

FLORENTINO OZAETA, PETITIONER, VS. COURT OF APPEALS AND JALWINDOR MANUFACTURERS, INC., RESPONDENTS.

G.R. No. 83281. December 04, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The only issue in this case is whether or not the Court of Appeals erred in considering the appealed judgment final and executory for failure of petitioner to file the appellant's brief within the required time.

In an action for damages arising from alleged infringement of patent, the Regional Trial Court of Quezon City rendered a decision requiring petitioner to pay private respondent P200,000.00 for actual damages, P50,000.00 exemplary damages, P10,000.00 attorney's fees plus the costs of the suit.

Petitioner appealed therefrom to the Court of Appeals, and when petitioner was required to file the brief, on June 5, 1987 he filed a motion for extension of time to file brief in the said Court and this was granted in a resolution dated June 18, 1987 giving him a period of sixty (60) days from June 5, 1987 or until August 4, 1987 within which to file his brief. On July 17, 1987 petitioner filed a motion to suspend proceedings before the appellate court due to the pendency of Inter Partes case No. 861 with the Philippine Patent Office wherein petitioner sought to nullify the patent of private respondent.

In a resolution dated July 30, 1987, private respondent was required to file its comment to the motion within ten (10) days from notice. Said comment was filed on August 29, 1987 to which petitioner filed a counter-comment and private respondent was required to file a reply.

On January 27, 1988 a resolution was issued by the appellate court denying the motion to suspend proceedings, a copy of which appears to have been received by petitioner on January 30, 1988. A motion for reconsideration dated February 15, 1988 was filed by petitioner to which an opposition was filed by private respondent. On March 7, 1988 the motion was denied, copy of said resolution was received by petitioner on March 11, 1988. On March 15, 1988 petitioner filed a motion for extension of thirty (30) days within which to file brief on the ground that counsel is practising alone and he had other cases to attend to. This was denied in a resolution dated March 22, 1988. A motion for reconsideration thereof was filed by petitioner. On April 13, 1988 petitioner filed a motion to admit appellant's brief attaching the same to the motion. On April 18, 1988 the Court of Appeals dismissed the appeal for failure of petitioner to file the brief on time and denied the motion for reconsideration of the resolution dated March 22, 1988. A copy of said resolution was received by petitioner on April 21, 1988 on which date private respondent filed a manifestation and motion to strike out the motion to admit brief and the attached brief in the same case.

Petitioner then filed on April 22, 1988 an omnibus motion for reconsideration of the resolution dated April 18, 1988. The motion to admit brief of petitioner was denied in a resolution dated April 22, 1988. On May 5, 1988 the Court of Appeals denied petitioner's omnibus motion for reconsideration.

Hence, the herein petition for review on certiorari, the resolution of which revolves on whether or not the dismissal of the appeal for failure to file the appellant's brief on time was proper.

The petition is devoid of merit.

The pendency of the administrative proceedings before the Philippine Patent Office to nullify the patent of private respondent which appears to have been filed earlier than the complaint for damages is not one of the grounds for the suspension of actions under Sections 1 and 3, Rule 21 of the Rules of Court. The filing of the said motion did not therefore suspend the period within which petitioner was required to file the appellant's brief which was due to expire on August 4, 1987.

As aforesaid, what petitioner did was to file a motion to suspend the proceedings on July 17, 1987. He did not take any step to file appellant's brief but simply awaited the resolution of the motion which was denied on January 27, 1988. Again a motion for reconsideration of said resolution was filed by petitioner which was also denied on March 7, 1988. It was only upon such denial and after the expiration of seven (7) months from the last day of filing the brief that the petitioner filed a motion for extension of thirty (30) days within which to file the brief i. e., on March 15, 1988. Correctly indeed, the Court of Appeals denied said motion on March 22, 1988. Petitioner again sought a reconsideration of said resolution and asked for another extension.

On April 13, 1988 petitioner filed appellant's brief. Nevertheless, the Court of Appeals dismissed the appeal on April 18, 1988 and denied the motion for reconsideration of its March 22, 1988 resolution.

From the foregoing set of facts there can be no question that petitioner and his counsel were grossly negligent. Knowing that the period within which to file the brief was to expire on August 4, 1987, they should have filed a motion for extension of time within which to file the brief or a suspension of time within which to file the same pending resolution of the motion to suspend the proceedings in the case. However, instead of taking any of these steps they assumed that the filing of the motion to suspend proceedings automatically suspended the running of the period within which to file the brief, an assumption that is not supported by the Rules or any other authority.

Moreover, when petitioner filed on March 15, 1988 a motion for thirty (30) days extension of time within which to file the brief, the motion was filed way past the period of time sought to be extended, i. e., seven (7) months past. The rule is explicit that such motion for extension of time must be filed before the expiration of time sought to be extended.[1]

The right to appeal is a statutory right and the party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost. More so in this case where petitioner not only neglected to file the appellant's brief within the stipulated time but also failed to seek an extension of time for a cogent ground before the expiration of the time sought to be extended.

WHEREFORE, the petition is DISMISSED for lack of merit, with costs against petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Section 15, Rule 46, Rules of Court.

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