

FIRST DIVISION

[G.R. No. 166236, July 29, 2010]

**NOLI ALFONSO AND ERLINDA FUNDIALAN, PETITIONERS, VS.
SPOUSES HENRY AND LIWANAG ANDRES, RESPONDENTS.**

DECISION

DEL CASTILLO, J.:

Technical rules may be relaxed only for the furtherance of justice and to benefit the deserving.

In the present petition for review, petitioners assail the August 10, 2004 Resolution^[1] of the Court of Appeals (CA) in CA-G.R. CV. No. 78362, which dismissed the appeal before it for failure of petitioners to file their brief within the extended reglementary period.

Factual Antecedents

The present case stemmed from a complaint for *accion publiciana* with damages filed by respondent spouses Henry and Liwanag Andres against Noli Alfonso and spouses Reynaldo and Erlinda Fundialan before the Regional Trial Court (RTC), Branch 77, San Mateo, Rizal.

On July 8, 1997, the RTC rendered a Decision^[2] in favor of respondents. The dispositive portion of the Decision states:

WHEREFORE, premises considered judgment is rendered in favor of the plaintiffs and against the defendants and all persons claiming rights under them who are ordered:

1. to vacate the premises located at 236 General Luna St., Dulongbayan 11, San Mateo, Rizal;
2. to jointly and severally pay the sum [of] P100.00 as reasonable compensation for the use of said premises commencing from 04 September 1995; [and]
3. to jointly and severally pay the sum of P10,000.00 as and for attorney's fees and to pay the cost of suit.

SO ORDERED.^[3]

Petitioners,^[4] thus, appealed to the CA.

Proceedings Before the Court of Appeals

On November 5, 2003, petitioners' previous counsel was notified by the CA to file appellants' brief within 45 days from receipt of the notice. The original 45-day period expired on December 21, 2003. But before then, on December 8, 2003, petitioners' former counsel filed a Motion to Withdraw Appearance. Petitioners consented to the withdrawal.

On December 19, 2003, petitioners themselves moved for an extension of 30 days or until January 21, 2004 within which to file their appellants' brief. Then on March 3, 2004, petitioners themselves again moved for a fresh period of 45 days from March 3, 2004 or until April 18, 2004 within which to file their appellants' brief.

On March 17, 2004, the CA issued a Resolution:^[5] a) noting the withdrawal of appearance of petitioners' former counsel; b) requiring petitioners to cause the Entry of Appearance of their new counsel; and c) granting petitioners' motions for extension of time to file their brief for a period totaling 75 days, commencing from December 21, 2003 or until March 5, 2004.

Petitioners themselves received a copy of this Resolution only on April 6, 2004. By that time, the extension to file appellants' brief had already long expired.

On April 14, 2004, the Public Attorney's Office (PAO), having been approached by petitioners, entered^[6] its appearance as new counsel for petitioners. However, on August 10, 2004, the CA issued the assailed Resolution dismissing petitioners' appeal, to wit:

FOR failure of defendants-appellants to file their brief within the extended reglementary period which expired on March 5, 2004 as per Judicial Records Division report dated July 26, 2004, the appeal is hereby DISMISSED pursuant to Sec. 1 (e), Rule 50 of the 1997 Rules of Civil Procedure.

SO ORDERED.

On September 6, 2004, the PAO filed their Motion for Reconsideration^[7] which requested for a fresh period of 45 days from September 7, 2004 or until October 22, 2004 within which to file appellants' brief. On October 21, 2004, the brief^[8] was filed by the PAO.

On November 26, 2004, the CA issued a Resolution^[9] which denied petitioners' motion for reconsideration. Hence, this petition for review.

Issues

Petitioners raise the following issues:

APPELLANTS' BRIEF, DESPITE THE ATTENDANCE OF PECULIAR FACTS AND CIRCUMSTANCES SURROUNDING SUCH FAILURE, LIKE THE GROSS AND RECKLESS NEGLIGENCE OF THEIR FORMER COUNSEL, THE ABSENCE OF MANIFEST INTENT TO CAUSE DELAY, THE SERIOUS QUESTIONS OF LAW POSED FOR RESOLUTION BEFORE THE APPELLATE COURT, AND THE FACT THAT THE APPELLANTS' BRIEF HAD ALREADY BEEN FILED WITH THE COURT OF APPEALS AND ALREADY FORMED PART OF THE RECORDS OF THE CASE.

II

THE DISMISSAL OF PETITIONERS' APPEAL BY THE HONORABLE COURT OF APPEALS IS HIGHLY UNJUSTIFIED, INIQUITOUS AND UNCONSCIONABLE BECAUSE IT OVERLOOKED AND/OR DISREGARDED THE MERITS OF PETITIONERS' CASE WHICH INVOLVES A DEPRIVATION OF THEIR PROPERTY RIGHTS.^[10]

Petitioners' Arguments

Petitioners contend that their failure to file their appellants' brief within the required period was due to their indigency and poverty. They submit that there is no justification for the dismissal of their appeal specially since the PAO had just entered its appearance as new counsel for petitioners as directed by the CA, and had as yet no opportunity to prepare the brief. They contend that appeal should be allowed since the brief had anyway already been prepared and filed by the PAO before it sought reconsideration of the dismissal of the appeal and is already part of the records. They contend that the late filing of the brief should be excused under the circumstances so that the case may be decided on the merits and not merely on technicalities.

Respondents' Arguments

On the other hand, respondents contend that failure to file appellants' brief on time is one instance where the CA may dismiss an appeal. In the present case, they contend that the CA exercised sound discretion when it dismissed the appeal upon petitioners' failure to file their appellants' brief within the extended period of 75 days after the original 45-day period expired.

Our Ruling

The petition has no merit.

Failure to file Brief On Time

Rule 50 of the Rules of Court states:

Section 1. Grounds for dismissal of appeal.-An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds: