

96 Phil. 407

[G.R. No. L-7972. January 24, 1955]

JAI-ALAI CORPORATION OF THE PHILIPPINES, PETITIONER, VS. COURT OF FIRST INSTANCE OP MANILA, BRANCH I, LUIS CHING KIAT BIEK, ET AL., RESPONDENTS.

D E C I S I O N

REYES, J.B.L., J.:

This is a petition for certiorari and mandamus to annul the orders of the respondent Court of First Instance of Manila dated March 18, 1954 and May 26, 1954 issued in Civil Case No. 7741 of that Court, excluding from petitioner's original record on appeal 12 pleadings and orders, and to direct the respondent Court to approve said original record on appeal *in toto*.

It appears that the petitioner Jai-Alai Corporation of the Philippines filed on March 30, 1949 against the respondents Luis Ching Kiat Biek, Ricardo Chung, and the partnership "Ricardo Chung, Ching Kiat & Co., Ltd.", Civil Case No. 7741 for the recovery of damages in the amount of P390,000 for breach and abandonment of a contract for the leasing of the four bars and restaurants of the Jai-Alai Stadium. The defendants filed answer with a counterclaim, and after trial, the respondent Court rendered judgment sentencing the plaintiff to pay the defendants the sum of P338,704.59 plus legal interest; the account of defendants with Gonzalo Puyat & Sons in the sum of P53,048.50; and the costs. Within the time set by the rules, petitioner gave notice of appeal from this decision, filed an appeal bond, and submitted a 63-page Record on Appeal (Annex A of this Petition). The defendants opposed the approval of the Record on Appeal, objecting to the inclusion of 12 pleadings and orders (Numbered VI to XVII of Annex A) on the ground that they were not appealed from and were irrelevant and immaterial to the appealed decision; and on March 18, 1954 the respondent Court sustained the opposition to the record on appeal by ordering

the petitioner to exclude therefrom “the motions, oppositions thereto, as stated in the said (respondents’) opposition” (Annex C). Petitioner sought a reconsideration of this order, but the same was denied by the respondent Court on March 18, 1954 for lack of merit (Annex D.) In order not to lose time for the perfection of its appeal, petitioner was constrained to delete from its original Record the orders and pleadings in question, at the same time, however, it filed the present petition for certiorari and mandamus with this Court.

While recognizing that a trial Court may order the exclusion from the appeal record of matter that is immaterial and unnecessary, despite the fact that Rule 41, section 7, only speaks of inclusions (Castro vs. Court of Appeals, [*] [1946] 42 Off. Gaz., [No. 8] p. 1821), we have also warned that trial Courts should be slow in excluding matters that an appellant wishes to insert in the record. The reasons were pointed out in Smith Bell & Co., vs. Sta. Maria (49 Phil., 820) where we said:

“* * * matters which at first sight appear to be irrelevant, may in the course of the argument on appeal be found to be of value in the determination of the questions at issue. The courts should exercise caution in ordering the exclusion from a record on appeal or a bill of exceptions of matters which the appellant has thought necessary for the proper development of his argument; he pays for the printing of the record and there is very little danger of his overburdening it with wholly irrelevant matter. On the contrary, he is more likely to omit matter which ought to be included.”

The fear that the inclusion of the rejected pleadings and motions may cause the determination of the appeal to be unnecessarily involved, should yield to the advantage of enabling the reviewing tribunal to have before it all matters necessary to a just determination of the questions submitted to it, thereby obviating possible remands or new trials (Prats & Co. vs. Phoenix Insurance Co., 52 Phil., 857).

The objection that the increased cost of the printed record due to the additional matter would be shifted to the appellee, in case the appeal succeeds, is nullified by the protection conferred by section 5 of Rule 131, that provides as follows:

“Sec. 5. *No costs for irrelevant matters.*—When the record contains any unnecessary, irrelevant, or immaterial matter, the party At whose instance the name was inserted or at whose instance the same was printed, shall not be allowed as costs any disbursement for preparing, certifying, or printing such matter.”

Certainly the Appellate Court, after deciding the case on its merits, would be in a far better position than the trial Judge to determine what matter included in the printed record should be considered unnecessary or irrelevant for the purposes of the appeal.

Moreover, our examination of the pleadings here sought to be included shows that they relate to the judgment appealed from, since they tend to contradict the finding of the Court below that Exhibit K “does not bear the signatures of any of the parties including plaintiff itself or any of its duly authorized representatives.” The contention of appellant is that it contracted with the father of appellee Ricardo Chung who also bore the same name; that said father was the real defendant and signer of Exhibit K; that the motions sought to be included import admission to that effect by the adverse party; and that the point was expressly called to the attention of the trial Court in a motion for reconsideration that was also ordered deleted. The matter sought to be included, therefore, comes within the description “copies of all pleadings, petitions, motions and all interlocutory orders relating to the appealed order or judgment” that Rule 41, section 6, requires to be included in the record of appeal, and their exclusion was ordered in abuse of discretion.

Being material and relevant, it is of no moment that the orders resolving such motions were not appealed from since section 6 of Rule 41 aforesaid requires the inclusion of even interlocutory orders (that are nonappealable), so long as they relate to the issues on appeal.

The writs prayed for are granted and the Court of First Instance of Manila is ordered to approve and forward the petitioner’s original record of appeal filed in Civil Case No. 77410 of that Court. Costs against respondents Luis Ching Kiat Biek and Ricardo Chung.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo,

Bautista Angelo, Labrador, and Concepcion, JJ., concur.

Petition granted.

^[*] 75 Phil., 824.

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