

**TAN HANG, DOING BUSINESS UNDER THE NAME AND STYLE OF
PARANAQUE LUMBER, PETITIONER, VS. HON. ANSBERTO PAREDES,
AS JUDGE RTC OF MAKATI, M.M. BRANCH CXL AND L.O.
YARI--SANTOS, RESP...**

G.R. No. 73627. January 29, 1988

Ponente: PARAS, J.

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PARAS, J.:

Antecedent facts reveal that an action for a sum of money was originally filed with the Metropolitan Trial Court of Paranaque, Branch LXXVII, docketed as Civil Case No. 6053. After trial on the merits, decision[1] was rendered dismissing the complaint of the plaintiff therein (now, petitioner) and awarding damages and attorney's fees to the defendant (herein, private respondent).

Not satisfied with the judgment of the lower court, plaintiff appealed to the Regional Trial Court which rendered its decision[2] affirming in toto the assailed judgment. Instead of filing any motion for reconsideration, plaintiff filed his Notice of Appeal with the Regional Trial Court on October 10, 1985.

Ruling that a petition for review is the proper remedy, the Regional Trial Court in its Order on October 17, 1985, dismissed the Notice on Appeal and directed the remanding of the entire records of the case to the trial court for proper disposition.

Plaintiff then filed a Petition for Review with the Intermediate Appellate Court but the same was dismissed by the resolution[3] (Annex "A") of said court promulgated on November 18, 1985. A motion for reconsideration of the same was likewise denied in its resolution promulgated January 24, 1986 (Annex "B"). Hence this petition, seeking the reversal of the aforementioned rulings of the appellate court.

The Petition does not deserve Our consideration. The findings of fact of the trial court, the Regional Trial Court and the Intermediate Appellate Court as embodied in their decisions sustained the position of private respondent that he has fully paid the amount of his total obligations to the petitioner. A cursory reading of these rulings shows that they are fully substantiated by the evidence presented. We have always been consistent in Our ruling that generally the findings of the judge who tried the case and heard the witnesses are not to be disturbed on appeal, unless there are substantial facts and circumstances which have been overlooked and which, if properly considered, might affect the result of the case.

Furthermore, the decision of the trial court is already final and executory. As stated earlier, petitioner filed a Notice of Appeal on October 10, 1985 in lieu of a petition for review as mandated in Section 22 of Batas Pambansa Blg. 129. In affirming the decision of the regional trial court and dismissing the appeal of the petitioner, the respondent appellate court laid down the following grounds:

"It is fundamental that the period to perfect an appeal (sic) a decision and final order is fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from.

"The facts obtaining in this case show that petitioner filed this petition out of time. For he received a copy of the assailed decision on September 23, 1985. Considering that he did not file any motion for reconsideration, he has, therefore, up to October 8, 1985 within which to file a petition for review. A mistake, however, was committed by counsel for petitioner when he filed a notice of appeal instead of a petition for review. This did not toll the running of the period to file a petition for review which inevitably lapsed or expired. It is settled in this jurisdiction that the client is bound by the acts even mistakes of his counsel in the realm of procedural technique (Isaac vs. Mendoza, 89 Phil. 299).

"Moreover, perfection of an appeal or filing of petition for review within the reglementary period is mandatory and jurisdictional, and failure to perfect an appeal renders the decision final and executory and it becomes the ministerial duty of the Court to order execution of judgment (Agricultural & Industrial Market-ing, Inc. vs. Court of Appeals, 118 SCRA 49)." (Rollo, p. 15)

Noteworthy is the fact that during the pendency of the petition at bar, in the absence of any restraining order, private respondent, alleging that the assailed decision has long been final and executory, applied for execution before the lower court and obtained a Writ of Execution. Petitioner, thru counsel, in his Comment (p. 33, Rollo) dated January 10, 1987 admitted payment by him of the judgment award in the amount of P7,000.00 to private respondent during the pendency of the petition. This satisfaction of the writ of execution operates as a bar to the present petition.

WHEREFORE, the Petition is hereby DENIED.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

[1] The names of the Ponentes of said decisions are not indicated in the records.

[2] The names of the Ponentes of said decisions are not indicated in the records.

[3] Penned by Justice Alfredo M. Lazaro, concurred in by Justices Jose A. R. Melo and Fidel P. Purisima.

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