

EDWARD L. FEREIRA, PETITIONER, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT, AMADO T. GURANGO AND ESTHER L. GURANGO, RESPONDENTS.

G.R. No. 65747. February 20, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

We set aside the resolution of the Intermediate Appellate Court, dated November 16, 1983, dismissing petitioner's appeal in AC-G.R. CV 00491, entitled "Ferreira vs. Gurango, et al.", for failure of petitioner, plaintiff-appellant therein, to file his brief within the period fixed by said court.

On June 13, 1983, petitioner received notice requiring him to file appellant's brief within 45 days from notice.

On July 26, petitioner's counsel filed a motion for 90 days extension of time within which to file appellant's brief. Respondent court however granted only a 45 day extension, instead of the 90 days prayed for, the same to be counted from July 27, 1983, with a warning that the period was non-extendible.

On September 9, or within the period granted, petitioner's counsel filed a motion, styled "Urgent Special and/or Emergency Motion" for extension of fifteen [15] days counted from September 10, 1983 to file appellant's brief, alleging therein that his work on the brief "was frequently interrupted not only because of daily court hearings x x x but also because of week-long trips he had to make to the provinces [Calbayog, Tacloban, Butuan, Davao and Cagayan de Oro x x x]"; and that "he had already finished his draft of appellant's brief, but needs little more time to have it corrected, finalized and have the same printed and/or mimeographed."

On September 26, petitioner's counsel filed the appellant's brief.

On September 28, counsel was served with copy of respondent court's resolution denying the 15 day extension prayed for. On September 29, he filed a motion for reconsideration and for admission of the appellant's brief he had filed on September 26.

On November 16, the respondent court, by a vote of 3 to 2, resolved to deny the said motion and to dismiss the appeal.[1]

Hence, the present recourse.

Considering that no substantial rights of the appellees, now private respondents, could be affected by the granting of the urgent motion for extension, and it appearing that the appellant's brief had already been filed when petitioner received the resolution denying the motion for 15 days extension, the ends of justice would be better served if the said brief is admitted and the appeal given due course.

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 Motions. - 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 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

"[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"

The circumstances obtaining in this case justify the application of the aforequoted section. The 15-day extension prayed for did not exceed the allowable 90 day period provided for in the said Internal Rules. And the fact that appellant's brief was actually filed before the lapse of the 15-day extension sought was indicative of lack of intention to cause delay. As We said in *Pongasi vs. Court of Appeals*[2] : "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 the mere convenience of the courts or of the parties in the case, the ends of justice and fairness would be served thereby."

WHEREFORE, the questioned resolution of the respondent court dated November 16, 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.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

Aquino, J., see concurrence below.

[1] Justices Caguioa, Losa and Bartolome voted for dismissal of the appeal; Justices Gaviola and Zosa, dissented.

[2] 71 SCRA 614.

CONCURRING

AQUINO, J.:

concur. The policy or practice of the Court of Appeals as embodied in its Banc resolution of March 21, 1971, 67 O. G. 2578 is to grant only one extension and that is ninety-day extension with "the warning that upon failure to file brief within this period the appeal will either be dismissed for failure to file appellant's brief" or given due course without appellee's brief for failure to file it.

That practice was intended "to save time" money and effort and to attain greater efficiency in the operation of the Court of Appeals.

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