

THIRD DIVISION

[G.R. No. 140974, July 11, 2001]

**RAMON ORO, PETITIONER, VS. JUDGE GERARDO D. DIAZ,
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 68,
DUMANGAS, ILOILO; AND DONATO MANEJERO, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

The power of the trial court to disallow or disapprove a notice of appeal that has been filed out of time is expressly recognized by the Rules of Court. The approval of the notice becomes a ministerial duty of the court *only when the appeal is filed on time*. Otherwise, the court has the discretion to refuse or disallow it in accordance with the Rules.

The Case

Before us is a Petition^[1] for *Certiorari* under Rule 65 of the Rules of Court. The Petition challenges the Order^[2] dated September 15, 1999, issued in Civil Case No. 99-070 by the Regional Trial Court (RTC), Branch 68, Dumangas, Iloilo. The RTC Order disapproved petitioner's Notice of Appeal for having been filed beyond the reglementary period.

The Facts

The factual antecedents, as alleged by petitioner in his Memorandum,^[3] are as follows:

"1. The private respondent is a tenant of the petitioner over a landholding located at Badiangan, Province of Iloilo, Philippines;

"2. When the private respondent maliciously failed to pay his rentals for crop years 1988 and 1989, the petitioner brought an action before the Department Of Agrarian Reform Adjudication Board (DARAB) for the collection of said rentals;

"3 Throughout the course and/or pendency of the said DARAB Case, the private respondent did not pay rentals until the same was decided and finally executed sometime in 1998 the private respondent was made to pay the past due rentals from 1988 to 1998 without interests and damages;

"4. Believing that the private respondent [was] liable for damages arising from the latter's malicious act of delaying the said DARAB case and not paying the rentals during the pendency of the aforesaid case, the

"5. Donato Manajero (respondent) appealed the questioned Decision with the DARAB Central Board, Diliman, Quezon City and on appeal said case was docketed as DARAB CASE No. 5296;

"6. Sometime on September 3, 1997, the DARAB Appellate Board rendered a Decision by modifying the Decision of PARAD Manuel Traviña dated, August 12, 1996. A machine copy of the Decision is hereto attached as Annex `A`;

"7. In said Decision, Donato Manejero (respondent) was x x x MAINTAINED in peaceful possession and cultivation but he was ordered to pay the aforementioned back rentals for 1988-89 and 1989-90 or a total of fifty (50) cavans of clean and dried palay or its mon[e]y equivalent;

"8. The Decision of the DARAB Central Board still ruled out damages and the same became final and executory Pursuant to the Entry of Judgment issued by the DARAB executive director dated, October 6, 1998. A machine copy of the Entry of Judgment is hereto attached as Annex `B`;

"9. A Writ of Execution has been issued and fully implemented[;] hence, this case is considered closed and terminated with nothing more to litigate;

"10. The record would reveal that petitioner filed a Complaint against respondent Donato Manejero with RTC-Dumangas, Iloilo (Branch No. 68) being presided by the Honorable Public Respondent Judge Gerardo Diaz, [and] respondent filed his Answer with Motion to Dismiss. A machine copy of the Complaint is hereto attached as Annex `C` and Answer as Annex `D`;

"11. Sometime on May 19, 1999, petitioner's case docketed as Civil Case No. 99-070 was ordered dismissed. A machine copy of the Order of Dismissal is hereto attached as Annex `E`;

"12. Petitioner filed a Motion for Reconsideration upon receipt of the Order and sometime on June 9, 1999 file[d] a Motion for reconsideration. Respondent upon receipt of a copy filed an Opposition and the record would show that his Motion was denied pursuant to the Order of RTC-Dumangas, Iloilo dated, July 27, 1999. A machine copy of the resolution is hereto attached as Annex `F`;

"13. Instead of filing a Notice of Appeal and appeal[ing] the Order of Dismissal with the Court of Appeals, herein petitioner filed this instant Petition;"^[5]

The Trial Court's Ruling

The trial court, in disapproving the Notice of Appeal filed by petitioner, explained its disposition in this wise:

"To be dealt with is the legal issue of whether or not to approve Notice of Appeal filed by plaintiff. No opposition has been filed by defendant.

"The records show that on May 19, 1999 the Court issued an Order dismissing the complaint[,] which order was received by plaintiff on June 02, 1999. On June 14, 1999, plaintiff filed a Motion for Reconsideration which was opposed by defendant on June 17, 1999. The Motion for Reconsideration was set for hearing on July 02, 1999 at 8:30 o'clock in the morning. On July 01, 1999, a motion to set hearing was filed by plaintiff which was granted by the Court[, which reset] the hearing on the Motion for Reconsideration to July 09, 1999 at 8:30 o'clock in the morning. On July 09, 1999, the Motion for Reconsideration and the Opposition was submitted for resolution. On July 27, 1999, the Court issued an Order denying the Motion for Reconsideration for [the] reason that [the] motion is pro-forma and the issues therein were already passed upon by the Court. On August 26, 1999, [plaintiff filed] a Notice of Appeal x x x o[f] the Order dated July 27, 1999 which Order was received by him on August 19, 1999.

"The Motion for Reconsideration filed by the plaintiff is pro-forma. The allegations in plaintiff's Motion for Reconsideration are [a] rehash of the allegations in his opposition which the court had already passed upon in the Order dated May 19, 1999. Nor [do] the allegations raise new matters which go beyond the meaning of pro-forma [or] which would prompt the Court to look into the issues raised.

"The Notice of Appeal [was] filed out of time. On July 27, 1999, the plaintiff's Motion for Reconsideration was denied by the Court on [the] ground of pro-forma and therefore, when the aforesaid Motion for Reconsideration was filed by him on June 17, 1999, the said motion did not toll the running of the 15-day reglementary period to appeal. Sec. 2, paragraph 4, Rule 37 of the 1997 Rules on Civil Procedure provides: `A pro-forma motion for new trial or reconsideration shall not toll the reglementary period of appeal. Notably, the records show that no Notice of Appeal was filed by the plaintiff within the 15-day reglementary period form receipt of the order dated May 19, 1999.

"Perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional and failure to perfect an appeal as legally required has the effect of rendering final and executory [the] judgment of the Court below and deprives the appellate court jurisdiction to entertain an appeal. (Ceniza vs. Court of Appeals, 218 SCRA 390).

"Plaintiff's Notice of Appeal o[f] the Order dated July 23, 1999 which denie[d] his motion for reconsideration, is misplaced. The appeal should be directed against the order dated May 19,1999, dismissing his complaint. Sec. 9, Rule 37 of the 1997 Rules of Civil Procedure reads as follows:

`Sec. 9. Remedy against order denying a motion for new trial or reconsideration. - An order denying a motion for new trial