ATTY. JESUS F. FERNANDEZ, PETITIONER, VS. HON. COURT OF APPEALS AND CONCEPCION OLIVARES, RESPONDENTS.

G.R. NO. 131094. May 16, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

The undisputed facts of this case show that a Complaint dated 23 January 1993 for unlawful detainer docketed as Civil Case No. 140953 was filed by private respondent Concepcion Olivares against the herein petitioner Jesus Fernandez.[1] The Metropolitan Trial Court of Manila (MeTC), Branch XV, dismissed the Complaint for lack of sufficient cause of action.[2]

Olivares appealed to the Regional Trial Court (RTC) of Manila, Branch 46, and the latter reversed the MeTC, ordering Fernandez to pay rental arrearages, attorney's fees, litigation expenses and costs[3] in a decision dated 02 May 1994.[4]

On 28 June 1994, Fernandez received a copy of the decision. On 12 July 1994 or 14 days after receipt of the decision, he filed a Motion for Reconsideration.[5] On 29 November 1994, Fernandez received an order denying his motion for reconsideration.[6] On 01 December 1994, Fernandez filed with the Court of Appeals a Motion for Extension of Time to File Petition for Review which was granted.[7] Said resolution was received by Fernandez on 12 December 1994.

In the meantime, on 09 December 1994, Fernandez filed a Motion for New Trial,[8] docketed as Civil Case No. 93-67034, before the RTC of Manila, Branch 46, citing newly discovered evidence of receipts proving his rental payments. In view of his Motion for New Trial, Fernandez, thru counsel, filed on 29 December 1994 in the Court of Appeals a Motion to Withdraw his Petition For Review[9] which the court duly noted in its resolution dated 19 January 1995.[10]

In an Order[11] dated 06 February 1995, the RTC denied the Motion for New Trial. It explained that when Fernandez went to the Court of Appeals and filed a Motion for Extension of Time to File Petition for Review, and the Court of Appeals accordingly acted on the same by granting the extension sought, jurisdiction of the Court of Appeals over the parties and the subject matter had already attached.

Fernandez filed a motion for reconsideration which the trial court denied in its Order dated 14 December 1995.[12] Fernandez filed a Motion to Reconsider the Order, while Olivares moved for the execution of the judgment of the RTC citing Section 21 of the Revised Rules on Summary Procedure.[13] In an Order dated 30 January 1996, the RTC granted the Motion for Execution and denied the Motion for Reconsideration.[14] A writ of execution was in fact issued by the RTC on 31 January 1996.[15]

This prompted Fernandez to file a Petition for Certiorari, Prohibition and Mandamus with prayer for the issuance of a writ of preliminary injunction and temporary restraining order, docketed as CA-G.R. SP No. 39655, before the Court of Appeals.[16]

The Court of Appeals, in a resolution dated 14 February 1996 temporarily restrained the respondents from proceeding with the enforcement of the writ of execution, "so as not to render the petition moot and ineffectual pending fuller consideration thereof, as well as for the preservation of the rights of the parties."[17] In a decision[18] dated 16 May 1997, the Court of Appeals denied the Petition and affirmed the stance of the RTC. It ruled:

> When petitioner herein elected to file before this Court a motion for extension of time to file petition for review, he in effect opted to appeal the adverse decision of the Regional Trial Court of Manila to the Court of Appeals. This is so because appeal to this Court is perfected by petition for review, where judgment was rendered by the Regional Trial Court in the exercise of appellate jurisdiction. This Court's assumption of appellate jurisdiction resulted initially in the issuance of the resolution granting petitioner an extension of fifteen (15) days within which to file the petition for review. Since this Court acquired appellate jurisdiction, the only proper thing for the court below to do was to deny the motion for new trial.[19]

Fernandez filed a Motion for Reconsideration which the Court of Appeals denied in a resolution dated 13 October 1997.[20]

Hence, this petition.

In a resolution of this Court dated 26 January 1998,[21] respondents were required to file their Comment on the Petition. Private respondent Olivares submitted her Comment on 26 February 1998.[22] Fernandez, in turn, was directed to file his Reply.[23] After the submission of Fernandez's reply,[24] the parties were then required by this Court, in a resolution[25] dated 02 December 1998, to submit their respective memoranda.

The only issue[26] submitted for resolution in this case is:

> WHETHER OR NOT THE MERE FILING BY PETITIONER OF A MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW (WHICH INTENTION [sic] WAS LATER WITHDRAWN), AUTOMATICALLY DIVESTED THE REGIONAL TRIAL COURT (RTC) OF ITS JURISDICTION OVER THE CASE, AS TO ENTERTAIN A MOTION FOR NEW TRIAL.

In general, in order for a Court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and over the parties.[27] Jurisdiction over the subject matter, or the jurisdiction to hear and decide a case, is conferred by law.[28] Jurisdiction over the person, on the other hand, is acquired by service of summons or by voluntary appearance.[29]

At first glance and mindful of the rule that the filing of motions seeking affirmative relief, such as the motion for extension of time to file petition for review filed by Fernandez in this case, is considered voluntary submission to the jurisdiction of the court[30] it may seem at once apparent that the Court of Appeals had in fact acquired jurisdiction over his person. It has been repeatedly held that an appearance in whatever form, without expressly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. He may appear by presenting a motion, for example, and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person.[31]

As we are dealing here with the jurisdiction of an appellate court, additional rules are required for jurisdiction to attach therein, to wit: (1) the petitioner must have invoked the jurisdiction of the Court of Appeals within the time for doing so;[32] (2) he must have filed his petition for review likewise within the time for doing so;[33] (3) he must have paid the necessary docket fees;[34] and (4) the other parties must have perfected their appeals in due time.[35]

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The Rule requires that in an appeal by way of Petition For Review, the appeal is deemed perfected as to the petitioner upon the timely filing of the petition and the payment of docket and other lawful fees.[36] In the discussion of the Committee on the revision of the Rules of Court, it was emphasized that to perfect the appeal, the party has to file the petition for review and to pay the docket fees within the prescribed period. The law and its intent are clear and unequivocal that the petition is perfected upon its filing and the payment of the docket fees.

Thus, it may be argued, and rightly so, that the Court of Appeals has not yet acquired jurisdiction over the case because Fernandez merely filed a motion for extension of time to file petition but not the petition itself. Withal, sans the petition, it cannot be said that the Court of Appeals has acquired jurisdiction over the case as to say that the trial court is without authority to act on a motion for new trial. It is axiomatic that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[37] Indeed, when the law speaks in clear and categorical language, there is no room for interpretation, vacillation or construction, but only for application.[38] On this point we fully agree in the position taken by Fernandez that when he filed the motion for extension of time to file petition for review, jurisdiction of the Court of Appeals had not yet attached, such that his failure to file the petition itself would normally have the effect of rendering the decision of the lower court final and executory.[39]

The consequential question is: what is the legal effect of the filing by Fernandez of a motion for new trial before the trial court?

Assuming that Fernandez filed his motion for new trial on time, we hold that the trial court still had jurisdiction to rule on the matter as the jurisdiction it originally acquired had not yet been lost.

The appellate jurisdiction of the trial court is to be juxtaposed with its residual jurisdiction as set forth in Rule 42, Section 8(a), 3rd paragraph of the Rules of Court. Before the Court of Appeals gives due course to a Petition for Review, the RTC retains jurisdiction for specified instances enumerated therein, to wit:

> (1) To issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, such as, the appointment of a receiver, and the issuance of writs of preliminary attachment or preliminary injunction.
>
> (2) To approve compromises.
>
> (3) To permit appeals of indigent litigants.
>
> (4) To order execution pending appeal in accordance with section 2 of Rule 39.
>
> (5) To allow withdrawal of the appeal.[40]

The residual jurisdiction of the trial court is available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject matter involved in the appeal. This stage is reached upon the perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal.[41] Considering that no appeal was perfected in this case and the records of the case have not yet been transmitted to the Court of Appeals, the case has not as yet attained the residual jurisdiction stage so as to say that the trial court already lost the jurisdiction it first acquired and that it is left with only its residual powers.

The foregoing considered, the inevitable recourse would have been to remand this case to the trial court for hearing on his motion for new trial. Such is not to be, however.

So much has been said by the parties over the issue of whether or not jurisdiction attaches to the Court of Appeals upon the filing of a motion for extension of time to file petition for review thereby divesting the court of origin the

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power to rule on a motion for new trial. As shall be hereunder shown, however, it turns out that the unraveling of this issue is quite peripheral and that the resolution of this case hinges on another matter totally different from that raised by the parties.

From the records of the case, the ultimate issue to be tackled concerns the proper computation of the period to file a motion for new trial.

Rule 37, Section 1 of the Revised Rules of Court providing for the period to file a motion for new trial in relation to Rule 41, Section 3 is in point.

> Rule 37. . . .
>
> Section 1. Grounds of and period for filing motion for new trial or reconsideration. – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party.
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> Rule 41 . . . .
>
> Sec. 3. Period of ordinary appeal. – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

It is without question that Fernandez received a copy of the RTC Decision on 28 June 1994. Fourteen (14) days after the receipt of the decision or specifically on 12 July 1994, he filed a motion for reconsideration. This motion was denied by the RTC and the Order of denial was received by Fernandez on 29 November 1994. Applying Rule 37, Section 1 of the Revised Rules of Court, he had only one (1) day left to file a motion for new trial since a motion for new trial should be filed within the period to appeal, that is, within fifteen (15) days from notice of the judgment.[41] The motion for new trial suspends the running of the period to appeal but does not extend the time within which an appeal must be perfected.[42] Hence if denied, a movant, like Fernandez in this case has only the balance of the reglementary period within which to appeal.[43] It bears repeating that Fernandez received a copy of the RTC decision on 28 June 1994. Applying Rule 41, Section 3 of the Revised Rules of Court, he had fifteen (15) days from receipt of the RTC decision to file a motion for new trial or reconsideration. He filed a motion for reconsideration fourteen (14) days after receipt of the decision. The motion was denied and he had only the remaining one (1) day to file a motion for new trial which day fell on 01 December 1994. Since 30 November 1994 was a holiday, Fernandez had up to 01 December 1994 to file the motion for new trial. Extant from the records, instead of a motion for new trial, he filed before the Court of Appeals on 01 December 1994 the motion for extension of time to file petition for review. Thereafter, and pending the resolution of his motion before the Court of Appeals, Fernandez went back to the RTC and filed on 09 December 1994 a motion for new trial.

Applying the foregoing, Fernandez's motion for new trial was filed out of time. The fifteen (15)-day period for filing a motion for new trial cannot be extended. As early as the case of Habaluyas v. Japzon,[44] cited in Naguiat v. Intermediate Appellate Court,[46] and reiterated in Tung Chin Hui v. Rodriguez,[47] motions for extension of time to file a motion for new trial or reconsideration may no longer be filed before all courts, lower than the Supreme Court. The rule in Habaluyas applies even if the motion is filed before the expiration of the period sought to be extended because the fifteen (15) days period for filing a motion for new trial or reconsideration with said court is non-extendible. Thus, motions for extension of time to file a motion for new trial or reconsideration may be filed only in connection with cases pending before the Supreme Court, which may in its sound discretion either grant or deny the extension requested. No such motion may be filed before any lower courts.[48]

IN SUM, considering that a motion for new trial must be filed during the period for filing an appeal and that such period cannot be extended, Fernandez, by filing his motion for new trial beyond the period to appeal, had unwittingly sealed his fate and stripped himself of any further relief.

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit. The Regional Trial Court of Manila, Branch 46, is ordered to execute the decision dated 02 May 1994 in Civil Case No. 93-67034.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

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[1] Annex D, CA Rollo, pp. 22-26.

[2] Annex F, CA Rollo, pp. 31-34.

[3] Rollo, p. 25.

[4] Annex C, CA Rollo, pp. 35-42.

[5] Annex H, CA Rollo, pp. 43-48.

[6] Annex I, Rollo, p. 49.

[7] Annex D, CA Rollo, p. 57.

[8] Annex C, Rollo, pp. 36-47.

[9] CA Rollo, p. 81.

[10] Annex E, CA Rollo, p. 83.

[11] Annex C, CA Rollo, pp. 20-21.

[12] Annex B, CA Rollo, p. 19.

[13] SEC. 21. Appeal. – The judgment or final order shall be appealable to the appropriate regional trial court which shall decide the same in accordance with Section 22 of Batas Pambansa Blg. 129. The decision of the regional trial court in civil cases governed by this Rule, including forcible entry and unlawful detainer, shall be immediately executory, without prejudice to a further appeal that may be taken therefrom. Section 10 of Rule 70 shall be deemed repealed.

[14] Annex F, CA Rollo, pp. 16-17.

[15] CA Rollo, p. 91.

[16] CA Rollo, pp. 11-15.

[17] CA Rollo, p. 93.

[18] Penned by Associate Justice Fermin A. Martin, Jr., with Justices Ruben T. Reyes and Omar U. Amin concurring.

[19] Rollo, p. 31.

[20] Rollo, pp. 34-35.

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[21] Rollo, p. 58.

[22] Rollo, pp. 59-67.

[23] Rollo, p. 67.

[24] Rollo, pp. 74-78.

[25] Rollo, pp. 87-88.

[26] Memorandum for Petitioner, p. 5; Rollo, p. 124.

[27] Antiporda, Jr. v. Garchitorena, G.R. no. 133289, 23 December 1999, 321 SCRA 551.

[28] Sumndad v. Harrigan, G.R. No. 132358, 12 April 2002, 381 SCRA 8.

[29] Ang Ping v. Court of Appeals, G.R. No. 126947, 15 July 1999, 310 SCRA 343; Melendres, Jr. v. Comelec, G.R. No. 129958, 25 November 1999, 319 SCRA 262.

[30] Hongkong and Shanghai Bank v. Catalan, G.R. No. 19590, 18 October 2004; citing Oaminal v. Castillo, G.R. No. 152776, 08 October 2003, 413 SCRA 189.

[31] Fores v. Zurbito, 37 Phil 746 (1918), cited in Villareal v. Court of Appeals, G.R. No. 107314, 14 September 1998, 295 SCRA 511.

[32] Rule 41, Section 3 of the Revised Rules of Court.

[33] Rule 41. . . .

> Sec. 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.
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> Rule 42. . . .
>
> Sec. 8. Perfection of appeal; effect thereof. –
>
> (a) Upon the timely filing of a petition for review and the payment of the corresponding docket and other lawful fees, the appeal is deemed perfected as to the petitioner.
>
> The Regional Trial Court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.
>
> However, before the Court of Appeals gives due course to the petition, the Regional Trial Court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.

[34] Ibid.

[35] Minutes of the meeting of the Rules of Court Revision Committee, 18 September 1991, p.11.

[36].Republic v. Court of Appeals, G.R. No. 103882, 25 November 1998, 299 SCRA 1999.

[37] Land Bank of the Phils. v. Court of Appeals, G.R.No. 118712, 05 July 1996, 258 SCRA 404; Caguioa v.

Laviï¿½a, A.M. No. RTJ-00-1553, 20 November 2000, 345 SCRA 49.

[38] Teodoro v. Court of Appeals, G.R. No. 140799, 10 September 2002, 388 SCRA 527.

[39] II Feria and Noche, Civil Procedure Annotated, pp. 172-173 (2001 Ed.).

[40] Katon v. Palanca, G.R. No. 151149, 07 September 2004, citing Zacate v. Comelec, G.R. No. 144678, 01 March 2001, 353 SCRA 441.

[41] Regalado, Florenz, Remedial Law Compendium, p. 377 (1997 Ed).

[42] Cf. De las Alas v. Court of Appeals, G.R. No. L-38006, 16 May 1978, 83 SCRA 200.

[43] Rule 22, Section 2 of the Revised Rules of Court provides:

SECTION 2. Effect of interruption. ï¿½ Should an act be done which effectively interrupts the running of the period, the allowable period after such interruption shall start to run on the day after notice of the cessation of the cause thereof.

The day of the act that caused the interruption shall be excluded in the computation of the period. (See also II Feria and Noche, Civil Procedure Annotated, p. 164 and pp. 503-504 (2001 Ed.).

[44] G.R. No. 70895, 30 May 1981, 142 SCRA 208.

[45] G.R. No. 73836, 18 August 1988, 164 SCRA 505.

[46] G.R. No. 141938, 02 April 2001, 356 SCRA 31; Argel v. Court of Appeals, G.R. No. 128805, 12 October 1999, 316 SCRA 511, cited in Amatorio v. People, G.R. No. 150453, 14 February 2003, 397 SCRA 445.

[47] I Feria and Noche, Civil Procedure Annotated, p. 629 (2001 Ed.).

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