

FRANCISCO S. BANAAD, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND CONRADO C. FULE, RESPONDENTS.

G.R. No. 60342. August 30, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Petitioner Francisco S. Banaad is the defendant-appellant in a case before the Court of Appeals, docketed as CA-G.R. No. 68190-R, entitled: Conrado C. Fule vs. Francisco S. Banaad, for sum of money, which was appealed from the Court of First Instance of Laguna, Branch III, as Civil Case No. SP-1404.

On September 15, 1981, petitioner was required by the Court of Appeals to file his brief within forty-five (45) days from receipt of notice.

On October 30, 1981, the Court of Appeals issued a resolution granting petitioner's counsel an extension of ninety (90) days from the expiration of the reglementary period within which to file brief with the warning that no further extension will be entertained except on highly meritorious grounds. The last day of filing of petitioner's brief was January 30, 1982.

On January 28, 1982, an ex-parte urgent motion for special extension was filed by The Vera Printing Press, thru its manager, praying for an extension of fifteen (15) days from January 30, 1982 within which to file petitioner's printed brief.

On February 8, 1982, the appellate court issued a resolution denying the motion for extension on the ground that The Vera Printing Press is not a party nor a counsel of a party in the case.

On February 15, 1982, a brief for the petitioner was filed accompanied by a petition to admit the printed brief.

On February 19, 1982, an ex-parte motion was filed by private respondent's counsel praying that the appeal be dismissed on the ground that the brief was filed out of time or fifteen (15) days late.

On March 23, 1982, respondent Court of Appeals issued a resolution denying the petition to admit printed brief and dismissing the appeal, saying that:

"The only reason given by the appellant in his petition to admit printed brief is that his counsel was advised by his printer that the latter holds itself responsible for a special extension of 15 days from expiry date and that counsel did not doubt the sincerity and capability of the printer to comply with its undertaking.

"The appellant has not cited any rule or statute which allows a printer to file motions in a case pending with this Court. Instead he attached copies of resolutions - one from the First Division of the Supreme Court and four from the Tenth, Second, and Seventh Divisions of the Court of Appeals - to show that extensions were granted upon motions of Vera Printing Press in the past, thereby implying that the same illegal procedure should be followed in the indefinite future.

"We are aware of the liberal attitude of the various Divisions of this Court, following the example of the

Supreme Court, in accepting pleadings and briefs even if out of time but always there has to be a sound reason. We do not know the strong reasons that warranted the issuance of the resolutions appended by the appellant but certainly the resolutions were promulgated in spite of and not because of the representations of the printer. In this case, the appellant has no argument except one based on ignorance of the rules and inexplicable negligence of counsel and some short arguments bordering on the presumptuous.

"It would have been much easier for all concerned and certainly indicative of respect for this Court, if the counsel filed his own motion for extension of time attaching thereto an affidavit or even a mere certification of the printer.

"We are also intrigued by the representations of influence allegedly made by this particular printer. The implications of a privileged position of this printer are not at all flattering to the members of this Court. Anarchy would also result if every printer and every mimeograph operator in the whole country can blithely say that he holds himself responsible for getting extensions even where the last resolution plainly says 'no more extension' and for filing motions or pleadings where he is neither party nor counsel.

"The appellant has given no considerations of substantial justice that would warrant our ignoring or setting aside our own deadlines and the provisions of the Rules of Court. We have carefully gone over the Record on Appeal and the appellant's brief and find no similar considerations of substantial justice. We are constrained to deny the petition to admit printed brief."

Petitioner, thru counsel, filed a motion for reconsideration dated March 30, 1982. It was denied for lack of merit in a resolution dated April 19, 1982.

In the petition at bar for Certiorari, Mandamus with Preliminary Injunction and Temporary Restraining Order, Francisco S. Banaad prays that the resolutions issued by the appellate court, dated February 8, 1982, March 23, 1982 and April 19, 1982, be declared null and void; that the Court of Appeals be ordered to admit the printed brief filed by him in CA-G.R. No. 68190-R, entitled: *Conrado C. Fule vs. Francisco S. Banaad*; and, that the appeal interposed by him in said civil case be reinstated.

Petitioner claims that the Court of Appeals, in a resolution, dated October 10, 1981, granted a period of 90 days "from the expiration of the reglementary period" within which his printed brief should be filed. The extended period would fall on January 31, 1982, which was a Sunday. Hence, the 90 days extended period fell on Monday, February 1, 1982. On January 28, he made inquiry with the printer on the status of the job given the latter and his counsel was informed of the fear that the deadline could not be met possibly because of the unavoidable circumstance brought about by brownouts in the electric service, besides the volume of their work. Whereupon, the printer, on January 28, 1982, filed a petition for another extension seeking fifteen (15) days to finish and file the printed brief. The fifteen (15) days sought by The Vera Printing Press would end on February 16, 1982. However, a day earlier, on February 15, 1982, the printed brief was filed with the Court of Appeals, as well as copies thereof furnished opposing counsel.

We find the petition to be meritorious.

In a Resolution, dated February 8, 1982, the Court of Appeals denied the motion for extension filed by The Vera Printing Press on the ground that it is not a party nor counsel of a party in the case; that petitioner's counsel should have filed the motion for extension of time attaching thereto an affidavit or even a mere certification of the printer.

On the matter of motions for extension filed by The Vera Printing Press, the First Division of this Court, on two occasions allowed to grant ex-parte motions of The Vera Printing Press for an extension to file brief. Thus:

1. "Gentlemen:

"Quoted hereunder, for your information, is a resolution of the First Division of this Court dated Dec. 17, 1980.

"G.R. No. 55394 (Leticia P. Quilatan vs. Government Service Insurance System. - The ex-parte urgent motion of the Vera Printing Press, thru its manager Arsenia C. Vera for a second extension of fifteen (15) days from the expiration of the reglementary period within which to submit printed petition for review on certiorari, is GRANTED."

2. "Gentlemen:

"Quoted hereunder, for your information, is a resolution of the First Division of this Court dated Dec. 2, 1981.

"G.R. No. 55343 (A & A Continental Commodities Philippines, Inc. vs. Securities and Exchange Commission, et al.). - The ex-parte motion of the Vera Printing Press for an extension of ten (10) days within which to file petitioner's brief, is GRANTED, and the aforesaid brief of petitioner, is NOTED."

There is no reason now why herein petitioner should be denied admission of his brief which resulted in the dismissal of his appeal in the absence of showing what-soever of any intent of delay on his part or of injury or prejudice to the private respondent. The brief was filed within the requested extended period. The exercise of sound discretion favors the granting of such extension of time in consonance with the settled principle that judicial discretion must be exercised "wisely and prudently, never capriciously, with a view to substantial justice." (Cucio vs. Court of Appeals, 57 SCRA 68 and cases cited. See Gregorio vs. Court of Appeals, 72 SCRA 120 [July 28, 1976], per Martin, J.)

"A liberal application of the rules becomes imperative and conversely an overstrict or rigid enforcement of the reglementary period for the filing of briefs, extensions of which for justifiable reasons are after all addressed to the sound discretion of the court, is to be shunned and avoided lest a grave miscarriage of justice be committed." (Obut vs. Court of Appeals, 70 SCRA 546)

ACCORDINGLY, the resolution of respondent Court of Appeals dismissing petitioner's appeal and denying admission of his printed brief is set aside and petitioner's appeal is hereby ordered reinstated. The case is remanded to respondent Court of Appeals for further proceedings and determination of petitioner's appeal on the merits.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Vasquez, JJ., concur.

Makasiar, J., on official leave.

Gutierrez, Jr., J., no part.

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