

CAESAR U. SOMOSO AND ANITA B. SOMOSO, PETITIONERS, VS. COURT OF APPEALS AND CONPINCO MARKETING CO., RESPONDENTS.

G.R. No. 78050. October 23, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals* in CA-G.R. No. L-09119 promulgated on March 2, 1987, affirming the order of the Regional Trial Court, Branch III, Nabunturan, Davao, the dispositive portion of which reads:

"WHEREFORE, the order of the respondent court dismissing the petition for relief from judgment is hereby AFFIRMED for lack of merit.

Appeal is DISMISSED with costs against appellant."

The facts of the case are as follows:

The spouses Caesar and Anita Somoso, petitioners herein, purchased from the Conpinco Marketing Company, private respondent herein, one unit National VHS with complete accessories and one unit Cinema Vision with complete accessories (PANASONIC Color Projecting System) as evidenced by Exhibits "1" and "2" which are documents of sale with reservation of title duly signed by the spouses (Record, p. 61-62). In connection with the purchase of the two (2) units the spouses made a deposit of P10,000.00 before the delivery of the units for which provisional receipt No. 39671 was issued by Conpinco Marketing Co., "Exhibit 3" (Record p. 63). The two units bought by the spouses, one National VHS with complete accessories worth P23,558.00 and one National Cinema Vision with complete standard accessories worth P124,449.00, were actually delivered to the spouses on August 13, 1979, the delivery acknowledged by Mrs. Anita B. Somoso as shown by Exhibits "4" and "5" (Rollo, p. 64-65). One day following the delivery of the two units the spouses made an additional down payment of P5,000.00 for the cinema vision, as shown by Exhibit "6" (Record, p. 66) and another additional down payment of P11,961.00 totalling P26,961.00 for the cinema vision on August 17, 1979, as evidenced by Exhibit "7" (Record, p. 67). On August 27, 1979 they made a down payment of P7,118 for the VHS, Exhibit "8" (Record, p. 68). No further payments were made by the spouses.

On October 24, 1979 Sony Video screen Model KV-500 bearing Serial No. 012619 with 110 watts transformer and a Sony Betamax 3L 800 bearing Serial No. 93687, complete with manual blank tape and remote control were delivered by private respondents to the house of petitioners for demonstration only as requested by petitioner herein, Caesar Somoso in a letter dated August 27, 1979, Exhibit "A" (Record, p. 129) which units were pulled out the following day, Exhibits "10" and "11" (Records, p. 70 and 71).

On November 27, 1979 petitioner herein, Caesar Somoso, wrote the Conpinco Marketing Company demanding that the Company pull out the National VHS delivered inasmuch as it was "not the unit requested for

demonstration" and that it return the P15,000.00 deposit for the unit. Petitioner threatened to consign the unit with the Court of First Instance of Tagum, Davao if not pulled out within ten days from respondent's receipt of the letter, Exhibit "13" (Record, p. 130). In response Conpinco Marketing Company sent petitioners a collection letter dated December 13, 1973 (Record, p. 74) and two statements of account, one for the Cinema Vision and another for the National VHS Exhibits "4" (Record, p. 69).

On February 7, 1980, the Somoso spouses, petitioners herein, filed with the Court of First Instance of Tagum, Davao, Branch 111 a complaint in consignment against the Conpinco Marketing Company, respondent herein (Record, p. 1).

After the trial on the merits the lower court rendered judgment on March 8, 1985 in favor of private respondent herein and against petitioners, the dispositive portion of which reads:

"WHEREFORE, the Court hereby dismisses the complaint, orders them to pay the defendant P23,558.00, representing the total outstanding obligation of plaintiffs to the defendant for the National VHS and P109,449.00 representing the total outstanding obligations of plaintiffs to defendant for the National Cinema Vision, plus interest thereon at the rate of 14% per annum; to pay the defendant the sum of P15,000.00 as and in concept of attorney's fees and P13,300.70 as agreed liquidated damages plus costs of suit" (Record, p. 187).

Atty. Onofre Francisco, the counsel for petitioners, received a copy of the decision on August 15, 1985 but petitioners learned about it only on September 27, 1985 the day they received from Atty. Francisco a letter informing them of such judgment, sent to them by registered mail. Atty. Francisco had not filed notice of appeal within the reglementary period (Petition, p. 6). On September 26, 1985, Atty. Francisco filed a motion to withdraw as counsel of petitioners (Record, p. 193). On September 27, 1985 the trial court granted the issuance of a writ of execution (Record, p. 144). On September 20, 1985 Dr. Somoso, petitioner herein, filed through his new counsel a motion to admit notice of appeal (Record, p. 197) and on October 11, 1985 a motion for reconsideration, of the Order of September 27 (Record, p. 205) both of which were denied by the lower court on November 13, 1985 (Record, p. 235).

On October 17, 1985 petitioner filed a petition for relief from judgment, alleging among others "that the failure of Atty. Onofre Francisco to inform the petitioners of the decision rendered constitutes an accident, mistake or excusable negligence which has prevented the petitioners from taking an appeal as provided for in Rule 38 of the Rules of Court (Record, p. 222). Said petition was opposed by private respondent herein, Conpinco Marketing Company. (Record, p. 228)

On October 17, 1985 the lower court gave due course to the petition of the Somoso spouses for relief from judgment. (Record, p. 226).

On November 15, 1985, the motion to admit appeal was considered abandoned and the writ of executions was issued. The petition for relief from judgment was also considered to have failed the same not having been filed within sixty (60) days after learning of the judgment and not more than six (6) months from entry of the judgment (Record, p. 237).

On November 26, 1985 the petitioners herein filed with the lower Court a motion for reconsideration of the lower court's aforesaid order dated November 13, 1985. (Record, p. 246) and on November 28, 1985 filed an omnibus motion praying that: (1) the Writ of execution be quashed; (2) the motion for reconsideration be heard and (3) the plaintiffs be allowed to present therein evidence in support of their contention that deliberate fraud was practiced on them by the former counsel thereby preventing them from taking an appeal (Record, p. 252). Said motion was opposed by Conpinco Marketing Company (Ibid., p. 257) and was set for hearing on December 6, 1985 (Ibid. p. 255). Meanwhile the Somoso spouses also filed with the lower Court on December 4, 1985, an urgent ex parte

motion for the issuance of a temporary restraining order to restrain the sheriff from executing the writ of execution pending the resolution of the aforesaid motions (Record, p. 261). The same was granted by the Court a quo on the same date (Record, p. 263). On January 15, 1986 petitioners herein filed with the lower court a motion to suspend execution of the judgment and to post a bond which was granted by the lower court on January 30, 1986 (Record, p. 351).

The Court a quo granted the omnibus motion on January 31, 1986 (Record, p. 353) and in another order also dated January 31, 1986, the lower court allowed the adoption of the omnibus motion and the motion for reconsideration as part of the petition for relief from judgment filed by the plaintiffs, petitioners herein (Record, p. 354).

On February 4, 1986 Conpinco Marketing Company, filed a motion for reconsideration, (Record, p. 356) of the order of the lower court dated January 17, 1986 (Record, p. 324), granting plaintiffs' motion to set aside the sheriff's notice of levy on two real properties of the Somoso spouses (Record, p. 310). Said motion for reconsideration was denied by the lower court on February 5, 1986 (Record, p. 361). Said company's motion for reconsideration of the order of the lower court dated January 31, 1986 (Record, p. 371) allowing the adoption of plaintiff's motion for reconsideration and Omnibus Motion as part of the latter's petition for relief were likewise denied by the lower court on February 21, 1989 (Record, p. 379).

The lower court resolved the Somoso spouses' motion for reconsideration on February 10, 1986, denying therein plaintiffs' petition for relief from judgment (Record, p. 363). From this order received by plaintiffs petitioners herein, on February 13, 1986 the Somosos filed their notice of appeal on February 18, 1986, (Record, p. 377).

Respondent Court of Appeals affirmed the order of the lower court and dismissed the appeal for lack of merit (Rollo, p. 27).

Hence, this petition for certiorari filed on April 22, 1987 (Rollo, p. 3).

On November 9, 1987 the Second Division of the Court gave due course to the petition.

The issue raised by petitioners is whether or not respondent Court of Appeals is correct (a) in affirming the order of the lower court dismissing the petitioners' petition for relief from judgment; and (b) in ordering the dismissal of the appeal for lack of merit (Rollo, p. 108).

As the petition for relief from judgment is against an order disallowing an appeal for having been filed out of time and the petition was denied in the lower Court which denial was affirmed by respondent appellate Court it becomes necessary for the Court to determine not only the existence of any of the grounds relied on whether it be fraud, accident, mistake or excusable negligence, but also whether petitioners have a good cause of action. The court must be convinced that there is a justifiable ground and a meritorious case in order to reverse the denial or dismissal and allow the appeal from the decision in the main case (*Vda. de Sayman v. Court of Appeals*, 120 SCRA 676 [1983]; *Service Specialists, Inc. v. Sheriff of Manila*, 145 SCRA 139 [1986]).

Relief from judgment under Rule 38 of the Rules of Court is a remedy provided by law to any person against whom a decision or order is entered into through fraud, accident, mistake or excusable negligence. It is of equitable character, allowed only in exceptional cases as when there is no other available or adequate remedy. When a party has another adequate remedy available to him, which was either a motion for new trial or appeal from adverse decisions of the lower court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking the appeal he cannot avail himself of the relief provided in Rule 38 (*Rizal Commercial Banking Corporation v. Lood*, 110 SCRA 205 [1981]; *Ibabao v. Intermediate Appellate Court*, 150 SCRA 76 [1987]).

In the petition for relief from judgment filed by petitioners herein, with the lower court, petitioners alleged the following:

"1. On March 8, 1985, this court issued a judgment in the above-entitled case against the petitioners ordering them to pay the defendant the following sums:

(a) P23,558.00 representing the total outstanding obligation of plaintiffs to defendant for the National VHS;

(b) P109,449.00 representing the total outstanding obligation of plaintiffs to defendant for the National Cinema Vision plus interest thereon at the rate of 14% per annum; and,

(c) to pay the defendant the sum of P15,000.00 as and in concept of attorney's fees and P13,300.70 as agreed liquidated damages, plus costs of suit.

2. That a copy of the said judgment was received by Petitioners' former counsel Atty. Onofre Francisco on August 15, 1985 but the petitioners themselves came to know of such judgment only on September 27, 1985 the day they received the letter from their former counsel Atty. Francisco informing them of such judgment;

3. That the 15-day reglementary period within which to appeal has already lapsed when the Petitioners received the information from Atty. Francisco of the said judgment on September 27, 1985;

4. That for reasons known only to him, Atty. Francisco did not inform the petitioners of the fact that he already received a copy of the judgment within the period of time within which to appeal. Neither did Atty. Francisco file the notice of appeal within the said reglementary period of appeal. Rather he chose to inform the petitioners only on September 27, 1985 and by means of registered mail;

5. That earlier Atty. Francisco had informed the petitioners that he was withdrawing his appearance as counsel in the above-entitled case. But on this score, the petitioners learned that although the motion to withdraw as counsel was dated June 10, 1985, the same was actually filed in court only sometime on September 27, 1985;

6. That had Atty. Francisco seasonably informed the petitioners of the fact that he received a copy of the judgment on August 15, 1985, the petitioners could have filed the appeal within the reglementary period;

7. That the failure of Atty. Francisco to inform the petitioners of the said fact constitute an accident, mistake, or excusable negligence which has prevented the petitioners from taking on appeal as provided for in Rule 38 of the Rules of Court;

8. That this petition is being filed within sixty (60) days after the petitioners learned of the above judgment and not more than six (6) months after such judgment was entered;

9. That the petitioners have a good and substantial cause of action as the plaintiffs in this case in that no sale was ever perfected in this case because the units were delivered to the plaintiff only for demonstration purposes subject to their satisfaction." (Record, p. 22)

The petition was denied by the lower court in an order dated February 10, 1986 (Record, p. 363). In affirming the order of the lower court and dismissing petitioners' appeal from the same order of the lower court, respondent Court of Appeals stated in its decision of March 2, 1987:

"The remedy of relief from judgment is available only if the judgment complained of has been rendered thru fraud, accident, mistake or excusable negligence. This cannot apply in this case. There was a full blown trial on the merits of the main complaint. Both parties were given all the chances to present and submit their evidence both testimonial and documentary. The judgment of dismissal as rendered, is valid and regular. If the petitioners' counsel, as they claim, failed to inform them of the rendition of judgment of their case thereby resulting in their failure to appeal the decision, said counsel's negligence is not the accident, mistake or excusable negligence referred to in Rule 38, Section 2 of the Rules of Court, to warrant the filing of the

petition for relief. Citing the case of *Duran vs. Pagarigan*, L-12573, January 29, 1960, 106 Phil. 907, Chief Justice Moran in his Comments on the Rules of Court, Vol. 2, p. 234, 1970 Edition, said: 'The failure of counsel to notify his client on time of the adverse judgment to enable the latter to appeal therefrom does not constitute excusable negligence. Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in loss of his right to appeal is not a ground for setting aside a valid judgment and regular on its face.' This is what happened in the case now the subject of this appeal. The aforecited ruling applies on all fours to this case." (Rollo, p. 31).

The allegations of petitioners in the petition for relief from judgment had been adequately proven. That the counsel of plaintiffs, petitioners herein, had been negligent in failing to inform his clients of the receipt of the adverse decision on time for petitioners to file their appeal within the reglementary period had not been denied or questioned by respondent.

In affirming the Order of the lower court dismissing the petitions for relief from judgment respondent Court of Appeals merely stressed that counsel's negligence is not the "excusable negligence referred to in Rule 38 to warrant the filing of the petition for relief."

But time and again, the Court has stressed that the rules of procedure are not to be applied in a very strict and technical sense. The rules of procedure are used only to help secure not override substantial justice (*National Waterworks & Sewerage System v. Municipality of Libmanan*, 97 SCRA 138 [1980]; *Gregorio v. Court of Appeals*, 72 SCRA 120 [1976]). The right to appeal should not be lightly disregarded by a stringent application of rules of procedure especially where the appeal is on its face meritorious and the interests of substantial justice would be served by permitting the appeal (*Siguenza v. Court of Appeals*, 137 SCRA 570 [1985]; *Pacific Asia Overseas Shipping Corporation v. National Labor Relations Commission, et al.*, G.R. No. 76595, May 6, 1988). Thus in *Cortes v. Court of Appeals* (G.R. No. 79010, May 23, 1988) the failure of the respondent to file his notice of appeal within the reglementary period due to the oversight of his counsel to withdraw his appearance as counsel on being appointed Judge of the Regional Trial Court, and to inform his client of such circumstance, was considered by the Court an excusable negligence on the part of respondent. The same circumstance is obtaining in the instant case. The existence of the ground of excusable negligence on the part of petitioners cannot be disputed.

In the determination of the merits of the case the normal procedure would be for the Court to remand the case to the appellate court for further proceedings. However, when there is enough basis on which the Court may render a proper evaluation of the merits of petitioners' case, in line with existing jurisprudence the Court may dispense with the time consuming procedure in order to prevent further delays in the disposition of the case (*Velasco v. Court of Appeals*, 95 SCRA 621 [1980]; *Quisumbing v. Court of Appeals*, 122 SCRA 709 [1983] *Ortigas & Co., Ltd. Partnership v. Ruiz*, 148 SCRA 326 [1987]).

Petitioners maintain that there was no perfected contract of sale between them and respondent Conpinco Marketing Company as there was no meeting of the minds of the parties upon the thing which is the object of the contract and upon the price of the said thing (Rollo, p. 109). Petitioners only requested for the demonstration of the set of National VHS consisting of one (1) National Cinema Vision and one (1) Unit National VHS notwithstanding that what was requested was a Betamax brand (Rollo, p. 103).

Such pretensions of petitioners are, however, belied by Exhibits "1" and "2", two documents of sale with reservations, both purportedly signed on December 4, 1979 by petitioner Anita Somoso as buyer and petitioner Caesar Somoso as co-buyer of the articles indicated therein, which documents were notarized on the same date by Notary Public Melchor Diaz (Records, p. 61 & 62), giving the following terms of sale:

Exhibit "1"

"One (1) Unit National VHS with complete standard accessories for the amount of P23,558, payable as follows:

- 1) P7,118.00 as down payment upon delivery
- 2) The balance of P16,440 to be paid in 24 equal monthly installments of P685.00, each payable on the 13th day of every month, starting with the month of September, 1979.

Exhibit "2"

one (1) Unit National Cinema Vision with complete standard accessories (Panasonic color projecting system with serial No. CL-6000 8350173, for the amount of P124,449.00 payable as follows:

- 1) P26,961.00 as down payment upon delivery
- 2) the balance of P97,488.00 to be paid in 24 equal monthly installments of P4,062.00, each payable on the 13th day of every month starting with the month of September, 1979.

As indicated in the upper right hand corner of the documents the agreements were actually entered into by the parties on August 13, 1979.

The units were delivered to petitioners on August 13, 1979 received by petitioner Anita Somoso who signed the delivery receipts herself, Delivery Receipt No. 9769 (Records, p. 64) and Delivery Receipt No. 9770 (Record, p. 65).

Petitioner Caesar Somoso testified in court that on December 4, 1979 he left with his wife for Manila to attend a seminar (Tsn, May 27, 1981, p. 29), insinuating that they could not possibly signed the documents on that date, putting into question the authenticity of the documents. Petitioners, however, had not denied the existence of the documents under oath which is required under Section 8, Rule 8 of the Rules of Court, of petitioners who are parties to the instrument (Cadirao v. Estenzo, 132 SCRA 93 [1984]). On the other hand Chita L. Fronteras, Manager of respondent Conpinco Marketing Company, Tagum Branch, identified the signature as those of petitioners who signed the documents in her presence (Tsn, October 28, 1982, p. 8). Petitioner Anita Somoso who was one of the signatories of the two documents of sale as buyer and the one who signed receipt of the objects of the sale was never put on the witness stand to deny her signature and to testify on the nature of the delivery of the units to their home. Exhibits "1" and "2" are entitled to full faith and credit in the absence of competent evidence that their execution was tainted with defects and irregularities that would warrant a declaration of nullity (Anchuelo v. Intermediate Appellate Court, 147 SCRA 434 [1987]). They have the force of law between the parties (Enrique v. Ramos, 73 SCRA 116 [1976]; Henson v. Intermediate Appellate Court, 148 SCRA 11 [1987]).

The acts of petitioners before and after the delivery of the National VHS negate any claim that the set was delivered for demonstration purposes only and that there was no meeting of the minds between the parties as to the subject of the sale and its price. On August 13, 1979 before the delivery of the two (2) units subject of the sale, petitioners Anita Somoso delivered to respondent Conpinco Marketing Company SBTC Check No. 57333 in the amount of P10,000.00 as partial down payment for the Cinema Vision, per Provisional Receipt No. 39691 (Record, p. 63). Upon receipt of the partial down payment respondent Conpinco Marketing Company delivered the two units. On August 14, 1979 petitioner Anita Somoso issued SBTC Check No. 57338 for P5,000.00 as additional down payment for Cinema visions, per provisional Receipt No. 39643 (Record, p. 66) and then on August 17, 1979, petitioner made an additional down payment of P11,961 completing the required down payment for National Visions of P26,981 for which Official Receipt No. 65447 was issued by respondent Conpinco Marketing Company (Records, p. 67). On August 27, 1979 SBTC Check No. 57332 in the amount of P7,118.00

was issued by petitioners as deposit for the National VHS Unit per Official Receipt No. 65734.

On the same date, August 27, 1979, petitioners requested respondent Conpinco Marketing Company, Tagum Branch, for the replacement of the National VHS set with Sony Brand units (Record, p. 129). Mrs. Chita Fronteras testified that for purposes of comparison respondent Company complied (Tsn, Oct. 1982, p. 171). As evidenced by Delivery Receipt Nos. 9996 and 9997 a Sony video Screen Model KV-5000 and a Sony Betamax SL 8600 complete with manual blank tape remote control were delivered to petitioners on October 24, 1979 for demonstration only. They were pulled out on the following day, October 25, 1987 (Record, p. 70 & 71) according to Chita Fronteras, after petitioner Anita Somoso decided that the National units have a better reception than the Sony brand (Tsn, Oct. 28, 1982, p. 17 & 19).

The case of petitioners is not meritorious.

PREMISES CONSIDERED, the petition is DENIED for lack of merit.

SO ORDERED.

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

* Penned by Associate Justice Esteban M. Lising and concurred in by Justice Florelia Castro Bartolome and by Justice Felipe B. Kalalo.

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