

**FLORA L. CAPINPIN AND MATEO CAPINPIN, JR., PETITIONERS, VS.
HON. BONIFACIO YSIP, AS PRESIDING JUDGE OF BRANCH XII OF THE
COURT OF FIRST INSTANCE OF MANILA, AND MANILA TRADING
& ...**

G. R. No. 14018. August 31, 1959

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

This is a petition for certiorari and mandamus to set aside two orders of the Court of First Instance of Manila in Civil Case No. 32277, entitled Manila Trading & Supply Co. vs. Flora L. Capinpin, et al., and to give due course to the appeal taken by defendants therein.

It appears that the decision rendered against the defendants in that case, now petitioners, was served upon them on February 24, 1958. Twenty-one days thereafter, or on March 17, 1958, they filed their notice of appeal and record on appeal, but without filing the required appeal bond. On March 26th, that is to say, on the 30th day counted from February-24th when petitioners were served copy of the decision, their counsel filed an urgent ex-parte motion asking for an extension of ten days within which to file the appeal bond, alleging that he could not contact his clients who were in the province. Meantime, the appeal bond was filed on March 28th. On March 31st, the court, without resolving the ex-parte motion for extension, entered an order declaring the decision final and executory for the reason that the ex-parte motion and the appeal bond were filed beyond the legal period. On April 14th, petitioners filed a motion for reconsideration, which was denied by the court on May 28th. Hence this petition.

The only question involved herein is whether the appeal has been perfected in due time. It is well settled that in order to perfect an appeal from the Court of First Instance, appellant should serve upon the adverse party and file with the court a notice of appeal, an appeal bond and a record on appeal, within 30 days from notice of order or judgment; so that failure of appellant to meet these three requirements would render his contemplated appeal unperfected and the decision becoming thereby final and executory. In this particular case, it is evident that petitioners did not comply with Sec. 3 of Rule 41 of the Rules of Court for having filed the appeal bond two days beyond the prescribed period. Petitioners however claim that, having in due time presented an ex-parte motion for extension to file the appeal bond, as they in fact filed two days after the 30-day period, their appeal should be given due course, at least on equitable ground. This contention, however, cannot be seriously entertained as (1) the filing of the motion for extension did not suspend the running of such period; (2) the same was not supported by any affidavit of merit and no copy thereof was served upon respondent company, for which reason, under Secs. 4 and 6 of Rule 26, the court could not have legally entertained it before the expiration of the 30-day period for perfecting an appeal.

Wherefore, the petition is hereby denied with costs.

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

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