily and insufficiently rebutted by private respondents.

In view of these circumstances, this Court finds it imperative for the Court of Appeals to review the findings of fact made by the trial court. For while this Court may review factual findings of the lower court, it will not preempt the Court of Appeals in reviewing the same and reappreciating the evidence presented by petitioners to resolve factual questions.

Prior resolution of the aforecited issues is necessary in order to determine the question of original ownership over the subject parcels of land which in turn would resolve the question of succession. Said questions pertain to factual matters that could best be resolved by the Court of Appeals which is mandated to examine and review the findings of fact made by the lower court.

The demands of substantial justice and fair play make it absolutely necessary for the courts to completely, judiciously and satisfactorily resolve said questions of fact. Failure to give due course to the appeal and to resolve those questions might give rise to the impression that the courts may be fostering and promoting injustice if and when the appellants' or petitioners' case turns out to be meritorious.

This Court cannot help but observe that the Court of Appeals itself is doubtful as to whether a motion for reconsideration of the June 16, 1995 resolution which dismissed petitioners' appeal was filed together with the Appellants' Brief. While the Appellants' Brief was indeed filed late, the Court of Appeals, in its December 8, 1995 resolution stated that the said brief was filed on August 1, 1995,[31] thirteen days after the supposed last day for filing a motion for reconsideration. However in its January 26, 1996 resolution, it stated that according to the Judicial Records Division Report, the Appellants' Brief was received and dated August 31, 1995.[32]

Without imputing any irregularity or negligence in the conduct of the official duties of the Court of Appeals' Judicial Records Division, this Court cannot help but observe that it is the common practice among lawyers, when filing a motion for reconsideration of the dismissal of their appeal or petition or any required pleading to attach the required appellant's brief, petition or pleading to said motion.

In the instant case, petitioners' Motion for Reconsideration was dated July 18, 1995 but allegedly received by the Court of Appeals on December 29, 1995 or five months later. Said Motion for Reconsideration stated that "attached to this motion are the required copies of their Brief for admission by the Honorable Court." In fact, said motion prayed:

"WHEREFORE. it is prayed that the resolution dated June 16 1995 dismissing the appeal be set aside and the appeal be reinstated and the attached Brief for appellants be admitted...."(Italics supplied)

While said motion may indeed have been filed on December 29, 1995, apart from and much later than the Appellants' Brief despite the former's being dated July 18, 1995, any sensible lawyer would have known that the next step after such dismissal of one's appeal for failure to file appellant's Brief would be to file a motion for reconsideration of said dismissal. Common sense would have dictated that the required brief, the late filing of which precisely caused the dismissal of the appeal, would be attached to the motion for reconsideration.

This may have been the reasoning of the Court of Appeals as it was itself undecided on whether a motion for reconsideration was indeed filed on time. This is obvious from its resolutions regarding entry of judgment.

The decision of the lower court was supposed to have become final and executory on July 19, 1995 when no motion for reconsideration of the dismissal of the appeal was filed on July 18, 1995, the last day for filing said motion. In the Revised Internal Rules of the Court of Appeals, Section 1, Rule 11 on Entry of Judgment and Remand of the Records, it is provided:

"Unless a motion for reconsideration or an appeal is taken to the Supreme Court, judgment and final resolutions of the Court of Appeals shall be entered upon the expiration of fifteen (15) days after notice to the parties." (Emphasis supplied)

Petitioners made known their intention to question the resolutions of the Court of Appeals before the Supreme Court only on January 17, 1997.[33] Hence, no appeal to the Supreme Court was filed for more than a year from the finality of the judgment or resolution of the Court of Appeals which could have suspended or delayed the entry of judgment.

The other reason that could have forestalled the entry of judgment was the filing of a motion for reconsideration. The Court of Appeals, in its December 8, 1995 resolution, declared:

"Considering:

1) Judicial Records Division verification reports dated November 8, 1995 that no Motion for Reconsideration/Supreme Court Appeal received as per docket book;xxx

the Court Resolved:

1) to issue entry of judgment and records remanded; the Court's Resolution of June 16, 1995 having become final and executory as of July 19, 1995;xxx"

It is apparent from the above-quoted Resolution that no entry of judgment was made as of November 8, 1995 after the finality of the Resolution dismissing the appeal on July 19, 1995. This should have been automatically done by the division Clerk of Court in accordance with Section 5, Rule 11 of the Revised Internal Rules of the Court of appeals which provides:

"After promulgation of the decision of final resolution it shall be the duty and responsibility of the division Clerks of Court to see it that the entry of judgment is made in due time without undue delay." (Emphasis supplied)

Granted that an allowance for delay was taken into consideration, Section 6 of the same Revised Internal rules of the Court of Appeals provides that:

"In making entries of judgments, the Division Clerk of Court shall determine the finality of the decision by making allowance for delay of mail, computed from the last day of the period of appeal from the decision or final resolution, as follows:xxx;twenty (20) days, if the addressee is from Luzon, except Metro Manila;xxx" (Emphasis supplied)

Prescinding from the foregoing disquisition, the provisions of the Internal Rules of the Court of Appeals further state that the Division Clerk of Court should have automatically entered the resolution which had become final and executory on August 7, 1995 since petitioners were from the province of Sorsogon in Luzon. This Court cannot comprehend why the Division Clerk of Court had not entered the resolution as of November 8, 1995 or One Hundred and Fifteen (115) days after the last day of the period to appeal from said resolution on July 18, 1995.

As if this were not enough, the Court of Appeals, in a January 26, 1996 Resolution, again declared and ordered:

2) Judicial Records Division Verification report dated January 16, 1996 that only appellants' brief was received and dated August 31, 1995 but without the Motion for Reconsideration;

the Court Resolved:

'Release entry of judgment.'"

Then in a December 18, 1996 Resolution the Court of Appeals reiterated:

"xxx. The entry of judgment is hereby ordered RELEASED."

This Court can only infer that The Court of Appeals itself was not certain as to whether petitioner had indeed filed a Motion for Reconsideration since it had to order the Judicial Records Division to verify if one was filed, not only once but twice. Only after it received confirmation that no Motion for Reconsideration had indeed been filed did it order the issuance of the entry of judgment when that should have been automatically done by the Division Clerk of Court Five Hundred Fifty-One (551) days earlier.

While the Court of Appeals itself appears unsure as to whether petitioner filed a Motion for Reconsideration of the dismissal of its appeal within the reglementary period, greater prejudice would be avoided if petitioners' appeal is reinstated and given due course.

This Court is aware that the instant case has dragged far too long, thereby causing prejudice to both parties. But greater harm, if not injustice, would be caused to petitioners if their appeal were not reinstated and given due course by the Court of Appeals, than it would to private respondents. Petitioners would be made to return the fruits in addition to payment of damages as well as P10,200.00 per annum effective 1993 until they finally vacate

and turn over possession of the subject parcels respondents in case the appellate court upholds the decision of the lower court. If the appellate court reverses the decision of the lower court and adjudges petitioners as entitled to a share in the subject parcels of land, then private respondents shall not have lost anything.

While this Court seeks to balance and harmonize procedural and substantive law, the words of Charles Rembrar could not be truer than in this case. "There is danger to real justice that inheres in the concepts of "fairness" and "general rules"; the hurt done by the sharp corners of an angular legal structure, the hospitality to tyranny that lies in easy disregard of rules. Both ideas are needed- adherence to abstractions that override the inclinations (bad or good) of those who make decisions, attention to the requirements of special situations. From time to time, one or the other becomes too prominent. Then there is clamor for its counterpart." [34]

IN VIEW OF THE FOREGOING, the following Resolutions of the Court of Appeals, dated June 16, 1995 deissmissing the appeal; that dated December 8, 1995 ordering entry of judgment; that dated January 26, 1996 ordering release of entry of judgment, and finally that dated December 18, 1996 ordering release of entry judgment in CA G.R. CV.NO.43573 are hereby SET ASIDE. The case is REMANDED to the Court of Appeals which is DIRECTED to admit petitioner's Appellant's Brief, to give due course to their Appeal and decide the same on the merits. No Costs.

SO ORDERED

Narvasa (Chairman), Kapunan and Purisima., JJ., concur.

[1] Annex "A", Rollo, p. 41 (Penned by Associate Justice Lourdes Tayao-Jaguros and concurred in by Justices Jesus Elbinias and Godardo Jacinto of the Special Twelfth Division).

[2] Annex "B", Rollo, p. 43 (Former Special Twelfth Division)

[3] Annex "C". Rollo, p. 69 (Former Special Twelfth Division)

[4] Annex "D", Rollo, p. 44 (Seventh Division).

[5] Now Judge of the Regional Trial Court of Quezon City, Branch 222.

[6] Now Judge of the Municipal Trial Court of Irosin, Sorsogon, Branch 1.

[7] Exhibit "A", Project of Partition dated February 19, 1952, Special Proceeding No. 2922 entitled "Intestado Del Finado Mauricio Ginete; Aniceta Ginga, Administradora".

[8] Records, p. 408.

[9] Records, p. 409.

[10] Records, p. 410.

[11] Records, p. 411.

[12] Videogram Regulatory Board v. Court of Appeals, G.R. No. 106564, November 28, 1996.

[13] Order dated January 26, 1993, Records, p. 411.

[14] 78 SCRA 526 {1977}

[15] Adm. Case No. 3907, april 10, 1997.

[16] De Guzman v. Sandiganbayan, 256 SCRA 171 [1996].

[17] Republic v. Court of Appeals, 83 SCRA 453 [1978].

[18] Judge Manuel V. Ginete of the Municipal Trial Court of Masbate, Masbate.

[19] See note 14, supra.

[20] See note 13, supra.

[21] See note 14, supra.

[22] Supra.

[23] Spouses Bella v. Court of Appeals, G.R. No. 105997, September 26, 1997.

[24] Trans International v. Court of Appeals, G.R. No. 128421, January 26, 1998.

[25] See note 11, supra.

[26] Supra.

[27] Paulino v. Court of Appeals, 80 SCRA 257 [1977].

[28] Sta. Rita v. Court of Appeals, 247 SCRA 484 [1995].

[29] G.R. No. 94457, October 16, 1997.

[30] Supra.

[31] Rollo, p. 41.

[32] Annex "C", Rollo, p. 37.

[33] Rollo, p.3.

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