

PABLO MAYOR, PETITIONER, VS. HONORABLE INTERMEDIATE APPELLATE COURT, HON. BALTAZAR R. DIZON, AS PRESIDING JUDGE OF BRANCH CXIII OF THE REGIONAL TRIAL COURT, NATIONAL CAPITAL JUD...

G.R. No. 74410. May 04, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of the resolutions issued by the then Intermediate Appellate Court, now Court of Appeals in AC-G. R. No. SP-07282, on January 30, 1986, and April 24, 1986 which respectively declared the petition for review of Pablo Mayor, abandoned and dismissed and denied a motion for reconsideration on the ground that the petition was filed one day late.

On April 18, 1983, Carmen M. Angeles and Edmundo M. Angeles filed an ejectment case against petitioner Pablo Mayor before the Metropolitan Trial Court of Pasay City. The case was docketed as Civil Case No. 116-83. Within the reglementary period, Pablo Mayor filed his answer denying the material averments of the complaint.

After trial on the merits, the trial court rendered a decision in favor of the defendant and against the plaintiffs, mother and son, dismissing the complaint, without pronouncement as to costs and attorney's fees.

The plaintiffs filed a motion for reconsideration of the decision.

Pending the resolution of the motion, the plaintiffs died. They were then properly substituted by their heirs. The court subsequently denied the motion for reconsideration.

Upon appeal by the plaintiffs to the Regional Trial Court at Pasay City, the metropolitan trial court's decision was reversed and set aside. The dispositive portion of the decision in Civil Case No. 2915-P reads:

"WHEREFORE, the challenged decision is hereby REVERSED. The correct judgment is hereby rendered ordering the defendant and those claiming any right through him to vacate that portion of lot covered by TCT No. 5593 of the Register of Deeds of Pasay City, located at Celeridad Street, Pasay City, and whereon defendant's house is erected, and further to pay plaintiffs the following amounts. Pursuant to Article 1687, Civil Code of the Philippines the lot must be vacated within three months from receipt of this decision.

"1) P150.00 a month from April, 1983 and every month thereafter until the lot in question is completely vacated as the reasonable rental of the same; and

"2) To pay plaintiffs the sum of P5,000.00 by way of attorney's fees." (p. 9, Rollo)

A copy of this decision, dated August 19, 1985 was received by the defendant, the petitioner herein, on August 29, 1985.

On September 13, 1985, the petitioner filed a motion for reconsideration of the lower court's decision.

On September 23, 1985, the lower court issued a resolution denying the motion for reconsideration. A copy of this resolution was received by the petitioner on September 30, 1985.

On October 1, 1985, the petitioner filed with the Intermediate Appellate Court an urgent motion for extension of time to file a petition for review. The petitioner prayed that he be granted an extension of fifteen (15) days from October 1, 1985, or until October 16, 1985 within which to file his petition for review.

Acting on the petitioner's motion, the appellate court on October 8, 1985, issued a resolution stating:

"the 'Motion for Extension of Time to File Petition for Review' is hereby GRANTED, conditioned on the timeliness of the filing of the motion."

xxx xxx xxx

(p. 200, Rollo)

On January 30, 1986, the appellate court issued the first questioned resolution to the effect that:

"It appearing from the verification made at the Special Cases Section that no petition has been filed within the period of extension granted to petitioner, the Court RESOLVED to DECLARE this case ABANDONED and DISMISSED." (p. 296, Rollo)

The petitioner filed a motion for reconsideration of the above-mentioned resolution alleging that he filed his petition for review on October 16, 1985 at 2:44 p.m., within the period of extension granted in the October 8, 1985 resolution; that copies of the petition were sent to respondent Judge Baltazar R. Dizon and to private respondent's counsel, Atty. Exequiel C. Masangkay, also on October 16, 1985 as evidenced by Registry Receipts No. 06086 and 06087 of the Makati Central Office, copies of which are attached to the petition; and that as evidenced by corresponding Registry Return Cards, copies of which are attached to the petition, Judge Dizon and Atty. Masangkay received, copies of the petition on October 18, 1985.

The petitioner's allegations were confirmed by the Division Clerk of Court of the Fourth Special Cases Division in his report to the Court, to wit:

"As undersigned and Alfonso Silva previously submitted separate explanations confirming the allegations of counsel for petitioner that the petition for review was filed on time but had not been reported to ponente due to inadvertence coupled with the verification that no petition was filed, the resolution dated January 30, 1986 may be set aside and case ordered reinstated, in the interest of justice." (p. 313, Rollo)

This recommendation, notwithstanding, the appellate court denied the motion for reconsideration and declared that the petition was filed one (1) day late. The court justified its ruling in the following manner:

"Granting that there was, after all, a petition filed as claimed by the petitioner on October 16, 1985, the question now to be resolved is whether or not the same was timely filed.

"In opposition to the claim of the petitioner that the petition for review was timely filed, private respondents argue -

"2. Considering that the timeliness of the filing of the petition for review is in issue, (sic) petitioner should have presented proof to show that said petition was filed on time but aside from bare claims he failed to do so;

"3. Assuming petitioner's claim to be true (a) that he received copy of the decision of respondent court on August 29, 1985, (b) that he had until September 13, 1985 within which to file a motion, for reconsideration, (c) that he filed his motion for reconsideration on September 13, 1985, (d) that he received the denial of said motion on September 30, 1985 and that he had until the next day, October 1, 1985 within which to appeal, the filing of the petition on October 6, 1985 was still out of time even if he filed a motion for extension. It should

be noted that when petitioner filed his motion, for reconsideration on September 13, that was the last day of the period to appeal or to file a reconsideration, and when he received the denial on September 30, that was also the last day for him to appeal. However, if what the petitioner filed on October 1 was the petition itself, it could have been considered on time but since he did not and instead filed a motion for a 15-day extension, the extension should be counted from September 30, not from October 1. In other words, the rule that an appellant who has received the denial of his motion for reconsideration on the last day of appeal has until the next day to perfect the same, presupposes that what he would file the next day is the appeal or petition itself. If not, and the period to appeal is extended, as in this case, the extension should be counted from the last day to appeal, this case on September 30, and not from the next day, October 1, in which case the last day the 15-day extension was October 15, so that the actual filing of the petition on October 16, 1985 was late by one (1) day. It should be remembered that in its Resolution dated October 8, 1985, this Honorable Court granted petitioner's motion for extension 'conditioned on the timeliness of the filing of the motion.'

"We agree with the private respondents that the petition was filed one (1) day late." (pp. 313-314, Rollo).

The petitioner assails the private respondent's computation which was adopted by the appellate court. He insists that he filed his petition for review within the 15-day extension granted to him in the appellate court's October 8, 1985 resolution.

Applying paragraph 2, section 3, Rule 41 of the Revised Rules of Court which allows the appellant a full one day period following that in which he received the order of denial of his motion for reconsideration within which to perfect his appeal, the petitioner states that in their instant case, the one day period referred to October 1, 1985 because the petitioner received the order of denial of his motion for reconsideration on September 30, 1985. The last day, therefore, for the petitioner to perfect his appeal was October 1, 1985 and not September 30, 1985 as sustained by the appellate court. He further submits, that the 15-day extension should be counted from October 1, 1985, it being the last day to file the petition for review under the original period. The petitioner concludes that the last day to file the petition for review under the extended period fell on October 16, 1985, the day when he filed his petition for review.

The petition is impressed with merit.

Before discussing the main issue in this case, we would like to state that paragraph 2, Section 3, Rule 41 of the Revised Rules of Court (section 39, BP. No. 129 and section 19(a) of the Interim Rules) cited by the petitioner is not the applicable rule. It is obvious, from the facts of the case that the mode of appeal to the Court of Appeals, was by petition for review under section 22 of BP No. 129 (section 22[b] of the Interim Rules) which provides:

"Sec. 22. Appellate jurisdiction. - Regional Trial Courts shall exercise appellate jurisdiction, over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions. Such cases shall be decided on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Courts. The decision of the Regional Trial Courts in such cases shall be appealable by petition for review to the Intermediate Appellate Court which may give it due course only when the petition shows prima facie that the lower court has committed an error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed."

In the recent case of *Lacsamana v. Second Special Cases Division of the Intermediate Appellate Court* (143 SCRA 643) we restated and clarified the rules on the period of appeal by way of a petition for review to the Court of Appeals as follows:

"3) APPEALS BY PETITION FOR REVIEW TO THE COURT OF APPEALS.

"The final judgment or order of a regional trial court in an appeal from the final judgment or order of a

metropolitan trial court, municipal trial court and municipal circuit trial court, may be appealed to the Court of Appeals through a petition for review in accordance with Section 22 of BP No. 129 and Section 22(b) of the Interim Rules, or to this Court through a petition for review on certiorari in accordance with Rule 45 of the Rules of Court and Section 25 of the Interim Rules. The reason for extending the period for the filing of a record on appeal is also applicable to the filing of a petition, for review with the Court of Appeals. The period for filling a petition for review is fifteen days. If a motion for reconsideration is filed with and denied by a regional trial court, the movant has only the remaining period within which to file a petition for review. Hence, it may be necessary to file a motion with the Court of Appeals for extension of time to file such petition for review." (at page 649).

In the instant case, the record shows that: (1) the petitioner received the lower court's decision on August 29, 1985; (2) the petitioner filed his motion for reconsideration on the 15th day which was September 13, 1985; (3) the resolution denying the motion for reconsideration was received by the petitioner on September 30, 1985; (4) on October 1, 1985, the petitioner filed a motion for extension for fifteen (15) days to file a petition for review with the appellate court; and (5) the appellate court granted the motion for extension conditioned on the timeliness of the motion.

Under the Lacsamana ruling, since the petitioner filed his motion for reconsideration on the last day to appeal, he had only one day to perfect his appeal. The question that arises is when does the extended period asked by the petitioner to file the petition for review commence to run?

A similar issue was raised in the case of *Lloren v. be Veyra* (4 SCRA 637), to wit:

"It is contended by petitioner Lloren that from March 18, 1958 to April 2, 1958 there is an intervening period of 15 days, and having filed his motion for reconsideration on April 2, the exact number of days that has actually elapsed was only 14 days, because he filed his motion for reconsideration on exactly the 15th day. This day was interrupted and so when he received copy of the order denying his motion for reconsideration he was entitled to at least 1 more day within which to appeal. Applying the rule of computation prescribed in Rule 28 that the first day should be excluded and the last included, it follows that when he filed his notice of appeal and appeal bond on April 17, 1958, the same were filed exactly within the reglementary period of 15 days.

"Counsel for respondent however, sustains the contrary view. He argues: 'By mathematical operation, we find that from March 18 (when petitioner received a copy of decision) to April 17, 1958 when he filed his notice of appeal and appeal bond) there were actually 30 days, March 18 being excluded and April, 17 being included in the counting. In the same manner, we find that from April 2, 1958 (when petitioner filed his motion for reconsideration) to April 16, 1958 (when he received a copy of the order denying his motion for reconsideration) there are actually 14 days, April 2 being excluded, and April 16 included in the counting. Deducting, therefore, 14 days from 30 days the result is 16 days. This means that petitioner (respondent below) filed his notice of appeal and appeal bond on the 16th day or one day late, tardiness which is sufficient to bar the appeal.' This method of computation is in accordance with the rule followed by this Court in the case of *Federal Films, Inc. v. Judge of the Court of First Instance of Manila*, 78 Phil., 472, which expressly modified the method of computation adopted in the case of *Taroma v. Cruz and Galinato*, 68 Phil., 281." (at p. 640).

We upheld the position of the petitioner in the abovesited case by stating that:

"After a mature deliberation, where the members of the Court delved once more into the methods of computation discussed in the cases mentioned by counsel for respondent, the Court resolved not to follow the ruling in either of them and to adhere strictly to the rule of computation embodied in Rule 28 of our rules. The idea that prevailed is that since petitioner Lloren filed his motion for reconsideration, on the 15th day of the period within which he may perfect his appeal, that day should be excluded so that when he received copy of the order denying his motion for reconsideration he had still 1 day within which to perfect his appeal, This period of one day should be computed again in accordance with the rule above cited by excluding the day of

receipt and including the next day which in this case is April 17, 1958. Hence, the Court concluded that the appeal interposed by petitioner Lloren was still within the reglementary period.” (at p. 641). (Emphasis supplied)

We reiterated this mode of computation in the case of *De las Alas v. Court of Appeals* (83 SCRA 200), when the Revised Rules of Court was already enforced.

Applying the Lloren rule to the instant case, we find the computation made by the Court of Appeals erroneous. The petitioner filed his motion for reconsideration with the trial court on September 13, 1985, which was the the fifteenth (15th) day after he received a copy of the Court's decision. The motion was denied. He received notice of the denial on September 30, 1985.

Under Section 3 of Rule, 41 of the Rules of Court, the last day to perfect the appeal was October 1, 1985. The right to file the petition for review would have expired on October 1, 1985, not September 30, 1985. When the petitioner asked for an extension of fifteen (15) days to file his petition for review, the fifteen-day period no longer includes October 1 because that day was already given to him by Rule 41. The fifteen-day period is on top of October 1. It started on October 2 and ended on October 16.

The error of the respondent court becomes more apparent if we assume that the petitioner asked only for a one-day extension. The last day to file the petition for review would have been October 2. If he asked for two days, it would have been October 3. But since he asked for and was given fifteen (15) days, the expiry date is October 16.

The motion for extension filed by the petitioner was made within the period to file the desired petition for review. The last day, therefore, of the 15-day extension granted by the appellate court to file a petition for review was October 16, 1985 when the petitioner actually filed his petition for review.

WHEREFORE, the instant petition is GRANTED. The questioned resolutions are hereby REVERSED and SET ASIDE. The Court of Appeals is ordered to REINSTATE the petition for review of the petitioner in AC-G. R. No. SP-07282.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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