

SMITH, BELL & CO., LTD., PLAINTIFF AND APPELLEE, VS. PHILIPPINE MILLING CO., DEFENDANT AND APPELLANT.

G.R. No. 12827. February 29, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal from an order of the Court of First Instance of Manila, denying defendant-appellant's petition for relief from judgment under Rule 38. The appeal was taken to the Court of Appeals, but that Court has certified the case to us on the ground that the question involved is purely legal.

It appears that on March 12, 1956 a decision was rendered in civil case No. 27201 by the court a quo against the defendant-appellant and in favor of plaintiff-appellee for the amount of P2,125.00, plus attorney's fees and costs. The court handed down the decision after hearing plaintiffs evidence, the defendant having, failed to appear at the hearing.

Defendant received a copy of the decision on March 16, 1956, but instead of appealing therefrom, it filed on April 2, 1956 a petition entitled "Relief from Judgment." The petition was, however, denied for lack of merit in an order dated April 16, copy of which was received by defendant on April 21.

The judgment subsequently became final and on May 21, 1956, upon motion filed by plaintiff with notice to defendant, the writ of execution was issued.

On May 29, 1956, defendant filed another petition, for "Relief from Judgment with Preliminary Injunction." Acting upon the petition, the court a quo on July 21, 1956 denied the same, the court stating that—

"Even considering defendants' pleading, entitled 'RELIEF FROM JUDGMENT', dated March 31, 1956, filed on April 2, 1966, to be a mere motion for reconsideration of the decision, which was denied by the Court in its order of April 15, 1956, the proper remedy for the defendant was to appeal from the decision of March 12, 1956, after the Court had refused to reconsider said decision because at that time the decision had not as yet become final. The failure of the defendant to appear from the decision after the Court had denied to reconsider it before it had become final, deprives the said defendant of the right to file a petition for relief from judgment under Rule 38 of the Rules of Court."

The motion for reconsideration of the above-mentioned order having been also denied, defendant filed the present appeal.

The appeal is without merit.

The petition for relief, under Rule 38 of the Rules of Court must be filed "within sixty days after the petitioner learns of the judgment, order or other proceeding to be set aside * * *." The period is non-extendible and is never interrupted. As stated in the case of Palomares et al, vs. Jimenez (90 Phil., 773):

"* * * Considering the purpose behind it, the period fixed by Rule 38 is non-extendible and is never interrupted. It is not subject to any condition or contingency, because it is itself devised to meet a condition or

contingency, The remedy allowed by Rule 38 is an act of grace, as it were, designed to give the aggrieved party another and last chance. Being in the position of one who begs, such party's privilege is not to impose conditions, haggle or dillydally, but to grab what is offered him." (See also *Rafanan vs. Rafanan*, 98 Phil., 162, 52 Off. Gaz., 229.)

It is not disputed that defendant received its copy of the decision sought to be set aside and learned of it on March 16, 1956. From that date to May 29, 1956, when said defendant filed its second petition for "Relief from Judgment with Preliminary Injunction", 74 days had already elapsed. The petition, therefore, could no longer be properly entertained, it having been filed 14 days too late.

Moreover, as observed by the lower court, defendant could have appealed the decision it now seeks to set aside but failed to do so, thereby allowing it to become final. Thus, even after April 21, 1956, when defendant received a copy of the order denying its first petition for relief—which may be considered a motion for reconsideration—it still had several days within which to perfect an appeal. Such being the case, it could no longer avail itself of the remedy under Rule 38. Relief will not be granted to a party who seeks to be relieved from the effects of a judgment when the loss of the remedy at law was due to its negligence. (*Robles et al. vs. San Jose et al.*, 99 Phil., 658; 52 Off. Gaz. 6193.)

Wherefore, the order appealed from is affirmed, with costs against defendant-appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

Barrera, J., concurs in the result.

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