Supreme Court E-Library

WHEREFORE, the judgment appealed from is affirmed. With costs.

Barredo, Antonio, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

Aquino, J., concurs in the result.

SECOND DIVISION

[G.R. No. L-29414. October 31, 1979]

THE PROVINCIAL BOARD OF AGUSAN, and FELIX M. ZAMAR, SR., as Provincial Treasurer of Agusan, *petitioners, vs.* **PASTOR D. AGO and HON. MANUEL LOPEZ ENAGE as Judge of the Court of First Instance, Br. II of Agusan, and MACARIO C. CONDE, as Provincial Sheriff of Agusan,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; MOTION FOR RECONSIDERATION; WHEN CONSIDERED *PRO FORMA*.— As will be seen, the herein petitioners did not 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 as required under Section 2, Rule 37 of the Rules of Court, but merely pointed out what the trial court had allegedly failed to consider in arriving at its judgment. This Court has ruled in many instances that motions for new trial (motion for reconsideration) on the ground that the judgment is contrary to law, without pointing out the supposed defects as required under Section 2 of Rule 37 are *pro forma* and do not interrupt the running of the period for the perfection of appeals. It results that the motion for reconsideration filed by the herein petitioners is a *pro forma* motion.

Supreme Court E-Library

AQUINO, *J.*, *concurring*:

REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; PERIOD FOR PERFECTION.— From December 13, 1967, when the provincial fiscal received a copy of the order denying his motion for reconsideration, he had twenty days (the remainder of the thirty-day reglementary period) within which to perfect his appeal. That means that the deadline for the perfection of the appeal was January 2, 1968.

D E C I S I O N

CONCEPCION JR., *J.*:

This is a petition for *certiorari* and *mandamus* with prohibition, seeking to annul and set aside the order of respondent Judge dismissing the appeal in Special Case No. 60 of the Court of First Instance of Agusan entitled: "*Pastor D. Ago, petitioner, versus Felix G. Martinez, et al., respondents*," for having been filed out of time.

The record of the case discloses that on September 29, 1958 herein private respondent Pastor D. Ago filed a petition for injunction with preliminary injunction with the Court of First Instance of Agusan, to restrain the Provincial Board of the Province of Agusan from conducting another public sale of the lot formerly used for the official residence of the Provincial Governor of Agusan for the reason that he had acquired a vested right over the lot by virtue of the approval and acceptance of his bid by the Provincial Board of Agusan on July 28, 1958.[1]

On October 10, 1958, the Provincial Fiscal of Agusan filed an answer to the petition disputing the claim of Ago.[2]

On August 14, 1964, the parties submitted a stipulation of facts[3] and upon their motion,[4] the respondent Judge rendered

---

[1] *Rollo*, p. 27.

[2] *Id.*, p. 31.

[3] *Id.*, p. 36.

[4] *Id.*, p. 39.

Supreme Court E-Library

a decision on November 6, 1967; based upon the pleadings and the stipulation of facts submitted by the parties.[5]

The Provincial Fiscal received a copy of the decision on November 8, 1967[6] and, not satisfied with the verdict, it being adverse to the Provincial Board, he filed a motion for the reconsideration of the decision on November 18, 1967, stating as grounds therefor that:

"1. Said decision failed to consider the condition stipulated in the 'Advertisement for Rebidding'; and

"2. That the petitioner failed to exhaust all administrative remedies."[7]

The motion for reconsideration was denied on December 12, 1967.[8] The Provincial Fiscal received a copy of the order of denial on the following day.[9] Thereupon, he filed a notice of appeal on December 28, 1967,[10] and on December 27, 1967, he requested an extension of time of thirty (30) days from January 5, 1968 within which to deposit the appeal bond and to submit the record on appeal.[11] On January 3, 1968, the Provincial Fiscal deposited the appeal bond[12] and submitted the record on appeal.[13] On July 22, 1968, Pastor Ago filed a motion to dismiss the appeal on the ground that the appeal was not filed within the reglementary period.[14] The motion was opposed by the Provincial Fiscal.[15]

---

[5] *Id.*, p. 40.

[6] *Id.*, p. 70.

[7] *Id.*, p. 52.

[8] *Id.*, p. 56.

[9] *Id.*, p. 58.

[10] *Id.*, p. 57.

[11] *Id.*, p. 58.

[12] *Id.*, p. 61.

[13] *Id.*, p. 62.

[14] *Id.*, p. 63.

[15] *Id.*, p. 70.

Supreme Court E-Library

On July 26, 1968, the respondent Judge dismissed the appeal as prayed for.[16] Whereupon, the Provincial Fiscal filed the instant petition for *certiorari* and *mandamus* with prohibition, to annul and set aside the order of the respondent Judge dismissing the appeal.

The petitioners claim that their appeal was perfected within the reglementary period because the motion for reconsideration of the decision filed on November 8, 1967 suspended the period for perfecting an appeal.

The respondents, upon the other hand, maintain that the appeal was filed late because the motion for reconsideration is a *pro forma* motion and did not suspend the running of the period for appeal.

The petition is without merit. The motion for reconsideration filed by the herein petitioners on November 18, 1967 reads, as follows:

"*MOTION FOR RECONSIDERATION*

"COME NOW the defendants, Provincial Treasurer and Provincial Board of Agusan thru the undersigned Provincial Fiscal of Agusan and to this Honorable Court most respectfully move for a reconsideration of the decision of this Honorable Court dated November 6, 1967 based on the following grounds:

1. Said decision failed to consider the condition stipulated in the "Advertisement for Rebidding" (Annex "A");

2. That the petitioner failed to exhaust all administrative remedies.

ARGUMENTS:

"1. SAID DECISION FAILED TO CONSIDER THE CONDITION STIPULATED IN THE "ADVERTISEMENT FOR REBIDDING."—

One of the conditions imposed in the "Advertisement for Rebidding" (Annex "A") reads as follows:

---

[16] *Id.*, p. 76.

Supreme Court E-Library

> "The right is reserved to reject any/or all bids, to waive any informality therein or to accept the bid as may be most advantageous to the government."

which condition is likewise incorporated in Subparagraph (d) of paragraph 11 of the Stipulation of Facts dated August 14, 1967.

"When the petitioner participated as a bidder and submitted his bid, he is presumed to have agreed to such a condition imposed in the advertisement for rebidding.

"The petitioner was granted a period of three (3) days from receipt of the demand letter of the Provincial Board within which to tender payment, but he failed to do so. (par. 6 & 7, Stipulation of Facts). Respondent Provincial Board passed Resolution No. 470, Series of 1958 wherein the petitioner was again granted another ten (10) days grace within which to tender full payment of the purchase price otherwise his award will be considered revoked, but the petitioner failed again to pay the amount of his bid (par. 7 & 8, Stipulation of Facts).

"Such failure of the petitioner to tender full payment of the price of his bid is a sufficient justification for the respondent Provincial Board to revoke the award based on the foregoing condition imposed in the Advertisement for Rebidding wherein the Respondent Provincial Board has reserved the right to reject any/or all bids, to waive any informality therein or to accept the bid as may be most advantageous to the government.

"2. THE PETITIONER FAILED TO EXHAUST ALL ADMINISTRATIVE REMEDIES: —

Before decisions of administrative bodies can be brought to the courts for review, all administrative remedies must first be exhausted:

> "We agree with counsel for the defendant (should be respondents that before resorting to take court action, plaintiff should have exhausted all his administrative remedies. When the Secretary of Agriculture and Natural Resources reversed the decision of the Director of the Fish and Game Administration, Bureau of Science (now Bureau of Forestry), he should have appealed to the President of the Philippines, who has control over the official actions and decisions of all subordinate officers in the Executive Department (Philippine Constitution, Art. VII,

Supreme Court E-Library

Sec. 10(1)." . . . (*DIMAISIP VS. THE SEC. OF AGRICULTURE & NATURAL RESOURCES*, CA-G.R. No. 16306, July 31, 1957.)

"PREMISES CONSIDERED, it is most respectfully prayed that this Honorable Court reconsider its decision, dated November 6, 1967 declaring

"1. The award given to the petitioner as revoked or rejected by Board Resolution No. 470, Series of 1968 (Annex "C");

2. The right and authority of respondents to readvertise the property in litigation for another public bidding; and

3. For other remedies which this Honorable Court may deem just and proper in the premises.

Butuan City, November 16, 1967."[17]

As will be seen, the herein petitioners did not 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 as required under Section 2, Rule 37 of the Rules of Court, but merely pointed out what the trial court had allegedly failed to consider in arriving at its judgment. This Court has ruled in many instances that motions for new trial (motion for reconsideration) on the ground that the judgment is contrary to law, without pointing out the supposed defects as required under Section 2 of Rule 37 are *pro forma* and do not interrupt the running of the period for the perfection of appeals.[18] It results that the motion for reconsideration filed by the herein petitioners is a *pro forma* motion.

Considering that the herein petitioners received a copy of the decision of the trial court on November 8, 1967, and filed their notice of appeal on December 28, 1967, after the lapse

---

[17] pp. 52-53, *rollo*.

[18] *Dineros vs. Roque*, G.R. No. L-38837, February 27, 1979, and other cases cited therein.

Supreme Court E-Library

of fifty (50) days; and their appeal bond and record on appeal on January 3, 1968, after the lapse of fifty-six (56) days, their appeal was not perfected within the period prescribed by the Rules.

WHEREFORE, the petition should be, as it is hereby DISMISSED. No costs.

SO ORDERED.

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

Barredo, J., I concur on the sole ground that the appeal bond was not filed on time.

AQUINO, *J.*, *concurring*:

I concur in the result. From December 13, 1967, when the provincial fiscal received a copy of the order denying his motion for reconsideration, he had twenty days (the remainder of the thirty-day reglementary period) within which to perfect his appeal. That means that the deadline for the perfection of the appeal was January 2, 1968.

The appeal bond was filed on January 3, 1968. It was one day late. The motion for the extension of the time within which to file the appeal bond was out of order. The period for filing the appeal bond cannot be extended. Hence, the petitioner's appeal was not perfected within the reglementary period (*Reyes vs. Court of Appeals*, 79 Phil. 235).