

ALFREDO FORMOSO, ET AL., PETITIONERS, VS. HON. DELFIN S. FLORES, ETC., ET AL., RESPONDENTS.*G.R. No. 14016. 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-14016/>**REYES, J.B.L., J.:**

Petition for certiorari and mandamus with preliminary injunction to annul the orders of respondent Judge dated February 15, 1958, denying petitioners' motion for approval of the record on appeal and appeal bond, and June 17, 1958, denying the motion for reconsideration, on the ground that appeal is not the appropriate remedy.

Respondents, spouses Malacas, filed a complaint for damages with the Court of First Instance of Ilocos Norte against the herein petitioners (Civil Case No. 1846) on September 14, 1953. In due time, an answer with affirmative defenses and counterclaim was filed. At the trial, there was no appearance either by defendants or by their counsel; wherefore respondents-plaintiffs were allowed to adduce their evidence, and judgment was thereafter rendered for the plaintiffs.

Availing that defendants (petitioners herein) were not duly notified of the hearing nor served with a copy of the decision, a petition for relief under Rule 38 of the Rules of Court was filed three days after petitioner Santiago Sambrano allegedly learned for the first time of the existence of the decision. In an order of November 29, 1957, the respondent Judge denied the said petition on the ground that the reasons therein stated were not "satisfactory".

Defendants in due time interposed a notice of appeal, and, on December 23, 1957, moved for the approval of the amended record on appeal and appeal bond. In its orders of February 15, 1958, the lower court refused to approve the record, and on June 17 denied a motion for reconsideration, on the ground that appeal was not the proper remedy. No specific basis for this conclusion was stated by the court. Hence, this petition.

The trial court has erred. We have ruled repeatedly that the refusal by a court to grant relief under Rule 38 of the Rules of Court, in an appropriate case, is not merely an interlocutory order, but a final one that can be appealed from (*Paner vs. Yatco*, 87 Phil., 271, 48 Off. Gaz., p. 61; *Philippine Manufacturing Co., et al. vs. Cabangis*, 49 Phil., 113; *Philippine Manufacturing Co. vs. Imperial*, 47 Phil., 810). Whether or not the petition for relief was sufficient in form or substance, is a matter extraneous to the determination of the appealability of the order of denial (*Tambunting vs. San Jose*, 97 Phil., 491).

Respondents' contention that the denial of the relief under Rule 38 is subject only to a petition for certiorari is not well-taken. It is true that the writ may be availed of in proper cases, as where the abuse of discretion is so grave or patent as to warrant that special remedy. Even so, however, appeal may still prosper, if the aggrieved party elects to pursue that course of action. Assuming that a petition for certiorari was available, there was nothing to compel petitioners to resort to that remedy instead of appeal.

Wherefore, the writs applied for are granted, the orders under review set aside, and the respondent Judge is hereby ordered to give due course to petitioners' appeal. Costs against respondents Malacas spouses.

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