

LORENZO BOLAÑOS AND PABLO RABAT, PETITIONERS, VS. THE INTERMEDIATE APPELLATE COURT AND N.S. MARKETING, INC., RESPONDENTS.

G.R. No. 68458. August 07, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This petition seeks a review of the resolution of the Intermediate Appellate Court granting private respondent's [N. S. Marketing, Inc.] motion for reconsideration.

The factual background has been summarized by the Intermediate Appellate Court in its decision as follows:

"On 17 July 1979, private respondent N.S. Marketing, Inc. filed a complaint in Branch I of the then Court of First Instance of Davao City against petitioners [Lorenzo Bolaños and Pablo Rabat] for damages and/or recovery of sum of money and attorney's fees, docketed therein as Civil Case No. 12224 (Annex "A", petition). In due time, petitioners filed their respective answers (Annexes "B" and "C", Petition).

"On 18 December 1979, the Honorable respondent Court, then presided by Honorable Francisco Z. Consolacion, rendered a summary judgment against petitioner Bolaños holding him liable for whatever damages private respondent may be entitled to, and set the case for hearing on 28 December 1979, for the reception of evidence on the amount of damages.

"On 7 February 1980, private respondent filed an urgent motion to attach petitioner Bolaños' real property on the ground that said petitioner was fictitiously alienating and/or concealing his properties to thwart any judgment in favor of private respondent (Annex "D", Petition). On 11 February 1980, the lower court issued a temporary restraining order 'ordering the Register of Deeds of Davao to hold in abeyance the registration and transfer of TCT No. T-52470' which private respondent claimed petitioner had fictitiously sold to his brothers, and held resolution on the motion until after the submittal of petitioner Bolaños' opposition and private respondent's reply (Annex "E", Petition).

"Hearings on the merits of the case were set on 22 August 1980, 12 November 1980, 16 January 1980, 12 February 1981, 18 May 1981, 3 August 1981, 7 October 1981, and 11 and 12 January 1982. With the exception, however, of the hearing on 12 November 1980 where the direct testimony of Mr. Ng Suy, witness for private respondent, was terminated, all the other hearings were postponed for one reason or another.

"Notice of the cancellation of the hearing for 11 January 1982 and the re-setting thereof to 12 April 1982, at 8:30 o'clock in the morning (Annex "H", Petition) was personally served on private respondent's counsel of record, Atty. Antonio A. Fernandez, at his address of record at 308 China Bank Bldg., Recto Avenue, Davao City, but was returned unserved with the following notation (Annex "H-1", Petition) by the process server:

'NOTE:

'Atty. Antonio Fernandez, was not served a copy of this order for the reason that his law office has transferred at F & M Lopez Building, corner Herrera & Legaspi Streets, Legaspi Village, Makati, Metro Manila, hence copy of the same is hereby Returned Unserved.

'Davao City, this 22nd day of January 1982.'

"Copy of the notice (Annex "H", supra) was again sent to counsel for private respondent on 26 January 1982, by registered mail (Registry Receipt No. 0388) at his aforesaid address at Makati, Metro Manila, but said counsel did not appear on the scheduled date of the hearing on 12 April 1982. Hence, the lower court issued an Order (Annex "I", Petition) requiring counsel for petitioners to inform the court of the correct address of both private respondent and its counsel, and requiring that, thereafter, notice of the hearing for 9 July 1982 at 8:30 a. m. be served on both private respondent and its counsel, with the warning that 'no further postponement will be entertained.' Copy of this Order was sent to Atty. Fernandez' new address at F & M Lopez Building, Corner Herrera & Legaspi Streets, Legaspi Village, Makati, Metro Manila, by registered mail (Registry Receipt No. 01644) on 14 April 1982. However, on the scheduled hearing on 9 July 1982, neither a representative of private respondent nor its counsel was present. Petitioners, therefore, moved for the dismissal of the case, and this motion was granted by the then Honorable presiding judge Francisco Z. Consolacion in an Order dated 14 July 1982 (Annex "J", Petition). Copy of this Order was sent to Atty. Fernandez on 16 July 1982, again at the Makati address by registered mail (Registry Receipt No. 0190) and delivered thereat on 21 July 1982, but was returned to sender for the reason that the addressee had moved out and left no forwarding address (Annex "B", Petitioner Bolaños' Reply to Comment).

"On 24 August 1982, petitioner Bolaños filed an urgent ex-parte motion to lift the temporary restraining order of 11 February 1980, for the reason that the same was automatically dissolved by the dismissal of the case (Annex "K", Petition). This was opposed on 13 September 1982, by private respondent through a new counsel, Atty. Victorino L. Enriquez, Jr. (Annex "L", Petition). Private respondent also filed a motion for reconsideration of the Order of 14 July 1982 dismissing the case (Annex "N", Petition), which petitioner Bolaños opposed (Annex "O", Petition). In its Order of 29 September 1982 (Annex "Q", Petition), the lower court, through the Honorable presiding judge Milagros O. Nartates, granted private respondent's motion for reconsideration, but denied petitioner Bolaños' motion to lift restraining order. Petitioner Bolaños' motion for reconsideration of the aforesaid Order (Annex "B", Petition) which petitioner Rabat adopted as his own, having been denied by the Honorable respondent court (Annex "X", Petition) petitioners have come to this court for the relief earlier stated herein." (Rollo, pp. 36-38.)

Bolaños and Rabat filed a petition for certiorari with the Intermediate Appellate Court. They asked that the orders of the trial court be annulled and that it be ordered to dismiss the suit against them. On November 24, 1983, the Appellate Court rendered judgment for the petitioners, thus:

"WHEREFORE, judgment is hereby rendered declaring the Orders of the Honorable respondent Court dated 28 [29] September 1982 and 17 November 1982, as null and void." (Rollo, p. 41.)

While the case was pending before the Intermediate Appellate Court, on May 4, 1983, R.D. Bagatsing and Associates, entered appearance as collaborating counsel for the private respondent with a request that orders, notices for private respondent and other relevant processes be furnished to them at their office address (IAC rollo, p. 193). Thus, a copy of the decision of the Intermediate Appellate Court dated November 24, 1983, was served on them the next day. (Id., p. 196-B.) On January 23, 1984, R.D. Bagatsing and Associates filed a motion for reconsideration of the decision. It was opposed by petitioners for late filing. On May 2, 1984, the Intermediate Appellate Court reconsidered its decision; dismissed the petition of Bolaños and Rabat; and made the following pronouncement:

"Under the circumstances, We deem it better to set aside technicalities and allow the case to proceed on the merits, especially since private respondent is about to close its evidence.

"WHEREFORE, the decision of this Court dated 24 November 1983, is hereby reconsidered and the petition is

dismissed."

(Rollo, p. 68.)

A motion for reconsideration filed by Bolaños and Rabat was denied which accounts for the instant petition.

The petition is impressed with merit.

The issue in this petition is whether or not the Intermediate Appellate Court gravely abused its discretion by acting on a motion for reconsideration of its decision which was filed out of time. It is to be noted that the decision was served on R.D. Bagatsing and Associates on November 24, 1983, but the motion for reconsideration was filed only on January 23, 1984, or an interregnum of almost two months.

We agree with the instant petitioners that the private respondent's motion for reconsideration of the decision of the appellate court having been filed late, the appellate court committed a grave abuse of discretion and exceeded its jurisdiction in granting the same. Under the rules a judgment of the Intermediate Appellate Court becomes final upon the expiration of fifteen (15) days after service of notice. To be sure, the party adversely affected can, before the expiration of 15 days, either move for reconsideration of the judgment or appeal to this Court. The private respondent did neither for which reason the judgment against it became final and executory; the Intermediate Appellate Court lost jurisdiction over the case and the subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment nor restore jurisdiction which had already been lost. (*Pfleider vs. Victoriano*, L-49809, June 30, 1980, 98 SCRA 491.)

That the private respondent had counsel other than R.D. Bagatsing and Associates can be assumed. That the private respondent's other counsel had been served copy of the decision can also be as-sumed. But the assumptions cannot negate the effectivity of the service on the decision on R.D. Bagatsing and Associates. This was recognized by the respondent court itself when it said:

"If a party appears by two or more attorneys of record, notice to one attorney is notice to the other as well as to the client (*Agpalo*, *Legal Ethics*, 1983, ed., p. 287, citing, Section 2, Rule 13, Rules of Court; *Ortega vs. Pacho*, 98 Phil. 618; *Don Luis Gutierrez & Sons, Inc. vs. Court of Appeals*, G. R. No. 39124, 15 Nov. 1974; *Damasco vs. Arrieta*, G.R. No. 18579, 31 Jan. 1963; *Sy It vs. Tiangco*, G. R. No. 18376, 27 Feb. 1962). The reason for the rule is that, when more than one attorney appears for a party, notice to one would suffice upon the assumption that he would notify or relay the notice to his colleagues in the case (*Ibid*, citing, *Ortega vs. Pacho*, *supra*). If, on the other hand, all the lawyers are given notices, the earliest date of receipt thereof by one of them is the starting point from which the reglementary period to comply with what is required is to be counted (*Ibid*, p. 288, citing, *Damasco vs. Arrieta*, *supra*; *Baquiran vs. Court of Appeals*, G. R. No. 14551, 31 July 1961)." (Rollo, pp. 62-63.)

WHEREFORE, the petition is granted. The resolution of the Intermediate Appellate Court dated May 2, 1984 is hereby set aside and its decision of November 24, 1983, is reinstated. Costs against the private respondent.

SO ORDERED.

Makasiar, C.J., Concepcion, Jr., Plana, Escolin, Relova, De La Fuente, and Alampay, JJ., concur.

Aquino, J., I dissent. The resolution of May 2, 1985, sustaining the orders of Judge Nartatez, is correct. She should be directed to give priority to the case and to finish the trial as soon as possible. This is one of those cases which cast a bad reflection on the efficiency and competence of the courts and the bar.

Melencio-Herrera, J., I vote to uphold the resolution of the Intermediate Appellate Court, dated May 2, 1984, in the interest of substantial justice.

Teehankee, Gutierrez, Jr., and Cuevas, JJ., no part.

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