

**FEDERICO MISSION, APELINA NICOR AND DEMOCRITO FORDAN,
PETITIONERS, VS. THE HONORABLE INTERMEDIATE APPELLATE
COURT (SECOND SPECIAL CASES DIVISION), HONORABLE BENJAMIN
M. ESTAÑOL,...**

G.R. No. 73669. October 28, 1986

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioners seek, through this petition for review by way of certiorari, to set aside the Decision of the respondent Intermediate Appellate Court, now the Court of Appeals, in AC-G.R. SP No. 07857, dated September 17, 1985.

The petitioners were defendants in Civil Case No. 481 of the Regional Trial Court, Branch XVII, at Kidapawan, Cotabato, entitled "Ricardo Josue, plaintiff, versus Federico Mission, et al., defendants". On 15 September 1985, petitioners received a copy of the decision of the respondent Trial Judge, a decision adverse to them. Thereupon, on 24 September 1985, the petitioners filed with the Regional Trial Court an "Ex-parte Motion for Extension of Time to File Motion for Reconsideration", seeking an extension of fifteen (15) days from 30 September 1985 within which to file a motion for reconsideration of the mentioned adverse decision.

The respondent Trial Judge, by an order dated 10 October 1985, granted the petitioners ten days from that date within which to file their motion for reconsideration of the decision in Civil Case No. 481. This Order was received by counsel for petitioners on 14 October 1985, the same date on which petitioners actually filed their motion for reconsideration with the Trial Court.

Private respondent Ricardo Josue opposed the petitioners' motion for reconsideration by filing his own motion for reconsideration of the Order dated 10 October 1985. In his motion for reconsideration, Ricardo Josue urged that the ex-parte motion for extension of time to file motion for reconsideration filed by the defendants (petitioners herein) did not suspend the running of the reglementary period for taking appeals which consequently had expired on 30 September 1985. The result was, in Josue's submission, that the decision sought to be reconsidered had already become final and executory on 14 October 1985 when petitioners' motion for reconsideration was actually filed with the Trial Court.

Respondent Trial Judge, on 13 November 1985, issued an Order reversing and setting aside as null and void his earlier order of 10 October 1985, on the basis of the decision of this Court in *Habaluyas Enterprises Inc. et al vs. Judge Maximo M. Japson, et al.*, 138 SCRA 46, promulgated on 5 August 1985.

Petitioners then filed, on 19 November 1985, a petition for certiorari and prohibition with the respondent Appellate Court, with prayer for a writ of preliminary injunction, seeking to set aside the 13 November 1985 order of the respondent Trial Judge. On 17 December 1985, respondent Court of Appeals dismissed the petition for certiorari and prohibition, holding principally that

"x x as respondent Judge by issuing the order in question rectified his earlier erroneous order, he may not be

accused of having acted with grave abuse of discretion. His order nullifying the extension which he had erroneously granted conforms with both the law and jurisprudence on the matter (Habaluyas Enterprises Inc. vs. Judge Maximo Japson, G.R. No. 70895, August 5, 1985; Roque vs. Gunigundo, 39 SCRA 178, 182; Gibbs vs. Court of First Instance of Manila, 80 Phil. 160, 164)."

The rule set out in the original Habaluyas case that "(T)he 15-day period for appealing or for filing a motion for reconsideration cannot be extended" (138 SCRA at 48) was restated by this Court acting en banc in the same Habaluyas case on 30 May 1986 in the following manner:

"1.) Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested (Underscoring in the original)."

The Court resolved to mitigate, in the interest of justice, the impact of strict enforcement of the original Habaluyas rule by giving this rule prospective application only beginning one month from the date of the clarifying resolution.

In Leoncio bayaca et al vs. Intermediate Appellate Court et al., G.R. No. 74824, promulgated 15 September 1986, this Court recognized that it had granted a one-month grace period in respect of application of the Habaluyas rule. The grace period is counted from 30 May 1986, the date when the Court's subsequent en banc resolution was issued in the Habaluyas case. In Bayaca, the petitioners had filed a motion for extension on 27 February 1986, that is, prior to the expiration of the grace period on 30 June 1986, and that motion was accordingly allowed.

In the present case, petitioners' ex-parte motion for extension of time was filed on 24 September 1985, and therefore after the original decision in the Habaluyas case had been promulgated on August 5, 1985, but well within the grace period granted in the en banc resolution of 30 May 1986 in Habaluyas.

WHEREFORE, the Order dated 13 November 1985 of the respondent Trial Judge in Civil Case No. 481 and the Decision of the respondent Court of Appeals in AC-G.R. SP No. 07857 promulgated on 17 December 1985 are SET ASIDE and the respondent Trial Judge is hereby directed to consider and resolve the petitioners' motion for reconsideration dated 11 October 1985 in Civil Case No. 481.

SO ORDERED.

Yap (Chairman), Narvasa, Melencio-Herrera, and Cruz, JJ., concur.

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