

CATALINA, ENRIQUE, ROSARIO, FLORDELIZA, RIZALAIDA AND SOCORRO, ALL SURNAMED ROXAS AS HEIRS OF THE LATE SEGUNDO ROXAS, PETITIONERS, VS. COURT OF APPEALS AND ANDRES ROXAS, RESPOND...

G.R. No. 76549. December 10, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Petitioners seek the review of the Resolution of the Court of Appeals dated October 2, 1986 and November 5, 1986 in CA-G.R. CV No. 08119 declaring appellants' Brief filed by herein petitioners to have been filed out of time and denying their motion for reconsideration.

It appears that in Civil Case No. 3837-M, Branch 132 of the Regional Trial Court of Makati rendered judgment dismissing plaintiff Segundo Roxas' complaint for reconveyance of title against Andres Roxas and others.

On October 21, 1985, petitioner filed a notice of appeal. In the Resolution of October 25, 1985, the court a quo directed the ventilation of the proceedings in the Court of Appeals as the notice of appeal was filed within the reglementary period. On January 29, 1986, petitioners were notified by the respondent Court of Appeals to pay the docket fee and on March 7, 1986, petitioners were required to file appellants' brief within forty-five (45) days from receipt thereof, copy of which was received by petitioners on March 18, 1986.

On April 28, 1986, petitioners filed their first motion for extension of time for thirty (30) days counted from May 2, 1986 within which to file their brief. Said motion was granted per Resolution of May 7, 1986, counted from notice thereof copy of which was received by petitioners' counsel on May 14, 1986. On May 29, 1987, petitioners filed a second motion for extension of time for another period of thirty (30) days on the ground that petitioners' counsel is suffering from asthma and hypertension and that their brief has not yet been completely finished in draft form. Per Resolution of June 6, 1986, respondent court granted the motion counted from notice thereof copy of which was received by petitioners, counsel on June 23, 1986. Then, on July 21, 1986, two (2) days before the expiration of the 30-day period granted, petitioners filed their last motion for extension of time praying for fifteen (15) days counted from notice.

On August 25, 1986, before said motion was resolved, petitioners filed their brief. On October 2, 1986, respondent Court of Appeals denied petitioners' motion for last extension in the resolution which reads as follows:

"Before Us for resolution is a 'Motion For Last Extension to File Appellant's Brief, filed on July 21, 1986 praying for a 15-day extension from July 23, 1986 within which to file appellant's brief.

It appears, however, that while the same remained unresolved, appellant filed his brief only on August 25, 1986, or 18 days beyond the period of extension prayed for by appellant. No other motion for extension was filed thereafter.

WHEREFORE, the appellant's brief is hereby considered filed out of time and is ordered expunged from the record.

The appeal of plaintiff is ordered DISMISSED.

SO ORDERED."[1]

On October 23, 1986, petitioner filed a motion for reconsideration of the resolution of October 2, 1986, but it was denied per Resolution of November 5, 1986.

Hence this petition.

It is the position of the petitioners that respondent court erred in considering their appellants' brief to have been filed out of time whereas it was filed before their motion for last extension of time was resolved. Petitioners argue further that since their motion which prayed for fifteen days extension counted from notice is in line with the previous resolutions of the respondent court, then their last motion for extension of time should not have been denied as there was no intention on their part to delay or prejudice the appellees.

Petitioners' argument is predicated upon the theory that whenever respondent court grants their motion for extension of time it was always made to begin from receipt of notice of the resolution despite their prayer that it be granted counted from the date prayed for.

The argument is unmeritorious. Pursuant to Section 15, Rule 46 of the Revised Rules of Court, an "extension of time for the filing of briefs will not be allowed except for good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended". Allowance or denial of motions for extension of time to file briefs is addressed to the sound discretion of the court.[2] There is no question that the discretion vested in the courts whether to grant or not motions for extensions must be exercised wisely and prudently, never capriciously, with a view to substantial justice.[3]

In the case before Us, it is Our considered view and We so hold that the Resolutions assailed by herein petitioners are products of respondent court's sound exercise of its discretion, considering the peculiar circumstances of this case. Reference is hereby made that from the time of the rendition of the decision appealed from dated July 19, 1985, up to the time of filing of the appellants' brief on August 25, 1986, a period of 402 days lapsed or counted from March 18, 1986, the date of petitioners' receipt of notice requiring them to file their brief up to the time of filing 160 days lapsed. Examining the brief filed by herein petitioners it appears however that it consists of twenty-six (26) pages only with simple narration of facts and discussions of the issues.[4] Any practising lawyer knows that twenty (20) days is more than sufficient to complete the printing of brief of such length including its proof-reading.[5] It is known among every practising lawyer that the policy of the Court of Appeals is to limit the second extension of time to file briefs to twenty (20) days.⁸ Said policy was relaxed further by the respondent Court by giving sixty (60) days extension on the basis of the plea of petitioners' counsel that he was suffering from asthma even if said plea appears to be self-serving as it was not even accompanied by a doctor's certificate. Petitioners abused the laxity extended them by the respondent Court. They even prayed that the extension of fifteen (15) days be counted from notice. Lawyers should not presume that the courts would grant their motion for extension more so to expect that if ever granted it would always be counted from notice thereof.

Thus, the petition to review the assailed resolutions must fail. Let this serve as warning among members of the Philippine bar who take their own sweet time with their cases if not purposely delay its progress for no cogent reason. It does not credit to their standing in the profession. More so when they do not file the required brief or pleading until their motion is acted upon. Not only should they not presume that their motion for extension of time will be granted by the court much less should they expect that the extension that maybe granted shall be counted

from notice. They should file their briefs or pleadings within the extended period requested. Failing in this, they have only themselves to blame if their appeal or case is dismissed.

WHEREFORE, premises considered the petition is hereby DENIED for lack of merit.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Paras, JJ., concur.

[1] Page 22, Rollo.

[2] De Guzman vs. Cuevas, Sr., 114 SCRA 650.

[3] San Juan vs. Court of Appeals, 89 SCRA 191, 196.

[4] Pages 53-79, Rollo.

[5] Razalan vs. Concepcion, 31 SCRA 611, 613.

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