

**ALFREDO MONTELIBANO AND ALEJANDRO
MONTELIBANO, PETITIONERS, VS. BACOLOD-MURCIA MILLING CO.,
INC., AND HON. INTERMEDIATE APPELLATE COURT, RESPONDENTS.**

G.R. No. 69800, May 07, 1985

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the timeliness of a motion for execution pending appeal. The trial court's decision, which awarded certain amounts to the Montelibanos as increase in their shares of the sugar and molasses for the crop-years 1956-57 to 1964-65, was served on the Montelibanos and Bacolod-Murcia Milling Co., Inc. on December 19 and 21, 1983, respectively.

Bacolod-Murcia Milling filed its notice of appeal on January 4, 1984 or on the fourteenth day. On January 6, 1984, or 18 days after service of the decision, the Montelibanos filed a motion for execution pending appeal.

The trial court granted the motion. The Appellate Court reversed the trial court and enjoined the execution pending appeal. The Montelibanos appealed to this Court. The appeal was filed late.

The first extension of 30 days was granted with the warning that no further extension would be granted. For that reason, the second and third extensions were denied in this Court's resolution of March 13, 1985. The Montelibanos filed a motion to admit their petition for review.

We hold that the Appellate Court acted correctly in holding that the motion for execution pending appeal was filed late. It should have been filed before the perfection of the appeal or within the fifteen-day period.

Section 23 of the Interim Rules for the Implementation of the Judiciary Revamp Law, Batas Pambansa Blg. 129, provides that "in cases where appeal is taken, the perfection of the appeal shall be upon the expiration of the last day to appeal by any party."

That means that the appeal of Bacolod-Murcia Milling was perfected, not on January 4, 1984, when it filed its notice of appeal but on January 5, 1984, the expiration of its last day to appeal which is later than the period to appeal of the Montelibanos. When the Montelibanos filed their motion, the appeal of Bacolod-Murcia was already perfected. The motion could not be entertained anymore.

In their instant petition for review, the Montelibanos miss the point of the Appellate Court in denying the execution pending appeal. It should be underscored that the motion was denied because the trial court had no more jurisdiction to grant execution pending appeal since the appeal of Bacolod-Murcia Milling was already perfected when the Montelibanos filed their motion. The absence of good reasons to justify execution was not the cause of the denial.

Consequently, the instant petition is dismissed for having been filed out of time and for lack of merit.

SO ORDERED.

Makasiar, Escolin, and Cuevas, JJ., concur.

Abad Santos, J., concurs in the result. :

Concepcion, Jr., J., took no part.

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