

SPS. GO IT BUN AND CHOI PING TAI, PETITIONERS, VS. HON. BALTAZAR R. DIZON, AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF THE NATIONAL CAPITAL REGION, BRANCH CXIX, PASAY CITY...

G.R. Nos. 75915-16. September 18, 1992

Ponente: NOCON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-75915-16/>

NOCON, J.:

This is a petition under Rule 65, Revised Rules of Court, seeking this Court's corrective hand of certiorari and mandamus in setting aside public respondent's[1] Orders of April 17, 1986[2] and May 23, 1986[3] denying petitioners' Notice of Appeal of their Petition for Relief filed therein on April 3, 1986 and (2) the motion for reconsideration of said order in Civil Cases Nos. 1149-P and 1164-P filed therein.

Petitioners allege that:

"On February 27, 1982 and February 13, 1981, respectively, petitioners insured their buildings and furnitures and fixtures and fittings including electrical appliances, kitchen utensils and personal effects of every kind and description (excluding money and jewelry) contained therein with private respondents Cathay Insurance Co., Inc. and Equitable Insurance Corporation for a total amount of P1,750,000.00, that is P1,350,000.00 with Cathay while P400,000.00 with Equitable. When said insured properties were burned in a fire that happened last March 19, 1982, private respondents refused to make good their obligations under their respective insurance contract so that a civil case for sum of money and damages was filed against them by herein petitioner before the Regional Trial Court of Pasay City, Branch CXII thereof, which is presided (sic) by the public respondent. After private respondents were allowed to present evidence on their Special and Affirmative Defenses as reflected in their respective answers, an Order dated December 18, 1985 was issued by public respondent dismissing the case filed before it without pronouncement as to costs. At the time material to this petition, however, petitioners and their then counsel of record were already having a misunderstanding, so that when Atty. Arthem Potian, petitioners' former counsel of record received a copy of said order on December 23, 1985, said counsel failed to inform petitioners of the existence of said order and likewise failed to interpose a timely appeal or motion for reconsideration to protect his client's interest. Petitioners were informed of said order only when one of them (Choi Ping Tai) followed up their case with the court after becoming suspicious of the long silence of communication from their former counsel of record. But, even then, the period for filing a timely appeal or motion for reconsideration has (sic) already lapsed. Within the reglementary period, petitioners engaged the service of another counsel who filed the Petition for Relief From the Order on February 17, 1986." [4]

The events which transpired after the filing of said Petition for Relief and which led to the filing of the instant petition are:

1. On March 21, 1986, public respondent, Judge Baltazar Dizon, issued an order denying the petition for relief; [5]
2. On April 3, 1986, petitioners filed a Notice of Appeal from said Order; [6]

3. On April 15, 1986, private respondent Equitable Insurance Corporation filed a Motion to Dismiss Appeal;[7]

4. On April 17, 1986, the public respondent issued an order dismissing petitioners' appeal, to wit:[8]

"After a petition for relief from judgment was filed and subsequently denied, the petitioner through counsel filed a notice of appeal. An opposition was interposed against the said notice. This Court finds the Motion to Dismiss Appeal to be meritorious, the denial of the petition for relief from judgment being interlocutory in nature is not subject of an appeal.

WHEREFORE, the appeal being prayed for by the plaintiff is hereby denied.

SO ORDERED."

5. On May 2, 1986, petitioners filed a Motion for Reconsideration of said April 17, 1986 order;[9]

6. On May 23, 1986, the public respondent issued an Order denying said motion for reconsideration.[10]

7. Hence, the instant petition for certiorari filed September 22, 1986[11] alleging -

7.1 The public respondent's order of March 21, 1986 is one established with the imprint of finality and thus subject to appeal;

7.2 This appeal has been perfected by operation of law; and

7.3 That in dismissing petitioners' appeal, the public respondent unlawfully refused to perform an act which the law specifically enjoins as a duty resulting from his office.

Private respondent Equitable Insurance Corporation alleges that:

"On February 13, 1981, herein private respondent issued Fire Insurance Policy No. F-33759 in favor of petitioner Choi Ping Tai, effective from 4:00 p.m., March 29, 1981 to 4:00 p.m., March 29, 1982 over the following properties:

Item 1 - P250,000.00 on the building only, of partly two and partly one--lofty storey height, constructed entirely on reinforced concrete on steel framework, under galvanized iron roof on steel trustees, occupied by the insured as biscuit factory with sections for storeroom, packaging and partly residence.

Item 2 - P150,000.00 on the building only, of one-story height, constructed entirely of concrete, under galvanized iron roof, occupied as office and dwelling quarters.

TOTAL - P400,000.00 in all, being the properties of the insured and/or for which he is responsible in case of loss and/or damage during the currency of this policy, situated within its own compound at No. 58 Interior Maisan Road, Valenzuela, Metro Manila, Philippines, Block No. 37-A. x x x.

MEMO: - Loss, if any, under this policy is payable to Equitable Banking Corporation, Manila, as their interest may appear, subject to the attached 'Mortgage Clause'

"On March 19, 1982, the above-insured properties were burned, hence, under date of March 31, 1982, petitioner Mr. Choi Ping Tai presented a Sworn Statement of Fire Claim, x x x.

"The herein private respondent, acting on said petitioner's Sworn Statement of Fire Claim, investigated the claim through its adjusters. It was discovered that the above declaration was false, hence, the claim was fraudulent and that the insured-petitioner Choi Ping Tai had no insurable interest on the property insured based on the following:

a) That even before he applied for fire insurance, there was an existing lien or encumbrance on the property which was the mortgage of the insured properties in favor of Equitable Banking Corporation dated March 27,

1979, in the amount of P350,000.00.

b) Notice of Attachment/Levy issued by the Deputy Sheriff of the Court of First Instance of Rizal, Seventh Judicial District, Caloocan City, Metro Manila, Branch XXXIII (33) in Civil Case No. 8647 covering all the rights, title, interests, shares, claims and participation of the defendant Choi Ping Tai (Note: herein petitioner) in the land herein described and also the (P100,000.00) for the recovery by the (plaintiff) against the defendant (Note: herein petitioner) dated September 18, 1980.

c) Certificate of Sale in favor of Tan Hua doing business under the name and style of 'TH Wilson Manufacturing' and 'Wilson Printing Press'. Vendee: Covering the property described in this Certificate of Title, all the rights, shares, claims, interests and participation for the sum of P154,410.00 in accordance with the Certification of Sale issued by the Deputy Sheriff of the Court of First Instance of Rizal, Seventh Judicial District, Caloocan City, Branch XXXIII (33) dated February 26, 1981.

xxx xxx xxx."[12]

While the other private respondent, Cathay Insurance Company, Inc., alleges that:

"1. On March 27, 1979, petitioners mortgaged their property covered by Transfer Certificate of Title (TCT) No. 15761 (Annex 'A' of the Complaint) to the Equitable Banking Corporation ('Equitable') to secure a loan for P350,000.00. This mortgage was registered with the Register of Deeds of Caloocan City on March 29, 1979.

"2. On November 10, 1980, Judge Marcelino Sayo of the Court of First Instance of Caloocan City rendered judgment in Civil Case No. C-8637 ordering the petitioners herein to pay Tan Hua the sum of P100,000.00 plus interests and attorney's fees.

"3. On February 24, 1981, all rights, title, interest and participation of the petitioners herein over the property covered by TCT No. 15761 including buildings and improvements thereon were sold to Tan Hua, the highest bidder in the public auction sale, for P154,410.00. On the same day, Tan Hua executed a Deed of Assignment, over the rights he thus acquired as highest bidder in the execution sale of property covered by TCT No. 15761, in favor of Janeer Realty Corporation ('Janeer').

"xxx xxx xxx.

"5. On February 27, 1982, petitioners insured for a period of six (6) months, the building on the property covered by TCT No. 15761, and the personal property therein, with defendant for P1,350,000.00.

"6. On March 18, 1982, the redemption period of the Execution Sale ended without petitioners exercising their right to redeem within the redemption period that began on March 18, 1981 and ended on March 18, 1982, pursuant to Sec. 30, Rule 30 of the Revised Rules of Court.

"7. On March 19, 1982, after the expiration of the redemption period, fire gutted down petitioners' building standing on the property covered by TCT No. 15761."[13]

We vote to grant the Petition.

First of all, petitioners doggedly maintain that the public respondent's Order of April 17, 1986[14] dismissing their appeal was oppressive and arbitrary as his order of March 21, 1986 denying the Petition for Relief is final in nature and not interlocutory as claimed by both private respondents Equitable and Cathay, and is, therefore, subject to appeal.

On this point, petitioners are correct as par. 2, Section 2, Rule 41 explicitly states that -

"A judgment denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that it is not supported by the evidence or it is contrary to

law."

which rule has been reaffirmed in the recent case of *Mateo vs. Court of Appeals*[15] which held that the remedy of petitioners from a denial of the petition for relief from judgment was to appeal. The petition was denied due to the fact that the negligence of the petitioner therein was not excusable, which, incidentally, is the same reason given by the court a quo for the denial of the petition for relief in the case at bar.

The petition for relief must be filed in the same court in accordance with Section 2, Rule 38 of the Revised Rules of Court and as ruled in the case of *Service Specialists, Inc. v. Sheriff of Manila*:[16]

"In the case of *Braca vs. Tan*, this Court held:

"It is clear from the foregoing provisions of Rule 38 that the petition for relief from a judgment of the Court of First Instance must be filed in the same court that rendered the judgment and in the same cause wherein the judgment was rendered; and that if the court finds the allegation of the petition to be true, it shall set aside the judgment and try the principal case upon its merits as if a timely motion for new trial had been granted therein. (84 Phil. 582, 584-585)

"xxx xxx xxx.

"In the case at bar, private respondent filed his petition for relief also with the Regional Trial Court of Manila, but he did not file it in the same case; he filed it in another case, No. 85-34098, Branch XII of the lower court to which Civil Case No. 85-34098 was assigned could not take cognizance of the petition for relief, because it was not the same branch of the court which rendered the judgment from which relief was sought. It was Branch L of the lower court which could properly take cognizance of said petition and which, if it found the allegations thereof to be true, could order the judgment complained of to be set aside and proceed to hear and determine the case as if a timely motion for new trial had been granted (Sections 6 and 7 of Rule 38)."

Petitioners' second point is that their appeal has been perfected by operation of law when they filed their notice of appeal.

Section 23 of the Interim Rules and Guidelines promulgated by this Court to implement BP 129 clearly states:

"Sec. 23. Perfection of appeal. - In cases where appeal is taken, the perfection of the appeal shall be upon expiration of the last day to appeal by any party."

The record, however, does not indicate at all when petitioners received their copy of the Order of March 21, 1986 denying their Petition for Relief. Neither respondent Equitable nor respondent Cathay have indicated their respective dates of receipt of said Order. In any case, petitioners filed their Notice of Appeal thirteen (13) days from March 21, 1986. However, respondent Equitable filed a Motion to Dismiss Appeal on April 15, 1986, which was erroneously granted. This should not have been the case because under Section 13, Rule 41, an appeal can only be dismissed "[w]here the notice of appeal, appeal bond or record on appeal is not filed within the period of time herein provided. . ."

Since neither an appeal bond nor record on appeal are now required,[17] and considering that petitioners filed their Notice of Appeal within the time provided, the respondent judge should have denied outright private respondent's (Equitable) Motion to Dismiss Appeal since private respondent's grounds are not sanctioned by Sections 13 and 14 of Rule 41.

The appeal interposed by the petitioners should be given due course. However, to remand the case to the Court of Appeals would only delay the final disposition of the case. This Court has consistently ruled that the remand of a case to a lower court for the reception of evidence is not necessary when the Supreme Court itself could resolve

the dispute based on the records before it.[18] In view of the long pendency of this case (March 1982 to the present), this Court finds that the greater interest of justice demands that the case be disposed of on the merits at this stage.

From the evidence presented by the parties, it appears that on November 10, 1980, Choi Ping Tai lost in Civil Case No. 8637 before the then Court of First Instance of Caloocan City and was ordered to pay the sum of P100,000.00 to Tan Hua with interest and attorney's fees. To satisfy the judgment in said case, a writ of execution was enforced by the Sheriff of said Court, and on February 24, 1981, all the rights, title, interest and participation of Choi Ping Tai over the property covered by TCT No. 15761, including the building and improvements thereon, were sold to said Tan Hua, the highest bidder at the sheriff's auction sale, for P154,410.00. On the same date, a Certificate of Sale was issued by the Sheriff to Tan Hua and registered with the Register of Deeds of Caloocan City on March 18, 1981 under Entry No. 96260. On the same day also, Tan Hua executed a Deed of Assignment in favor of Janeer Realty Corporation.[19]

Choi Ping Tai, unfortunately, could not redeem said property by the 18th of March, 1982 in accordance with Section 30, Rule 39, Rules of Court. He had, therefore, no more interest over said property, so much so that when fire broke out on the property on the 19th of March, 1982, Choi Ping Tai had no more insurable interest over the same.

But Choi Ping Tai claims, in his Petition for Relief that:

"It is therefore obviously clear that the question to be resolved in order to know whether plaintiffs still have an insurable interest over the subject property due to the alleged expiration of the redemption period within which to redeem the property is when exactly did the date of the redemption begin. Is it on March 18, 1981 when the Certificate of Sale in favor of Tan Hua was registered with the Registry of Deeds of Caloocan City or on February 24, 1982 when the foreclosure sale of the mortgaged property by the Equitable Banking Corporation was registered with the Register of Deeds; although the mortgage in favor of said banking institution over the same property was registered since March 27, 1979?"

Petitioner claims that the redemption period --- and thus his insurable interest over the property --- must be counted from February 24, 1982 when the foreclosure sale of the mortgaged property was registered, bearing in mind the protection accorded by the law to this March 27, 1979 mortgage which was ahead of the execution sale of March 18, 1981.

Again, petitioner's claim is not well-taken. By operation of law, Section 35, Rule 39, Rules of Court, Tan Hua became the successor-in-interest of Choi Ping Tai when Choi could not redeem his property (TCT 15176) bought by Tan Hua at the aforementioned Sheriff's auction sale. Equitable Banking Corporation's interests in the mortgage are fully protected since Tan Hua took Choi Ping Tai's property subject to Equitable Bank's prior lien which he (Tan) has to satisfy.[20]

Choi Ping Tai, therefore, had no insurable interest in the property[21] as of the date of the fire -- March 19, 1982 -- since his last day to redeem the property pursuant to Section 30, Rule 39 of the Rules of Court expired on March 18, 1982.

Regarding petitioners' claim that their negligence in not filing their appeal from the December 18, 1985 decision dismissing their complaints against private respondents was excusable as their former lawyer, Atty. Arthur Potian, "willfully and fraudulently failed to inform" them about the same, this question has been disposed of by the court a quo in its March 21, 1986 order dismissing petitioners' petition for relief as "notice to counsel is notice to his client and the failure of counsel to notify his client of an adverse judgment would not constitute excusable negligence and therefore binding to his client."

Petitioners should have been forewarned when Choi Ping Tai received a letter from Atty. Arthur Pontian that all is not well between the latter and the former and which could have led to the non-filing of the appeal from the December 18, 1985 decision.

At that point in time, petitioners should have taken steps to already settle whatever misunderstanding they had with their lawyer or hire another lawyer to handle their appeal. They cannot now claim excusable negligence as the negligence was their own.

WHEREFORE, premises considered, the April 17, 1986 Order denying petitioners' notice of appeal from the Order of the court a quo dated March 21, 1986 denying their Petition for Relief and the Order of May 23, 1986 denying petitioners' Motion for Reconsideration of said April 17, 1986 Order are hereby REVERSED and SET ASIDE.

However, resolving the appeal of petitioners, the same is DISMISSED for lack of merit.

The March 21, 1986 Order of public respondent denying the petition for relief, is AFFIRMED in toto.

Costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Campos, Jr., JJ., concur.

Regalado, J., see separate opinion.

[1] The Hon. Baltazar R. Dizon, Presiding Judge, Regional Trial Court of Pasay City, Branch CXII.

[2] Rollo, p. 26.

[3] Rollo, p. 31.

[4] Rollo, pp. 102-103.

[5] Rollo, p. 21.

"Order

Before this Court is a petition for relief grounded on the following allegations:

'I. PLAINTIFFS WERE NOT ABLE TO FILE A TIMELY APPEAL TO THE ORDER OF THIS HONORABLE COURT DATED DECEMBER 18, 1985, DUE TO THE MALICIOUS AND FRAUDULENT ACT OF ATTY. ARTHUR M. POTIAN, PLAINTIFFS' FORMER COUNSEL OF RECORD AND/OR SAID COUNSEL'S MISTAKE AND/OR NEGLIGENCE IN NOT INFORMING THEM OF THE EXISTENCE OF THE AFOREMENTIONED ORDER DESPITE SAID FORMER COUNSELS RECEIPT OF SAID ORDER ON DECEMBER 23, 1985;

'II. PLAINTIFFS HAVE A GOOD AND MERITORIOUS CAUSE OF ACTIONS:'

In a more intensive study of the record of the case leads to the conclusion that this is a case where the petitioner is bound by the mistakes and omissions of his counsel and he was not oppressively denied his day in Court. And since the decision has become final and executory when the petitioner filed the instant petition for relief and as there is no clear showing that he was deprived of due process or that said decision was procured by means of extrinsic or collateral fraud, it can no longer be set aside. (See Gaba, et al. vs. Judge Jose Castro, et al., 120 SCRA 505)

It must be stressed in this connection, that 'notice to counsel is notice to his client and the failure of counsel to notify his client of an adverse judgment would not constitute excusable negligence and therefore binding to his client.' (Seavan Carrier, Inc. vs. GTI Sportswear Corp., 132 SCRA 308).

WHEREFORE, the petition for relief is hereby DENIED, for lack of merit.

SO ORDERED."

[6] Rollo, p. 22.

[7] Rollo, p. 24.

[8] Rollo, p. 26.

[9] Rollo, p. 27.

[10] Rollo, p. 31.

[11] Rollo, p. 1.

[12] Private Respondent's Memorandum, pp. 108-110.

[13] Rollo, pp. 141-142.

[14] Rollo, p. 26.

[15] 196 SCRA 280 (1991)

[16] 145 SCRA 139, 145, 146.

[17] Section 18, Interim Rules and Guidelines.

[18] Dimayuga vs. Philippine Commercial and Industrial Bank, 200 SCRA 143.

[19] Page 3, Decision, Civil Cases 1149-P and 1164--P, December 18, 1985.

[20] Tizon vs. Valdez, 48 Phil. 911, 914, 915.

[21] Section 13 (P.D. 1460). Every interest in property, whether real or personal, or any relation thereto or liability in respect thereof, of such a nature that a contemplated peril might directly indemnify the insured, is an insurable interest.

109 6 pt 6 pt 0 3

SEPARATE OPINION

REGALADO, J.:

I concur. I take this opportunity, however, to submit a clarification on the matter of computing the period for the redemption by the judgment debtor of his property subject of an execution sale.

The main decision states that the certificate of sale issued by the sheriff to Tan Hua was registered with the Register of Deeds of Caloocan City on March 18, 1981, but "Choi Ping Tai, unfortunately, could not redeem said property by the 18th of March, 1982 in accordance with Section 30, Rule 39, Rules of Court." Hence, the

conclusion is that “Choi Ping Tai, therefore, had no insurable interest in the property as of the date of the fire - March 19, 1982 since his last day to redeem the property pursuant to Section 30, Rule 39 of the Rules of Court expired on March 18, 1982.”

The necessary implication, consequently, is that the period of redemption is one (1) year, as has been stated in some decisions of the Court, from the registration of the sheriff’s certificate of sale. My position is that the redemption period should be considered as having lapsed five (5) days earlier, that is, on March 13, 1982 in this case.

Section 30 of Rule 39 provides that “(t)he judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve (12) months after the sale x x x,” and not within one (1) year. Of course, it is already settled that the phrase “after the sale” really means after the date of registration of the certificate of sale.[1] What is here in question, instead, is the computation of the redemption period of “twelve (12) months.”

Article 13 of the Civil Code provides that “(w)hen the laws speak of years, months, x x x, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; x x x” and it is only “(i)f months are designated by their name, (that) they shall be computed by the number of days which they respectively have.”

Now, the Rules of Court have the force and effect of law,[2] and in the rule applicable to the case at bar the months involved are not specifically designated. Accordingly, applying Article 13 of the Civil Code, the redemption period in this case and other cases falling under Section 30 of Rule 39 should consist of 360, and not 365, days since said Section 30 speaks of only twelve (12) months which, under the rules of computation in the aforestated Article 13, is not necessarily equivalent to one (1) year.

While the 5-day variance pointed out here, resulting from what I suggest is the correct basis for computation pursuant to said Article 13,[3] does not affect the disposition of the present case but even reinforces the conclusion therein, under like situations in other cases involving the correct duration of the redemption period such divergence could very well mean the difference between either the legal entitlement of the judgment creditor to or an extended opportunity for recovery by the judgment debtor of the auctioned property.

[1] Reyes vs. Manas, et al., 29 SCRA 736 (1969); Salazar, et al. vs. Meneses, et al., 8 SCRA 495 (1963); Garcia vs. Ocampo, et al., 105 Phil. 1102 (1959).

[2] Conlu vs. Court of Appeals, et al., 106 Phil. 940 (1960); Alvero vs. De la Rosa, et al., 76 Phil. 428 (1946); Shioji vs. Harvey, 43 Phil. 333 (1992).

[3] The provisions of Article 13 of the Civil Code were observed in computing the prescriptive period involved in People vs. Ramos, 83 SCRA 1 (1978), and in clarifying the effectivity date of the Family Code through Memorandum Circular No. 85, Office of the President, dated November 7, 1988.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.