

**THE MUNICIPAL GOVERNMENT OF CORON, PALAWAN, DULY
REPRESENTED BY MAYOR RICARDO F. LIM, PETITIONER, VS. JOSE
CARINO, VICTORIANO DACULLA, BEN GUMASING, LUCENA CRUZ,
HILARIA YALON, ...**

G.R. No. 65894. September 24, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The second paragraph of Section 39, Batas Pambansa Bilang 129 provides that:

"No record on appeal shall be required to take an appeal. In lieu thereof, the entire original record shall be transmitted with all the pages prominently numbered consecutively, together with an index of the contents thereof."

Likewise, Sections 18 and 19(b) of the Interim Rules of Court promulgated on January 11, 1983 provide that:

"Sec. 18. The filing of a record on appeal shall be dispensed with, except in the cases referred to in sub-paragraph (b) of paragraph (1) hereof.

"No appeal bond shall be required for an appeal."

xxx xxx xxx

"Sec. 19(b). In appeals in special proceedings in accordance with Rule 109 of the Rules of Court and other cases wherein multiple appeals are allowed, the period of appeal shall be thirty (30) days, a record of appeal being required."

Whether or not the above provisions are applicable to the case at bar is the lone issue in this petition which assails the resolution of the respondent appellate court dated July 29, 1983.

The dispositive part of the questioned resolution reads:

"WHEREFORE, notwithstanding the foregoing, in the broader interest of justice and considering that under the present Interim Rules a record on appeal is no longer necessary for taking an appeal, the Court resolved to order the recall of the records of this case from the Regional Trial Court of Palawan Branch I, Puerto Princesa for further proceedings before this Court." (Rollo, pp. 12-13)

Following are the pertinent facts of the case as culled from the records.

Sometime in 1976, an action was filed by the petitioner before the Court of First Instance of Palawan and Puerto Princesa City, Branch IV where it was docketed as Civil Case No. 35. The action sought authority from the court to demolish the structures built by the private respondents alongside the rock causeway of the petitioner's wharf. The complaint alleged, among others:

"that the defendants' houses were constructed more than 3 years before the filing of instant action (par. 2,

Complaint); that on August 19, 1974 the herein defendants undertook to remove their structures on the space where they were then at that time and are presently standing, when it will be needed by the government (par. 3, Ibid); that the space or area is needed by the plaintiff for the docking or berthing of pumpboats (motorized bancas) and fishing boats and for the loading and unloading of cargoes along the pier on both sides thereof (par. 4, Ibid); and also to ease the congested traffic along it (par. 10, Ibid); that his Excellency, President Ferdinand E. Marcos had directed the Mayor of plaintiff-municipality to demolish and remove all constructions along the pier after giving the defendants one month notice (par. 5, Ibid) and aside from this directive of the President, the mayor of the plaintiff-municipality is also authorized to remove the defendants' illegal constructions under LOI 19 (par. 7, Ibid); that despite said mayor's desire to comply immediately with the said presidential directive, the defendants had already been given 3 extensions thereby delaying their ejectment therefrom (par. 6, Ibid); that most of the defendants are affluent squatters (par. 9, Ibid); and that for the indigent defendants, a surveyed area has already been made ready for their relocation (par. 12, Ibid)." (Decision CFI, Palawan and Puerto Princesa City, Branch IV, p. 2; Rollo, p. 15).

On the other hand, the private respondents, in their answer, counter-alleged, among others:

"that their structures when made were covered by building permits with the approval of the Bureau of Public Highways (par. 2, Answer); that the area where their structures were located is a foreshore area (par. 4, Ibid); that a meeting was convened and presided by Governor Socrates at Coron, the same having been attended by the local representatives of the Philippine Constabulary, the Philippine Coast Guard, the Department (now Ministry) of Social Services and Development, the Sangguniang Bayan and the defendants and it was agreed in this meeting that the demolition of the defendants' houses will be suspended pending action of the Office of the President (pars. 15, 16 and 17, Ibid); and that the Chairman of the National Housing Authority had sent a letter-advice to the mayor of the plaintiff-municipality to suspend the demolition of the houses of the defendants (par. 18, Ibid)." (Rollo, pp. 15-16)

After a series of postponements, the trial court, on January 16, 1979, reset the hearing of the case for the last time for three consecutive dates, March 20, 21, and 22, 1979 with further warning to the private respondents that no more postponements shall be allowed.

On March 20, 1979, despite proper notice, the private respondents and their counsel failed to appear at the scheduled hearing. Consequently, the petitioner moved that private respondents' non-appearance be considered as a waiver on their part of their right to cross-examine the petitioner's witnesses and their right to present evidence. The lower court issued an order granting the petitioner's motion and considered the case submitted for decision.

In view of the above order, the private respondents went to the appellate court on certiorari. On June 9, 1979, the appellate court dismissed for lack of merit CA G.R. SP-09389-R captioned "Jose Carino, et al., petitioners v. Mayor Ricardo Lim and Hon. Benjamin Vega, Judge CFI, Palawan, Branch IV."

On May 15, 1979, after the main case had been submitted for decision as aforestated, the private respondents filed a notice to take deposition which the lower court disregarded for being "irrelevant and for other obvious reasons."

On October 10, 1980, the lower court rendered its decision, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiff-municipality of Coron, Palawan and against all the herein defendants as follows:

1. Dismissing the defendants' counterclaim for lack of merit;
2. Confirming the power of plaintiff-municipality and authority of its incumbent mayor to demolish the defendants' structures along the rock causeway or pier of Caron; and
3. Ordering the said defendants to remove their structures in the area in question within thirty (30) days from

receipt of this decision and for their failure to do so, authorizing the herein plaintiff represented by its incumbent mayor to demolish the said structures at the expense of the said defendants.

Costs against all the defendants." (Rollo, pp. 28-29)

On appeal, the private respondents on February 2, 1982 were required "to submit the forty (40) printed copies of their record on appeal together with the proof of service of fifteen (15) copies thereof upon the appellee" within fifteen (15) days from receipt of the notice of the appellate court's Acting Clerk of Court regarding their appeal. (Rollo, p. 32)

Upon motion by the private respondents, the appellate court granted an extension of sixty (60) days from April 7, 1982 within which the required printed copies of the record on appeal may be submitted. However, despite the extended period given, the private respondents were not able to comply with the appellate court's requirement.

In a resolution dated July 19, 1982, the appellate court required the private respondents to show cause why their appeal should not be dismissed for failure to file the printed copies of their record on appeal.

On August 31, 1982, the appellate court resolved to dismiss the private respondents' appeal docketed as CA G.R. No. 69052-R for failure to file the required record on appeal.

On December 6, 1982, the Acting Clerk of Court of the appellate court, in an Entry of Judgment, certified that the above resolution dismissing the private respondents' appeal had become final and executory on September 27, 1982.

Accordingly, on February 1, 1983, a writ of execution was issued to enforce the October 10, 1980 decision of the Court of First Instance of Palawan and Puerto Princesa City, Branch IV.

Before the Provincial Sheriff could proceed with the execution of the judgment, the private respondents, in a motion dated April 12, 1983 asked the appellate court that the records of the case be recalled from the court of origin. In their supplemental motion, the private respondents argued that since under the present law, printed records on appeal are no longer required, their right to be heard on appeal must be upheld instead of the rule on technicalities.

In its opposition to the private respondents' motion, the petitioner pointed out that although the newly promulgated procedural rules invoked by the private respondents may be given retroactive effect, their applicability only covers pending actions and does not extend to those which had already become final and executory.

As a consequence of the private respondents' motion to recall the records of the case, a temporary restraining order dated April 29, 1983 was issued by the appellate court directing the Provincial Sheriff of Palawan to desist from executing the October 10, 1980 decision.

On July 29, 1983, the appellate court issued the disputed resolution. The subsequent denial of the petitioner's motion for reconsideration prompted the filing of this petition.

The petitioner maintains that the Interim Rules of Court promulgated on January 11, 1983 to implement the provisions of Batas Pambansa Bilang 29 cannot apply to the case at bar for the simple reason that to revive or recall appealed cases which had been dismissed or which had become final and executory would cause a great injustice to those in whose favor these cases had been decided. It is further contended that to allow its application would put no end to those appealed cases which are otherwise considered as closed ones.

We find merit in the petitioner's contentions.

We have resolved the issue as to the extent of the retroactive application of section 18 of the Interim Rules of Court in *Alday v. Camilon* (120 SCRA 521). We reiterated the rule that:

"Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retrospective in that sense and to that extent." (*People v. Sumilang*, 77 Phil. 764 [1946]) Underscoring supplied."

The appellate court should have followed this time honoured rule instead of issuing its July 29, 1983 resolution seeking to revive a case already long final as evidenced by the entry of judgment made by its Acting Clerk of Court on December 6, 1982.

The records of the instant case show that despite the 60-day extension period given to the private respondents within which they could file their printed record of appeal as then required, they still failed to do so. It was only after a writ of execution had been issued on February 1, 1983 that the private respondents responded to the appellate court's resolution dated July 19, 1982 requiring them to show cause why their appeal should not be dismissed for failure to file the printed record on appeal. They claimed that the court's resolution must have been a result of oversight because they actually filed a record on appeal.

As a general rule, our policy towards an invocation of the right to appeal has been one of liberality. (*Castro v. Court of Appeals*, 123 SCRA 782 citing *De Las Alas v. Court of Appeals*, 83 SCRA 200). This is so because an appeal is an essential part of our judicial system and every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause freed from the constraints of technicalities. (See *Siguenza v. Court of Appeals*, 137 SCRA 570). However, it is an equally established doctrine that the right to appeal is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. (See *United CMC Textile Workers Union v. Clave*, 137 SCRA 346).

For a proper exercise of their right to appeal, the private respondents should have complied with Section 5, Rule 46 of the Rules of Court, as amended by our resolution en banc dated September 17, 1974, which partly provides that:

"Sec. 5. Duty of Appellant upon Receipt of Notice. - It shall be the duty of the appellant, within fifteen (15) days from the date of the notice referred to in the preceding section, to pay to the Clerk of the Court of Appeals the fee for the docketing of the appeal, and within sixty (60) days from such notice to submit to the court twelve (12) printed copies of the record on appeal, or twelve (12) typewritten or mimeographed (on one side of good quality paper, eleven inches in length by eight and a half inches in width - commonly known as letter size - written double spaced) copies of said record on appeal, together with proof of service of two (2) printed, typewritten or mimeographed copies thereof upon the appellee."

Thus, upon failure of the appellant to comply with the above rule, the Court of Appeals may dismiss his appeal. Said provision implicitly grants the Court of Appeals the power to do so. (See *Pfleider v. Victoriano*, 98 SCRA 491). The private respondents in this case did not submit printed copies of their record on appeal. When the appellate court issued its July 19, 1982 resolution, it was to afford the private respondents a chance to explain why they failed to comply with the applicable rule. After having failed to submit the required printed copies of their record on appeal, they cannot now rectify a clear non-compliance with the law by invoking the court's liberality insofar as the application of remedial laws is concerned. The private respondents even faulted the appellate court as having issued the July 19, 1982 resolution through oversight. They alleged that they had filed the required record on appeal when in fact what they referred to was the record on appeal from the lower court to the appellate court and not the printed record on appeal.

Since the private respondents failed to submit the required printed record on appeal, the lower court's judgment in

favor of the petitioner became final and executory as an eventual result of the dismissal of the appeal. Once a judgment becomes final, the prevailing party, the petitioner in the instant case, is entitled as a matter of right to the execution of the judgment in his favor. For the court, it becomes its ministerial duty to order the execution of said judgment. (Santos, Jr. v. Court of Appeals, et al., G.R. No. 56614, promulgated July 28, 1987 citing Agricultural and Industrial Marketing, Inc. v. Court of Appeals, 118 SCRA 49; Balintawak Construction Supply Corporation v. Valenzuela, 124 SCRA 31; Rizal Commercial Banking Corporation v. Dayrit, 123 SCRA 203; Gonzales v. Sayo, 122 SCRA 607).

WHEREFORE, the petition is hereby GRANTED. The resolution of respondent appellate court dated July 29, 1983 is SET ASIDE. Let the records of this case be remanded to the court of origin for enforcement of the writ of execution of the judgment. This decision is immediately executory.

SO ORDERED.

Fernan, (Chairman), Feliciano, and Cortes, JJ., concur.
Bidin, J., no part.

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