

COMMODITIES SALES CORPORATION, PETITIONER, VS. LA SUERTE BUS CO., INC., SPOUSES LAZARO AND NIEVES LANDICHO TEODORICO AND PURITA LANDICHO, SOFRONIO AND ADELAIDA LANDICHO, PABLO A...

G.R. No. 55952. March 31, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

The respondent judge is faulted for dismissing as tardy a petition for reconstitution of judicial records destroyed during a fire. It is claimed that the petition was not belated under the provisions of Act 3110. The respondent judge insists on her decision invoking the same statute. We are asked to resolve the impasse and settle the question once and for all.

The fire occurred on January 9, 1979, and razed the Puericulture Center Building in Davao City, where Branches III and IV of the Court of First Instance of Davao were sitting. Everything was reduced to ashes, including the files of the court.

Pursuant to Section 1 of Act 3110, the Office of the Clerk of Court issued a Notice of Loss of Judicial Records on January 23, 1979.[1]

Conformably to Section 2 of the same Act, the public respondent, as Presiding Judge of the Court of First Instance of Davao, Branch III, issued a General Notice of Loss of Judicial Records on February 7, 1979.[2]

This notice was published once a week for four consecutive weeks in the Official Gazette, the last publication appearing in its issue of March 5, 1979, which was released on April 25, 1979.[3] The notice was also published once weekly for three consecutive weeks in the Mindanao Times, a newspaper of general circulation in the three provinces of Davao, the last publication appearing in its issues of April 19, 1979.[4]

On July 29, 1980, the Commodities Sales Corporation filed before the Court of First Instance of Davao Branch III, then presided by the respondent judge, a petition for the reconstitution of the records of Civil Case No. 10278, allegedly decided on June 23, 1978.[5]

On August 19, 1980 the petitioner moved for leave to amend its original petition.[6] The motion was denied on September 2, 1980, for non-compliance with the procedural requirements of motions in general under Sections 4 to 6 of Rule 15 of the Rules of Court.

Finally, on September 25, 1980, Judge Pacita Cañizares-Nye dismissed the petition on the ground that it had been filed late, the period for doing so having expired on October 18, 1979.[7] The motion for reconsideration was denied on November 21, 1980.[8] The petitioner is now before the Court to seek relief from these orders of the respondent judge.

In its memorandum, the petitioner concedes that it "failed to file its petition for the reconsideration or the

restoration of its records in Civil Case No. 10278 in the Court of First Instance of Davao, Davao City, within the period set by the said court." [9]

Even so, it argues that the respondent judge had no power to prescribe a period as Section 1 of Act 3110 merely provides that the reconstitution should be done "as soon as practicable."

This section reads in full as follows:

Section 1. As soon as practicable after the occurrence of any fire or other public calamity resulting in the loss of all or part of the records of judicial proceedings on file in the office of the clerk of a Court of First Instance, said officer shall send a notice by registered mail to the Secretary of Justice, the Attorney-General, the Director of Lands, the Chief of the General Land Registration Office, the Clerk of Court of the Supreme Court, the judge of the province, the provincial fiscal, and all lawyers who may be interested, stating the date on which such fire or public calamity occurred and whether the loss or destruction was total or partial, and giving a brief list of the proceedings not affected in case the loss or destruction was partial.

The petitioner also points to the case of *Sta. Ana v. Menla*, [10] where the Court, interpreting the said provision, declared through Justice Labrador:

Where the loss of the records of a judicial proceedings sought to be reconstituted occurred in 1945 and the application for reconstitution was made on June 24, 1947, said application is not belated because Act No. 3110 provides that records of judicial proceedings in the office of the Court of First Instance may be reconstituted as soon as practicable, after the occurrence of any fire or other public calamity resulting in the loss of all part of the records of judicial proceedings. The loss occurred during the liberation of this country in 1945 and the application for reconstitution was made on June 24, 1947. It is apparent that the petition for reconstitution herein is not belated.

Our reading of Section 1 of Act 3110 does not yield the impression suggested by the petitioner that it has no time limit within which to ask for reconstitution and may do so only "as soon as practicable." No such leeway is given as the section is addressed not to the person seeking reconstitution. It is addressed to the clerk of court. Section 1 does not allow a period to the petitioner but in fact imposes a duty on the said clerk of court to send the necessary notices to the officers named therein. Nowhere in this section is the petition for reconstitution allowed to be filed at any time as long as it is done as soon as practicable.

As for the excerpted portion of the decision cited by the petitioner, we find that the counsel for the petitioner has been less than candid with the Court. The portion should have included what the ponente continued to say, thus:

Besides, in a resolution of this Court dated October 14, 1946, the period for the reconstitution of judicial records was extended to June 30, 1947 (42 O.G. No. 10, p. 2446). In any case, such reconstitution was also extended by the provisions of Republic Act No. 441 to June 7, 1951.

The above meaningful statement was deliberately suppressed by Atty. Apolinario L. Batoon on the evident if mistaken belief that he could deceive the Court with his misrepresentation. His motive is obvious: *res ipsa loquitur*. He should realize that as a member of the bar and an officer of the court he should cooperate in the discovery of the truth and not its distortion. He is hereby censured for his cheap and dishonorable tactic and warned that the commission of this or similar offenses in the future will be dealt with more severely.

In the case at bar, no such extension has been made by the legislature. As correctly pointed out by the respondent judge, the period for filing the petition for reconstitution is fixed at six months from notice by Section 29 of Act 3110, which clearly states:

Sec. 29. In case the parties interested in a destroyed record fail to petition for the reconstitution thereof within the six months next following the date on which they were given notice in accordance with section two hereof, they shall be understood to have waived the reconstitution and may file their respective actions anew without being entitled to claim the benefits of section thirty-one hereof.

The last publication of the required notice was made in the Official Gazette in the issue of March 5, 1979, which was released on April 25, 1979. Following the case of *People v. Veridiano*,^[11] the effective date of notice would be the date of release, i.e., April 25, 1979, from which the six-month period should be counted. This ended on October 25, 1979. Both the original petition, which was filed on July 29, 1980, and the amended petition, which was filed on August 19, 1980, were therefore way beyond the statutory deadline.

The other important argument raised by the petitioner is that courts have the inherent power to order the reconstitution of lost or destroyed judicial records as recognized in Rule 135, Section 5(h), of the Rules of Court, where it is provided that:

Sec. 5. Inherent powers of courts. - Every court shall have the power:

xxx xxx xxx

(h) to authorize a copy of a lost or destroyed pleading or other paper to be filed and used instead of the original, and to restore, and supply deficiencies in its records and proceedings.

It is contended that, exercising that power, the Court declared in *Yatco v. Cruz*:^[12]

Furthermore, our ruling is justified by the precedent set by this Court in the case of *Allingag v. Del Valle-Cruz* (R-G.R. No. 47766, April 13, 1959) in which, upon a report of the commissioner which reads as follows:

Acting upon the petition filed by Zoilo Dayahan del Rosario, praying that the time to reconstitute judicial records be extended, the Court resolved that said petition is not necessary because courts have inherent power to reconstitute at any time the records of their finished cases under Rule 124, Section 5(h).

this Court adopted and approved a resolution couched in the following terms:

Considering the report of the reconstitution commissioner in R-G.R. No. 47766 (*Ciriaco Allingag v. Luca F. del Valle-Cruz*), THE COURT RESOLVED to approve said report and to declare duly reconstituted the decision whose copy is in this record.

While it is true that courts have the inherent power to reconstitute judicial records, it does not mean that they can exercise this power at will in disregard of the reasonable requirements of the law on the same matter. A becoming respect for the other departments of the government is one of the hallmarks of judicial conduct. It may be that in certain exceptional cases the circumstances may justify the extension of the statutory period in the interest of substantial justice. However, no such circumstances have been invoked or shown by the petitioner to support the non-application of the period in the case before us.

The petitioner also argues that a similar petition for reconstitution filed by it in Civil Case No. 10279 in Branch IV of the Court of First Instance of Davao, involving the same parties as in Civil Case No. 10278, was granted. The decision in that case was certainly not controlling on Judge Cañizares-Nye and much less on this court.

We find that the only strong argument of the petitioner is the claim that Civil Case No. 10278 has already been terminated, but that in fact had yet to be proved with the reconstitution of the records. The petitioner is in effect putting the cart before the horse. At that, even if it be assumed that the case has really been terminated, the petitioner has only itself to blame for having delayed the execution of the judgment until the records were burned on January 9, 1979. The writ of execution was supposedly issued on August 4, 1978,^[13] but it apparently

remained unserved until the fire destroyed everything, including the records of the case, all of five months later. The petitioner has proved the well-known adage that procrastination is the thief of time.

WHEREFORE, the petition is DISMISSED, with costs against the petitioner. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-aquino, and Medialdea, JJ., concur.

[1] Rollo, p.90.

[2] Ibid., p. 87.

[3] Id., p. 91.

[4] Id., p. ??.

[5] Id., pp. 11-13.

[6] Id., p. 44.

[7] Id., p. 9.

[8] Id., p. 10.

[9] Id., p. 105.

[10] 1 SCRA 1294.

[11] 113 SCRA 64.

[12] 6 SCRA 1078.

[13] Rollo, p. 34.

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