

BENJAMIN S. APRIETO AND ALFREDO S. APRIETO, PETITIONERS, VS. THE INTERMEDIATE APPELLATE COURT (SECOND CIVIL CASES DIVISION): HONORABLE FELIX B. BARBERS, PRESIDING JUDGE OF BRANC...

G.R. No. 73828. November 14, 1988

Ponente: PARAS, J.

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PARAS, J.:

Plaintiff Candido Lim Kim Po, private respondent herein, filed before the Regional Trial Court of Manila a complaint for collection of a sum of money against the defendants therein, petitioners Enterprises."herein, arising from the sale of two (2) marine crankshafts to said defendants, doing business under the name and style of "BSA

Defendants denied the material allegations of the complaint.

After issues were joined on May 20, 1982, the trial court rendered judgment[1] for the private respondent, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing consideration, judgment is hereby rendered:

"1. Ordering the defendants Benjamin S. Aprieto and Alfredo S. Aprieto, doing business under the name and style "BSA Enterprises" to pay jointly and severally plaintiff the amount of P180,000.00 plus interest thereon at the rate of twelve percent (12%) per annum computed from the time of the filing of the complaint until full payment is made;

"2. Ordering defendants to pay plaintiff the amount of P25,000.00 as attorney's fees; and

"3. To pay the costs of this litigation." (pp. 77-78, Rollo)

Not satisfied with the said decision, herein petitioners appealed the same to the Court of Appeals, which rendered a decision[2] on September 17, 1985, in favor of private respondent affirming the decision of the Court a quo except as to the amount of attorney's fees which was reduced to P15,000.00.

Petitioners received a copy of said decision on September 23, 1985. On October 8, 1985, or the last day of the 15th day reglementary period within which to file a motion for reconsideration or appeal, counsel for petitioners, instead of filing a motion for reconsideration or notice of appeal, filed a motion for an extension of thirty (30) days from date to file his Motion for Reconsideration, alleging that he is in a period of mourning and is emotionally weak and upset due to the untimely death of his youngest daughter. The respondent appellate court in its resolution dated October 18, 1985, denied the Motion for Extension of Time to file a Motion for Reconsideration invoking the prevailing doctrine in the case of *Habaluyas Enterprises, Inc. Et Al. v. Mariano Japzon Et. Al.* (138 SCRA 46). A copy of said resolution was received by petitioners on October 30, 1985.

On November 15, 1985, respondent Appellate Court declared its decision final and executory and on January 15, 1986 entry of judgment was made. Thereafter, the records of the case were remanded to the court of origin for

execution of the judgment. On February 11, 1986, private respondent thru counsel, filed his Motion for Execution which motion was requested by counsel to be calendared for hearing on February 21, 1986 at 9:00 o'clock in the morning as appearing on the face of the motion itself. A copy of said motion was furnished to counsel for petitioners and received by him as per Registry Return Receipt No. 05237 dated February 11, 1986 (p. 65, Rollo). Notwithstanding said notice, nobody appeared on behalf of petitioners on said date. Consequently, on March 1, 1986 the writ of execution was issued on the basis of which respondent deputy Sheriff of Manila issued a notice of levy and sale on execution of the personal properties of one of the petitioners herein.

Petitioners filed the present petition for review with Us imputing grave abuse of discretion amounting to excess of jurisdiction of the respondent appellate court when it denied the motion for extension of time to file a Motion for Reconsideration. On May 26, 1986, We issued a resolution which reads as follows:

"The Court Resolved to DENY the petition for review on certiorari for having been filed out of time and for late payment of the legal fees on March 7, 1986, due date of both being November 14, 1985. At any rate, even if the petition were filed and the legal fees paid on time, the petition would nevertheless be denied for lack of merit." (p. 18, Rollo)

Petitioners filed their Motion for Reconsideration to the abovementioned resolution which We reconsidered and resolved in our Resolution dated August 11, 1986 to grant said motion without giving due course to the petition for review and to require the private respondents to comment on the merits of the petition within ten (10) days from notice.

In Our subsequent Resolution dated January 5, 1987, We said-

"G.R. No. 73828 (Benjamin S. Aprieto, et al. vs. Candido Lim Kim Po and Court of Appeals, et al.)- Considering the allegations contained, the issues raised and the arguments adduced in the petition for review on certiorari of the decision of the Court of Appeals, as well as the opposition to (comment on) the said petition by counsel for private respondent, the Court Resolved: (a) to give DUE COURSE to the petition; and (b) to require the parties to file their respective MEMORANDA within twenty (20) days from notice. The petitioners are hereby required to DEPOSIT the amount of P 80.40 for costs and clerk's commission within five (5) days from notice, otherwise the petition will be dismissed." (p. 67, Rollo)

The private respondent subsequently filed his Memorandum. Petitioners on the other hand, notwithstanding Our Resolution granting to them their ex-parte second motion of the first extension within which to file their memorandum, failed to avail themselves of said opportunity and to date, petitioners have not yet filed their memorandum without any explanation, or any motion requesting for another extension of time to file one. Hence, private respondent now comes to Us moving ex-parte to submit the case for resolution on the basis of the pleadings and/or evidence on file and forming part of the records.

Up to the present time, petitioners or their counsel have not filed their memorandum nor filed any manifestation or pleading, notwithstanding Our Resolution dated August 19, 1987, to wit:

"It appearing that Atty. Emilio P. Angeles, Jr., counsel for petitioners, failed to file memorandum within the period which expired on May 1, 1987, the Court Resolved to REQUIRE Atty. Angeles, Jr. to SHOW CAUSE why he should not be disciplinarily dealt with or held in contempt for such failure, and to COMPLY with the resolution requiring the filing of the said memorandum, both within ten (10) days from notice hereof." (p. 106, Rollo)

Thus, from said manifest lack of interest and gross negligence in pursuing their case, petitioners have gravely abused this Court's tolerance and generosity and have completely disregarded the judicial process amounting to the delay in the administration of justice to the prejudice of private respondent's interest and to the denial of his

right to a speedy administration of justice. The counsel of the petitioners is hereby WARNED that a similar display of neglect in the future will warrant severe disciplinary action.

WHEREFORE, premises considered, the above petition is hereby DISMISSED, with double costs against petitioners.

SO ORDERED.

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

[1] Penned by Judge Felix V. Barbers.

[2] Penned by Justice Serafin S. Camilon, concurred in by Justices Jose C. Campos, Jr. and Desiderio P. Jurado.

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