

NICARIO AVISADO & TORIBIO ALFECHÉ, PETITIONERS, VS. SPS. JORGE & NARCISA VILLAFUERTE AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 84939, March 13, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

Before the Court for decision is the sole issue regarding the propriety of the respondent Court of Appeals' dismissal of therein appellants' (now petitioners') appeal for failure to file the appellants' brief within the extended period granted by said court.[*]

In the Regional Trial Court (Branch XVII) of Cebu City, spouses Jorge and Narcisa Villafuerte, now respondents, instituted an action against Nicario Avisado and Toribio Alfeche, now petitioners, for damages and declaration of nullity of contract. Petitioners having failed to file an answer or other responsive pleading, the court a quo, upon motion of the respondents, in an order dated 12 July 1986, declared petitioners in default and directed the reception of respondents' evidence ex parte.[1] On 4 August 1986, petitioners filed a motion praying that the aforesaid default order be set aside, alleging that they were not properly served with summons and copy of the complaint. It appears from the record, specifically, the Return of Summons,[2] that the summons and copy of the complaint had been served on petitioners through substituted service and not by personal service. Further, the conditions for substituted service had also not been apparently met or satisfied. Notwithstanding the deficiency in such service of summons, the court a quo denied petitioners' motion, ruling that there had been a valid service of summons.

After an ex parte hearing, the trial court on 21 August 1986, rendered a decision in favor of the respondents, the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiffs (herein respondents), and, accordingly, the Memorandum Agreement dated November 24, 1984, signed by plaintiff Narcisa N. Villafuerte and defendant (herein petitioner) Nicario Avisado as second party and first party, respectively, and entered unto (sic) the notarial register of Notary Public Hermes T. Montecillo as Doc. No. 164 on page 34, Book No. XVI, series of 1984 (Exhs. 'F' and 'F-1'), the promissory note dated September 24, 1984, signed by plaintiffs Jorge Villafuerte and Narcisa N. Villafuerte as promissors (Exh. 'D'), and the Deed of Absolute Sale of a Residential Lot dated September 24, 1984, signed by Romeo Militante as vendor and entered unto (sic) the Notarial register of Notary Public Jesus V. Rosal as Doc. No. 164 on page 68, Book No. LXXXI, series of 1984 (Exhs. 'B' and 'B-1'), are declared null and void; and defendants Nicario Avisado and Toribio Alfeche are ordered to pay plaintiffs jointly and severally the following amounts: P24,000.00 by way of reimbursement, with interest thereon at 12% per annum beginning June 10, 1986, date of filing of the complaint, until the said amount is fully paid; P10,000.00 as moral damages; P5,000.00 as exemplary damages; P7,000.00 as attorney's fees; and P2,000.00 as litigation expenses. Costs against defendants.

Cebu City, Philippines, this 21st day of August, 1986.

MARIO M. DIZON

Judge”[3]

Petitioners appealed to the then Intermediate Appellate Court (IAC). The record is bereft of any mention by the particulars of this appeal but it appears that in a Resolution[4] of the appellate court dated 22 June 1987, petitioners, as appellants, were granted a 90-day period or until 9 September 1987 to file the appellants' brief, with the warning that no further extension would be granted save for highly meritorious grounds.

As fate would have it, Atty. Lucinio Sayman, counsel for petitioners, passed away on 18 August 1987. After said date, there is nothing in the records as to the progress of the appeal until 9 November 1987 when the respondent court, in a Resolution[5] of even date, required counsel for petitioners to show cause within ten (10) days why the appeal should not be dismissed for failure to file the appellants' brief.

In a Manifestation[6] dated 19 February 1988 filed by petitioners, Atty. Sayman's death was relayed to respondent court, together with a request for time to engage another counsel. By Resolution[7] dated 10 March 1988, respondent court granted the motion and set an inextendible period of 30 days from notice, for the appellants to submit their brief. However, on 7 April 1988, the new counsel for appellants filed a motion to extend the deadline for submission of the appellants' brief to 5 May 1988. Respondent court, in a Resolution[8] dated 25 April 1988, denied the same and dismissed the appeal for failure to file appellants' brief within the extended period. Appellants, on 4 May 1988, moved for reconsideration of the aforesaid resolution, accompanying said motion with forty (40) copies of the appellants' brief. In a Resolution[9] dated 31 May 1988, respondent court denied the motion and directed that the "Brief for Defendants-Appellants" be expunged from the records.

Petitioners assail the resolutions of respondent court, dated 25 April 1988 and 31 May 1988, mainly on the ground that it failed to heed the provisions of Rule 46, Section 15 of the Rules of Court, allowing an extension of time for the filing of appellants' brief for good and sufficient cause. In support thereof, the death of their original counsel is cited and relied upon.

The petition is impressed with merit.

Time and again, this Court has had to rule upon the issue of allowance or denial of motions for extension of time to file the appellants' brief. In all such instances, it appears basic that the issue is mainly addressed to the discretion of the court, to be exercised wisely and prudently, never capriciously and always with a view to achieving substantial justice.[10] It goes without saying that the exercise of such discretion must take into account considerations of public policy and necessity - that of putting an end to litigation within the shortest possible time; and yet, harmonizing such necessity with the right of litigants to an opportunity to be heard.

In the case at bar, the record indicates that petitioners, as appellants, were twice granted an extension of time to file their appellants' brief, the first for 90 days and the second for 30 days. What catches the attention of this Court is the death of appellants' counsel and the assumed confusion consequent thereto, owing to said counsel having had no other associate to attend to petitioners' appeal. Such situation, which was manifested to respondent court, fortunately persuaded the latter to grant a second extension for the filing of the appellants' brief. Notwithstanding its admonition, however, that such period of time (30 days) was inextendible, new counsel for appellants was compelled to file another motion for extension, citing the difficulties of reconstituting the records following the death of original counsel.

While this Court can not favor or sanction multiple extensions of time that inevitably clog court dockets and delay the disposition of cases, a second or succeeding motion for extension of time to file appellants' brief may be granted if a "good and sufficient cause" is given as justification thereof.[11] The death of petitioners' original counsel is here viewed as fitted within such requisite. For the Court is also mindful of the difficulties attendant to

securing willing and able counsel, especially by litigants who, as in the case of petitioners, are not financially situated to be able to immediately procure the services of new counsel. In addition, due consideration is given to the dilemma that such new counsel found himself in, faced as he was with a pending case on appeal the records of which still had to be gathered and reconstituted. Finally, respondent court should have considered the fact that the appellants' brief was actually filed on 4 May 1988 or even a day earlier than the deadline prayed for by counsel. This reflects the earnest efforts of said counsel and the petitioners in complying with the respondent court's directives and is well indicative of a lack of intention to cause delay.

WHEREFORE, the petition is GRANTED. The Resolutions of the Court of Appeals dated 25 April 1988 and 31 May 1988 are SET ASIDE. The respondent Court is hereby directed to REINSTATE the appeal of petitioners in CA-G.R. CV No. 12317 against private respondents herein.

No pronouncement as to costs.

SO ORDERED.

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

[*] Rollo, p. 13; Minute Resolution, 25 April 1988, Ninth Division, composed of Justices Jose C. Campos, Jr., Ricardo J. Francisco, and Alfredo L. Benipayo.

[1] Rollo, p. 83

[2] Rollo, p. 82

[3] Rollo, p. 87

[4] Rollo, p. 45

[5] Rollo, p. 46

[6] Rollo, p. 5

[7] Rollo, p. 9

[8] Rollo, p. 13

[9] Rollo, p. 17; Minute Resolution, Ninth Division, composed of Justices Jose C. Campos, Jr., Ricardo J. Francisco and Alfredo L. Benipayo.

[10] Gregorio v. CA, G.R. No. L-43511; July 28, 1976, 72 SCRA 120

[11] Ibid., p. 123

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