

ALEX DEMATA, PETITIONER, VS. HONORABLE COURT OF APPEALS, HON. ROSARITO F. DABALOS AND FRANCISCO AALA, RESPONDENTS.

G.R. No. 127697. February 25, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

The pivotal issue here is whether or not the petition for review before the Court of Appeals was seasonably filed.

The facts that matter are undisputed.

On December 1, 1994, Francisco Aala instituted a case for unlawful detainer against Alex Demata, docketed as Civil Case No. 5895 before the Butuan City Court.

On January 18, 1995, the said defendant moved to dismiss^[1] the complaint on the ground of lack of jurisdiction, citing Section 33 of Batas Pambansa Blg. 129, as amended by Section 3(3) of Republic Act No. 7691, which reads:

"Section 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise:

"(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (P20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (P50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots."

On March 13, 1995, the City Trial Court of origin dismissed the case, as prayed for, on the ground of lack of jurisdiction,^[2] ratiocinating, thus:

"The record of the instant case shows that the plaintiff acquired the land in issue on July 18, 1983 from Sinforiano Torralba as evidenced by a machine copy of the deed of absolute sale denominated as Doc. No. 420; Page No. 84; Book No. XXXVI and Series of 1983 and acknowledged before a Notary (sic) Public. The plaintiff was already the owner of the land in question when the previous owner filed a complaint for Unlawful Detainer against defendant's predecessor-in-interest on August 4, 1993. The real party-in-interest is therefore the herein plaintiff and not Sinforiano Torralba. This fact was concealed or withheld by Sinforiano Torralba to the Court.

Thusly, as early as July 18, 1983, plaintiff's cause of action for unlawful detainer against the defendant's predecessor-in-interest had already accrued. Since the instant complaint was filed more than eleven (11) years from accrual of the cause of action or from the date of defendant's predecessor-in-interest began to withhold unlawful the possession of the realty in the case at hand, it is the Regional Trial Court who has jurisdiction over the present case." (Bernabe v. Dayrit, 125 SCRA 423)

On August 24, 1995, Aala appealed to the Regional Trial Court, the appeal docketed as Civil Case No. 4326 before Branch 2, Regional Trial Court in Libertad, Butuan City.

On May 13, 1996, the Regional Trial Court reversed the Order of dismissal of the City Trial Court a quo. Alex Demata, the herein petitioner, received such disposition adverse to him on May 17, 1996. On May 27, 1996, he presented a motion for reconsideration but to no avail. The same was denied on July 22, 1996. Petitioner received on July 30, 1996 the order of denial of the motion for reconsideration.[3]

On August 5, 1996,[4] petitioner filed with the Court of Appeals a motion for extension[5] of time to file a Petition for Review[6], and on September 11, 1996, the appellate court granted an extension of fifteen (15) days within which to bring before it the contemplated petition, subject to the timeliness of the filing of the motion for extension.

On September 27, 1996, the Ninth Division[7] of the Court of Appeals issued another Resolution[8]; ruling, thus:

"A reading of the Motion for Extension of Time to File Petition for Review as well as Annex I of the petition shows that petitioner received a copy of the questioned resolution dated May 13, 1996 on May 17, 1996. Ten (10) days thereafter, or on May 27, 1996, petitioner filed a motion for reconsideration which was denied by public respondent in its order dated July 22, 1996, copy of which was received by petitioner on July 30, 1996. It also appears that the instant "Petition for Review on Certiorari" (should be Petition for Review) was sent by registered mail on August 19, 1996 or on the 20th day from receipt of the denial of the motion for reconsideration. Clearly, therefore the petition has been filed beyond the reglementary period. xxx "

The aforequoted Resolution of September 27, 1996, however, was received by petitioner on October 8, 1996. Consequently, the respondent court denied petitioner's motion for reconsideration filed on October 25, 1996, on the ground of late filing, the same having been filed two (2) days after the expiration of the 15-day reglementary period.

On December 20, 1996, the petitioner found his way to this Court, via a motion for extension of time for the filing of a petition for review on certiorari.

On February 19, 1997, the Second Division of the court gave petitioner a thirty (30) day extension, with a warning that no further extension will be allowed.

On February 17, 1997, petitioner brought the instant Petition for Review on Certiorari; contending, that:

"THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR BEING FILED BEYOND THE REGLEMENTARY PERIOD DESPITE THE FACT THAT IT WAS FILED WITHIN THE EXTENDED PERIOD.

THE RESPONDENT COURT OF APPEALS ERRED IN DISMISSING THE MOTION FOR RECONSIDERATION AS TWO (2) DAYS LATE AND IN NOT RESOLVING IT ON ITS MERITS."[9]

In his Comment,[10] private respondent Francisco Aala pointed out that the petition lacks the proof of service required by Revised Circular No. 1-88, which is a ground for outright dismissal.[11] He reiterated that the decision of the Court of Appeals in C.A. G.R. SP No. 41758 had already become final and executory when the motion for extension to file a petition for review was filed.

Section 3, Rule 6 of the Revised Internal Rules of the Court of Appeals[12] provides that a party has fifteen (15) days within which to bring a Petition for Review against an unfavorable decision of the trial court.

Let us examine the material dates. The decision of the Regional Trial Court, dated July 22, 1996, was received on July 30, 1996. From said date the fifteen (15) day period for filing a Petition for Review commenced. Therefore,

Demata had until August 14, 1996 to file the petition. But instead of filing the petition, Demata sought a fifteen day extension.

The Court of Appeals dismissed the petition because it was sent by registered mail only on August 19, 1996 or twenty (20) days from the date of the motion for reconsideration of the decision of the trial court.

Clearly then, the Petition for Review of petitioner was filed beyond the reglementary period. So, also, petitioner admitted that the motion for reconsideration of the Order of dismissal of the Court of Appeals was filed two (2) days after the expiration of the reglementary period. In the case of *Bank of America, NT & SA v. Gerochi, Jr.*, 230 SCRA 9 citing *Valdez v. Ocumen*, 106 Phil 929; *Mangali v. Court of Appeals*, 99 SCRA 236, *FJR Garments Industries v. Court of Appeals*, 130 SCRA 216 and *Gutierrez v. Court of Appeals*, 26 SCRA 32, this Court held:

"The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but jurisdictional, and the failure to perfect that appeal renders the judgment of the court final and executory. xxx

xxx xxx xxx

The case at bench, given its own settings, cannot come close to those extraordinary circumstance that have indeed justified a deviation from an otherwise stringent rule. Let it not be overlooked that the timeliness of an appeal is a jurisdictional caveat that not even this Court can trifle with."

WHEREFORE, the Petition is DENIED. The Court of Appeals Resolution dated September 27, 1996, dismissing the petition for review, and the Resolution, dated December 2, 1996, denying petitioner's motion for reconsideration are both AFFIRMED.

SO ORDERED.

Romero (Chairman), Panganiban, and Gonzaga-Reyes, JJ., concur.
Vitug, J., on official business abroad.

[1] Annex D, Rollo, pp. 37-40.

[2] Annex F, Rollo, pp. 43-44.

[3] Annex H, Rollo, pp. 51 -52.

[4] A careful examination of the annexes proved that the motion was filed on August 6, 1996, not August 5, 1996 as substantiated by registry return receipt Nos. 4280 -4281. So, also, Annex I proved that Postal Money Orders Nos. 6200014 and 8975579 dated August 5, 1996 in the sum of five hundred seventy (P570.00) as payment for the docket fees.

[5] Annex I, Rollo, pp. 53-55.

[6] Petitioner termed it as petition for review on certiorari. For the guidance of the Bench and the Bar, now, appeals from the Regional Trial Court in the exercise of its appellate jurisdiction shall be governed by these relevant provisions:

Rule 41 , Section 2. Modes of Appeal._

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(b). Petition for Review. The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

Rule 42. Petition for Review from the Regional Trial Courts to the Court of Appeals

Section 1. How appeal taken; time for filing.- A party desiring to appeal from the decision of the Regional Trial Court in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of full amount of the docket and other lawful fees and the deposit for cost before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen days (15) days. (n)

[7] Composed of Justices Jorge S. Imperial, Corona Ibay Somera and Celia Lipana - Reyes.

[8] Annex A, Rollo, p. 28.

[9] Petition for Certiorari, pp. 23, 25.

[10] Comment, Rollo, pp. 62-65

[11] (2) Form and Service of petition

A petition filed under Rule 45, or under Rule 65, or a motion for extension may be denied outright if it is not clearly legible, or there is no proof of service on the lower court, tribunal or office concerned and on the adverse party in accordance with Section 3, 5, and 20 of Rule 13, attached to the petition or motion for extension when filed.

[12] Section 3. Petitions for Review. -

Within the period to appeal, the petitioner shall file a verified petition in seven (7) legible copies and one (1) copy thereof shall be served in each of the respondents. Upon proper motion presented before the expiration of the original reglementary period, the Court may grant a non - extendible additional period of fifteen (15) days save in exceptionally meritorious cases within which to file the petition for review; Provided, however, that should there be no petition filed within the extended period, the case shall be dismissed. A petition filed after the period shall be denied due course outright. The Regional Trial Court shall be furnished a copy of the resolution to this effect. C

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