

**DOMINGO T. ARCEGA AND RAMON M. ARCEGA, PETITIONERS, VS.
THE HON. COURT OF APPEALS AND PHILIPPINE COMMERCIAL AND
INDUSTRIAL BANK, RESPONDENTS.***G.R. No. 79043, October 28, 1988*

Ponente: PADILLA, J.

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Petition for certiorari and mandamus, with a prayer for the issuance of restraining order and writ of preliminary injunction, to annul and set aside the resolution[*] issued by the respondent appellate court on 25 May 1987, dismissing, for failure to prosecute, the appeal of the petitioners in CA-G.R. Civil Case No. 13069, entitled: "Philippine Commercial and Industrial Bank, plaintiff-appellee, versus Arcega's Marketing Corporation, et al., defendants-appellants," as well as the resolution[**] issued on 26 June 1987 which denied petitioners' motion for extension of time to file a motion for reconsideration of said resolution of 25 May 1987.

The facts, in brief, are as follows:

Sometime in 1983, herein private respondent Philippine Commercial and Industrial Bank (Bank, for short) filed an action for the collection of a sum of money against the petitioners before the Regional Trial Court of Manila. The case was docketed therein as Civil Case No. 83-17525 and assigned to Branch 39.

After trial, or on 17 April 1985, the trial court rendered judgment against the petitioners, ordering them to pay the Bank, jointly and severally, with the Arcega's Marketing Corporation, the sum of P457,096.53, plus daily charges in the amount of P116.0439 from 15 April 1983, until fully paid; and an amount equivalent to 25% of the total amount due as attorney's fees; and to pay the costs.[1]

On 17 July 1985, the petitioners filed a notice of appeal, signifying their intention to appeal the decision to the Intermediate Appellate Court (now the Court of Appeals),[2] and on 30 July 1985, the trial court ordered the elevation of the entire records of the case to the appellate court.[3]

Obviously, the records of the case were not elevated to the appellate court, as ordered, because on 27 March 1987, almost two (2) years after the issuance of the order to elevate the records, the Bank filed with the appellate court a motion to dismiss the appeal of the petitioners on the ground that said petitioners failed to prosecute their appeal, as provided for in Sec. 1(c), Rule 50 of the Rules of Court, in that said petitioners failed to take the necessary steps to have the records of the case transmitted to the appellate court.[4]

Acting upon the motion, the appellate court, in the aforesaid resolution, dated 25 May 1987, declared the appeal abandoned and dismissed the same.[5]

Counsel for the petitioners received a copy of the resolution on 29 May 1987, and on 17 June 1987, he filed a motion for extension of time within which to file a motion for reconsideration of the resolution of 25 May 1987.[6] But, the appellate court, citing the case of *Habaluyas Enterprises vs. Japson*,[7] denied the petitioners' motion for extension of time within which to file a motion for reconsideration.[8]

Hence, the present recourse. As prayed for, the Court issued a temporary restraining order on 12 August 1987, restraining the respondents from enforcing the decision issued by the trial court in Civil Case No. 83-17525, until further orders from the Court.[9] The Court also gave due course to the petition.[10]

The petitioners contend that the respondent Court of Appeals seriously erred in dismissing their appeal since petitioners have not yet been notified that the records of the appealed case are now with the appellate court and for them to pay the required docket and other fees, and that the elevation of the records of the case to the appellate court by the lower court is beyond their means and control.

Petitioners' contention is without merit. It cannot be said that the respondent Court of Appeals abused its discretion or exceeded its jurisdiction in dismissing the appeal of the petitioners for failure to prosecute, since it appears that the petitioners did nothing to effect or facilitate the transmittal of the records of the case to the appellate court for almost two (2) years from the issuance of the order to elevate said records to the appellate court. The Court has held that, while it is the duty of the clerk of the lower court to transmit the records of an appealed case to the appellate court, it is also the duty of the appellant to make the clerk of court act, and the failure of the clerk to perform his legal duty is no justification for the appellant's failure to perform his, and he cannot justify his failure by saying that the fault was that of the clerk of the lower court.[11]

In *Fagtanac vs. Court of Appeals*,[12] the Court said:

"2. A rule long familiar to practioners in this jurisdiction is that it is the duty of the appellant to prosecute his appeal with reasonable diligence. He cannot simply fold his arms and say that it is the duty of the Clerk of the Court of First Instance under the provisions of Section 11, Rule 41 of the Rules of Court, to transmit the record on appeal to the appellate court. It is appellant's duty to make the Clerk act and, if necessary, procure a court order to compel him to act. He cannot idly sit by and wait till this is done. He cannot afterwards wash his hands and say that delay in the transmittal of the record on appeal was not his fault. For, indeed, this duty imposed upon him was precisely to spur on the slothful."

The petitioners further contend that the rule enun-ciated in the case of *Habaluyas Enterprises vs. Japson*, cannot be invoked as authority for the denial of their motion for extension of time to file a motion for reconsideration, because a proceeding of some kind was conducted in said case, whereas, "the instant case never had a proceedings before the public respondents." [13]

The argument is without merit. It clearly appears that the private respondent Bank had filed a motion to dismiss the appeal of the petitioners with the respondent Court of Appeals, and when the appellate court granted said motion and dismissed the appeal for failure to prosecute, the petitioners filed a motion for extension of time to file a motion for reconsideration. Since the filing of a motion for extension of time to file a motion for new trial or reconsideration is not allowed in Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Court of Appeals, pursuant to the rule established in said *Habaluyas* case, the Court of Appeals correctly denied the petitioners' motion for extension of time to file a motion for reconsideration.

WHEREFORE, the petition is DISMISSED and the temporary restraining order, heretofore issued, is LIFTED and SET ASIDE. With costs against the petitioners.

SO ORDERED.

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

[*] Ponente: Justice Jesus M. Elbinias; concurring: Justices Fidel P. Purisima and Emeterio C., Cui, Fourteenth

Division.

[**] Same ponente and concurring Justices.

[1] Rollo, p. 65

[2] Id., 13

[3] Id., p. 14

[4] Id., p. 15

[5] Id., p. 17

[6] Id., p. 18

[7] G.R. No. 70895, May 30, 1986, 142 SCRA 208, where the Court ruled 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.

[8] Rollo, p. 21

[9] Id., p. 24

[10] Id., p. 44

[11] Government of Philippine Island vs. Joaquin Abrion, G.R. Nos. L-13841 & 14133, Sept. 25, 1918, 38 Phil. 679, 683

[12] G.R. Nos. L-26922-23, March 21, 1968, 22 SCRA 1227, 1231

[13] Memorandum for the Petitioners, p. 5, Rollo, p. 76

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