

MAXIMO BAQUIRAN, PETITIONER, VS. THE COURT OF APPEALS, HON. DELFIN B. FLORES AND TRINIDAD L. AURELIO, RESPONDENTS.

G.R. No. 14551. July 31, 1961

Ponente: NATIVIDAD, J.

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NATIVIDAD, J.:

This is an appeal by certiorari interposed by the appellant, Maximo Baquiran, from a decision of the Court of Appeals which denied an application for a writ of mandamus to the Court of First Instance of Ilocos Norte commanding that the latter give due course to the appeal interposed by said appellant from the judgment entered by it in Civil Case No. 1612, Court of First Instance of Ilocos Norte, Trinidad L. Aurelio, plaintiff, versus Maximo Baquiran, defendant.

The facts as found by the Court of Appeals, are as follows:

" (a) El 11 de Agosto de 1952 Trinidad L. Aurelio presento ante el Juzgado de Primera Instancia de Ilocos Norte una demanda que se registro como causa civil num. 1612 con el objeto de cobrar del demandado, hoy peticionario, la cantidad de P6,238, saldo de un prestamo, con intereses legales el 10 de junio de 1950;

" (b) El 10 de septiembre de 1952 el peticionario Maximo Baquiran, demandado en la causa civil ya mencionada, presento una contestacion en la que niega la existencia de tal prestamo y contiene que la cantidad de P6,288 que aparece acreditada por un recibo, era un pago parcial hecho por el demandante Trinidad L. Aurelio de su compromiso de contribuir la cantidad de P10,000 a los fondos de una sociedad organizada por el demandante y el demandado Baquiran cuyo objetivo era dedicarse a los trabajos de construccion de edificios. En contra-demanda del peticionario Maximo Baquiran, entonces demandado, alego que por su parte ha cumplido con su obligacion de contribuir de P10,000 a los fondos de la sociedad y debido a la demanda maliciosa del demandante, el recurrente ha sufrido daños en la cantidad de P5,000.00;

"(c) El Juzgado inferior dicto una decision en vista de los escritos presentados por las partes sin recibir pruebas de los mismos. Esta decision fue apelada ante este Tribunal cuya apelacion fue transmitida al Tribunal Supremo porque la cuestion discutida entre las partes era puramente legal. Estando pendiente la apelacion ante este Tribunal, la misma se sobreseyo por falta de pago de los derechos del Tribunal y del costo de la impresion del expediente de apelacion, pero debido a una mocion de reconsideracion firmada por el demandado, Maximo Baquiran, hoy peticionario, por el fundamento de que su abogado Santiago Ranada ha sido negligente y abandonado en el desempeño de sus deberes como abogado del recurrente, este Tribunal reconsidero la orden de subreimiento; se repuso la apelacion y elevo esta al Tribunal Supremo, como ya queda indicado;

"(d) El Tribunal Supremo revoco la decision del Tribunal inferior y devolvio el expediente al Juzgado de origen para los tramites ulteriores.

Una vez devuelto el expediente al juzgado de origen, este señalo la vista de la causa para el 19 de junio de 1957 notificandose de la misma al abogado Santiago Radana como abogado del demandado. No se notifico a los abogados Castellanas y Ilagan que comparacieron por el demandado en relacion con la apelacion arriba referida;

"(e) El 19 de julio de 1957, nadie comparecio por el demandado, hoy recurrente Maximo Baquiran, y en la referida fecha que acabamos de indicar el Tribunal a quo en ausencia del peticionario Baguiran y sus abogados permitio al damandante-recurrido Trinidad L. Aurelio a presentar sus pruebas y se dio por sometida la causa para su decision;

"(f) El 20 de julio de 1957, el abogado Santiago Ranada presento una mocion de reconsideracion en la que se alega que el no se molesto en comunicarse con el demandado, hoy recurrente, sobre la vista señalada para el 19 de julio de 1957 porque creia de buena fe que ya estaba desligado del asunto puesto que estando el asunto pendiente de apelacion ante este Tribunal, el recurrente utilizo los servicios de otros abogados;

"(g) El 25 de julio de 1957, Santiago Ranada recibio copia de la decision fechada el 19 de julio de 1957 y el peticionario recibio personalmente otra copia de la misma decision el 30 de julio de 1957. En la decision se ordena al peticionario a pagar al demandante Trinidad L. Aurelio la cantidad de P6,238 con intereses legales desde la presentacion de la demanda:

"(h) El 29 de julio de 1957, el abogado Santiago Ranada recibio copia de la orden del Tribunal fechada el 27 de julio de 1957 denegando la mocion de reconsideracion. El 7 de agosto de 1957 el demandado, hoy recurrente, Maximo Baquiran por medio de los abogados Ruiz, Ruiz, Ruiz y Ruiz presento una mocion jurada en la que sepide la reconsideracion de la decision y que se conceda al demandado, hoy recurrente, la oportunidad de presentar sus pruebas. El 29 de agosto. de 1957, el Tribunal a quo denego dicha mocion y copia de la orden denegando esta mocion se recibo por los nuevos abogados del peticionario en la misma fecha;

"(i) El 27 de agosto el peticionario presento una mocion ex-parte para la extension del plazo para perfeccionar la apelacion que fue favorablemente considerada por el Tribunal y el 12 de septiembre de 1957, el peticionario presento su aviso de apelacion y el expediente de apelacion. El 18 de septiembre de 1957, el recurrido Trinidad L. Aurelio, presento una oposicion para la aprobacion del expediente por el fundamento de que el mismo no tenia un indice; que ha sido presentado fuera del tiempo reglamentario y que la apelacion no era adecuada. El 24 de septiembre el recurrente presento su expediente de apelacion enmendado; y

"(j) El diciembre 19 de 1957, el Tribunal a quo desaprobo dicho expediente de apelacion en virtud de una orden cuyo tenor es como sigue:

ORDER

'Appeal not being the proper remedy in this case, the notice of appeal, the appeal bend and the record on appeal filed are hereby disapproved and denied.'

Based upon the above facts, the Court of Appeals dismissed appellant's application for mandamus, on the ground that the latter's record on appeal was filed beyond the period prescribed by law. This is the decision the review of which the appellant seeks in this appeal.

Appellant's main contentions are two-fold, to wit:

First—That the Court of Appeals erred in basing its decision on the ground that the appellant failed to file his record on appeal within the period prescribed by law. It is claimed that said matter, as well as the merits of the case which that Court considered in its decision, were improperly considered, for they were not raised as issues in the pleadings, the only issue raised therein being the correctness of the ground on which the trial court based its order disapproving appellant's record on appeal—that appeal was not the proper remedy in the case; and

Second—That the Court of Appeals erred in holding that appellant's record on appeal was filed beyond the period prescribed by law. It is urged on this point that as the service of notice of the judgment rendered in the case in question on Attorney Ranada on July 25, 1957, and on the appellant personally on July 30, 1957, had no force or effect, for the former was then no longer counsel for the appellant and service on the latter was likewise of no force or effect as he was represented by counsel, the period for appeal did not commence to run from either dates;

and that, even assuming that said period commenced to run from either July 25 or July 30, 1957, nevertheless said period was interrupted by the filing on August 27, 1957, by the appellant of a verified motion for a reconsideration of said judgment, which in effect, was a motion for a new trial, notice of denial of which was received on the same date. Hence, it is argued that, even disregarding the extension of said period for fifteen days from August 30, 1957, granted by the trial court in its order of August 27, 1957, still appellant's record on appeal, which was filed September 12, 1957, was filed on due time.

We fail to find merits in appellant's first contention. It is true that the pleadings filed with the Court of Appeals in the present proceeding does not raise any issue concerning the merits of that case, or the timely or untimely filing of the record on appeal. But these questions were raised in the trial court and they appear in the record of the case. One of the grounds invoked by defendant Trinidad L. Aurelio in her opposition to the approval of said record on appeal was that it was filed beyond the period prescribed by law, and the merits of the case was the main issue passed upon by the trial court in its judgment. They are, therefore, matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, and which the appellate court may, in the interest of justice, properly take into consideration in deciding the case, although they have not been specifically raised as issues by the pleadings. Moreover, appellant's stand takes a very narrow view of the practice and procedure in civil cases, contrary to the liberal spirit which pervades the Rules of Court, and the modern trend of procedure which accord to courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. *Relativo vs. Castro*, 76 Phil., 563; *Dilag vs. Heirs of Resurreccion*, 76 Phil., 650; *Hernandez vs. Andal*, 78 Phil., 196.

We likewise find no merits in appellant's second contention. Notice of the judgment rendered in the case in question, for all legal purposes, was served on the appellant on July 25, 1957, when Attorney Santiago Ranada received said notice. This attorney was still the attorney of record of the appellant at the time. It is true that, under the law, an attorney may withdraw as such from the case with the consent of the client, and the latter may dismiss his attorney at any time, and in the motion for a reconsideration of the order of the trial court declaring the case submitted for decision, Atty. Ranada stated that, since the appellant had engaged the services of another lawyer to handle his mandamus case in the Court of Appeals, he (Ranada) honestly believed that "he was already relieved as counsel for the defendant," and that the appellant, in his motion for reconsideration of the resolution of the Court of Appeals dismissing his appeal from the first judgment in the case rendered on the pleadings because of failure to pay in due time the docketing fees, that he condemned the conduct observed by Atty. Ranada and "has, therefore, separated himself from said counsel." Such manifestations, however, did not constitute the withdrawal or dismissal as counsel contemplated in the law. The withdrawal as counsel of a client in a case, which must be made with the consent of the client, of the dismissal by the client of his counsel, must be made in a formal petition filed in the case. No such petition of withdrawal or dismissal of counsel has been accomplished in this case. The period of thirty days, therefore, prescribed by law within which the appellant had to perfect his appeal from the judgment in the case in question, commenced to run from July 25, 1957, when Atty. Ranada was served with notice thereof, and expired on August 25, 1957. The running of this period has not been interrupted by the filing by the appellant on August 7, 1957, of his verified motion for reconsideration, nor has it been validly extended by the order of the trial court of August 27, 1957. Said motion it is true, partakes of the nature of a motion for new trial and evidently it is based on subdivisions (a) and (c) of Section 1 of Rule 37 of the Rules of Court, for it alleges that the judgment was contrary to law and by reason thereof the movant has been impaired in his rights due to excusable negligence, and asks that it be set aside. But it is not a valid motion for new trial, for it is not accompanied by affidavit or affidavits of merits. Such requirement is, under the law and jurisprudence, essential to the validity of motions made for causes mentioned in subdivision (a) of said section and rule. Rule 37, Section 2, Rules of Court; *Philippine Engineering Co. vs. Argosino*, 49 Phil., 983; *McGrath vs. del Rosario*, 49 Phil., 330;

Mapua vs. Mendoza, 45 Phil., 424; Banco Espanol-Filipino vs. Palanca, 37 Phil., 921; Baron vs. Sampang, 50 Phil., 756; Philippine Guaranty Co. vs. Belando, 53 Phil., 412; Gonzales vs. Amon, 98 Phil., 587; 52 Off. Gaz., [3] 1445; Vda. de Yulo vs. Chua Chuco, et al., 87 Phil., 448; 48 Off. Gaz., 554. And the order of the trial court of August 27, 1957, extending the period for the filing of appellant's record on appeal for 15 days from August 30, 1957, is clearly illegal. The motion for extension of the period for filing pleadings and papers in the court must be made before the expiration of the period to be extended. Appellant's petition for extension was as already stated, filed on August 27, 1957, or two days after August 25, 1957, the date of expiration of the original period for appeal. When the appellant, therefore, filed his record on appeal on September 12, 1957, or forty-nine (49) days after July 25, 1957, the period for filing said record on appeal had long expired.

Wherefore, we find that the decision of the Court of Appeals appealed from is in accordance with law. Accordingly, said judgment is hereby affirmed, with the costs taxed against the appellant. It is so ordered.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

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