

LOURDES ALDECOA, BARBARA ZAMORA, AND AUGUSTO E. SALAZAR, PETITIONERS, VS. THE HON. FRANCISCO ARELLANO, JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, BRANCH I, AND P...

G.R. No. 15616. September 19, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by certiorari from a decision of the Court of Appeals.

On March 25, 1958, Hon. Francisco Arellano, Judge of the Court of First Instance of Negros Occidental, rendered a decision in Civil Case No. 4352 thereof, entitled "Pedro G. Siguenza vs. Lourdes Aldecoa, Barbara Zamora and Augusto E. Salazar"—who are petitioners herein—sentencing the latter to pay to Siguenza the sum of P7,500, with interest thereon at the legal rate from the date of the filing of the complaint, plus P1,000 as attorney's fees.

On March 29, 1958, a court stenographer tried to serve copy of the decision on counsel for petitioners herein, Atty. Jose Macasa, then in the court premises, but the latter refused to accept the service. On the same date, the clerk of court tried to serve copy of the decision upon a brother of said counsel, namely, one Carlos Macasa, who, likewise, refused to receive said copy, stating that it should be delivered to Atty. Macasa personally. Hence, copy of the decision was sent to Atty. Macasa by registered mail, and the corresponding registry notice was sent to him by the Post Office of Bacolod on March 31, 1958. He having failed to claim the registered letter containing said copy of the decision, a second notice and, subsequently, a third notice were sent to Atty. Macasa on April 7 and 17, 1958, respectively. Eventually, or on April 26, 1958, said Carlos Macasa claimed the letter at the post office adverted to above.

On May 8, 1958, Siguenza moved for the execution of the decision, whereas petitioners herein filed on May 19, 1958, their notice of appeal, appeal bond and record on appeal, which were objected to by Siguenza. Petitioners in turn filed on May 23, 1958 their opposition to his motion for execution. By an order dated June 5, such motion was granted and defendants' appeal was dismissed upon the ground that it had not been perfected in due time. From said order of June 5, petitioners appealed on July 17, 1958. Siguenza objected to such appeal, which was dismissed on July 26, 1958. Petitioners' motion for a reconsideration of the order of July 26, 1958 was denied by respondent Judge on August 9, 1958.

Hence, on September 17, 1958, petitioners filed with the Court of Appeals a petition (docketed in said Court CA-G.R. No. 23786-R) for a writ of mandamus directing respondent Judge to give due course to their appeal from his decision in Civil Case No. 4352 of the Court of First Instance of Negros Occidental. After appropriate proceedings, the Court of Appeals rendered its decision, promulgated on April 28, 1959, dismissing said petition, with costs against the petitioners. The case is now before us on appeal by certiorari taken by said petitioners.

The only issue in this case is whether their appeal in said Case No. 4352 was filed within the reglementary period

or not. The Court of Appeals resolved the issue in the negative upon the ground that petitioners' period to appeal began to run after five (5) days from March 31, 1958 when the first registry notice was sent to their counsel, he having failed to claim the registered letter containing copy of the decision in said Case No. 4352, and that from April 6 to May 19, 1958—when petitioners' notice of appeal, appeal bond and record on appeal were—filed more than thirty (30) days had elapsed.

Upon the other hand, petitioners maintain that their counsel had never received, either said first registry notice or the second registry notice, which were allegedly delivered to unidentified persons. However, the mailman, Dominador Pedria, testified that he delivered said notices to a person residing in the house of Atty. Macasa, and that, for more than a year prior thereto, said person had been the one receiving the mail of said counsel, and, in view of this evidence, the Court of Appeals held that receipt of said notices by him had been satisfactorily and convincingly established by the respondents. Inasmuch as such finding is conclusive upon this Court, apart from being borne out by the record, it is clear that petitioners' appeal has no leg to stand on.

Wherefore, the decision appealed from is hereby affirmed, with costs against the petitioners. It is so ordered.

Bengzon, C. J., Padilla, Labrador, Reyes, J. B. L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.
Bautista Angelo, J., on leave.

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