

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.
HON. ABELARDO M. DAYRIT, METALLOR TRADING CORPORATION,
LORENZO M. SARMIENTO, JR., AND MARCELINO TY, RESPONDENTS.**

G.R. No. 63372. June 28, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is about the order issued by the respondent judge dated November 24, 1982, which the petitioner seeks to annul.

In a decision dated July 6, 1982, in Civil Case No. 81-458, Rizal Commercial Banking Corporation vs. Metallor Trading Corporation, et al., the public respondent rendered the following judgment:

"PREMISES CONSIDERED, the Court hereby renders judgment in favor of the plaintiff, ordering the defendants to pay the plaintiff, jointly and severally, the amount of P300,000.00, plus 14% interest from the execution of the promissory note and service charges and penalty fees at 6% until fully paid; plus 5% of the entire amount due, for and as attorney's fees and the costs of these proceedings.

"The counterclaim is hereby dismissed." (Rollo, p. 18-b.)

In a motion dated October 21, 1982, RCBC moved for the execution of the judgment "which has become final and executory." (Rollo, p. 19.)

In a motion dated October 27, 1982, the defendants asked that their appeal be admitted and that the motion for a writ of execution be denied. In support of the motion, the defendants averred:

"1. This case was handled all throughout by Atty. Elmer D. Nitura, then a partner at the law firm of undersigned counsel.

"2. It turned out later that when the decision in this case was received, Atty. Nitura had some serious personal and family problems which affected his professional work and caused the period to appeal in this case to lapse without the appeal having been filed. In fact, precisely due to those problems, Atty. Nitura has resigned from the law office of undersigned counsel.

"3. The inexcusable negligence of undersigned counsel in faithfully relying on Atty. Nitura to fulfill his professional responsibility is a ground for the admission of this appeal. The liberality in the construction of the Rules of Court, as an aid to justice rather than a tool of technicality, warrants this result.

'In this jurisdiction, the Supreme Court has consistently held that the rules of procedure in inferior courts regarding appeals need not be strictly and rightly complied with because the sense of justice and equity should prevail as against the technicality of the law. This is specially true where the appellant acted in good faith and had no intention to unduly delay the termination of the case.' (Castro vs. De los Reyes, 109 Phil. 64, 78 [1960]).

"4. The appeal therefore should be admitted and the motion for the writ of execution filed by plaintiff, which is

dated October 21, 1982, be denied." (Rollo, pp. 20-21.)

Despite a written opposition to the defendants' motion, the respondent judge issued the questioned order which reads as follows:

"Submitted for resolutions are the motions for the issuance of a writ of execution and to admit appeal, together with the respective opposition thereto.

"This is an action for a sum of money. The records show that after the issues have been joined, the case was set for pre-trial. However, the parties, having failed to settle their dispute, were directed by the Court to proceed to trial on the merits. In the course of the trial and after presenting one witness, the defendants failed to appear on the subsequent hearing, hence, the case was submitted for decision. Conformably, on July 6, 1982, a decision was rendered by the Court in favor of the plaintiff, copy of which was received on August 13, 1982 by the defendants, thru counsel Atty. Elmer D. Nitura.

"On October 22, 1982, the plaintiff filed a motion for execution and on October 27, 1982, the defendants filed their motion to admit appeal and opposition to the motion for writ of execution. On November 4, 1982, the plaintiff filed an opposition to the motion to admit appeal as well as a reply to the opposition to the motion for writ of execution.

"In order that justice may be fully subserved, it appearing that defendants were not able to present their evidence completely and considering the extent of negligence of their former counsel, as shown in the motion to admit appeal, and considering further Sec. 2, Rule 1 of the Rules of Court, this Court therefore is not inclined to grant the motion for execution.

"Conformably, said motion for execution should be, as it is hereby, DENIED and consequently, the motion to admit appeal is hereby given due course and considering that the record on appeal is already forming part of the record, the same is hereby admitted and approved.

"Let therefore the notice of appeal, appeal bond and the record on appeal, together with the evidence, both oral and documentary, be forwarded to the Honorable Court of Appeals." (Rollo, pp. 31-32.)

A motion to reconsider the order was denied, hence the instant petition to annul it on the ground that the respondent judge had no jurisdiction to issue it.

The petition is highly impressed with merit.

Counsel for the defendants received a copy of the decision on August 13, 1982. He had thirty days from notice within which to file with the trial court a notice of appeal, an appeal bond and a record on appeal (Rule 41, Sec. 3, Rules of Court). Hence when the defendants filed their motion dated October 27, 1982, praying that their appeal be admitted and that the motion for a writ of execution be denied, the judgment had already become final. Assuming that the allegations in the motion are meritorious, the remedy of the defendants would have been relief from a judgment under Rule 38 of the Rules of Court. But even Rule 38 could not be invoked by them because more than sixty days had elapsed from notice of the judgment to the date when the motion was filed. (See Sec. 3, Rule 38.)

In *Alvero vs. De la Rosa*, 76 Phil. 428 (1946), this Court held:

"Failure to perfect the appeal, within the time prescribed by the rules of court, will cause the judgment to become final, and the certification of the record on appeal thereafter, cannot restore the jurisdiction which has been lost. (*Roman Catholic Bishop of Tuguegarao vs. Director of Lands*, 34 Phil. 623; *Estate of Cordoba and Zarate vs. Alabado*, 34 Phil. 920; and *Bermuda vs. Director of Lands*, 36 Phil. 774)

"The period within which the record on appeal and appeal bond should be perfected and filed may, however,

be extended by order of the court, upon application made, prior to the expiration of the original period. (Layda vs. Legaspi, 39 Phil. 83.)

"Rules of courts, promulgated by authority of law, have the force and effect of law; and rules of court prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business. (Shioji vs. Harvey, 43 Phil. 333.)

"Strict compliance with the rules of court has been held mandatory and imperative, so that failure to pay the docket fee in the Supreme Court, within the period Fixed for that purpose, will cause the dismissal of the appeal. (Salaveria vs. Albindo, 39 Phil. 922.) In the same manner, on failure of the appellant in a civil case to serve his brief, within the time prescribed by said rules, on motion of the appellee and notice to the appellant, or on its own motion, the court may dismiss the appeal. (Shioji vs. Harvey, 43 Phil. 333)" (At pp. 433-34.)

There are other points against the position of the respondents.

If Atty. Elmer D. Nitura had serious personal and family problems he could easily have asked his partners to attend to the appeal which did not necessitate a knowledge of the merits of the case. The appeal was lost thru the unjustified neglect of counsel and the clients must suffer the consequences.

Moreover, it appears that the defendants presented only one witness and thereafter failed to appear in subsequent hearings. They thus abandoned their own case. What then will they raise in their appeal?

WHEREFORE, the petition is hereby granted; the order of the respondent judge dated November 24, 1982, is hereby annulled and set aside; and he is directed to issue a writ for the execution of the judgment. Costs against the private respondents.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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