

FELISA QUIJANO, PLAINTIFF AND APPELLANT, VS. JACINTO TAMETA, DEFENDANT AND APPELLEE.

G.R. No. 16473. April 20, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On March 23, 1955, Felisa Quijano filed a complaint for the annulment of certain agreement against her husband Jacinto Tameta before the Court of First Instance of Occidental Mindoro. Defendant answered the complaint setting up a counterclaim, and the court set the case for trial on September 15, 1955.

On September 9, 1955, plaintiff filed an urgent motion for postponement, which was denied. When the case was called for hearing, plaintiff failed to appear and so defendant was allowed to present his evidence. Thereupon, the court rendered judgment in favor of defendant on the same date. Plaintiff did not file any motion for reconsideration, nor appeal from the decision. Consequently, the clerk of court made an entry of judgment on November 9, 1955.

On May 24, 1956, plaintiff filed a petition for relief under Eule 38, but having been filed outside the reglementary period, the same was denied. Hence this appeal.

There is no merit in this appeal. From November 9, 1955, when the judgment was entered, to May 24, 1956, when the petition was filed, six months and fifteen days had elapsed, which shows that the petition was filed beyond the six-month period provided for in Section 8, Rule 38. The remedy allowed by said rule to a party adversely affected by the decision is merely an act of grace or benevolence intended to afford a litigant a penultimate opportunity to protect his interest. Considering the nature of such relief and the purpose behind it the period fixed by said rule is non-extendible and is never interrupted; nor can it be subject to any condition or contingency because it is itself devised to meet a condition or contingency,[1] Furthermore, the petition was not accompanied with an affidavit showing the fraud, accident, mistake or excusable negligence relied upon, and unless this requirement is complied with, the petition cannot be granted."[2]

Wherefore, the order appealed from is affirmed, with costs against appellant.

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

[1] Palomares vs. Jimenez, 90 Phil., 773; Rafanan vs. Rafanan, 98 Phil., 162; 52 Off. Gaz., 229; Vda. de Salvatierra vs. Garlitos, 103 Phil., 757.

[2] Paz vs. Inandan, 75 Phil., 608.

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