

**SPOUSES RICARDO M. JAVIER, AND ROSE Y. JAVIER, PETITIONERS,
VS. SPOUSES LEON MADAMBA, JR. AND ZENaida ECHEVARRIA,
ROMEO VELUZ, ALFREDO ABEJA AND GOVERNMENT SERVICE
INSURANCE SYS...**

G.R. No. 81157. June 29, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

An appeal by Certiorari, under Rule 45 of the Rules of Court, from the Decision of respondent Court of Appeals in CA-G.R. CV No. 07326, dated 12 November 1987,[1] reversing the judgment of the Regional Trial Court, Branch 89, Quezon City, in Civil Case No. 0-40422 entitled "Sps. Ricardo M. Javier vs. Sps. Leon Madamba, Romeo Veluz, Alfredo V. Abeja, and Government Service Insurance System (GSIS)" an action for the annulment of the auction sale covering the disputed property.

On 17 October 1988 we resolved to give due course to the Petition and required the parties to file their respective Memoranda simultaneously. The last Memorandum, that of the GSIS, was filed on 11 April 1989.

In the Joint Memorandum submitted by private respondents they stress anew that the judgment of respondent Court of Appeals had become final and executory so that this Petition can no longer be entertained. For verification purposes, we ordered the elevation of the records from the Court of Appeals.

Indeed, we find that petitioners (who were the plaintiffs-appellees in CA-GR CV No. 07326), received a copy of the 12 November 1987 Decision of respondent Court, adverse to them, through their counsel of record, Atty. Pablo Bernardo, on 17 November 1987 (back of p. 23, Rollo, CA-G.R. CV No. 07326). They had, therefore, fifteen (15) days from said date or until 2 December 1987 within which to avail of the proper remedies. None were taken during the period.

On 23 December 1987, petitioner, Ricardo M. Javier himself, filed before respondent Court an "Urgent Manifestation and Motion for Allowance and Consideration to File Appeal," alleging:

"1. That he personally received and knew the decision of the Honorable Court on December 22, 1987;

"2. That said decision was received by his lawyer on November 17 1987 but was not able to do something about it. Plaintiff-appellees' lawyer filed his candidacy for Mayor in Zamboanga and is now busy campaigning;

"3. That for the sake of justice, plaintiff-appellee most urgently moves and prays the Honorable Court that he be allowed to file an appeal or relief from judgment in the above entitled case;

"4. That he has still to contact another lawyer to handle this case to protect his interest" (CA-G.R. CV No. 07326, Rollo, p. 39).

This was followed on 29 December 1987 with an "Addendum" to that Urgent Motion annexing documents attesting to the candidacy of Atty. Pablo Bernardo, as Mayor for Sibuco, Zamboanga del Norte, for the 18 January 1988 elections. Private respondents filed an Opposition contending that the Decision of respondent Court of Appeals had, by operation of law, become final.

On 14 January 1988, petitioner Ricardo M. Javier, again on his own, filed a "Motion to Withdraw Urgent Manifestation" as well as the Addendum thereto on the ground that he had retained the services of Caguioa Aligada and Associates as his new counsel, who had filed before this Court on 6 January 1988 a "Manifestation and Motion for Additional Time to File a Petition for Review by way of Certiorari" (the instant case). Said Motion to Withdraw was again opposed by private respondents on the ground that the filing of the "Manifestation and Motion for Additional Time" before us did not deprive respondent Appellate Court of the authority to decide pending incidents.

On 29 January 1988, respondent Court denied petitioners' "Urgent Manifestation and Motion for Allowance to File Appeal" as follows:

Acting on the 'Urgent Manifestation and Motion for Allowance and Consideration to File Appeal', filed by plaintiff-appellee, Ricardo M. Javier on December 23, 1987, the same is hereby DENIED, for the reason that the decision sought to be reviewed has become final and executory for failure of plaintiff-appellee to pursue the appeal or file a motion for reconsideration within the fifteen (15) day period from receipt by his counsel of the decision in this case on November 17, 1987. The fifteen (15) day period within which to file an appeal or a motion for reconsideration cannot be extended pursuant to the ruling in the case of *Habaluyas Enterprises, Inc., et al. vs. Japson*, 238 SCRA 46" (Rollo, p. 54).

On 8 February 1988, petitioner Ricardo Javier, himself, again filed before respondent Court an Ex-parte Motion and Manifestation praying for the amendment of its Resolution of 29 January 1988 declaring its Decision of 12 November 1987 final and executory.

On 10 February 1988 respondent Court merely NOTED petitioners' "Motion to Withdraw."

On 4 March 1988, the Appellate Court denied petitioners' plea for amendment in a Resolution, the dispositive portion of which reads:

"WHEREFORE, finding that the 15-day reglementary period within which to file Motion for Reconsideration or appeal by certiorari has lapsed, this court can no longer amend its resolution dated January 24, 1988 for lack of jurisdiction over the case" (Rollo, p. 56).

Apparent, therefore, from all the foregoing is the fact that the judgment of respondent Court sought to be reviewed has become final and executory such that even this Court is bereft of jurisdiction to entertain this Petition, much less alter a final judgment (*Agricultural and Industrial Marketing Inc. vs. CA*, L-39518, November 2, 1982, 118 SCRA 49; *ACDA vs. Minister of Labor*, 51607, December 15, 1982, 119 SCRA 306; *Garcia vs. Echiverri*, L-44455, October 23, 1984, 132 SCRA 631).

It is true that in our Resolution of 20 January 1988, we granted petitioners' Motion for an extension of twenty (20) days within which to file a Petition for Review on Certiorari (Rollo, p. 10). That was, however, specifically

"conditioned upon the timeliness of the filing of said motion x x x."

It turns out now that since the Decision of respondent Court had become final and executory, no petition for extension of time within which to file a Petition for Review on Certiorari before this Court can legally be granted. It is by no means a mere technicality that is involved. A question of jurisdiction has come to the fore.

The "extraordinary circumstances" pleaded by petitioners' new counsel, particularly, that the former counsel of record, Atty. Pablo Bernardo, was in Zamboanga del Norte, campaigning for Mayor, at the time the registered mail from the Court of Appeals arrived at his address of record, and that the receiving clerk who picked up the registered mail from the Post Office is not the clerk of Atty. Bernardo but of a corporation of which he was an officer, cannot prevail over the finality of respondent Court's Decision. Besides, as pointed out by private respondents before this Court in their "Opposition to Petitioners' Motion for Additional Time to File Petition for Review on Certiorari" the same clerk had been receiving previous pleadings sent to said counsel (Rollo, p. 17) and that the law office of Atty. Bernardo is, in fact, located in the same office where the receiving clerk works. As to the alleged absence of Atty. Bernardo when the registered mail arrived at his address, suffice it to state that "it is the duty of a practicing lawyer to so arrange matters that official or judicial communications sent by mail reach him promptly. Failure to do so, he and his clients must suffer the consequences of his negligence" (Enriquez vs. Bautista, 79 Phil. 220, 222), particularly where such negligence is not excusable, as in this case.

The spirit of justice and fair play, invoked by petitioners, must work in favor of all parties to a case.

ACCORDINGLY, the due course Resolution of 17 October 1988 is RECALLED and this Petition hereby DISMISSED.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Justice Minerva P. Gonzaga-Reyes and concurred in by Justices Luis A. Javellana and Pedro A. Ramirez.

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