

SECOND DIVISION

[G.R. NO. 131094, May 16, 2005]

ATTY. JESUS F. FERNANDEZ, PETITIONER, VS. HON. COURT OF APPEALS AND CONCEPCION OLIVARES, RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

The undisputed facts of this case show that a Complaint dated 23 January 1993 for unlawful detainer docketed as Civil Case No. 140953 was filed by private respondent Concepcion Olivares against the herein petitioner Jesus Fernandez.^[1] The Metropolitan Trial Court of Manila (MeTC), Branch XV, dismissed the Complaint for lack of sufficient cause of action.^[2]

Olivares appealed to the Regional Trial Court (RTC) of Manila, Branch 46, and the latter reversed the MeTC, ordering Fernandez to pay rental arrearages, attorney's fees, litigation expenses and costs^[3] in a decision dated 02 May 1994.^[4]

On 28 June 1994, Fernandez received a copy of the decision. On 12 July 1994 or 14 days after receipt of the decision, he filed a Motion for Reconsideration.^[5] On 29 November 1994, Fernandez received an order denying his motion for reconsideration.^[6] On 01 December 1994, Fernandez filed with the Court of Appeals a Motion for Extension of Time to File Petition for Review which was granted.^[7] Said resolution was received by Fernandez on 12 December 1994.

In the meantime, on 09 December 1994, Fernandez filed a Motion for New Trial,^[8] docketed as Civil Case No. 93-67034, before the RTC of Manila, Branch 46, citing newly discovered evidence of receipts proving his rental payments. In view of his Motion for New Trial, Fernandez, thru counsel, filed on 29 December 1994 in the Court of Appeals a Motion to Withdraw his Petition For Review^[9] which the court duly noted in its resolution dated 19 January 1995.^[10]

In an Order^[11] dated 06 February 1995, the RTC denied the Motion for New Trial. It explained that when Fernandez went to the Court of Appeals and filed a Motion for Extension of Time to File Petition for Review, and the Court of Appeals accordingly acted on the same by granting the extension sought, jurisdiction of the Court of Appeals over the parties and the subject matter had already attached.

Fernandez filed a motion for reconsideration which the trial court denied in its Order dated 14 December 1995.^[12] Fernandez filed a Motion to Reconsider the Order, while Olivares moved for the execution of the judgment of the RTC citing Section 21 of the Revised Rules on Summary Procedure.^[13] In an Order dated 30 January 1996, the RTC granted the Motion for Execution and denied the Motion for

Reconsideration.^[14] A writ of execution was in fact issued by the RTC on 31 January 1996.^[15]

This prompted Fernandez to file a Petition for *Certiorari*, Prohibition and *Mandamus* with prayer for the issuance of a writ of preliminary injunction and temporary restraining order, docketed as CA-G.R. SP No. 39655, before the Court of Appeals.^[16]

The Court of Appeals, in a resolution dated 14 February 1996 temporarily restrained the respondents from proceeding with the enforcement of the writ of execution, "so as not to render the petition moot and ineffectual pending fuller consideration thereof, as well as for the preservation of the rights of the parties."^[17] In a decision^[18] dated 16 May 1997, the Court of Appeals denied the Petition and affirmed the stance of the RTC. It ruled:

When petitioner herein elected to file before this Court a motion for extension of time to file petition for review, he in effect opted to appeal the adverse decision of the Regional Trial Court of Manila to the Court of Appeals. This is so because appeal to this Court is perfected by petition for review, where judgment was rendered by the Regional Trial Court in the exercise of appellate jurisdiction. This Court's assumption of appellate jurisdiction resulted initially in the issuance of the resolution granting petitioner an extension of fifteen (15) days within which to file the petition for review. Since this Court acquired appellate jurisdiction, the only proper thing for the court below to do was to deny the motion for new trial.^[19]

Fernandez filed a Motion for Reconsideration which the Court of Appeals denied in a resolution dated 13 October 1997.^[20]

Hence, this petition.

In a resolution of this Court dated 26 January 1998,^[21] respondents were required to file their Comment on the Petition. Private respondent Olivares submitted her Comment on 26 February 1998.^[22] Fernandez, in turn, was directed to file his Reply.^[23] After the submission of Fernandez's reply,^[24] the parties were then required by this Court, in a resolution^[25] dated 02 December 1998, to submit their respective memoranda.

The only issue^[26] submitted for resolution in this case is:

WHETHER OR NOT THE MERE FILING BY PETITIONER OF A MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW (WHICH INTENTION [sic] WAS LATER WITHDRAWN), AUTOMATICALLY DIVESTED THE REGIONAL TRIAL COURT (RTC) OF ITS JURISDICTION OVER THE CASE, AS TO ENTERTAIN A MOTION FOR NEW TRIAL.

In general, in order for a Court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and over the parties.^[27] Jurisdiction over the subject matter, or the jurisdiction to hear and decide a case, is

conferred by law.^[28] Jurisdiction over the person, on the other hand, is acquired by service of summons or by voluntary appearance.^[29]

At first glance and mindful of the rule that the filing of motions seeking affirmative relief, such as the motion for extension of time to file petition for review filed by Fernandez in this case, is considered voluntary submission to the jurisdiction of the court^[30] it may seem at once apparent that the Court of Appeals had in fact acquired jurisdiction over his person. It has been repeatedly held that an appearance in whatever form, without expressly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. He may appear by presenting a motion, for example, and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person.^[31]

As we are dealing here with the jurisdiction of an appellate court, additional rules are required for jurisdiction to attach therein, to wit: (1) the petitioner must have invoked the jurisdiction of the Court of Appeals within the time for doing so;^[32] (2) he must have filed his petition for review likewise within the time for doing so;^[33] (3) he must have paid the necessary docket fees;^[34] and (4) the other parties must have perfected their appeals in due time.^[35]

The Rule requires that in an appeal by way of Petition For Review, the appeal is deemed perfected as to the petitioner upon the timely filing of the petition and the payment of docket and other lawful fees.^[36] In the discussion of the Committee on the revision of the Rules of Court, it was emphasized that to perfect the appeal, the party has to file the petition for review and to pay the docket fees within the prescribed period. The law and its intent are clear and unequivocal that the petition is perfected upon its filing and the payment of the docket fees.

Thus, it may be argued, and rightly so, that the Court of Appeals has not yet acquired jurisdiction over the case because Fernandez merely filed a motion for extension of time to file petition but not the petition itself. Withal, sans the petition, it cannot be said that the Court of Appeals has acquired jurisdiction over the case as to say that the trial court is without authority to act on a motion for new trial. It is axiomatic that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.^[37] Indeed, when the law speaks in clear and categorical language, there is no room for interpretation, vacillation or construction, but only for application.^[38] On this point we fully agree in the position taken by Fernandez that when he filed the motion for extension of time to file petition for review, jurisdiction of the Court of Appeals had not yet attached, such that his failure to file the petition itself would normally have the effect of rendering the decision of the lower court final and executory.^[39]

The consequential question is: what is the legal effect of the filing by Fernandez of a motion for new trial before the trial court?

Assuming that Fernandez filed his motion for new trial on time, we hold that the trial court still had jurisdiction to rule on the matter as the jurisdiction it originally acquired had not yet been lost.

The appellate jurisdiction of the trial court is to be juxtaposed with its residual jurisdiction as set forth in Rule 42, Section 8(a), 3rd paragraph of the Rules of Court. Before the Court of Appeals gives due course to a Petition for Review, the RTC retains jurisdiction for specified instances enumerated therein, to wit:

- (1) To issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, such as, the appointment of a receiver, and the issuance of writs of preliminary attachment or preliminary injunction.
- (2) To approve compromises.
- (3) To permit appeals of indigent litigants.
- (4) To order execution pending appeal in accordance with section 2 of Rule 39.
- (5) To allow withdrawal of the appeal.^[40]

The residual jurisdiction of the trial court is available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject matter involved in the appeal. This stage is reached upon the perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal.^[41] Considering that no appeal was perfected in this case and the records of the case have not yet been transmitted to the Court of Appeals, the case has not as yet attained the residual jurisdiction stage so as to say that the trial court already lost the jurisdiction it first acquired and that it is left with only its residual powers.

The foregoing considered, the inevitable recourse would have been to remand this case to the trial court for hearing on his motion for new trial. Such is not to be, however.

So much has been said by the parties over the issue of whether or not jurisdiction attaches to the Court of Appeals upon the filing of a motion for extension of time to file petition for review thereby divesting the court of origin the power to rule on a motion for new trial. As shall be hereunder shown, however, it turns out that the unraveling of this issue is quite peripheral and that the resolution of this case hinges on another matter totally different from that raised by the parties.

From the records of the case, the ultimate issue to be tackled concerns the proper computation of the period to file a motion for new trial.

Rule 37, Section 1 of the Revised Rules of Court providing for the period to file a motion for new trial in relation to Rule 41, Section 3 is in point.

Rule 37. . . .

Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* – **Within the period for taking an appeal**, the aggrieved party may move the trial court to set aside the judgment or