

CAROLINA B. VILLENA, PETITIONER, VS. ROMEO Z. RUPISAN AND RODOLFO Z. RUPISAN, RESPONDENTS.*G.R. NO. 167620. April 03, 2007*

Ponente: CHICO-NAZARIO, J.

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This is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 79405 dated 10 November 2004 granting the petition of the herein respondents Romeo and Rodolfo Rupisan and the Resolution[2] dated 1 April 2005 denying the Motion for Reconsideration filed by herein petitioner Carolina B. Villena.

The factual antecedents are:

The late Nicomedes T. Rupisan was first married to Felicidad Zamora. Their union bore five children namely: Consuelo, Erlinda, Alejandro, Rodolfo, and Romeo. Rodolfo and Romeo are the respondents in this petition. Upon the death of Felicidad in 1949,[3] Nicomedes married Maria Rosario de Castro (Maria Rosario) on 14 October 1964. The couple did not have any children. During the marriage of Nicomedes and Maria Rosario, they acquired certain properties including those hereinbelow described:

A parcel of land (Lot 3 of subdivision plan (LRC) Psd-180944, being a portion of Lot 3-A-2-B (LRC) Psd-140722, LRC Record No. 19405), situated in Poblacion, Municipality of Alcala, Province of Pangasinan, Island of Luzon. Bounded on the NE., points 1 to 2 by Lot 2 of the subdivision plan, and points 3 to 4 by property of the Heirs of Luis Soriano; on the SE., points 4 to 5 by property of the Heirs of Luis Soriano, and points 5 to 6 by property of Andres Dumpao; on the SW, points 6 to 7 Lot 3-B (LRC) Psd-54161; and on the NW., points 7 to 1 by Burgos street, 15.00 M. wide, and points 2 to 3 by Lot 2 of the subdivision plan. Containing an AREA OF ONE THOUSAND FOUR HUNDRED NINETY TWO (1,492) Square Meters, more or less. Its technical description appears on TRANSFER CERTIFICATE OF TITLE No. 101871 — Register of Deeds for Pangasinan. Its assessed value is P9,600.00 as per Tax Dec. No. 6599 of Alcala.[4]

(a) A parcel of residential land (Lot 1, Plan Psu-79891), situated in Poblacion, Alaminos, Pangasinan, containing an area of two hundred ninety-two (292) square meters and covered by TCT No. 1037 of the Register of Deeds of Pangasinan, issued to the names of Nicomedes and Ma. Rosario.

(b) A parcel of land (Lot 3, Plan Psu-79891) situated in Poblacion, Alaminos, Pangasinan, containing an area of sixteen (16) square meters and covered by TCT No. 1037 of the Register of Deeds of Pangasinan.[5]

As to the above properties, Nicomedes and Maria Rosario apparently executed an Agreement on Separation of Conjugal Properties[6] which reads:

I. MAIN MOTIVE OF THE AGREEMENT. Because of the absence of descendant, WE the undersigned spouses have adopted this AGREEMENT, in order to provide a Guidance and to prevent any possible misunderstanding and litigation between the surviving Spouse and the Heirs and successors of the predeceased Spouse. WE HOPE that the Courts of Justice will give legal value to these Agreements.

x x x x

V. The parcel of land in No. 2 SECTION A, including the House of strong materials built thereon and all Furnitures to be found therein, will belong exclusively to the Husband.

VI. The parcels of lands (Lot No. 1 and Lot No. 3) in SECTION B, including the House of strong materials built thereon and all Furnitures to be found therein, will belong exclusively to the Wife.[7]

On 22 June 1981, Maria Rosario caused the annotation and registration of the said agreement on Transfer Certificate of Title (TCT) No. 1037.

On 20 March 1984, Nicomedes died intestate.[8] On 18 May 1984, Maria Rosario executed an Affidavit of Self-Adjudication adjudicating to herself alone the subject properties covered by TCT No. 1037.[9] Maria Rosario then caused the cancellation of TCT No. 1037 and a new one, TCT No. 8177, issued in her name. Similarly, she caused the cancellation of tax declaration covering the subject properties.

On 24 April 1992, Maria Rosario died at the age of 83 years old[10] allegedly leaving behind a holographic will dated 3 October 1989[11] wherein she devised the properties under TCT No. 8177 to her niece, petitioner Carolina Villena. Petitioner immediately took possession of the properties.

Respondents Romeo and Rodolfo Rupisan, sons by the first marriage of Nicomedes, filed Civil Case No. A-2106 for Partition, Annulment of title/documents and/or Recovery of possession/ownership and damages.[12] On the other hand, petitioner filed Special Proceedings No. A-1278 for the probate of the will of Maria Rosario in her capacity as devisee of the deceased, Maria Rosario.[13] Both cases were filed before the Regional Trial Court of Alaminos, City Pangasinan, Branch 54. The cases were consolidated on 18 November 1999.

On 25 September 2002, a Decision on the consolidated cases, was rendered, the dispositive portion of which reads:

WHEREFORE, premises considered, JUDGMENT is hereby rendered as follows:

- Allowing and granting the probate of the Holographic Will of Maria Rosario Braganza De Castro Rupisan (Spl. Proc. Case No. A-1278) and a certificate of its allowance to be attached to the Holographic Will is accordingly hereby issued, attested by the seal of this Court, pursuant to and in consideration with Section 13, Rule 76 of the Rules of Court and which must be duly recorded with the Office of the Clerk of Court, as well as in the Office of the Registry of Deeds, Alaminos, Pangasinan;
- Dismissing the Complaint in Civil Case No. A-2106 for utter lack of merit, and
- Ordering plaintiffs in Civil Case No. A-2106 to jointly and solidarily pay defendant moral damages in the sum of TWO HUNDRED THOUSAND PESOS (P200,000.00); the reduced sum of exemplary damages in the amount of SEVENTY THOUSAND PESOS (P70,000.00), including attorney's fees and costs of litigation in the sum of FIFTY THOUSAND PESOS (P50,000.00).[14]

Respondents, through counsel Atty. Jose Antonio M. Guillermo (Atty. Guillermo), filed a Notice of Appeal dated 5 October 2002.[15]

On 22 November 2002 the RTC issued an Order denying respondent's appeal in Civil Case No. A-2106 due to late payment of appellate docket fees[16] but allowed the appeal in Special Proceeding No.A-1278, subject to certain conditions.[17] The RTC held:

To emphasize the point, if it is true indeed that the plaintiff received through counsel on October 2, 2002, the Decision of this Honorable Court, then he has (sic) up to October 17, 2002 within which to perfect the appeal in Civil Case No. 2106 which is the timely filing of the Notice of Appeal, together with the payment to the

Clerk of Court of the full amount of the appellate court docket and other lawful fees.

x x x x

However, with respect to Special Proceeding Case No. 1278, considering that Rule 141 Sec. 3 of the Revised Rules of Court provides that: "where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty days from notice of judgment or final order" and in which case therefore, with respect to Special Proceeding Case No. A-1278, the Notice of Appeal is deemed perfected except for the approval of the Record on Appeal.

WHEREFORE, Civil Case No. A-2106, not having been perfected within the time provided for by law in accordance with Rule 41, Sec. 4 of the Revised Rules of Court, the said appeal is DENIED for lack of merit.[18]

Respondents filed a Motion for Reconsideration of the Order dated 22 November 2002 insofar as it dismissed their appeal in Civil Case No. A-2106. Acting on this motion, the trial court in an Order dated 16 July 2003 dismissed both appeals including that in Special Proceedings No. A-1278. The Court ruled that inasmuch as respondents' counsel of record, Atty. Guillermo, already filed his Withdrawal of Appearance on 4 October 2002, the Notice of Appeal filed on 5 October 2002, signed by said counsel, was invalid and no longer bound his clients, respondents therein. The RTC ratiocinated:

During the January 20, 2003 hearing which are for purposes of approval of the record on appeal and to determine whether such record on appeal filed by the oppositor in Special Proceeding Case No. A-1278 is in order and whether or not the other matters treated in the Opposition to the Motion for Approval of the Record on Appeal filed by petitioner are impressed with merit, the following facts surfaced, to wit:

- That on October 4, 2002, as shown by the date of the pleading entitled "Withdrawal of Appearance" filed by Atty. Jose Antonio M. Guillermo and which contained the conformity of no less than the oppositor himself, Romeo Rupisan, the said counsel, Jose Antonio M. Guillermo, stated as follows: "the undersigned attorney upon the request and conformity of plaintiff/oppositor respectfully withdraws his appearance as counsel for plaintiffs/oppositor in the above-entitled cases" and prayed that his Withdrawal of Appearance be noted by this Court;
- The aforesaid pleading was received and docketed in this court on November 12, 2002;
- However, notwithstanding the aforesaid withdrawal, the aforesaid counsel, Atty. Jose M. Guillermo, submitted and filed with this Court, without the conformity of oppositor, Romeo Rupisan, a "Notice of Appeal" dated October 5, 2002 in the above-consolidated cases and which was received by this Court on October 9, 2002;
- In the meantime, on November 8, 2002, this Court is in receipt of a "Motion for Approval of Record on Appeal" filed by Seguión Reyna Montecillo and Ongsiako, which motion is dated October 29, 2002;
- Subsequently on November 11, 2002 (the same date of receipt by this court of Atty. Guillermo's Withdrawal of Appearance), this Court received the "notice of Appearance" dated November 5, 2002 of Seguión Reyna Montecillo and Ongsiako, as counsel for the plaintiffs/oppositor in the above-captioned cases;
- Thereafter, on November 12, 2002, Atty. Jose M. Guillermo, filed with this court an "Opposition" dated November 12, 2002, to defendant/petitioner's Motion to Dismiss Appeal, alleging among others as follows: (a) that he is still the counsel of record for plaintiffs/oppositor in the above-captioned cases inasmuch as his Withdrawal of Appearance has not yet been acted upon by this court and considering that to his own knowledge, no new counsel has yet entered its appearance for plaintiffs/oppositor in the above-captioned cases; (b) That a record on appeal is not required in the instant case.

x x x x

Verily, this Court has not acted on Atty. Guillermo's Withdrawal of Appearance dated October 4, 2002 and received by this court on November 12, 2002 considering that same is not a motion and he prayed that his Withdrawal of Appearance be just noted by the court while the Notice of Appeal dated November 5, 2002 was received by this Court on October 9, 2002. Thus, it appears that with reference to date, the Withdrawal of Appearance came ahead before the Notice of Appeal. However, with respect to the filing, the Notice of Appeal was filed ahead than the Withdrawal of Appearance.

Rupisan alleged on his Notice of Appeal that he received a copy of the Decision rendered by this Court dated September 25, 2002 on October 2, 2002 which means therefore that he has (sic) until October 17, 2002 within which to file his appeal. Although his Notice of Appeal dated October 5, 2002 and was received by this Court on October 9, 2002, the appeal/docket fee was paid late as payment was made only on October 23, 2002.[19]

Anent Special Proceedings Case No. A-1278, the RTC disallowed the appeal thereon on the ground that respondents did not comply with the requirements provided by law. It said that aside from the fact that the documents involved were not arranged in chronological order the same also did not contained any data that will show the court that the appeal was perfected on time. It added that neither the Compliance dated February 11, 2003 filed by respondents contained any data showing that the appeal was perfected on time. The trial court said that these requirements are mandatory[20] and non-compliance therewith is fatal to the appeal.

The RTC declared that since no Notice of Appeal has effectively been filed even up to the present, its decision dated 25 September 2002, has become final and executory.

The dispositive portion of the Order dated 16 July 2003 reads:

WHEREFORE, for reasons above-stated, including those stated in the Order of this court dated November 22, 2002, which are not in conflict with the above, plaintiff/oppositor's appeal is denied. Accordingly, the decision of this Court dated September 25, 2002, has now become final and executory.[21]

Respondents hastily filed a Petition for Certiorari before the Court of Appeals which was given due course. A Decision was rendered on 10 November 2004, the dispositive portion of which provides:

WHEREFORE, the foregoing premises considered, the petition is GRANTED. The assailed resolutions of the respondent court denying the notice of appeal filed by petitioners for late payment of docket fees are hereby ANNULLED and SET ASIDE. The respondent trial court is directed to give due course to petitioners' notice of appeal.[22]

The Court of Appeals applied a liberal interpretation of the rules. It found the delay excusable as respondents demonstrated their willingness to pay the docket fees as manifested in their immediate compliance with the said requirement.[23]

Petitioner filed a Motion for Reconsideration[24] which was denied in a Resolution of the Court of Appeals dated 1 April 2005. Hence, this Petition.

The following issues are for our resolution:

- DID THE COURT OF APPEALS VALIDLY ACQUIRE JURISDICTION OVER RESPONDENTS' PETITION FOR CERTIORARI IN CA-G.R. SP No. 79405 NOTWITHSTANDING RESPONDENTS FAILURE TO FILE A PRIOR MOTION FOR RECONSIDERATION AS AGAINST THE JULY 16, 2003 ORDER OF THE REGIONAL TRIAL COURT A QUO.
- CAN A LAWYER WHO WAS PRIORLY DISMISSED BY HIS CLIENT STILL INTERVENE IN THE CASE BY FILING A NOTICE OF APPEAL WITHOUT THE CONFORMITY OF HIS FORMER CLIENT?

STATED DIFFERENTLY, IS THERE A VALID NOTICE OF APPEAL IN THE INSTANT CASE.

- EVEN ASSUMING ARGUENDO THAT THE NOTICE OF APPEAL WAS VALIDLY FILED, WERE RESPONDENTS IN THE PRESENT PETITION ABLE TO PERFECT THEIR APPEAL ON TIME AS CONTEMPLATED BY LAW AND JURISPRUDENCE.

- WHETHER OR NOT THE COURT OF APPEALS IS GUILTY OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN PLACING THE SELF-SERVING AND GRATUITIOUS EXPLANATION OF RESPONDENTS AS REGARDS THEIR DELAY IN THE PAYMENT OF DOCKET FEES, WITHIN THE REALM OF THE EXCEPTIONAL CIRCUMSTANCES JUSTIFYING THE LATE PAYMENT OF APPELLATE COURT DOCKET AND OTHER LAWFUL FEES.

- WHAT IS THE LEGAL STANDING OR HOW SHOULD THE MOTION FOR APPROVAL OF THE RECORD ON APPEAL TOGETHER WITH THE RECORD ON APPEAL FILED BY SIGUION REYNA MONTECILLO AND ONGSIAKO BE TREATED IN THE ABSENCE OF A VALID SUBSTITUTION OF COUNSEL?[25]

Petitioner faults respondents for not filing a Motion for Reconsideration on the assailed RTC order of 16 July 2003. Petitioner's theory is that a Petition for Certiorari before the Court of Appeals may be availed of only after having earlier filed a motion for reconsideration before the trial court.

We disagree.

The filing of a Motion for Reconsideration before resort to certiorari will lie is intended to afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case.[26]

Respondents actually filed a Motion for Reconsideration. It must be noted that the 16 July 2003 Order of the trial court is in itself an order resolving the motion for reconsideration dismissing the respondents' Notice of Appeal in Civil Case No. A-2106.

In any event, the filing of a Motion for Reconsideration before availing of the remedy of certiorari is not always *sine qua non*. [27] The rules admit of certain exceptions. [28] The instant case is one of those. In this case, a motion for reconsideration would be useless in the light of the declaration of the RTC that the Order of 16 July 2003 is final and executory.

We now proceed to resolve the second and fifth issues. Taken together, the question to be resolved is: what is the effect of the withdrawal of Atty. Guillermo as respondents' counsel of record on the Notice of Appeal [29] which he had filed for both Civil Case No. A-2106 and Special Proceedings No. A-1278.

The Rule regarding change of counsel is provided under Rule 138, Section 26 thereof. It states:

SEC. 26. Change of attorneys. — An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

Admittedly, Atty. Guillermo filed a Notice of Withdrawal on 4 October 2002. The withdrawal notwithstanding, the trial court in its Order dated 22 November 2002 initially allowed the appeal of the respondents in Special Proceedings No. A-1278, although it rejected the appeal in Civil Case No. A-2106. Be that as it may, we are inclined to allow the Notice of Appeal for both cases in spite of the obvious procedural lapse. When

non-compliance with the Rules of Court is not intended for delay or does not prejudice the adverse party, the dismissal of an appeal on a mere technicality may be stayed and the court may, in its sound discretion, exercise its equity jurisdiction.[30] This lack of intention to delay is shown by the fact that the Notice of Appeal was filed on 5 October 2002, or only a difference of one day from the filing by Atty. Guillermo of his Notice of Withdrawal. The emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause free from the constraints of technicalities. [31] While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the administration of justice especially when such strict compliance was apparently relaxed by the trial court itself when it initially gave due course to the Notice of Appeal. If the rules are intended to insure the orderly conduct of litigation it is because of the higher objective they seek which is the protection of the substantive rights of the parties.[32] Under the circumstances we find that the notice of appeal signed by Atty. Guillermo should be considered valid.

The next issue relates to docket fees, and the effect of the belated payment by the respondents. The records show that on 2 October 2002, the respondents received a copy of the decision. They had up to 17 October 2002 to file a Notice of Appeal and to pay the appropriate docket fees. It is not disputed that said docket fees were paid only 23 October 2002, or six days after the lapse of the period within which to pay the said docket fees. The reason advanced by respondents for the delayed payment is poverty and ignorance of legal procedures.

Rule 41, Section 4, of the Revised Rules of Civil Procedure, states:

SEC. 4. Appellate court docket and other lawful fees. — Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

x x x x

SEC. 9. Perfection of appeal; effect thereof. — A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.

The failure of the appellant to pay the docket fees is a ground for the dismissal of the appeal under Section 1(c), Rule 50 of the same rule which states:

SECTION 1. x x x.

(c) Failure of the appellant to pay the docket and other lawful fees as provided in section 5 of Rule 40 and section 4 of Rule 41.

From the foregoing, it can be gleaned that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. This is so because a court acquires jurisdiction over the subject matter of the action only upon the payment of the correct amount of docket fees regardless of the actual date of filing of the case in court.

In the case of *Gegare v. Court of Appeals*,^[33] this Court upheld the appellate court's dismissal of an appeal for failure of petitioner to pay the docket fees within the reglementary period despite a notice from the Court of Appeals informing him that such fees had to be paid within 15 days from receipt of such notice. Denying petitioner's plea for judicial leniency, we held that —

Also without merit, in our view, is petitioner's plea for a liberal treatment by the said court, rather than a strict adherence to the technical rules, in order to promote substantial justice. For it has consistently held that payment in full of docket fees within the prescribed period is mandatory. As this Court has firmly declared in *Rodillas v. Commission on Elections* [245 SCRA 702 (1995)], such payment is an essential requirement before the court could acquire jurisdiction over a case:

The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal (*Dorego v. Perez*, 22 SCRA 8 [1968]; *Bello v. Fernandez*, 4 SCRA 135 [1962]). In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees as held in *Acda v. Minister of Labor*, 119 SCRA 306 (1982). The requirement of an appeal fee is by no means a mere technicality of law or procedure. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal was filed at all. The right to appeal is merely a statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provision of the law."

In *Lazaro v. Court of Appeals*,^[34] decided 6 April 2000, the private respondents therein failed to pay the docket fees within the reglementary period. They paid the fees only after the Court of Appeals had dismissed the appeal, that is, six months after the filing of the Notice of Appeal. The Court of Appeals reinstated the appeal "in the interest of substantial justice" without other justification. This Court, through then Chief Justice Artemio V. Panganiban, though not persuaded, recognized that there are exceptions to the stringent requirements of the law on payment of the docket fees. thus:

We must stress that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. "Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of this thoughtlessness in not complying with the procedure prescribed."^[35] (Emphasis supplied.)

Sure enough, the foregoing jurisprudence truly blazed the trails for a liberal application of the strict interpretation of the law.^[36]

In *Mactan Cebu International Airport Authority v. Mangubat*,^[37] the payment of the docket fees was delayed by six days, but the late payment was accepted because the party showed willingness to abide by the Rules by immediately paying those fees. The Court also took note of the importance of the issues in this case involving as it does the entitlement or not of the respondents to properties involved.

Of similar import is the ruling of the court in the case of *Ginete v. Court of Appeals*^[38] where we held that aside from matters of life, liberty, honor or property which would warrant the suspension of the rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (1) the existence of special or compelling circumstances; (2) the merits of the case; (3) a cause not entirely attributable to the fault or negligence of the party

avored by the suspension of the rules; (4) a lack of any showing that the review sought is merely frivolous and dilatory, and (5) the other party will not be unjustly prejudiced thereby.

Yambao v. Court of Appeals[39] saw us again relaxing the Rules when we declared therein that "the appellate court may extend the time for the payment of the docket fees if appellant is able to show that there is a justifiable reason for the failure to pay the correct amount of docket fees within the prescribed period, like fraud, accident, mistake, excusable negligence, or a similar supervening casualty, without fault on the part of the appellant.

In Go v. Tong,[40] reiterated in Heirs of Bertuldo Hinog v. Melicor,[41] it was held that while the payment of the prescribed docket fee is a jurisdictional requirement, even its nonpayment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period; more so when the party involved demonstrates a willingness to abide by the rules prescribing such payment.[42]

In Planters Products, Inc. v. Fertiphil Corporation,[43] the Court stated that failure to pay the appellate docket fee does not automatically result in the dismissal of an appeal, dismissal being discretionary on the part of the appellate court. And in determining whether or not to dismiss an appeal on such ground, courts have always been guided by the peculiar legal and equitable circumstances attendant to each case.

In Camposagrado v. Camposagrado,[44] the case involved a deficiency in the payment of docket fees in the amount of Five Pesos (P5.00). This Court called for the liberal interpretation of the rules and gave due course to the appeal. In brief, the Court said that the failure to pay the appellate docket fee does not automatically result in the dismissal of the appeal, dismissal being discretionary on the part of the appellate court. A party's failure to pay the appellate docket fee within the reglementary period confers only a discretionary and not a mandatory power to dismiss the proposed appeal. Such discretionary power should be used in the exercise of the court's sound judgment in accordance with the tenets of justice and fair play with great deal of circumspection, considering all attendant circumstances and must be exercised wisely and ever prudently, never capriciously, with a view to substantial justice.[45]

In the subsequent case of Far Corporation v. Magdaluyo,[46] this Court, while reiterating that the payment of docket and other legal fees within the prescribed period is both mandatory and jurisdictional, in the same vein, recognized that the existence of persuasive and weighty reasons call for a relaxation of the rules.

In La Salette College v. Pilotin,[47] notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognized that its strict application is qualified by the following: first, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; second, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.

In all, what emerges from all of the above is that the rules of procedure in the matter of paying the docket fees must be followed. However, there are exceptions to the stringent requirement as to call for a relaxation of the application of the rules, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances

attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules. Anyone seeking exemption from the application of the Rule has the burden of proving that exceptionally meritorious instances exist which warrant such departure.[48]

In the case at bar, respondents were delayed in the payment of docket fees for six (6) days only. The reason advanced by them was because of poverty. Evidently, in the cases where the Supreme Court disallowed the late payment of docket fees, the tardiness was for a significant period of time.[49] Guided by the foregoing jurisprudential pronouncements, it will be extremely harsh for the Court to take a lackadaisical attitude towards the cause of the respondents. We are convinced of the fastidiousness of the Court of Appeals' decision.

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit. The assailed Decision of the Court of Appeals dated 10 November 2004 and Resolution dated 1 April 2005 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Callejo, Sr., and Nachura, JJ., concur.

[1] Rollo, pp. 69-80. Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Eubulo G. Verzola and Noel G. Tijam concurring.

[2] Id. at 11.

[3] CA rollo, Vol. II, p. 612.

[4] Id. at 665.

[5] Rollo, p. 142.

[6] CA rollo, Vol. II, p. 665.

[7] Rollo, p. 142.

[8] CA rollo, Vol. II, p. 632.

[9] Id. at 640.

[10] Id. at 635.

[11] Id. at 625.

[12] Id. at 786; Only Romeo and Rodolfo Rupisan filed the Complaint in view of the Deed of Renunciation of Real Rights executed by their other siblings, Consuelo Z. Rupisan, Erlinda R. Lirag and Alejandro Z. Rupisan (Id. at 797).

[13] Id. at 793; Section 1. Who may petition for the allowance of will. — Any executor, devisee, or legatee named in a will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed. (Rule 76, Rules of Court.)

[14] Rollo, pp. 94-95.

[15] CA rollo, Vol. II, p. 621.

[16] The RTC held:

In Civil Case No. 2106, what was submitted before this Honorable Court was only a Notice of Appeal, however, it was only on October 23, 2002, that an appeal fee of Forty Eight Pesos (P48.00) covered by O.R. No. 15919947 and the amount of Four Hundred Fifty Two Pesos (P452.00) covered by O.R. No. 1591854 and another amount of Twenty Pesos (P20.00) covered by O.R. No. 15918522 which were paid to the Clerk of Court, in the manner therefore that the payment of appeal fees prescribed under Rule 41 Sec. 4 of the Revised Rules of Court was after the expiry of the fifteen days period to perfect the appeal.

[17] The RTC Order on this point reads:

However, with respect to the appeal filed by the Oppositor in Special Proceeding Case No. A-1278, the appeal is considered seasonably filed upon the timely filing of the Record of Appeal, inclusive of the required appeal fees, but in accordance with Sec. 7 of Rule 41 of the Revised Rules of Court, let the records on appeal be submitted for consideration by the Honorable Court for purposes of its approval.

Let there be a hearing on Special Proceeding Case No. A-1278 for the purpose of determining whether or not there are incidents to be included in the record of appeal or there are amendments thereto which the Court orders therefore the parties to appear on December 18, 2002 at 2:00 o'clock in the afternoon for purposes of approval of the record of appeal submitted by the Oppositor in Special Proc. Case No. 1278.

[18] CA rollo, Vol. I, pp. 51-52.

[19] Rollo, pp. 99-101.

[20] Sec. 6, Rule 41, 1997 Rules of Civil Procedure.

[21] Rollo, p. 101.

[22] Id. at 79.

[23] Id. at 78.

[24] CA rollo, Vol. II, p. 104.

[25] Rollo, pp. 257-259. The new counsel of respondents, Siguion Reyna Montecillo & Ongsiako, filed its entry of appearance on 5 November 2002 (Rollo, p. 296).

[26] *Sevillana v. I.T. (International) Corporation*, G.R. No. 99047, 16 April 2001, 356 SCRA 451, 462.

[27] *Chas Realty and Development Corporation v. Talavera*, 445 Phil. 43, 53 (2003).

[28] The recognized exceptions where the special civil action for certiorari will lie even without filing a motion for reconsideration includes: (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon by the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and (i) where the issue

raised is one purely of law or public interest is involved. (*Sevillana v. I.T. [International] Corp.*, supra note 26 at 462.)

[29] Rule 41, Section 9, of the 1997 Revised Rules of Court states that:

Sec. 9. — Perfection of appeal; effect thereof. — A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.

[30] *Parañaque Kings Enterprises, Inc. v. Court of Appeals*, 335 Phil. 1184, 1194 (1997).

[31] *Cojuangco v. Court of Appeals*, 369 Phil. 41, 52.

[32] *Rinconanda Telephone Co., Inc. v. Buenviaje*, G.R. Nos. 49241-42, 27 April 1990, 184 SCRA 701, 706.

[33] 358 Phil. 228 (1998).

[34] 386 Phil. 412 (2000).

[35] *Id.* at 417.

[36] *Mactan International Airport v. Mangubat*, 371 Phil. 393 (1999); *Ginete v. Court of Appeals*, 357 Phil. 36 (1998); *Yambao v. Court of Appeals*, 399 Phil. 712 (2000).

[37] *Id.*

[38] *Supra* note 36.

[39] *Supra* note 36.

[40] G.R. No. 151942, 27 November 2003, 416 SCRA 557, 567.

[41] G.R. No. 140954, 12 April 2005, 455 SCRA 460, 475.

[42] *Go v. Tong*, supra note 40 at 567; *Heirs of Bertuldo Hinog v. Melicor*, supra note 41 at 475.

[43] G.R. No. 156278, 29 March 2004, 426 SCRA 414, 420.

[44] G.R. No. 143195, 13 September 2005, 469 SCRA 602, 608.

[45] *Id.*

[46] G.R. No. 148739, 19 November 2004, 443 SCRA 218.

[47] 463 Phil. 785 (2003).

[48] Enriquez v. Enriquez, G.R. No. 139303, 25 August 2005, 468 SCRA 77, 86.

[49] See cases of La Salette College v. Pilotin, supra note 47 at 387-388; Lazaro v. Court of Appeals, supra note 34; Barangay 24 of Legazpi City v. Imperial, 393 Phil. 357 (2,000); Enriquez v. Enriquez, id; Far Corporation v. Magdaluyo, supra note 46; Tamayo v. Tamayo, Jr., G.R. No. 148482, 12 August 2005, 466 SCRA 618.

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