369 Phil. 655

FIRST DIVISION

[G.R. No. 120972, July 19, 1999]

SPOUSES JOSE AND EVANGELINE AGUILAR, SPS. DOMINGO AND SIXTA AGUILAR, AMBROSIO DE LOS REYES, AND SPS. FRANCISCO DELOS REYES, EMILIA MERCADO-REYES, SPS. JOSE AND ROSA Y VILLARAMA, RUBY IBANEZ, MAGNO MANALO AND VALENTINO MAGSARILI, PETITIONERS, VS. HON. COURT OF APPEALS, SAN MIGUEL CORPORATION, PAZ G. PALANCA AND ROMEO REYES, CLERK OF COURT AND EX-OFFICIO SHERIFF AND DEPUTY SHERIFF IN-CHARGE, RESPECTIVELY, OF THE REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, CALOOCAN CITY, METRO MANILA; ESPERANZA T. ECHIVERRI AND FERNANDO G. CRUZ, CLERK OF COURT AND EX-OFFICIO SHERIFF AND DEPUTY SHERIFF IN-CHARGE, RESPECTIVELY, OF THE REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, VALENZUELA, METRO MANILA; JOSE R. ORTIZ, JR. AND HECTOR L. GALURA, CLERK OF COURT, AND EX-OFFICIO SHERIFF AND DEPUTY SHERIFF IN-CHARGE, RESPECTIVELY, OF THE REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, PASAY CITY, METRO MANILA; PIO Z. MARTINEZ AND NICANOR D. BLANCO, EX-OFFICIO SHERIFF AND DEPUTY SHERIFF IN-CHARGE, RESPECTIVELY, OF THE REGIONAL TRIAL COURT, FOURTH JUDICIAL REGIONAL, ANTIPOLO, RIZAL, RESPONDENTS.

R E S O L U T I O N

KAPUNAN, J.:

On July 25, 1995, petitioners Spouses Jose and Evangeline Aguilar, *et al*., through petitioner Jose Aguilar, filed a Motion for Extension of Time seeking thirty (30) days from July 26, 1995 to file a petition for review on *certiorari* assailing the Court of Appeals' Decision dated September 30, 1994 in CA-G.R. CV No. 40901 and Resolution dated February 2, 1995 denying their motion for reconsideration. Petitioners alleged that they received a copy of the February 2, 1995 Resolution on July 11, 1995 "upon follow ups."[1]

Private respondent San Miguel Corporation opposed the motion alleging that the decision petitioners sought to elevate for review to this Court attained finality on March 29, 1995, with entry of judgment made by the Court of Appeals on May 5, 1995.[2]

The petition was filed with this Court on August 25, 1995. In its comment, private respondent reiterated that the disputed decision of the Honorable Court of Appeals can no longer be reviewed as the same had become final and executory.[3]

In our Resolution dated October 5, 1998, we required petitioners to submit to this Court the name and address of their counsel within ten (10) days from notice. In a Motion dated November 6, 1998, petitioners asked for "at least thirty (30) days within which to find a Lawyer to assist [them]."[4] We granted petitioner's motion in a Resolution dated February 10, 1999 and gave them "an extension of thirty (30) days from the expiration of the original period within which to submit the name and address of counsel."[5] Until the time of the promulgation of this resolution, however, petitioner has not complied with the February 10, 1999 Resolution.

The Court of Appeals *rollo* reveals that a copy of the February 2, 1995 Resolution was sent on February 7, 1995 to petitioners' counsel of record, Atty. Almario T. Amador, through registered mail, at his address appearing on record. The envelope containing the resolution was, however, returned to sender Court of Appeals stamped "unclaimed." On the envelope also appears stamped boxes with notations "second notice/2-13" and "third notice/2-14."[6]

A copy of the resolution was then sent on March 2, 1995 to Jose Aguilar, one of the parties, at his address appearing on record. The mail was, however, returned to the Court of Appeals with the annotation "moved."[7]

Subsequently, on May 5, 1995, the Decision dated September 30, 1994 was entered in the Book of Judgments of the Court of Appeals "per Sec. 8, Rule 13, Revised Rules of Court."[8]

The issue to be resolved is whether service upon Atty. Amador, petitioners' counsel of record at the appellate court, and upon petitioner Jose Aguilar may be deemed complete, so that entry of judgment was duly made.

Petitioners allege receipt of the assailed decision on July 11, 1995. Their motion for extension of time was filed on July 25, 1995.

§8, Rule 13 of the Revised Rules of Court[9]provides thus:

> *Completeness of service*. - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the post master, service shall take effect at the expiration of such time.

The general rule is that service by registered mail is complete upon actual receipt thereof by the addressee. The exception is where the addressee does not claim his mail within five (5) days from the date of the first notice of the postmaster, in which case the service takes effect upon the expiration of such period.

Inasmuch as the exception only refers to constructive and not actual service, such exception must be applied upon conclusive proof that a first notice was duly sent by the postmaster to the addressee.[10] Not only is it required that notice of the registered mail be sent but that it should also be delivered to and received by the addressee.[11] Notably, the presumption that official duty has been regularly

performed is not applicable in the situation. It is incumbent upon a party who relies on constructive service or who contends that his adversary was served with a copy of a final order or judgment upon the expiration of five days from the first notice of registered mail sent by the postmaster to prove that the first notice was sent and delivered to the addressee.[12]

The best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery thereof was made.[13] The mailman may also testify that the notice was actually delivered.[14]

In *Barrameda v. Castillo*,[15] we again faulted the trial court for applying the presumption as to constructive service "literally and rigidly," and for failing to require the adverse party to present the postmaster's certification that a first notice was sent to opposing party's counsel and that notice was received. The envelope containing the unclaimed mail was presented in court. On its face, the envelope bore the notation "Returned to sender. Reason: Unclaimed." On the back-side of the envelope bore the legend "City of San Pablo, Philippines, Jan. 29, 1966" with the dates "2-3-66 and 2-9-66," and "R to S, notified 3/3/66." We stated that the mere exhibition in court of the envelope containing the unclaimed mail is not sufficient proof that a first notice was sent.

In *De la Cruz v. De la Cruz*,[16] we held as error the trial court's mere reliance on the notations on the envelope of the returned order consisting of "R & S", "unclaimed" and the stamped box with the wordings "2nd notice" and "last notice" indicating that the registered mail was returned to sender because it was unclaimed in spite of the notices sent by the postmaster to the addressee. No other proof of actual receipt of the first notice was presented in court.

In another case, *Johnson & Johnson (Phils.), Inc. v. Court of Appeals*,[17] petitioners assailed the following resolution of the appellate court:

> Considering that the copy of the resolution dated November 29, 1990 served upon counsel for respondent was returned unclaimed on January 3, 1991, and afterwards the same copy sent to the private respondent itself at given address was likewise returned unclaimed on February 28, 1991, the Court RESOLVED to DECLARE service of the said resolution upon the private respondent complete as of February 28, 1991, pursuant to Sec. 8, Rule 13, Rules of Court.

We held that the Court of Appeals erred in ruling that therein petitioner had been duly served with a copy of the assailed resolution, as there was utter lack of sufficient evidence to support the appellate court's conclusion. Nothing in the records showed how, when, and to whom the delivery of the registry notices of the registered mail addressed to petitioner was made and whether said notices were received by the petitioner. The envelope containing the unclaimed mail merely bore the notation "return to sender: unclaimed" on its face and "Return to: Court of Appeals" at the back. We concluded that the respondent court should not have relied solely on these notations to support the presumption of constructive service, and accordingly, we set aside the questioned resolution and ordered the appellate court to properly serve the same on therein petitioner.