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SECOND DIVISION

[G.R. No. L-38837. February 27, 1979]

JOSE S. DINEROS in his capacity as Receiver of La Paz Ice Plant and Cold Storage Co., Inc., and RICARDO GURREA, *petitioners*, *vs.* **MARCIANO C. ROQUE, MANUEL LEZAMA, JUDGE CARLOS Y. GONZALES, GREGORIO L. LIRA as Provincial Sheriff *Ex-Officio* of Iloilo, and the CITY SHERIFF OF MANILA**, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; REQUISITE.** — The Rules of Court require that the movant shall point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions. Moreover, the movant should also point out why it is so. Among the ends to which a motion for reconsideration is addressed, one is precisely to convince the court that its ruling in so doing, the movant has to dwell of necessity upon the issues passed upon by the court.

2. **ID.; ID.; ID.; WHEN CONSIDERED *PRO FORMA*.** — Where the petitioners alleged in their motion for reconsideration that the issues raised in the pleadings were not passed upon, considered and determined and the decision, that the decision does not conform to the pleadings and proofs, and that said decision is not in accordance with the theory of the action and defense, and in law; but they failed to point out specifically the findings and conclusions in the decision which are not supported by the evidence or which are contrary to law, the motion is *pro forma*, intended merely to delay the proceedings and as such, it is a mere scrap of paper that cannot stay the period for taking an appeal.

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4. ID.; ID.; APPEAL; APPEAL FROM THE COURT OF FIRST INSTANCE TO THE COURT OF APPEALS; REQUISITES. — Under Section 3, Rule 41 of the Rules of Court, an aggrieved party may appeal from the decision of the Court of First Instance to the Court of Appeals within thirty (30) days from receipt of the order of judgment, by filing with the trial court, a notice of appeal, an appeal bond and a record on appeal.

5. ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; CLEAR LEGAL RIGHT MUST BE ESTABLISHED. — Where the records show that the appeal was filed beyond the reglementary period for perfecting appeals, and, therefore, petitioners have not demonstrated a ministerial duty on the part of the respondent Judge to approve, nor established a clear right to the approval of, their record on appeal, *mandamus* will not lie to compel the respondent Judge to elevate the record on appeal.

APPEARANCES OF COUNSEL

Tirso Espeleta for petitioners.
Efrain B. Treñas for respondents.

D E C I S I O N

CONCEPCION JR., *J.*:

This is a petition for *mandamus* with preliminary injunction to compel the Court of First Instance of Iloilo, Branch VI, presided by respondent Judge Carlos Y. Gonzales, to approve and certify the record on appeal filed by petitioners in Civil Case No. 5509, entitled "*Jose S. Dineros, et al. vs. Marciano C. Roque, et al.*"

The essential facts that led to the filing of the instant petition may be summarized as follows:

On December 2, 1959, the Court of First Instance of Manila Branch XVII, rendered in Civil Case No. 39827 a default judgment, ordering the defendant therein, the La Paz Ice Plant

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and Cold Storage Co., Inc., to pay the plaintiff therein, Marciano C. Roque, the sum of ₱150,000.00 with interest and attorney's fees.[1]

On July 18, 1960, the petitioners Jose S. Dineros (as receiver of La Paz Ice Plant and Cold Storage Co., Inc.) and Ricardo Gurrea as plaintiffs, filed in the Court of First Instance of Iloilo, Branch VI, presided by respondent Judge, an action to annul the default judgment rendered by the Court of First Instance of Manila, Branch XVII, in Civil Case No. 39827, which case was docketed therein as Civil Case No. 5509.[2]

After due trial, respondent Judge rendered, on March 7, 1974, a decision dismissing the complaint,[3] copy of which was received by petitioners on March 13, 1974.[4]

On April 4, 1974, petitioners filed a motion for reconsideration,[5] which was, however, denied by respondent Judge in his Order, dated April 22, 1974 for lack of merit.[6]

After the denial of petitioner's motion for reconsideration, private respondents (defendants below) filed on April 12, 1974,[7] an opposition to the motion for reconsideration and a counter-motion to order entry of judgment, dated April 20, 1974, alleging that the motion for reconsideration is *pro forma*, which did not suspend the running of the period for perfecting appeal, and since petitioners received a copy of the decision on March 13, 1974, the same became final and executory on April 14, 1974.[8]

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[1] pp. 2-3, *rollo*.

[2] Annex "A", p. 13, *rollo*.

[3] Annex "D", p. 29, *rollo*.

[4] Annex "E", p. 37, *rollo*.

[5] *Ibid*.

[6] Annex "G", p. 47, *rollo*.

[7] p. 113, *rollo*.

[8] Annex "F", p. 42, *rollo*.

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Thereafter, petitioners filed their notice of appeal and cash appeal bond in the sum of ₱120.00, under Official Receipts Nos. 4082251 and 444393, both dated April 24, 1974,[9] and tendered on May 3, 1974,[10] their record on appeal for the approval by the court *a quo*. On May 4, 1974, private respondents filed an opposition to the approval of the record on appeal and a motion to dismiss appeal,[11] to which petitioners filed their reply.[12]

On May 21, 1974, respondent Judge issued an order holding that petitioner's motion for reconsideration is in the category of a *pro forma* motion which did not suspend the running of the period to appeal and that the decision had already become final and executory for failure of petitioners to perfect their appeal within the reglementary period. Consequently, he ordered the dismissal of the record on appeal, directed the Clerk of Court to make the proper entry of judgment, and issued the correspondent writ of execution.[13]

Thereupon, petitioners resorted to this Court for a writ of mandamus, alleging that respondent Judge committed an error in holding that their motion for reconsideration is *pro forma* and in disallowing their record on appeal.

On May 28, 1975, We issued a temporary restraining order, enjoining the respondents and all persons acting under them from enforcing the default judgment dated December 2, 1959 rendered in Civil Case No. 39827 of Branch XVII of the Court of First Instance of Manila.[14]

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[9] Annex "H", p. 48, *rollo*.

[10] p. 51, *rollo*.

[11] Annex, "I", pp. 49, 53, *rollo*.

[12] p. 51, *rollo*.

[13] Annex "J", p. 50, *rollo*.

[14] p. 99, *rollo*.

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The only issue presented for resolution is whether or not the petitioners' motion for reconsideration, dated April 4, 1974, is *pro forma*, and, therefore, did not interrupt the running of the period to appeal.

Among the ends to which a motion for reconsideration is addressed, one is precisely to convince the court that its ruling is erroneous and improper, contrary to law or the evidence, and in so doing, the movant has to dwell of necessity upon the issues passed upon by the court.[15] In this connection, the Rules require that the movant "shall point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions."[16] Moreover, the movant "should also point out why it is so."[17]

In the case before Us, the petitioners, alleged in their motion for reconsideration that the issues raised in the pleadings were not passed upon, considered and determined in the decision; that the decision does not conform to the pleadings and proofs; and that the said decision is not in accordance with the theory of the action and defense, and in law.[18] They failed, however, to point out specifically the findings and conclusions in the decision which are not supported by the evidence or which are contrary to law. A motion for reconsideration which does not specify the findings or conclusions in the decision, which are not supported by the evidence or which are contrary to law, is *pro forma*, intended merely to delay the proceedings,[19] and, as such, it is

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[15] *Gurrea Enterprises Co., Inc. vs. The CFI of Lanao del Sur*, Branch I and Pablo Cuna, L-28310, April 17, 1970, 32 SCRA 314; Rule 37, Sec. 1, subsection (c).

[16] Rule 37, Section 2, par. 3.

[17] *Luzon Stevedoring Co., Inc. vs. CIR*, L-16682, July 26, 1963, 8 SCRA 447.

[18] Annex "E", p. 37, *rollo*.

[19] *Alvero vs. De la Rosa*, 76 Phil. 428; *Valdez vs. Jugo*, 74 Phil. 49.

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a mere scrap of paper that cannot stay the period for taking an appeal.[20]

Respondent Judge, therefore, correctly ruled that petitioners' motion for reconsideration is *pro forma*, which did not suspend the running of the period for taking an appeal.

Under Section 3, Rule 41 of the Rules of Court, an aggrieved party may appeal from the decision of the Court of First Instance to the Court of Appeals within thirty (30) days from receipt of the order of judgment, by filing with the trial court, a notice of appeal, an appeal bond and a record on appeal. In the present case, petitioners received a copy of the decision of the court *a quo* on March 13, 1974.[21] They had, therefore, up to April 12, 1974 within which to perfect their appeal. The records, however, show that they filed their appeal bond only on April 24, 1974, and their notice of appeal and record on appeal only on May 3, 1974.[22] Obviously, their appeal was filed beyond the reglementary period for perfecting appeals.

In conclusion We find that petitioners have not demonstrated a ministerial duty on the part of respondent Judge to approve their record on appeal[23] nor establish a clear right to the approval of their record on appeal.[24]

ACCORDINGLY, the present petition should be, as it is hereby, dismissed, and the restraining order issued by this Court on May 28, 1975, is hereby dissolved. With costs against the petitioners.

SO ORDERED.

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[20] *Crisostomo vs. Court of Appeals*, L-27166, March, 1970, 32 SCRA 54; *Valdez vs. Jugo, supra; Alvero vs. De la Rosa, supra.*

[21] Annex "E", p. 37, *rollo.*

[22] p. 113, *rollo.*

[23] *Villamor, et al. vs. Lacson, et al.*, L-15845, Nov. 28, 1964; *Llanto vs. Dimaporo*, L-21905, March 31, 1966.

[24] *Complido vs. Mendoza*, L-20265, June 30, 1964, 11 SCRA 477.

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Antonio, Santos, and *Abad Santos, JJ.*, concur.

Fernando, J. (*Chairman*), took no part.

Barredo, J., joins Justice Aquino's concurring opinion.

Aquino., J., see concurring opinion below.

AQUINO, *J.*, *concurring*:

The petitioners filed a motion for reconsideration on April 4, 1974 or twenty-two days after their receipt on March 13, 1974 of the lower court's decision (p. 37, Rollo). That motion was denied in the order of April 22, 1974. The record does not show when the petitioners were served a copy of that order of denial.

However, since on April 24, 1974, they filed their notice of appeal and deposited their cash appeal bond (pp. 4 and 113, *Rollo*, that date may be assumed as the date when they received a copy of the order of denial. From that date, they had *eighty days or up to May 2, 1974* within which to file their record on appeal. They could have asked for an extension but they did not do so.

They filed their record on appeal on *May 4, 1974. It was two (2) days late*, the deadline being May 2. So, even if petitioners' motion for reconsideration is regarded as not *pro forma*, still the trial court acted correctly in not giving due course to their appeal. It was not perfected on time. A record on appeal, which was filed one day late, was not considered filed on time (*Reyes vs. Court of Appeals*, 74 Phil. 235).

Consequently, the petition for *mandamus* to compel the trial court to elevate the record on appeal has no merit.