

LEANDRO D. VALISNO, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND ANTONIO N. DE DIOS, RESPONDENTS.

G.R. No. 65464. August 30, 1984

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari to review a resolution of the Intermediate Appellate Court dismissing the appeal of petitioner Leandro D. Valisno on the ground that the brief was filed fourteen days beyond the extended reglementary period.

On October 6, 1980, private respondent, Antonio N. De Dios, filed with the Court of First Instance of Rizal a complaint for A Sum of Money with Replevin against petitioner docketed as Civil Case No. Q-30974. On October 8, 1980, private respondent acting for and in behalf of Transit Motor Supply filed with the Court of First Instance of Rizal another complaint for Sum of Money with Replevin against petitioner and one John Doe docketed as Civil Case No. Q-31014.

On September 24, 1981, the lower court rendered a single decision in both cases adverse to petitioner. Petitioner appealed to the Intermediate Appellate Court in separate notices of appeal and paying separate appeal bonds and filing separate records on appeal for the two cases.

On March 24, 1983, petitioner received from the Intermediate Appellate Court a notice to file brief in AC-CV No. 00148-R (RTC-Q-30974). Due to volume of work, counsel for petitioner filed a Motion for Extension of Time with the Intermediate Appellate Court seeking for an extension of ninety (90) days from May 8, 1983 within which to file a brief but was only granted a forty-five (45) days extension by the respondent Court contrary to the usual practice of granting one (1) ninety (90) day extension and which resolution was received by counsel for petitioner in the afternoon of the last day of the extension granted.

On the day the resolution was received, counsel for petitioner immediately filed another motion for extension of fifteen (15) days from June 22, 1983 within which to file the brief which by resolution of July 19, 1983 granted said motion.

Upon discovery that the notice to file brief referred only to one case, petitioner filed with the respondent Court a Motion to File Consolidated Brief on June 27, 1983. The respondent Court did not act immediately on the Motion so the petitioner decided to file his Brief with the respondent Court on July 21, 1983.[1]

On August 17, 1983, petitioner received a copy of the Resolution of the respondent Court dated August 11, 1983 dismissing the appeal on the ground that the brief was filed 14 days beyond the extended reglementary period. On September 1, 1983, petitioner filed with the respondent Court a Motion for Reconsideration of its Resolution dated August 11, 1983, and on October 14, 1983, petitioner received a copy of a minute resolution of the respondent Court denying the Motion for Reconsideration for lack of merit.[2]

Hence, the present recourse.

As correctly argued by the petitioner, practitioners have always relied on the established policy of automatically granting one (1) unextendable period of ninety (90) days extension in the filing of brief. The herein petitioner has adjusted his time to this practice in the grant of extensions. To suddenly depart from this established policy without prior notice to petitioners will definitely disturb their timetable in the preparation of the pleadings.

In the case of *Edward L. Ferreira vs. The Honorable Intermediate Appellate Court, Amado T. Gurango and Esther L. Gurango*,^[3] We held that:

"Nor can petitioner be faulted for having originally requested an extension of 90 days. He merely sought to avail himself - on good and valid grounds - of the provisions of the Appellate Court's Internal Operating Procedures approved in the En Banc Resolution No. 163, dated April 30, 1979, Section D (1.b) of which reads:

'D. Who Acts on Motion. - For the purpose of determining who will act on a motion, motions are classified into three categories, to wit: (1) those that may be acted upon by the Division Clerk alone; (2) those which may be acted upon by a single Justice; and (3) those which require the action by a Division.

'1. By the Division Clerk. - The motions that may be acted upon by the Division Clerk by himself alone include the following:

x x x x x x x x

'(b) motions for extension of time to file briefs which shall not be for more than ninety days for the appellant's and appellee's briefs and thirty days for the reply brief; x x x.' "

When the appeal was dismissed for the late filing of the brief, the brief was already filed in court and the respondent Court should have adopted a liberal attitude by admitting the brief instead of dismissing the appeal taking into consideration that the brief showed the meritorious defense of the petitioner.

Worthy of note are the following pronouncements of this Court on the subject:

"The granting of extension of time for filing briefs is a matter of judicial discretion; however, that discretion should be exercised soundly and judiciously with an understanding of human limitations and pressing circumstances which warrant a relaxation, nay, even a suspension of the rules. The exercise of judicial discretion should always be predicated on the consideration that more than mere convenience of the courts or of the parties in the case, the ends of justice and fairness would be served thereby."^[4]

"We previously emphasized in *Gregorio vs. Court of Appeals* (72 SCRA 121) that x x x 'The Court is commanded by the higher interest of justice dictated by a sense of fairness with which procedural process is identified. Nothing would be lost and the right to a hearing on appeal would be accorded full respect if under the circumstances the motion were granted. More so, when it is considered that the failure of the appellant to file his brief within the allotted time does not ipso facto result in the dismissal of the appeal. The Appellate Court has still that inherent power and discretion to amend whatever order it had made before in order to render substantial justice."^[5]

The principal purpose of the petitioner in requesting the respondent Court to allow him to file a Consolidated Brief as prayed in his motion was to expedite the resolution of the two (2) cases. There was never any intention to delay the same for if that were the intention, petitioner would have just filed a brief in one case and then wait for the notice from the respondent Court to notify him to file brief in the other case. The filing of a consolidated brief would have resolved all issues in one single brief and thus two cases could have been decided in one sitting.

WHEREFORE, the questioned resolution of the respondent Court dated August 17, 1983, is hereby SET ASIDE and respondent Court is ordered to ADMIT appellant's brief and to proceed with the consideration of the appeal. No costs.

SO ORDERED.

Aquino, (Acting Chairman), Abad Santos, Escolin, and Cuevas, JJ., concur.

Makasias and Guerrero, JJ., on leave.

[1] Rollo, p. 12.

[2] Id., p. 12.

[3] G.R. No. 65747, February 20, 1984.

[4] Ferreira vs. IAC, et al., supra.

[5] Reyes vs. Court of Appeals, 80 SCRA 114.

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