

HEIRS OF TEOFILO GAUDIANO, NAMELY: HONORIA GAUDIANO, ERLINDA G. SANDE, PHILIP GAUDIANO, JAMES GAUDIANO, EDISON GAUDIANO AND TERESITA GAUDIANO-APORA, PETITIONERS, VS. CONSTANCIO ...

G.R. NO. 174247. February 21, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This Petition for Review on Certiorari[1] assails the April 17, 2006 Order[2] of the Regional Trial Court (RTC) of Cebu City, Branch 21 in Civil Case No. CEB-1151 denying petitioners' Motion for Extension of Time to File a Notice of Appeal and declaring its October 7, 2005 Decision[3] final and executory.

The respondents filed before the Regional Trial Court of Cebu an action for redemption against the petitioners. On October 7, 2005, the lower court rendered its Decision[4] allowing the respondents to redeem their respective areas of cultivation from the petitioners and directing them to execute the documents necessary to effect the redemption.

Petitioners received a copy of the Decision on December 21, 2005 but instead of filing a Notice of Appeal, they filed a Motion for Extension of Time to File a Notice of Appeal on January 4, 2006 without the assistance of counsel.[5] They prayed for a 15-day extension claiming that their counsel, Atty. Antonio Villaflor, suffered a stroke sometime in the middle of 2005, and that they needed to engage the services of another counsel who can represent them. On January 13, 2006, they filed a Notice of Appeal[6] through their new counsel, Atty. Virgilius Santiago.

On April 17, 2006, the Regional Trial Court of Cebu, Branch 21 issued the assailed Order denying the motion, to wit:

This treats of the defendants' Motion for Extension of Time to File a Notice of Appeal, submitted on 04 January 2006.

Under Section 3, Rule 41 of the Rules of Civil Procedure, said motion is not allowed.

WHEREFORE, premises considered, the Motion for Extension prayed for is hereby denied, and defendants having been unable to file their Notice of Appeal within the required reglementary period, in effect, renders the decision final and executory.

SO ORDERED. [7]

Hence, this Petition for Review on Certiorari raising the following issues: 1) whether the petitioners' belated filing of their notice of appeal is justifiable; and 2) whether the court a quo correctly denied petitioners' Motion for an Extension of Time to File Notice of Appeal and in declaring the RTC Decision dated October 7, 2005 final and executory.[8]

Petitioners claim that their former counsel suffered a stroke which incapacitated him from filing a notice of appeal. Thus, while looking for a new counsel to engage, they decided to file a motion for extension to file a notice of appeal. They argue that respondents would not be prejudiced if their notice of appeal is given due course despite its late filing. They also allege that under Section 3, Rule 41 of the Rules of Court, the filing of a motion for extension to file a notice of appeal is not prohibited and that this Court is vested with power to relax its rules in the interest of justice and equity.

The petition lacks merit.

In *Lacsamana v. Second Special Cases Division of the Intermediate Appellate Court*,^[9] the Supreme Court ruled that in ordinary appeals by mere notice of appeal, as in the instant case, no extension to file a notice of appeal is allowed. It was stated:

In an ordinary appeal from the final judgment or order of a metropolitan or municipal trial court to the regional trial court, and from the regional trial court to the Court of Appeals in actions or proceedings originally filed in the regional trial court, the fifteen-day period for appeal provided by Section 39 of BP No. 129 and Section 19(a) of the Interim Rules is interrupted or suspended by a motion for new trial or reconsideration, unless such motion fails to satisfy the requirements of Rule 37 (Section 3 of Rule 41). If the motion for new trial or reconsideration is denied, the moving party has only the remaining period from notice of denial within which to file a notice of appeal, which is the only requirement for taking an appeal under the present rules. Obviously, no extension of time to file such a notice of appeal is needed, much less allowed.^[10]

The perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory.^[11] The limitation on the period of appeal is not without reason. They must be strictly followed as they are considered indispensable to forestall or avoid unreasonable delays in the administration of justice, to ensure an orderly discharge of judicial business, and to put an end to controversies.^[12] Though as a general rule, rules of procedures are liberally construed, the 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,^[13] which are not present in the instant case.

Being a prohibited pleading, a motion for extension of time to file a notice of appeal is a mere scrap of paper and its filing does not toll the running of the period to appeal.^[14] Petitioners filed their Notice of Appeal within the period prayed for in their motion for extension but beyond the period to appeal. Sections 2(a) and 3 of Rule 41 clearly provide that decisions of Regional Trial Courts may be appealed by filing a notice of appeal within 15 days from date of receipt of notice of judgment. The filing of a notice of appeal within the reglementary period is mandatory; no extension is allowed. Since the motion for extension did not toll the running of the period to appeal, it follows that the Notice of Appeal filed after the lapse of 15 days was filed out of time and the trial court properly dismissed the appeal pursuant to Section 13, Rule 41, which reads:

SEC. 13. Dismissal of appeal.— Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may, *motu proprio* or on motion, dismiss the appeal for having been taken out of time or for non-payment of the docket and other lawful fees within the reglementary period.

When no timely appeal is taken, the judgment becomes final and the court loses jurisdiction over the case, and it has no alternative but to order the execution of the final judgment. The trial court, therefore, commits no error in denying the motion for extension and declaring that its October 7, 2005 Decision has become final and executory.

Petitioners' reliance on this Court's power to relax and disregard the application of technical rules of procedure in the interest of substantial justice is misplaced. The liberal application of rules of procedure for perfecting

appeals is still the exception, and not the rule; and it is only allowed in exceptional circumstances to better serve the interest of justice. In *Neypes v. Court of Appeals*,^[15] the Court declared:

In setting aside technical infirmities and thereby giving due course to tardy appeals, we have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules. In those situations where technicalities were dispensed with, our decisions were not meant to undermine the force and effectivity of the periods set by law. But we hasten to add that in those rare cases where procedural rules were not stringently applied, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.^[16] (Emphasis added)

The circumstances surrounding this case do not warrant the relaxation of the rules. Petitioners alleged in their motion for extension of time that their previous counsel suffered a stroke sometime in the middle of the year 2005 and they still need to engage another counsel who can ably represent them.^[17]

We do not find these circumstances extraordinary that would warrant a liberal application of the rules. The allegation of stroke was not proven or supported with a medical certificate.^[18] There is likewise no evidence showing that their counsel was unable to assist them in filing the notice of appeal. Interestingly, on January 10, 2006, or five days after the period to appeal had lapsed, Atty. Villaflor filed before the trial court his withdrawal as counsel for petitioners. This only shows the falsity in petitioners' allegation as to the counsel's incapacity to file the notice of appeal.

Petitioners likewise allege that respondents have nothing to lose should their notice of appeal be given due course.^[19] However, it is worthy to note that the action for redemption filed by respondents dated as far back as August 30, 1983.^[20] Respondents had waited for more than two decades to have their case resolved. As we held in *Videogram Regulatory Board v. Court of Appeals*,^[21] "(j)ust as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case."

Section 1, Rule 41 of the Rules of Court provides that no appeal may be taken from an order disallowing or dismissing an appeal. The denial of petitioners' motion for extension and the declaration that the Decision has become final and executory, is tantamount to a disallowance/dismissal of an appeal. As such, the remedy of appeal is not available. Even on the assumption that an appeal is available, petitioners should not have directly filed the same before the Supreme Court since only questions of law may be raised in appeals by certiorari from a judgment, final order or resolution of Regional Trial Courts.

Even if we treat this petition as one for a petition for certiorari under Rule 65, it is still dismissible for violation of the hierarchy of courts. Although the Supreme Court has concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals to issue writs of certiorari, this should not to be taken as granting parties seeking any of the writs an absolute and unrestrained freedom of choice of the court to which an application will be directed. It is an established policy that a direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special, important and compelling reasons, clearly and specifically spelled out in the petition,^[22] which are not present in this case.

The right to appeal is not a natural right or a part of due process; it is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal.^[23]

WHEREFORE, the petition is DENIED. The Order dated April 17, 2006 of the Regional Trial Court of Cebu, Branch 21, denying petitioners' Motion for Extension of Time to File a Notice of Appeal and declaring its October 7, 2005 final and executory, is AFFIRMED.

SO ORDERED.

Austria-Martinez, Callejo, Sr., Chico-Nazario and Nachura, JJ., concur.

[1] Rollo, pp. 4-13.

[2] Id. at 40. Penned by Judge Eric F. Menchavez.

[3] Id. at 16-23.

[4] Id.

[5] Id. at 24.

[6] Id. at 25-26.

[7] Id. at 40.

[8] Id. at 7.

[9] 227 Phil. 606 (1986).

[10] Id. at 611.

[11] Cabellan v. Court of Appeals, 363 Phil. 460, 467 (1999).

[12] See Videogram Regulatory Board v. Court of Appeals, 332 Phil. 820, 828 (1996).

[13] Buenaflor v. Court of Appeals, 400 Phil. 395, 402-403 (2000).

[14] Cf. Uy v. Court of Appeals, 349 Phil. 1004 (1998) where petitioner filed before the Court of Appeals a motion for extension of time to file a motion for reconsideration which is prohibited by several rulings of this Court. In said case, this Court ruled that said motion did not suspend/toll the running of the reglementary period and in effect renders the assailed decision final and beyond the jurisdiction of this Court.

[15] G.R. No. 141524, September 14, 2005, 469 SCRA 633, 643.

[16] Id.

[17] Rollo, pp. 25-26

[18] Id. at 49.

[19] Id. at 8.

[20] Id. at 16.

[21] Supra note 12.

[22] David v. Mijares, G.R. No. 158717, March 3, 2004, SC E-Library.

[23] M.A. Santander Construction, Inc. v. Villanueva, G.R. No. 136477, November 10, 2004, 441 SCRA 525, 528.

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