

SIXTO F. ESQUIVIAS, PETITIONER, VS. PEDRO MA. SISON, JUDGE OF FIRST INSTANCE OF MANILA, AND FIDELITY AND SURETY COMPANY OF THE PHILIPPINE ISLANDS, RESPONDENTS.

G.R. No. 43107. March 02, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition filed by Sixto F. Esquivias against Pedro Ma. Sison, Acting Judge of Branch III of the Court of First Instance of Manila, and the Fidelity and Surety Company of the Philippine Islands, praying for the reasons therein stated, that a writ of mandamus addressed to said respondent, the Honorable Pedro Ma. Sison, be issued compelling him to certify and approve the bill of exceptions filed by the petitioner in said court, copy of which is attached to said petition, with costs against the respondent Fidelity and Surety Company of the Philippine Islands.

The pertinent facts necessary for the resolution of the questions raised in the present case are as follows: On August 15, 1933, the herein respondent Fidelity and Surety Company of the Philippine Islands brought in the Court of First Instance of Manila an action to recover a sum of money from the herein petitioner Sixto F. Esquivias, Tomas Oeronimo and Mario Guariia, which was docketed as civil case No. 44947.

On September 12, 1933, Sixto F. Esquivias, the petitioner herein and defendant in the civil case above stated, through his attorneys, Sierra & Esquivias, filed his answer giving at the foot thereof his address as "116 Tetuan Street, Manila."

Attorney Cirilo Lim provisionally appeared during the trial in the absence of the attorneys for Sixto F. Esquivias.

On January 18, 1934, judgment was rendered in said case in favor of Fidelity and Surety Company of the Philippine Islands and against Sixto F. Esquivias, and on January 29, 1934, notice of said decision was served not on Attorneys Sierra & Esquivias at 116 Tetuan Street, Manila, but on Attorney Cirilo Lim at 456 Dasmariias Street, Manila, whose address does not appear of record. When the herein petitioner Sixto F. Esquivias was informed of the decision for the first time on February 23, 1934, he immediately excepted thereto and on February 28, 1934, he filed his motion for new trial.

On March 3, 1934, said motion for new trial was denied but no notice of the order of denial was served on the petitioner or his attorneys. On March 13, 1934, the petitioner, without having received notice of said order denying his motion for new trial and having been unofficially informed thereof, immediately excepted thereto and filed notice of his intention to appeal and to tender a bill of exceptions. On March 22, 1934, said petitioner filed the bill of exceptions under consideration and on the 31st of said month and year, the respondent judge refused to certify it. On April 16, 1934, the petitioner filed a motion for reconsideration of [the order of March 31, 1934, denying his motion for the approval and certification of the bill of exceptions, and on April 21, 1934, said respondent judge denied the motion for reconsideration. The petitioner later filed a motion for new trial under section 113 of the Code of Civil Procedure, which was likewise denied by an order dated July 14, 1934.

The question to be decided in the case at bar is whether or not the petitioner, Sixto F. Esquivias, filed his bill of exceptions within the statutory period.

We have seen from the statement of facts above stated that the attorneys for the petitioner Sixto F. Esquivias, who filed their appearance and answer to the complaint in civil case No. 44947 of the Court of First Instance of Manila, were Sierra & Esquivias, who, pursuant to Rule 7 of the Rules of Courts of First Instance, gave as their address 116 Tetuan Street, Manila, and not Cirilo Lim who merely appeared provisionally at the trial in the absence of said attorneys.

Rule 20 of the Rules of Courts of First Instance, in force, provides that notices be addressed to the office of the attorney who has entered his appearance, in the manner therein prescribed. As the notice of the decision rendered against the petitioner, Sixto F. Esquivias, was not sent to the office of his attorneys, Sierra & Esquivias, but to that of Attorney Cirilo Lim, whose appearance does not appear of record, said petitioner was not duly notified and as he had not been informed of said decision until February 23, 1934, the period for the filing of his motion for new trial commenced to run only from said date. His motion for new trial filed on February 28, 1934, was therefore filed within the reglementary period of 30 days. Neither were his attorneys notified of the order of March 3, 1934, denying his motion for new trial, and said petitioner was informed thereof accidentally only on March 13, 1934, on which date he filed his exception thereto and notice of intention to appeal, that is, within the reglementary period of 5 days. He filed his bill of exceptions on March 22, 1934, or 9 days later, also within the reglementary period of 10 days. It will be noted therefore that the petitioner, Sixto F. Esquivias, filed on time his bill of exceptions in civil case No. 44947 under consideration, and it was the duty of the respondent judge, if he found it complete, to approve and certify it.

The second question to be decided, which is raised in respondents' answer, is whether or not the present petition was filed out of time.

Section 499 of the Code of Civil Procedure provides as follows:

"Sec. 499. Judge failing to sign exceptions, how compelled.—If from any cause the bill of exceptions is not certified by the judge of the court below, without fault of the party tendering the bill of exceptions, such party, or his attorney, may apply at the next term of the Supreme Court, and on petition obtain from said court a mandamus directed to such judge."

Section 139 of the Revised Administrative Code provides as follows:

"Sec. 139. Regular terms of Supreme Court.—The Supreme Court shall hold at Manila two regular terms for the hearing of causes, the first commencing on the second Monday of January and the second on the second Monday of July. Each regular term shall continue to and include the day before the opening of the next regular term. The Supreme Court shall convene and hold a session after the regular court vacation on the first day of July, or if that be a holiday, then upon the next day thereafter not a holiday, for the purpose of hearing such motions and applications as should be heard before the close of the term. The court shall also meet upon the second day of January, or, if that be a holiday, upon the next day thereafter which is not a holiday, for the purpose of hearing such business of the regular July term as should be heard before the end of the term. The office of the clerk of the Supreme Court shall always be open for the transaction of business, except upon lawful holidays, and the court shall always be open for the transaction of such interlocutory business as may be done by a single member thereof.

"The sessions of the court for the hearing of cases shall be held on such days in the week, and for such length of time, as the court by its rules may order."

This court, interpreting section 499 of the Code of Civil Procedure, above cited, through Justice Malcolm, said in

the case of *Cortes vs. Court of First Instance of Capiz* (52 Phil., 214, 215), as follows:

"Section 499 of the Code of Civil Procedure permits the dissatisfied party to 'apply at the next term of the Supreme Court' for a mandamus. While terms of court are pretty much disregarded in actual practice, the rules do provide for the calling of a calendar on the second Monday of July. The July term of court may, therefore, be here taken to be the next term of the Supreme Court mentioned in the law. But even under the most favorable aspect, from the second Monday of July to the first days of September, more than a month elapsed. Without deciding what would constitute an application within a reasonable time after the refusal of a trial judge to sign the bill of exceptions, it is apparent that the delay in ordinary cases should not be more than the longest period allowed in the lower court for the party to take action, which is thirty days. It is well settled that laches in making an application for the writ of mandamus affords sufficient cause for its denial. Also it should not be forgotten that during the pendency of the proceedings execution has issued and the property of the petitioner has been sold at public auction."

(See also *Municipality of San Miguel vs. Provincial Board of Leyte and Municipality of Alangalang*, 60 Phil., 289, and *Po Sun Tun vs. Mapa*, 59 Phil., 459.)

Under the doctrine above stated, inasmuch as the herein petitioner filed his petition six months after the last order denying his motion for reconsideration and new trial, said petition was filed too late.

In view of the foregoing considerations, we are of the opinion and so hold: (X) That service of notice of a decision on the attorney who provisionally appeared in a case in the absence of the attorney who has entered his appearance therein and has not withdrawn therefrom, and not on the latter, violates the provisions of Rules 7, 8 and 20 of the Rules of Courts of First Instance, and said notice is not binding upon the party adversely affected by the decision; and (2) that a petition for mandamus filed six months after the last judicial action which gave rise thereto, is too late to be considered.

Wherefore, the remedy of mandamus applied for is denied, with costs against the petitioner. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

Petition denied.

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