

**CANDIDA DE LA CRUZ, PETITIONER, VS. HON. COURT OF APPEALS;
HON. REGINO T. VERIDIANO II, JUDGE PRESIDING OVER BRANCH 31
OF THE REGIONAL TRIAL COURT OF MANILA; HON. THELMA A.
PONE...**

G.R. No. 81953. June 28, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The main issue raised in this petition for review on certiorari is whether or not, under the facts of the case, a petition for relief from a judgment for ejectment can be granted on the ground of alleged excusable negligence.

Petitioner Candida de la Cruz is a lessee of the premises located at 1193-A Flores Corner J. Bocobo Street, Ermita, Manila, owned by private respondent Antonio M. Mendoza, the lessor.

The antecedent facts of the case as narrated by the respondent Court of Appeals are as follows:

"(1) On July 10, 1985, a complaint for ejectment was filed by private respondent Antonio M. Mendoza against petitioner, docketed as Civil Case No. 11363 before the Metropolitan Trial Court of Manila, Branch 18;

(2) After answer had been filed and private respondent had presented his evidence, and after a series of postponements on the ground that petitioner was going to settle the case, the case was set for reception of petitioner's (defendant in the ejectment case) evidence on January 22, 1987;

(3) On January 21, 1987, Atty. Edmund Abesamis, counsel for petitioner, filed an Urgent Motion for Postponement of the hearing set for January 22, 1987 on the ground that he is appearing in the court of Cabanatuan City on a criminal case;

(4) On January 22, 1987, the Metropolitan Trial Court issued an order denying the motion for postponement, declared petitioner 'is deemed to have waived presentation of her evidence and the case is now considered submitted for judgment based on the evidence adduced by plaintiff;

(5) On February 9, 1987, Atty. Abesamis filed a motion for reconsideration of the order of January 22, 1987;

(6) On February 17, 1987, an order was issued lifting the order of January 22, 1987 and setting the reception of

petitioner's evidence on March 16, 1987;

(7) Upon motion filed by petitioner requesting March 19, 1987 as the available date, the hearing set for March 16, 1987 was reset to March 19, 1987;

(8) On March 19, 1987, neither petitioner nor her counsel appeared, and the Metropolitan Trial Court reinstated its order of January 22, 1987;

(9) On April 22, 1987, the Metropolitan Trial Court rendered its decision based on plaintiffs (private respondent Mendoza) evidence ordering the ejectment of petitioner, among others;

(10) On May 5, 1987, petitioner's counsel, Atty. Edmund Abesamis received a copy of the decision;

(11) On May 21, 1987, or sixteen (16) days after receipt of the decision, Atty. Abesamis filed by mail a motion for reconsideration dated May 20, 1987 which respondent-MTC received on June 1, 1987;

(12) Opposition having been filed to said motion for reconsideration by private respondent, respondent-MTC issued the order of June 17, 1987 denying the motion for reconsideration on the ground, among others, that the same was filed out of time;

(13) In the latter part of June, 1987, petitioner was served with a writ of execution by respondent Deputy Sheriff to enforce the judgment of April 22, 1987;

(14) On July 3, 1987, petitioner filed a Petition for Relief from Judgment (Appendix "A" of Petition) with the respondent-RTC, with prayer for injunctive relief;

(15) On November 17, 1987, respondent Judge of the Regional Trial Court rendered the decision (Appendix "C" of Petition, p. 38, Rollo) dismissing the petition." (pp. 34-36, Rollo)

A petition for review was filed before the Court of Appeals. It was denied on the ground that the case "does not present a case of 'fraud' or 'betrayal' of a client by his lawyer but simply inexcusable negligence." The petitioner filed a motion to reconsider the appellate court decision which included a prayer for the trial court to be ordered to admit a newly discovered evidence which would result in the dismissal of the complaint. It was, however, denied.

The petitioner alleges that the respondent court gravely erred in sustaining the dismissal by the lower court of her petition for relief from judgment. The appellate court, she explains, failed to appreciate the errors assigned therein. She insists before this Court that she has been unjustly deprived of her right to adduce evidence on her behalf and prevented from seasonably taking an appeal due to reckless inattention on the part of her counsel, Atty. Edmundo Abesamis. She alleges that her lawyer gave preferential treatment to other cases; that the motion for

reconsideration filed by mail on May 21, 1987 was one day late; that she was made to believe that her case was well attended to so that she found no reason to inquire into the records and the status of the case which she would not understand anyway; that she was not notified of the hearing nor informed that her presence was indispensable in the presentation of evidence. To support her assertions and to challenge the rule that a client is bound by the negligence of his lawyer, she reiterated the cases of *Yuseco v. Court of Appeals*, (68 SCRA 464 [1975]), *Heirs of Clemente Celestino v. Court of Appeals*, (67 SCRA 22 [1975]), and *People's Homesite and Housing Corporation v. Tiongco*, (12 SCRA 471 [1974])

The cases cited by the petitioner are not applicable. This Court expressed the rule in these cases that reliefs are granted only if there is a clear showing by conclusive evidence of fraud, reckless inattention, or excusable negligence.

We do not find any merit in the petitioner's attempt to reargue the matters already passed upon by the appellate court. The restatement of the grounds in the petition for relief from judgment shows that the petitioner wants this Court to retry the facts of the case. There is no attempt to show and no clear indication just how the Court of Appeals committed reversible error in failing to spot any fraud, accident, mistake, or excusable negligence. The pronouncement of the respondent appellate court reveals that its findings are in accordance with law and the evidence available from the records. There is no reversible error in the appellate court's affirming the lower court's ruling that there was no evidence proving any of the grounds cited in the Rules to warrant the setting aside of the decision against petitioner. Contrary to the petitioner's assertion, the cases cited by the appellate court are in point.

Well-settled is the rule that, in general, the findings of facts of the Court of Appeals are "conclusive on the parties and the Supreme Court on the tenet that this Court decides appeals which only involve questions of law and that it is not the function of the Supreme Court to analyze and to weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed by the lower court." (*Philippine National Bank v. Court of Appeals*, 159 SCRA 433 [1988]). The petition fails to show why this rule should not apply or why it should be disregarded.

The appellate court correctly concluded that the trial court did not ignore the right of the petitioner to her day in court. It stated:

"x x x the petitioner was scheduled to present her evidence wherein neither petitioner nor counsel appeared on March 19, the day the hearing was set and as a consequence, the case was submitted for decision by the respondent judge after reconsidering a previous order considering the case submitted for decision if only to give petitioner a second chance to appear in Court and present evidence for the defense. The negligence of counsel was merely presumed and not proven by the evidence." (Rollo, p. 40)

Neither can it be inferred that there was a disregard of the petitioner's right to appeal based on the alleged assurances of the counsel that the case was well-attended to, thus obviating the need for the petitioner to inquire into the proceedings. Absent any supporting grounds to the contrary, we rule that the acts and omissions of the counsel are binding upon the client. A failure by a party to call the attention of counsel during the pendency of the proceedings because she thinks the counsel is doing his work is not ground to set aside a decision if the party discovers later that the counsel was not as enthusiastic about the case as he should have been.

Even assuming that there was indeed fault on the part of the counsel, the same would not constitute excusable negligence under the circumstances. This Court made this pronouncement in *Villa Rhecar Bus v. De La Cruz* (157 SCRA 13 [1988]):

"As a general rule, a client is bound by the mistakes of his counsel. Only when the application of the general rule would result in serious injustice should an exception thereto be called for."

In the case at bar, the petitioner failed to satisfactorily show any serious injustice not only in the treatment of the alleged negligence of her counsel but even in the basic merits of the ejectment case. The omission of her counsel to appear during the presentation of evidence at the first hearing as a result of which she was compelled to move for a reconsideration to get another chance to present evidence, should have immediately roused her suspicion and alerted her to remedial action. Instead, she complacently continued to rely on the supposed diligence of her counsel until an adverse judgment, valid on its face, became final and executory. She herself should bear the consequences of her own negligence which led to a second and inexcusable negligence of her counsel. The petitioner's lack of concern could only mean condonation of the acts of the counsel.

The petitioner raises another issue as to whether or not the appellate court gravely erred in rejecting a newly discovered evidence interposed in a motion for reconsideration. In the said motion, besides praying for the setting aside of the decision, the petitioner asked that the trial court be ordered to admit a newly discovered evidence and if admitted, for the complaint to be dismissed. She stated that the private respondent is not the real party-in-interest in the ejectment case filed in the 1985 because the ownership of the disputed land had been transferred to one Eliseo Santiago in 1984 (Rollo, pp. 27, 66). It must be noted that the alleged newly discovered evidence was not supported by affidavits of merit as required by Section 2, Rule 37 of the Rules of Court.

The petitioner is asking for the dismissal of a case which was properly disposed of and where judgment has become final and executory. The petition filed before the appellate court asked for the review of the dismissal of a petition for relief from judgment. It was not an appeal on the merits from the judgment in the ejectment case. The issue in the petition was to determine whether or not to order the setting aside of the judgment and to direct the reopening of the case based on the sufficiency of the evidence and the applicable-law. Since the appellate court correctly denied the petition there can be no further request for the dismissal of a decided case on the basis of alleged newly discovered evidence.

The equities of this case are also in favor of the private respondent. The ejectment case was filed as early as July 10, 1985 on grounds of non-payment of rentals and putting up of unauthorized structures on the premises. The first non-appearance of the petitioner was pardoned by the Judge who gave her another opportunity to present her evidence. On the day fixed for the hearing, the petitioner filed a motion for postponement. It was granted. On the date of the postponed hearing neither the petitioner nor her counsel appeared. It may also be noted that the petitioner had earlier — for about one year and a half — successfully asked for postponements on the ground that she was seeking an amicable settlement. Whether or not the supposed newly discovered evidence is true, that there is a new owner by the name of Eliseo Santiago, this petition must still be denied. Mr. Santiago can take steps to protect his rights. He does not have to depend on the petitioner.

Because of inexcusable negligence and dilatory tactics employed by the petitioner and her counsel, the resolution of a simple ejectment case has dragged on for four years and the valuable time and efforts of four levels of the judiciary expended beyond justification. It is time to close this case.

WHEREFORE, the petition is hereby DENIED. The questioned decision and resolution of the Court of Appeals are AFFIRMED. This decision is immediately executory.

SO ORDERED.

Fernan (Chairman), C.J., Feliciano, and Cortes, JJ., concur.

Bidin, J., took no part.

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