Supreme Court E-Library

FIRST DIVISION

[G.R. No. L-28983 March 30, 1979]

FAUSTINO SAN JUAN, CORAZON SAN JUAN and VIRGINIA SAN JUAN, *petitioners, vs.* **HONORABLE COURT OF APPEALS, THE DIRECTOR OF LANDS, THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, MODESTA JACOBE, CLEMENTE SAMORIO, and EMILIANO ADRIANO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; DISCRETION TO GRANT OR DENY EXTENSION OF TIME; ADDRESSED TO THE COURT.** — The allowance or denial of motions for extensions of time is addressed mainly to the sound discretion of the Court and such must be exercised "wisely and prudently, never capriciously, with a view to substantial justice."

2. **ID.; ID.; ID.; FILING; DATE OF MAILING IS CONSIDERED DATE OF FILING.** — It is the date of mailing which is considered as the date of filing under Section 1, Rule 13 of the Rules of Court. Thus, where the envelope containing the motion bears two office stamps, one postmarked at the place where it was mailed, dated February 16, 1968, and the other postmarked at the place where it was received, dated February 20, 1968, the motion must be considered dated February 20, 1968, the motion must be considered filed on February 16, 1968.

3. **ID.; ID.; APPEAL; PERIOD TO FILE BRIEF NOT JURISDICTIONAL WHEN ALLOWED.** — The expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter.

4. **ID.; ID.; EXTENSION OF TIME TO FILE BRIEF, WHEN ALLOWED.** — Where there is no assertion or showing whatsoever of any intent to delay on the part of appellant or injury or prejudice to the appellee, and valid special reasons are presented for the granting of an additional extension within which to file the appellant's brief which is fact was filed within

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the requested extended period and such briefs shows that it is not perfunctory but on the contrary presents strong *prima facie* arguments for hearing the side of the appellant instead of dismissing the appeal outright, the exercise of sound discretion favors the granting of such extension of time in consonance with the settled principle that judicial discretion must be exercised "wisely and prudently, never capriciously, with a view to substantial justice.

APPEARANCES OF COUNSEL

Salonga Ordoñez Yap Sicat & Associates for petitioners.
Edgardo M. Carreon for private respondents.

D E C I S I O N

MELENCIO HERRERA, *J.*:

This is a petition for *Certiorari* and *Mandamus* seeking to nullify the Resolutions of respondent Court of Appeals dated (1) March 8, 1968, denying petitioners' Motion for a third extension of time to file their brief; (2) March 23, 1968, denying the Motion for a fourth extension to file said brief and dismissing the appeal; and (3) April 6, 1968, refusing reconsideration, admission of the brief and reinstatement of the appeal.

The following chronology of events will give the background of the present controversy:

November 15, 1967 —	petitioners received notice from the Court of Appeals to file their Brief within 45 days from receipt, or up to December 30, 1967;
December 29, 1967 —	petitioners filed their first petition for extension of 30 days from December 30, 1967 stating that although the brief was under preparation, "due to pressure of work, the preparation, revision and printing of said brief may not be finished and filed on or before(said date)."

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January 11, 1968 — Resolution of the Court of Appeals granting extension up to January 29, 1968.

January 27, 1968 — 2nd Petition for extension of 20 days from January 29, 1968, alleging the same grounds.

February 21, 1968 — Resolution of the Court of Appeals granting extension up to February 18, 1968.

February 16, 1968 — 3rd Petition for extension of 15 days from February 18, 1968, or up to March 4, 1968, for the same reason.

March 2, 1968 — 4th Petition for extension of 10 days from March 4, 1968, or up to March 14, 1968, for the same reason.

March 7, 1968 — Resolution of the Court of Appeals denying the 3rd Petition "for having been filed 2 days late."

March 14, 1968 — Motion for Reconsideration filed by petitioners contending that the true and legal date of filing of their 3rd Petition was February 16, 1968 as shown by the postmark from Binangonan, Rizal, where it was posted, although the same was received in the Manila Post Office on February 20, 1968, which must have been the basis for the finding that the Motion was filed 2 days late; that counsel had been taken ill and was unable to finish the typewritten draft of the brief although it had already been delivered the day before to Vera Printing Press.

Petitioners then prayed for an extension of one week from March 14, 1968 within which to file their brief.

March 18, 1968 — Petition for additional 3 days extension, as counsel was informed by Vera Printing press that the brief could only be finished on March 20, 1968 because one of their printing machines was not operating.

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March 21, 1968	—	Petition to admit plaintiffs-appellants brief filed by registered mail on March 20, 1968 by petitioners.
March 23, 1968	—	Resolution of the Court of Appeals denying the petition for 4th extension, it appearing that the earlier petition for a 3rd extension had been denied and that up to then, the appeal brief had not been filed. The appeal was likewise dismissed upon appellees' Motion.
March 26, 1968	—	*Ex-parte* Manifestation by petitioners praying for reconsideration of the last mentioned Resolution, reinstatement of the appeal and admission of the brief filed on March 20, 1968.
April 6, 1968	—	Resolution of the Court of Appeals denying the petition for extension to file brief until March 20, 1968 and maintaining the Resolution of March 23, 1968.

Hence, on May 3, 1968, petitioners presented this Petition for *Certiorari* and *Mandamus* praying that the afore enumerated Resolutions of the Court of Appeals be set aside, that their appeal be reinstated, and their printed brief admitted.

Specifically, petitioners assign the following errors to respondent Court:

"I

IN DENYING ADMISSION OF PETITIONERS' BRIEF ON THE GROUND THAT THE THIRD EXTENSION FOR EXTENSION OF TIME TO FILE BRIEF WAS FILED '2' DAYS LATE RESPONDENT COURT OF APPEALS HAS SO DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND HAS ACTED IN A MANNER NOT IN ACCORD WITH LAW AS TO CALL FOR THE EXERCISE BY THIS HONORABLE SUPREME COURT OF ITS POWER OF SUPERVISION.

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"II

IN DISMISSING THE APPEAL OF THE PETITIONERS ON THE GROUND, NAMELY, 1) THAT THE THIRD PETITION FOR EXTENSION OF TIME TO FILE BRIEF OF THE PETITIONERS WAS FILED 2 DAYS LATE 2) THAT THE BRIEF OF PETITIONERS HAS NOT BEEN FILED UP TO MARCH 23, 1968 WHEN SAID GROUNDS ARE BELIED BY THE VERY RECORDS OF RESPONDENT COURT OF APPEALS SAID COURT HAS ACTED IN EXCESS OF ITS JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION.

"III

IN DISMISSING THE APPEAL OF THE PETITIONERS, THE RESPONDENT COURT OF APPEALS HAS DEPRIVED THE PETITIONER OF THEIR RIGHT TO APPEAL WITHOUT DUE PROCESS OF LAW CAUSING THEM IRREPARABLE INJURY AS THE DISMISSAL OF THEIR APPEAL WILL HAVE THE EFFECT OF SANCTIONING THE ACTS OF LAND GRABBING PERPETRATED AGAINST THEM BY HEREIN PRIVATE RESPONDENTS."

There is no question that the allowance or denial of motions for extensions of time is addressed mainly to the sound discretion of the Court. It is likewise axiomatic that such discretion must be exercised "wisely and prudently, never capriciously, with a view to substantial justice."

In this case, the Court of Appeals denied petitioners' Motion for a 3rd extension to file their brief on the ground that said Motion was "filed 2 days late." This was a clear misapprehension of the facts. The xerox copy of the envelope containing that 3rd Petition bears two post office stamps, one postmarked Binangonan, Rizal, dated February 16, 1968, and the other postmarked Manila, dated February 20, 1968.[1] Since it is the date of mailing which is considered as the date of filing under Section 1, Rule 13 of the Rules of Court, it is evident that petitioners' 3rd Petition must be considered filed on February 16, 1968, or two days before the last day, which was February 18, 1968. The error was compounded when respondent Court

[1] p. 97, *Rollo*.

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denied the 4th Petition for extension "it appearing that the earlier petition for a 3rd extension had been denied."

Respondent Court likewise denied on March 23, 1968, the petition for 4th extension on the ground that up to then the appeal brief had not been filed. As pointed out, however, by petitioners in their Petition to Admit Plaintiffs-Appellants Brief dated March 21, 1968, they had actually filed their printed Brief on March 20, 1968, three days before respondent Court's Resolution dated March 23, 1968.

The interests of substantial justice, therefore, mandate that petitioners' appeal be reinstated and their printed brief admitted. Equally relevant in the resolution of this case is the consideration that the expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter.[2]

Additionally, this case involves a land controversy and the brief presented by petitioners presents cogent reasons for hearing petitioners' side.

"Suffice it to state that where there is no assertion or showing whatsoever of any intent to delay on the part of appellant or of injury or prejudice to the appellee, and valid special reasons are presented for the granting of an additional extension within which to file the appellant's brief which in fact is filed within the requested extended period and such briefs shows that it is not perfunctory but on the contrary presents strong *prima facie* arguments for hearing the side of the appellant instead of dismissing the appeal outright, the exercise of sound discretion favors the granting of such extension of time in consonance with the settled principle that judicial discretion must be exercised 'wisely and prudently, never capriciously, with a view to substantial justice."[3]

WHEREFORE, the Resolutions of respondent Court of Appeals denying petitioners' 3rd and 4th Petitions for extension

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[2] *Gregorio vs. Court of Appeals*, 72 SCRA 120 [1976].

[3] *Oyao vs. People*, 75 SCRA 424-25.

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of time within which to file their brief are set aside, petitioners' appeal ordered reinstated and their brief admitted.

No costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *De Castro, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-31364. March 30, 1979]

MISAEL P. VERA, as Commissioner of Internal Revenue, and JAIME ARANETA, as Regional Director, Revenue Region No. 14, Bureau of Internal Revenue, *petitioners, vs.* **HON. JOSE F. FERNANDEZ, Judge of the Court of First Instance of Negros Occidental, Branch V, and FRANCIS A. TONGOY, Administrator of the Estate of the late LUIS D. TONGOY,** *respondents.*

SYLLABUS

1. **STATUTORY CONSTRUCTION; PRINCIPLE OF *EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS;* APPLIED TO SECTION 5, RULE 86, RULES OF COURT.** — Since Section 5, Rule 86 of the Rules of Court makes no mention of claims for monetary obligations of the decedent created by law, such as taxes which is entirely of different character from the claims expressly enumerated therein, such as: "all claims for money against the decedent arising from contract, express or implied, whether the same be due, not due or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent and judgment for money against the decedent," it necessarily,