

SECOND DIVISION

[G.R. No. 137771, June 06, 2002]

**PHILIPPINE MERCHANT MARINE SCHOOL, INC., PETITIONER,
VS. HON. COURT OF APPEALS AND ERNESTO OPPEN, INC.,
RESPONDENT.**

DECISION

QUISUMBING, J.:

In this petition for review, petitioner assails the two resolutions of the Court of Appeals dated July 23, 1998^[1] and February 26, 1999,^[2] in CA-G.R. CV No. 56325, dismissing petitioner's appeal on the ground that the Appellant's Brief was (a) filed out of time and (b) without a motion for leave for its admission.

The following are the factual antecedents.

On May 22, 1995, the Regional Trial Court of Makati, Branch 61, rendered a decision^[3] adverse to petitioner in Civil Cases Nos. 90-3490 and 91-685, upholding the validity of an auction sale over a piece of land and ordering the issuance of a new Certificate of Title in favor of herein respondent Oppen.^[4]

On August 15, 1996, petitioner filed a Notice of Appeal from the adverse decision of the RTC.

On March 26, 1998, petitioner received a Notice^[5] to File Appellant's Brief from the Court of Appeals. Petitioner had 45 days^[6] or until May 10, 1998 to file its brief. Since May 10 was a Sunday and May 11 was a holiday, petitioner had until May 12, 1998 to file it.

On May 7, 1998, or five days before its deadline, petitioner allegedly filed by mail an "Urgent Ex-Parte Motion for Extension of Time to File Appellant's Brief," praying for an additional period of 60 days or from May 13, 1998 to July 13, 1998 within which to file the brief.

On July 13, 1998, the last day of the extension prayed for, petitioner filed its appellant's brief.

On July 23, 1998, the Court of Appeals (Special Sixth Division) dismissed the appeal in a resolution,^[7] for failure to file the appellant's brief within the required period of 45 days from receipt of notice to file the same. It was further noted by the CA that the appellant's brief, received only on July 13, 1998, was without any accompanying motion for leave to admit the same.

The CA found that:

Record shows that a notice to file brief dated March 17, 1998 was received by appellant on March 26, 1998. Consequently, the 45-day period within which to file appellant's brief expired on May 10, 1998.

On July 2, 1998, the Judicial Records Division (Civil Cases Section) submitted a report stating that no appellant's brief has been filed in this case.

However, the appellant's brief was received by this court on July 13, 1998, without any accompanying motion for leave to admit the same.

The pertinent provisions of the 1997 Rules of Civil Procedure regarding the filing of appellant's brief read as follows:

RULE 44

SECTION 7. Appellant's Brief. --- It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

RULE 50

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:

x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time prescribed by these Rules;

For failure of appellant to file its brief within the required period of forty five (45) days from receipt of the notice to file brief, the appeal is hereby DISMISSED.

SO ORDERED.^[8]

On August 4, 1998, petitioner filed a Motion for Reconsideration^[9] of the said Resolution. It was alleged therein that a prior Urgent Ex-Parte Motion for Extension of Time had been filed. A copy of the Urgent Ex-Parte Motion for Extension of Time to File Appellant's Brief was appended^[10] to the Motion for Reconsideration. Also attached therein was Registry Receipt No. 13864^[11] while Registry Receipt No. 13867^[12] was noted on the Motion for Extension. Both registry receipts appeared to be dated May 7, 1998.

Petitioner explained that the reason the brief was not accompanied by a Motion for Leave to Admit, was because its counsel had assumed that the CA granted the Motion for Extension and thought that he had until July 13, 1998 to file the brief. It

was only on the same day the Motion for Reconsideration was filed that petitioner found out that the CA did not receive a copy of the Urgent Ex-Parte Motion for Extension of Time to File Appellant's Brief.

Thus, on August 12, 1998, petitioner filed a Supplement,^[13] attaching thereto the following documents:

1. An Affidavit^[14] of Hernando B. Dellomas, the person who mailed the Urgent Ex-Parte Motion for Extension of Time to File Appellant's Brief; and
2. A Certification^[15] issued by Ms. Matabai Garcia, the receiving clerk of the Ayala Post Office

On October 14, 1998, the CA issued a Resolution^[16] directing the postmaster of the Manila Central Post Office to inform it within 10 days whether Registry Receipts Nos. 13864 and 13867 mailed at the Ayala Post Office on May 7, 1998, addressed to the CA and opposing counsel, were delivered to and received by the addressees and the dates thereof.

On February 26, 1999^[17] the CA issued a Resolution denying the Motion for Reconsideration. It found that, per certification of the postmaster and contrary to what petitioner insists on, no motion for extension was sent to the CA and opposing counsel on May 7, 1998. Hence, the CA reiterated that appellant's brief was filed out of time and affirmed its denial of the appeal. It stated thus:

This is a motion for reconsideration of our Resolution dated July 23, 1998 dismissing the appeal for failure of appellant to file its brief within the period of forty five (45) days from receipt of the notice to file brief.

Appellant claims that it filed an urgent *ex-parte* motion for extension of time to file appellant's brief, which it sent by registered mail to this Court and to appellee's counsel, and that it filed its brief within the period requested.

Upon learning that its motion for extension of time to file brief has not been received by this Court, appellant submitted an Affidavit of Hernando B. Dellomas, Para-Legal of Batocabe and Associates, alleging that he was the one who deposited a copy of said motion addressed to the Court of Appeals at the Ayala Post Office in Makati City on May 7, 1998 and that he was issued Registry Receipt No. 13864, as well as the Certification of Matabai Garcia, receiving clerk at the Ayala Post Office, stating that Registered Letter No. 13864 posted at Ayala Post Office on May 7, 1998 addressed to the Court of Appeals, Manila was dispatched on May 7, 1998 under APO/DSMDC, Bill No. 117, Page No. 1, Line No. 60, Column 2.

An Opposition to the motion for reconsideration was filed by appellee Ernesto Oppen, Inc. alleging that it has not likewise received a copy of appellant's motion for extension of time to file appellant's brief, so that no such motion was probably filed by appellant.

In a Resolution dated October 14, 1998, We requested the Postmaster,