ANDRES CENTENERA, PETITIONER, VS. HON. NICASIO YATCO, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, ET AL., RESPONDENTS.

G.R. No. 13564. January 30, 1960

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-13564/

REYES, J.B.L., J.:

Petition for mandamus to give due course to petitioner's appeal from the decision of the Court of First Instance of Rizal in Civil Case No. Q-2473, which appeal was disapproved by the court below for having been filed out of time.

It appears that judgment was rendered in the aforementioned case against the defendant (now petitioner) Andres Centenera on August 30, 1957, copy of which he received on September 2, 1957. On September 25, 1957, petitioner filed a motion for reconsideration, which was set for hearing on October 5, 1957. Three days before the hearing, or on October 3, 1957, Centenera filed a supplement to his motion for reconsideration, serving copy thereof on plaintiff's counsel on the same day, and requesting the court to hear it on the day of the hearing of the motion, October 5. At the scheduled hearing of the motion and its supplement, neither plaintiff nor his counsel appeared. Two days later, on October 7, 1957, the court denied the motion for reconsideration. On October 15, 1957, petitioner filed Ms notice of appeal, record on appeal, and appeal bond subscribed by himself and another person. For fear that his bond might be disapproved, petitioner filed on October 21st another bond executed by himself and a surety company. On October 26, 1957, the lower court disapproved petitioner's appeal for having been filed beyond "the prescribed period. Upon respondent's motion, execution was ordered on November 2, 1957. On November 7, 1957, petitioner moved to reconsider the disapproval of his appeal, but it was denied on November 16. On March 4, 1958, the order of execution was transmitted to the sheriff of Quezon City. Shortly thereafter, on March 11, 1958, this petition for mandamus was filed before this Court, and upon petitioner's request, we issued a writ of preliminary injunction restraining execution of the judgment of the lower court.

The question here is—Was petitioner's appeal perfected on time?

Petitioner received copy of the lower court's decision on September 2, 1957 and filed a motion for reconsideration twenty-three days later, on September 25, 1957. Assuming that his motion suspended the running of the period for appeal, he had seven days from the denial of his motion within which to appeal. Petitioner claims he received copy of the order of denial on October 14, 1957, so that he had up to October 21 within which to perfect his appeal. As he filed his notice of appeal and record an appeal on October 15, 1957, and his appeal bond either on October 15, or on October 21, he urges his appeal was perfected on time.

Respondents asserts, upon the other hand, that petitioner's counsel was notified of the denial of his motion for reconsideration in open court on October 7, 1957. Seven days after October 7 would leave petitioner only up to October 14, 1957 within which to perfect his appeal; thus, respondent insists petitioner's appeal was filed out of time.

We have gone through the original records in the Court below and have found no indication supporting respondent's claim that petitioner's counsel was notified in open court on October 7 of the denial of his motion for reconsideration. The hearing of said motion took place on Saturday, October 5, while the resolution of denial was issued the following Monday, October 7. Since there was no hearing in the case on October 7th, it could not have been possible that there was any oral notice of the order of denial to petitioner or counsel on that date.

And even assuming that petitioner's counsel was orally notified of the denial of the motion right after the hearing on October 5, notice thereof given in open court is not sufficient (Melgar vs. Delgado, 53 Phil., 223; I Moran, Rules of Court, 1957 ed., p. 411). To be effective, service of a final order should be made either personally or by registered mail (sec. 3, Rule 27, Rules of Court), and personal service is made by delivering personally a copy to the party or his attorney, or by leaving it in his office with his clerk or with a person having charge thereof (sec. 4, supra). According to the records in the court below, copy of the order in question was sent to petitioner's counsel by registered mail on October 7, 1957. There is no showing, however, when said mail was received. Petitioner asserted in the court below as well as in this Court that he received the same on October 14, 1957. As respondent has not proved that petitioner received said order on any other date, petitioner's claim that he received the order of denial of his motion to reconsider on October 14th remains uncontradicted. Therefore, he had up to October 21st within which to perfect his appeal. Since his notice of appeal and record on appeal were filed on October 15, and his appeal bond either on October 15, or on October 21, petitioner's appeal was perfected on time.

Respondent likewise claims that petitioner's motion for reconsideration of September 25, 1957 was pro forma and, therefore, did not suspend the period for appeal. Although said motion, which petitioner filed himself without benefit of counsel, could have been greatly improved upon if petitioner were skilled in the preparation of pleadings, the same sufficiently points out the lower court's supposed errors in refusing to admit certain documentary evidence presented by petitioner, and in its evaluation of the evidence on the question of whether it was plaintiff or defendant who had physical possession of the premises in question, which question in turn determines the main issue whether or not the action for recovery of possession against petitioner lies. Besides, petitioner, this time through counsel, filed, with notice to respondent, a supplement to his motion three days before hearing thereof, explaining clearly the reasons of fact and law relied upon in the motion, and even raising the question of jurisdiction. Read together, the original motion and the supplement are clearly not pro forma. In fact, the lower court also took account of the arguments urged in the supplement to petitioner's motion, although it was denied in its order of October 7, 1957.

Respondent finally urges that this petition for mandamus is frivolous and dilatory, having been filed only after four months from the denial of petitioner's motion to reconsider the disapproval of his appeal, and after the lower court had already issued a writ of execution. On this question, it is significant to note that Section 15, Rule 41 of the Rules of Court does not specify the period for the filing of mandamus proceedings against an order disapproving an appeal, which implies that the period for its filing is variable as the ends of justice may demand. Indeed, the constant policy of the courts is not to deny the writ if the result would be to deprive a party of his substantial right and leave him without remedy (14 C. J. S. 190). A delay of four months in the pursuit of his remedy of mandamus is not so loner or unreasonable as to nullify petitioner's right to appeal and leave him without any relief against the decision of the trial court which may after all be erroneous and reversible, especially as the lower court is already poised to execute said judgment and compel petitioner to remove his house of strong materials from the premises in question, which execution could cause petitioner great damage and prejudice.

The writ of mandamus, is, therefore, granted, and the lower court is ordered to give due course to petitioner's appeal. Costs against respondent Heraldo del Castillo.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Gutierrez David, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.