

AURORA B. GO, PETITIONER, VS. ELMER SUNBANUN,â° GEORGIE S. TAN, DORIS SUNBANUN AND RICHARD SUNBANUN, RESPONDENTS.*G.R. No. 168240. February 09, 2011*

Ponente: DEL CASTILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-168240/>**DEL CASTILLO, J.:**

When a procedural rule is amended for the benefit of litigants for the furtherance of the administration of justice, it shall be retroactively applied to likewise favor actions then pending, as equity delights in equality.

For non-compliance with the formal requirements of a petition, the Court of Appeals (CA) dismissed the certiorari petition filed by herein petitioner Aurora Go (Aurora), prompting her to file before us this petition for review on certiorari. Aurora now calls for liberality in the application of the procedural rules in the hope that she would eventually be given a chance to be heard by the CA after the trial court denied her prayer for an extension of time to file a notice of appeal.

Factual Antecedents

In November 2000, respondents filed a suit for damages against Aurora, her husband Yiu Wai Sang (Sang), and Yiu-Go Employment Agency (hereinafter collectively referred to as defendants), docketed as Civil Case No. CEB-25778, before the Regional Trial Court (RTC) of Cebu, Branch 58.[1] The respondents claimed that the spouses occupied the ground floor portion of their house in 68-F General Junquera Street, Cebu City under a one-year lease contract and had used the premises as the business office of Yiu-Go Employment Agency. This allegedly increased the risk of loss by fire, and thus a breach of warranty in the fire insurance policies that the respondents made which described the property as residential type.[2]

Only Aurora filed her Answer with Affirmative Defenses and Counter-Claim.[3] In her answer, Aurora averred that they already left the premises sometime in 2001 and that during the entirety of their stay, they used the leased floor as a private residence and as a lodging house. She denied that their employment agency held office there. She also pointed out that the lease contract was terminated when the one-year term expired in July 1996, and that she was not privy to the contracts of insurance since she was not informed of the contracts' existence. To her, whether the house was used as a business office or as a lodging house was immaterial as there was no increased risk of fire either way. Aurora demanded actual damages as she claimed that she works in Hong Kong on a no-work-no-pay basis and the suit would result in spending airfare and lost earnings.

After the respondents concluded their presentation of evidence, Aurora moved on October 28, 2002 that her testimony be taken by deposition upon written interrogatories, as she was unsure as to when she could come home to the Philippines considering that her work schedule as a court interpreter in Hong Kong is erratic. She averred that arrangements have already been made with the Philippine consulate in Hong Kong to take her deposition.[4] Over the objection of the respondents, the RTC granted Aurora's motion on November 21, 2002.[5] However, Aurora's deposition was taken only on January 28, 2004[6] after her follow-up letter dated November 7, 2003 to the Philippine consulate.[7]

Before this deposition was taken, the RTC in its December 1, 2003 Order[8] already deemed the defendants to have waived their right to present their evidence and considered the case submitted for resolution since more than a year had elapsed from the date the RTC granted Aurora's motion to have her testimony be taken by deposition. Again, only Aurora moved for reconsideration[9] and prayed that the December 1, 2003 Order be recalled and instead admit the deposition. She attributed the delay of her deposition-taking to the consulate's fault, as she was passed from one officer to another or no officer was available.

On January 26, 2004, the RTC rendered judgment[10] finding only Aurora liable and ordering her to pay moral damages, attorney's fees, litigation expenses and costs.[11] The trial court disregarded her two-page transcript of deposition when it received the same on March 5, 2004.[12]

Aurora's former counsel of record, Atty. Jude Henritz R. Ycong (Atty. Ycong), belatedly discovered about this adverse judgment when he received from respondents' counsel a Motion to Direct Issuance of Entry of Judgment and Writ of Execution[13] on March 16, 2004. It turned out that although he had already previously informed the court of his new office address, the court mistakenly sent the January 26, 2004 Decision to his former office address.[14] He raised this in his opposition to the motion filed by the respondents.[15] Finding this point meritorious, the court denied respondents' motion, ruling that the judgment against Aurora has not yet attained finality as the 15-day period to appeal, counted from March 16, 2004, has not yet lapsed.[16]

Aurora filed her Motion for Reconsideration[17] on March 31, 2004, the last day to file her appeal. The court in its April 27, 2004 Order[18] denied said motion.

Atty. Ycong received the notice of denial on May 6, 2004, thus giving his client a day left to file her appeal. Explaining that Aurora has been busy campaigning for the local elections as she was running for the position of town mayor in Calubian, Leyte[19] and that he and his client have yet to discuss the pros and cons of appealing the case, Atty. Ycong sought for the relaxation of the procedural rules by filing an extension of 15 days to file Aurora's notice of appeal.[20]

Atty. Ycong thereafter filed the Notice of Appeal on May 11, 2004.

Ruling of the Regional Trial Court

In its May 12, 2004 Order, the RTC denied the notice of appeal, viz:

While there are rulings of the Supreme Court declaring that the period to appeal is not extendible, there are also instances when it allowed appeals to be perfected despite their filing out of time. x x x

In the instant case, the delay is due to defendant-Go's running for an elective post. Such is no excuse.

In other words, contrary to the belief of this court that Aurora Go had been and is out of the country, she in fact is in the Philippines. Consequently, she could have the time to confer with her counsels in order to prepare for her appeal.

Accordingly, the Motion for Extension of Time to File Notice of Appeal is DENIED for lack of merit and the Notice of Appeal is hereby declared filed out of time.

SO ORDERED.[21]

Aurora sought for reconsideration but it was denied by the RTC on June 10, 2004.[22]

Ruling of the Court of Appeals

Filing her petition for certiorari with the CA by way of registered mail on August 13, 2004,[23] Aurora claimed that the RTC gravely abused its discretion in refusing to relax the period for filing the notice of appeal. She

contended that her situation is enough reason to grant her prayer. She averred that she could not just leave the campaign trail just to discuss matters with her lawyer about her case as she was busy in Leyte at the homestretch of the campaign period.

However, the CA on December 8, 2004, dismissed the petition (docketed as CA-G.R. SP No. 85897) for being procedurally flawed, viz:

- 1) The Verification/Certification of Non-Forum Shopping is signed by only one petitioner without a Special Power of Attorney/Secretary's Certificate authorizing her to represent the two (2) other petitioners;
- 2) The Affidavit of Service shows that respondents were personally served copies of the petition but lacks explanation why service of the petition with this Court was not done personally (Section 11, Rule 13 of the Revised Rules of Court);
- 3) Counsel for petitioners failed to indicate his PTR and IBP numbers;
- 4) Certified true [sic] copies of the assailed decision dated January 26, 2004 attached to the petition is a mere photocopy of a certified true copy;
- 5) The following copies of pleadings and other relevant documents referred to in the petition which would support the allegations therein are not attached:
 - a) Complaint; and,
 - b) Answer.[24]

Invoking the liberal construction of procedural rules, petitioner Aurora asked for reconsideration[25] with the following justifications:

- 1) A certification/verification of one of a number of principal parties is sufficient compliance. Although her certiorari petition named her, her spouse, and Yiu-Go Employment Agency, as 'petitioners,' her co-defendants were not held liable in the lower court. It is only she who is interested in filing the certiorari petition for her to be able to appeal, hence her lone signature.
- 2) Anent the lack of explanation of why personal service to the CA was not resorted to, Aurora averred that it was redundant to explain why registered mail was used considering the distance between Cebu, where she is based, and the CA in Manila.
- 3) The professional tax receipt (PTR) and Integrated Bar of the Philippines (IBP) receipt numbers were inadvertently overlooked. However, the defect was cured when Atty. Ycong included the numbers when he subsequently filed on October 14, 2004 his Notice of Change of Address[26] with the CA.
- 4) Questioned in the certiorari are the May 12 and June 10, 2004 Orders that denied Aurora's prayer for an extension of time to file her notice of appeal. Requiring her to additionally append to the CA petition the certified true copies of the January 26, 2004 RTC Decision (i.e., the decision on the merits of the case), the complaint, and the answer was not necessary as these documents are not relevant and material to the issue to be resolved.

Finding Aurora's reasoning unacceptable, the CA insisted on a strict observance of the rules in its April 8, 2005 Resolution:

As to the first ground, petitioners merely disagree with the deficiency which occasioned the outright dismissal of their petition without even curing the said defect. Suffice it to say here that the petition itself contains more than one petitioner. No less than the Supreme Court pronounced in *Loquias vs. Office of the Ombudsman* that where there are two or more plaintiffs or petitioners, a complaint or petition signed by only [sic] of the parties is defective unless he/she is authorized by his co-parties. x x x

x x x x

The reason why petitioners' petition was dismissed based on the second defect was because the said petition lacks explanation why service of the petition with this Court was not done personally, not much for having filed the same by registered mail. In other words, the dismissal was not due to the fact that the petition was filed by registered mail, but because of the failure to explain why the personal service was not resorted to. Then again, petitioners did not even bother to cure such defect.

Anent the third ground, counsel for petitioners posits that his failure to indicate in the petition for certiorari his PTR and IBP numbers was cured by his succeeding Notice of Change Address filed with this Court. However, a closer of [sic] examination of the same reveals that the same was only filed on October 14, 2004 or some two (2) months after the petition for certiorari was filed on August 13, 2004. If it was really the intention of counsel for petitioners to cure such defect, he could have done it immediately after filing the petition. Had it not been due to the filing of the notice of change of address, We doubt if petitioners would have cured such defect.

Considering the foregoing, We deem it unnecessary to discuss the other grounds raised by petitioners.

x x x x[27]

The Parties' Respective Arguments

Believing that her case should not have been dismissed for procedural

defects, Aurora assails the December 8, 2004 and April 8, 2005 Resolutions of the CA, reiterating to this Court that she deserves to be accorded the chance to prove to the CA that the RTC had unfairly denied her motion for extension of time to file her notice of appeal.

On the other hand, respondents defend the stance of the CA, insisting that perfection of an appeal is jurisdictional and mandatory; and that the circumstances do not justify granting Aurora leniency in the application of the procedural rules. Moreover, ever since she filed her motion for reconsideration on the RTC's January 26, 2004 Decision, she had in the interim sufficient time to think about the next legal action to take before the trial court issued its order of denial on April 27, 2004.

Issue

The sole question to resolve is whether the formal deficiencies in the petition before the CA may be relaxed in the interest of justice.

Our Ruling

The signatures/authorizations of Sang and Yiu-Go Employment Agency in the verification and certification on non-forum shopping are not necessary.

In filing a certiorari petition, one aggrieved by a court's judgment, order or resolution must verify his/her petition and must also attach a sworn certification of non-forum shopping.[28] In dismissing Aurora's petition, the CA cited as one of its grounds the lack of signatures or authorizations of Sang and Yiu-Go Employment Agency in the verification and certification of non-forum shopping. Such signatures, however, may be dispensed with as these parties are not involved in the petition. Although the caption in Aurora's petition before the CA erroneously included Sang and Yiu-Go Employment Agency as petitioners, its contents reveal that it is solely Aurora who is the 'person aggrieved,' as she is the one who assailed before the CA the RTC's Order that denied her notice of appeal and, hence, she should be the one who should sign the petition. Notably, Aurora is the only one held liable

by the trial court for damages and thus is the one interested in filing an appeal and in elevating the case to the CA. Moreover, only Aurora filed her answer before the RTC while Sang and Yiu-Go Employment Agency did not file any.

Non-submission of certified true copy of the January 26, 2004 Decision and copies of the Complaint and Answer not fatal.

Another ground cited by the CA was the non-submission of the certified true copy of the January 26, 2004 Decision as well as the failure to attach copies of the complaint and answer in Aurora's petition.

The second paragraph of Section 1 of Rule 65 requires the submission of a certified true copy of the judgment, order or resolution subject of the petition as well as the submission of copies of all pleadings and documents relevant to the petition. "The initial determination of what pleadings, documents or order are relevant and pertinent to the petition rests on the petitioner. [Should the CA opine that additional documents must be submitted together with the petition, it may] (a) dismiss the petition under the last paragraph of [Section 3,] Rule 46 of the Rules of Court; (b) order the petitioner to submit the required additional pleadings, documents, or order within a specific period of time; or (c) order the petitioner to file an amended petition appending thereto the required pleadings, documents or order within a fixed period." [29] We emphasize that not all pleadings and parts of case records are required to be attached, but only those which are material and pertinent that they may provide the basis for a determination of a prima facie case for abuse of discretion. [30]

Thus, we agree with the petitioner that the CA required pleadings immaterial to the issue presented before it. The questioned subject of certiorari does not touch upon the substantive merits of the suit for damages against Aurora but actually involves the refusal of the trial court to entertain her notice of appeal due to late filing. The complaint and answer are not indispensable at all in the resolution of this issue, the contents of which are already summarized in the January 26, 2004 Decision attached to the petition. Furthermore, since Aurora's petition assails the May 12 and June 10, 2004 Orders of the RTC, it is the certified true copies of these orders that are required to be attached to the petition. On the other hand, photocopy of the January 26, 2004 Decision will suffice, as this document is material and pertinent to the petition.

Failure to indicate PTR and IBP Official Receipt Numbers not fatal.

The failure of petitioner's former counsel, Atty. Ycong, to indicate in the petition before the CA his PTR and IBP numbers for the year 2004 was obviously an oversight. A perusal of the records of the case would show that counsel had duly paid the required dues for that year and that his PTR and IBP receipt numbers are indicated in the pleadings he had filed with the RTC. [31] Although he omitted to indicate the numbers on Aurora's CA petition, the same numbers were nevertheless stated on his Notice of Change of Address, around two months before the appellate court issued the questioned December 8, 2004 Resolution.

Rules on perfecting appeals must be strictly complied with; liberal application available only under exceptional circumstances.

Whenever practicable, personal service and personal filing of pleadings are always the preferred modes of service. Under Section 11, Rule 13 of the Rules of Court, should one deviate from the general rule, it is mandatory for him/her to submit a written explanation why the pleading was not personally filed/served. Otherwise, the court has the discretion to consider the paper as not filed. Petitioner should be aware that a court, in reasonably

exercising discretionary power to dismiss a petition that violated the rule on written explanation for resorting to modes other than personal service, also has to take into account another factor, i.e., the prima facie merit of the pleading sought to be expunged for violation of Section 11.[32] For this reason, we do not find any grave abuse on the part of the CA in exercising its discretion to dismiss Aurora's petition.

Indeed, judicial notice may be taken that personal service is impracticable considering the distance between Cebu and Manila, and that *Musa v. Amor*[33] supports Aurora's argument that a written explanation why service was not done personally might have been superfluous considering the evident distance between the appellate court and the place where the petition was posted. It must be emphasized, however, that provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied and are only relaxed in very exceptional circumstances on equitable considerations.[34] In the case at bar, the reason behind the filing of an extension of time to file her notice of appeal was not per se, a compelling and a highly exceptional one. Just as it is the lawyer's duty to safeguard her client's interest, it is the responsibility of the client to make herself available to her counsel and open the lines of communication, even during the busy election period, for their discussions of legal options. She is obliged to be vigilant in fighting for her cause and in protecting her rights. It is Aurora's duty, "as a client, to be in touch with [her] counsel so as to be constantly posted about the case. [She] is mandated to inquire from [her] counsel about the status and progress of the case from time to time and cannot expect that all [she] has to do is sit back, relax and await the outcome of the case." [35] Additionally, "motions for extension are not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extension or postponement will be granted or that they will be granted the length of time they pray for." [36]

In spite of petitioner's error, the 'fresh period rule' amendment as held in *Neypes v. Court of Appeals* will be applied to her benefit

Aurora had almost lost her statutory privilege to appeal, but in view of our ruling on *Neypes v. Court of Appeals*, [37] we shall grant Aurora's petition.

In *Neypes* we held that a litigant is given another fresh period of 15 days to perfect an appeal after receipt of the order of denial of his/her motion for reconsideration/new trial before the RTC. We said:

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.

Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by certiorari to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.[38] (Emphasis supplied.)

"[P]rocedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure." [39] *Neypes*, which we rendered in September 2005, has been applied retroactively to a number of cases [40] wherein the original period to appeal had already lapsed subsequent to the denial of the motion for reconsideration. Aurora's situation is no exception, and thus she is entitled to benefit from the amendment of the procedural rules.

The denial of Aurora's Motion for Reconsideration of the trial court's January 26, 2004 decision was received by

her former counsel on May 6, 2004. Sans her motion for extension to file a notice of appeal, with the fresh period rule under Neypes, she still has until May 21, 2004 to file her notice of appeal and thus, had timely filed her notice of appeal on May 11, 2004.

WHEREFORE, the petition is GRANTED. The challenged Resolutions of the Court of Appeals in CA-G.R. SP No. 85897 dated December 8, 2004 and April 8, 2005 are REVERSED and SET ASIDE; the Orders of the Regional Trial Court of Cebu, Branch 58, dated May 12 and June 10, 2004 that denied Aurora Go's notice of appeal are likewise REVERSED and SET ASIDE. The Regional Trial Court of Cebu, Branch 58 is hereby DIRECTED to give due course to petitioner's Notice of Appeal dated May 11, 2004.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[*]Also spelled as Sunbanon in some parts of the record.

[1] Rollo, pp. 77-79.

[2] Id. at 57-76.

[3] Id. at 80-84.

[4] Id. at 157-160.

[5] Id. at 163.

[6] Id. at 165-225.

[7] CA rollo, p. 18.

[8] Rollo, p. 85.

[9] Id. at 86-89.

[10] Id. at 92-96; penned by Judge Gabrile T. Ingles.

[11] In said Decision, the RTC ordered Aurora Go to pay the following:

1. P200,000.00 for moral damages;
2. P30,000.00 plus P2,000.00 per appearance as attorney's fees.
3. P10,000.00 as litigation expense; and
4. cost of suit. (Id. at 96.)

[12] Id. at 110.

[13] Id. at 90-91.

[14] Id. at 97.

[15] Id. at 100-101.

[16] Id. at 103.

[17] Id. at 104-109.

[18] Id. at 111.

[19] Id. at 114.

[20] Id. at 112-113.

[21] Id. at 116.

[22] Id. at 121.

[23] CA rollo, p. 3.

[24] Rollo, pp. 130-131; penned by Associate Justice Vicente L. Yap and concurred in by Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos.

[25] Id. at 132-140.

[26] CA rollo, pp. 39-40.

[27] Rollo, pp. 142-143. Citations omitted. Underscoring in the original.

[28] Rules of Court, Rule 65, Sec. 1.

[29] *Garcia v. Philippine Airlines, Inc.*, 498 Phil. 809, 820 (2005).

[30] *Air Philippines Corporation v. Zamora*, G.R. No.148247, August 7, 2006, 498 SCRA 59, 62.

[31] CA rollo, pp. 19-24, 27-28, 30-33.

[32] *Solar Team Entertainment, Inc. v. Judge Ricafort*, 355 Phil. 404, 414 (1998).

[33] 430 Phil 128 (2002).

[34] *Heirs of Gaudiano v. Benemerito*, G.R. No. 174247, February 21, 2007, 516 SCRA 416, 420-421 citing *Sps. Buenaflor v. Court of Appeals*, 400 Phil. 395, 402-403 (2000).

[35] *GCP-Manny Transport Services, Inc. v. Judge Principe*, 511 Phil. 176, 186 (2005), citing *Philhouse Development Corp. v. Consolidated Orix Leasing & Finance Corp.*, 408 Phil. 392, 398 (2001) and *Balgami v. Court of Appeals*, 487 Phil. 102, 114-115 (2004).

[36] *Ramos v. Atty. Dajayog, Jr.*, 428 Phil. 267, 278 (2002).

[37] 506 Phil. 613 (2005).

[38] Id. at 626-627.

[39] *Pfizer, Inc. v. Galan*, 410 Phil. 483, 491 (2001).

[40] *Sumiran v. Damaso*, G.R. No. 162518, August 19, 2009, 596 SCRA 450; *Fil-Estate Properties, Inc. v. Homena-Valencia*, G.R. No. 173942, June 25, 2008, 555 SCRA 345; *First Aqua Sugar Traders, Inc. v. Bank of the Philippine Islands*, G.R. No. 154034, February 5, 2007, 514 SCRA 223; *Sumaway v. Urban Bank, Inc.*, G.R. No. 142534, June 27, 2006, 493 SCRA 99; *Elbiña v. Ceniza*, G.R. No. 154019, August 10, 2006, 498 SCRA 439.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.