

FELISA P. DE ROY AND VIRGILIO RAMOS, PETITIONERS, VS. COURT OF APPEALS AND LUIS BERNAL, SR., GLENIA BERNAL, LUIS BERNAL, JR., HEIRS OF MARISSA BERNAL, NAMELY, GLICERIA DELA CRUZ...*G.R. No. 80718. January 29, 1988*

Ponente: CORTES, J.

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This special civil action for certiorari seeks to declare null and void two (2) resolutions of the Special First Division of the Court of Appeals in the case of Luis Bernal, Sr., et al., v. Felisa Perdosa De Roy, et al., CA-G.R. CV No. 07286. The first resolution promulgated on 30 September 1987 denied petitioners' motion for extension of time to file a motion for reconsideration and directed entry of judgment since the decision in said case had become final; and the second Resolution dated 27 October 1987 denied petitioners' motion for reconsideration for having been filed out of time.

At the outset, this Court could have denied the petition outright for not being verified as required by Rule 65 section 1 of the Rules of Court. However, even if the instant petition did not suffer from this defect, this Court, on procedural and substantive grounds, would still resolve to deny it.

The facts of the case are undisputed. The firewall of a burned-out building owned by petitioners collapsed and destroyed the tailoring shop occupied by the family of private respondents, resulting in injuries to private respondents and the death of Marissa Bernal, a daughter. Private respondents had been warned by petitioners to vacate their shop in view of its proximity to the weakened wall but the former failed to do so. On the basis of the foregoing facts, the Regional Trial Court, First Judicial Region, Branch XXXVIII, presided by the Hon. Antonio M. Belen, rendered judgment finding petitioners guilty of gross negligence and awarding damages to private respondents. On appeal, the decision of the trial court was affirmed in toto by the Court of Appeals in a decision promulgated on August 17, 1987, copy of which was received by petitioners on August 25, 1987. On September 9, 1987, the last day of the fifteen-day period to file an appeal, petitioners filed a motion for extension of time to file a motion for reconsideration, which was eventually denied by the appellate court in the Resolution of September 30, 1987. Petitioners filed their motion for reconsideration on September 24, 1987, but this was denied in the Resolution of October 27, 1987.

This Court finds that the Court of Appeals did not commit a grave abuse of discretion when it denied petitioners' motion for extension of time to file a motion for reconsideration, directed entry of judgment and denied their motion for reconsideration. It correctly applied the rule laid down in *Habaluyas Enterprises, Inc. v. Japzon*, [G.R. No. 70895, August 5, 1985, 138 SCRA 46], that the fifteen-day period for appealing or for filing a motion for reconsideration cannot be extended. In its Resolution denying the motion for reconsideration, promulgated on May 30, 1986 (142 SCRA 208), this Court en banc restated and clarified the rule, to wit:

Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for reconsideration may be filed with the Metropolitan or

Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested. (at p. 212)

Lacsamana v. Second Special Cases Division of the Intermediate Appellate Court, [G.R. No. 73146-53, August 26, 1986, 143 SCRA 643], reiterated the rule and went further to restate and clarify the modes and periods of appeal.

Bacaya v. Intermediate Appellate Court, [G.R. No. 74824, Sept. 15, 1986, 144 SCRA 161], stressed the prospective application of said rule, and explained the operation of the grace period, to wit:

In other words, there is a one-month grace period from the promulgation on May 30, 1986 of the Court's Resolution in the clarificatory Habaluyas case, or up to June 30, 1986, within which the rule barring extensions of time to file motions for new trial or reconsideration is, as yet, not strictly enforceable.

Since petitioners herein filed their motion for extension on February 27, 1986, it is still within the grace period, which expired on June 30, 1986, and may still be allowed.

This grace period was also applied in Mission v. Intermediate Appellate Court [G.R. No. 73669, October 28, 1986, 145 SCRA 306].

In the instant case, however, petitioners' motion for extension of time was filed on September 9, 1987, more than a year after the expiration of the grace period on June 30, 1986. Hence, it is no longer within the coverage of the grace period. Considering the length of time from the expiration of the grace period to the promulgation of the decision of the Court of Appeals on August 25, 1987, petitioners cannot seek refuge in the ignorance of their counsel regarding said rule for their failure to file a motion for reconsideration within the reglementary period.

Petitioners contend that the rule enunciated in the Habaluyas case should not be made to apply to the case at bar owing to the non-publication of the Habaluyas decision in the Official Gazette as of the time the subject decision of the Court of Appeals was promulgated. Contrary to petitioners' view, there is no law requiring the publication of Supreme Court decisions in the Official Gazette before they can be binding and as a condition to their becoming effective. It is the bounden duty of counsel as lawyer in active law practice to keep abreast of decisions of the Supreme Court particularly where issues have been clarified, consistently reiterated, and published in the advance reports of Supreme Court decisions (G.R.s) and in such publications as the Supreme Court Reports Annotated (SCRA) and law journals.

This Court likewise finds that the Court of Appeals committed no grave abuse of discretion in affirming the trial court's decision holding petitioner liable under Article 2190 of the Civil Code, which provides that "the proprietor of a building or structure is responsible for the damage resulting from its total or partial collapse, if it should be due to the lack of necessary repairs."

Nor was there error in rejecting petitioners' argument that private respondents had the "last clear chance" to avoid the accident if only they heeded the warning to vacate the tailoring shop and, therefore, petitioners' prior negligence should be disregarded, since the doctrine of "last clear chance", which has been applied to vehicular accidents, is inapplicable to this case.

WHEREFORE, in view of the foregoing, the Court Resolved to DENY the instant petition for lack of merit.

Fernan, (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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