

TRANS-PHILIPPINES, INC., PETITIONER, VS. COURT OF APPEALS AND LUZON STEVEDORING CORPORATION, RESPONDENTS.

G.R. No. L-42184. July 29, 1977

Ponente: ANTONIO, J.

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ANTONIO, J.:

Special civil action for certiorari and prohibition with preliminary injunction to annul and set aside the Resolutions of the Court of Appeals, dated October 29, 1975 and December 2, 1975, in CA-G.R. No. 57671-R,[1] and to enjoin the respondents from proceeding with the appeal in said case except to dismiss it, on the ground that said Resolutions were issued without and in excess of its jurisdiction and with grave abuse of discretion, for the appeal therein had not been duly perfected.

The following incidents gave rise to the present petition:

On November 27, 1974, the Court of First Instance of Manila, Branch XIII, through the late Judge Jesus P. Morfe, issued, in Civil Case No. 81878,[2] an Order Amending Original Decision, reversing a prior decision, dated September 30, 1974, dismissing the complaint of Trans-Philippines, Inc. (herein petitioner), and rendering judgment in its favor and against defendant Luzon Stevedoring Corporation, (herein private respondent) upon a motion for reconsideration filed by petitioner. The dispositive portion of said Order reads:

"WHEREFORE, plaintiff's motion for reconsideration, dated October 26, 1974, is hereby granted and this Court's decision of September 30, 1974 is hereby amended by deleting all the parts of said decision from the word 'The' of the first paragraph of page five (5) up to the end of said decision; and in lieu thereof this Court substitutes by reference all the contents of this Order, except the first paragraph of page one (1) here-of, and in lieu of the dispositive part of said decision hereby substituted the following:

"WHEREFORE, judgment is hereby rendered ordering the defendant to pay to the plaintiff, a damage which plaintiff's cargo would not have suffered had the defendant not breached its contract, the amount of P209,530.84, plus P20,000.00 by way of damage as and for attorney's fees. With costs against the defendant."

Luzon Stevedoring Corporation received a copy of the aforesaid Order Amending Original Decision, subject of the appeal, on December 4, 1974, and, therefore, it had a period of thirty (30) days from said date, or until January 3, 1975, within which to perfect an appeal.

On December 27, 1974, Luzon Stevedoring Corporation filed with the trial court a notice of appeal, a cash appeal bond and a motion for extension of time to file record on appeal, asking for fifteen (15) days from January 3, 1975, or until January 18, 1975, within which to file the same, on the ground of "pressure of work".

On January 7, 1975, petitioner filed its opposition to the extension and moved to dismiss the appeal and for issuance of a Writ of Execution, contending that: (1) the motion for extension was a "useless piece of paper", because it was not addressed to adverse party and had not been set for hearing; (2) the reason given does not justify the extension; and (3) the filing of the record on appeal within the thirty-day period from notice of

judgment is mandatory under Section 3, Rule 41 of the Revised Rules of Court, and the filing of a motion for extension of time does not ipso facto suspend the period of appeal, citing *Bello v. Fernando*,^[3] and, therefore, Luzon Stevedoring Corporation not having perfected its appeal within the reglementary period of thirty (30) days, the decision sought to be appealed had already become final and executory.

In compliance with the Order of the court requiring the petitioner to submit proof of service of its motion, petitioner filed its "Compliance and Manifestation" on January 31, 1975, attaching thereto the registry receipt and the return card of said motion and manifesting to the court that "the extended period prayed for would have expired last January 18, 1975 but up to this date, January 21, 1975, no record on appeal appears to have been filed."

This manifestation notwithstanding, the trial court, on February 4, 1975, issued an Order stating that "it appearing that the aforesaid motion together with the notice of appeal and appeal bond were filed seven (7) days before the decision became final and executory, in the interest of justice and equity the defendant's motion is hereby granted. Defendant Luzon Stevedoring Corporation is hereby directed to file its record on appeal within five (5) days from the date hereof."^[4]

On February 8, 1975, Luzon Stevedoring Corporation filed a sixty-five-page record on appeal, dated February 7, 1975, setting the same for hearing on February 14, 1975.

On February 13, 1975, petitioner filed a motion for reconsideration of said Order of February 4, 1975, contending that Luzon Stevedoring Corporation's appeal had not been duly perfected within the period prescribed by law and the trial court had no longer any power to extend the time for the perfection of the appeal. Simultaneously, petitioner also filed an urgent ex parte motion to defer the hearing on the record on appeal until the resolution of its motion for reconsideration.

On February 14, 1975, the trial court reset the hearing of the record on appeal to February 19, 1975, on which date said court also gave Luzon Stevedoring Corporation until the next day to file its written opposition to petitioner's motion for reconsideration.

On February 20, 1975, Luzon Stevedoring Corporation filed its opposition, stating that its motion for extension of time to file the record on appeal was not acted upon due to the retirement of the incumbent judge, and said motion for extension was acted upon only on February 4, 1975 by Judge Rafael S. Sison, to whom the case was reassigned, and that the appeal is not dilatory nor frivolous. On March 6, 1975, petitioner filed its reply to said opposition.

On May 26, 1975, the trial court issued an Order dismissing the appeal of Luzon Stevedoring Corporation, thus:

"Considering that the Record on Appeal was filed only on February 8, 1975, or a good twenty-one (21) days after and further, considering that from January 18, 1975, defendant had not even filed any motion for extension of time to file the Record on Appeal, the appeal has not been perfected. Under Section 3, Rule 41 of the Rules of Court, to perfect an appeal, an appellant must file and serve a notice of appeal, a Record on Appeal, and an appeal bond within thirty (30) days from notice of judgment otherwise, the appeal is not perfected. And even a motion for extension of time to perfect an appeal does not suspend the running of the period sought to be extended.

"PREMISES CONSIDERED, it is hereby ordered that the appeal filed by the defendant be DISMISSED."

Barely two (2) days after, or on May 28, 1975, the trial court *motu proprio* reconsidered its Order of May 26, 1975 on the ground of "oversight" and approved Luzon Stevedoring Corporation's record on appeal, thus:

"Upon going over the record of this case, this Court thru oversight issued an order dated May 26, 1975

dismissing defendant's record on appeal, which order contravenes an earlier order dated February 4, 1975 directing the said defendant to file its record on appeal within five (5) days from date hereof; the Court motu proprio and in the exercise of its sound discretion reconsiders its order of May 26, 1975 and hereby approves defendant's record on appeal."

After the case was elevated to the respondent Court of Appeals,[5] petitioner filed, on September 8, 1975, a motion to dismiss the appeal, on the grounds that: (a) the appeal has not been perfected on time; (b) the record on appeal does not show on its face that the appeal was perfected on time; and (c) the record on appeal is fatally defective in other respects.[6]

On October 29, 1975, after Luzon Stevedoring Corporation had filed its comment on petitioner's motion to dismiss, the Court of Appeals, by minute resolution, denied petitioner's motion to dismiss.[7]

On November 18, 1975, petitioner filed a motion for reconsideration,[8] reiterating its principal reason in its motion to dismiss, i.e., that the Court of Appeals has no jurisdiction to entertain the appeal because it was made beyond the period provided by law.

On December 2, 1975, the Court of Appeals denied petitioner's motion for reconsideration, stating that "the motion for extension was filed before the expiration of the period of appeal. Although the motion asked for an extension until January 18, 1975, this motion was not acted upon until February 4, 1975, and the order granted appellant five days from February 4, 1975, to file the record on appeal which was filed on February 9, 1975 (should be February 8, 1975), or within the extended period. The Court may act upon the motion for extension and grant it even if at the time of the order the original period had already expired." [9]

Hence, this petition for certiorari and prohibition with preliminary injunction, which raises in issue the authority of the trial court to extend the period for filing the record on appeal within five (5) days from February 4, 1975, or on February 9, 1975, notwithstanding the absence of any motion by appellant, before the expiration of the period prescribed by law, to extend the period to file the record on appeal, beyond January 18, 1975. As prayed for by petitioner, this Court issued on January 8, 1976, a temporary restraining order against the respondents.

Under the rules, in order to perfect an appeal, the appellant must file with the trial court and serve upon the adverse party a notice of appeal, a record on appeal, and an appeal bond within thirty (30) days from notice of order or judgment, otherwise the appeal is considered not duly perfected.[10]

In the case at bar, it should be noted that Luzon Stevedoring Corporation received on December 4, 1974 a notice of the Order of November 27, 1974 of the trial court amending original decision, subject of the appeal, so that as appellant it had a period of thirty (30) days from service of the order, or until January 3, 1975, within which to perfect its appeal. It is true that on December 27, 1974, Luzon Stevedoring Corporation filed with the trial court a notice of appeal, a cash appeal bond and a motion for extension of fifteen (15) days from January 3, 1975, or until January 18, 1975, within which to file its record on appeal, but Luzon Stevedoring Corporation failed to file any record on appeal within the requested extension period. It is also undisputed that private respondent did not file any motion for the extension of the period requested, which expired on January 18, 1975. There is no question that "the court has power and discretion to extend the period for filing the record on appeal in the interest of justice, if it appears that the appellant has not sufficient time to prepare and file it within the period limited by law, either because the remaining period is very short, or the record on appeal voluminous, or because of some other justifiable reason, provided the motion for extension is filed before the expiration of the period fixed by law." [11] This power of the court to extend the period exists only if the motion to extend is filed prior to the expiration of the period prescribed by law. Thus, it has always been the consistent ruling of this Court that while the period within which the record on appeal and appeal bond should be perfected and filed may be extended by

order of the court, the application for extension should be made prior to the expiration of the original period.[12] It is evident from the foregoing that the court has authority to extend the period for perfecting the appeal on two (2) conditions: (1) the motion for extension must be filed prior to the expiration of the period prescribed by law; and (2) such motion should be supported by justifiable reasons. The first condition is predicated upon the fact that once the period prescribed expires and no record on appeal has yet been filed, the court loses jurisdiction to approve the extension, unless the delay is due to fraud, accident, mistake or excusable negligence.[13] Indeed, it is the duty of appellant to ascertain the status of his motion, for if no action is taken thereon or is denied after the lapse of the period, the right to appeal is lost.[14] The second is based on the settled rule that while the trial court may, in its discretion, extend the time for appeal beyond the period fixed by law, it must be satisfactorily shown that there is a justifiable reason for such action, like fraud, accident, mistake or excusable negligence, or similar supervening causality, without the fault on the part of the appellant.[15] Here, not only has Luzon Stevedoring Corporation failed to file any motion for extension of the period for filing the record on appeal after January 18, 1975, but what is more, there appears to be no justifiable reason to warrant the action of the judge in extending such period after the same had already expired.

It is true that the trial court is vested with discretion to allow or admit an appeal filed out of time. But this discretion is not unconditional. There must be a legal justification to warrant such action. Thus, in *Reyes v. Court of Appeals, et al.*, [16] where this Court enjoined the Court of Appeals from taking cognizance of the appeal on the ground that the record on appeal was not filed within the thirty-day period provided by the rules, this Court explained that "interest of justice" cannot be invoked against the rule unless there is lawful justification.

"* * * When we said that 'it was not mandatory but, if at all, purely discretionary in their respondent judge to approve or disapprove it in the interest of justice' we did not mean that a judge is vested with discretion to approve a record on appeal presented out of time without legal justification. For instance, if in that case Bustamante had filed the record on appeal on January 23, 1942, the respondent judge would have been justified in admitting it although it was filed beyond the thirty-day reglementary period, for the reason that on account of war the office of the clerk of court was closed before said date. Conversely, in the absence of any justifying circumstance the court has no discretion to approve or admit an appeal filed out of time. The interest of justice cannot be invoked against the rule unless there is lawful justification. It is the intervention of such circumstance as the law recognizes as a valid reason for relaxing the rule -- fraud, accident, mistake, excusable negligence that creates the 'interest of justice' in favor of the victim of the circumstance." (At pp. 237-238.)

Certainly, the private respondent cannot invoke the inaction of the court as a justification for having a longer period.[17] As this Court emphasized in various cases, it was the duty of the appellant to ascertain from the Clerk of Court the status of the motion for extension. Had it followed this elementary precaution, private respondent could have known the absence of the judge in Branch XIII to act on its motion, in which event it was its duty to present the same motion for the approval of the judge of the Court of First Instance of Branch XIV, the sala assigned, under the internal rules of the Court of First Instance of Manila, to act on motions pertaining to Branch XIII in the absence of the incumbent judge therein.

Private respondent Luzon Stevedoring Corporation, however, argues that it filed this record on appeal within the period granted by the trial court in its Order of February 4, 1975 and it does not have to plead fraud, accident, mistake or excusable negligence to secure approval of its record on appeal. This argument fails to consider the circumstance that at the time when the trial court issued its Order of February 4, 1975, the period to file the record on appeal had already expired, hence the trial court had no longer any authority to grant the extension, as there was no longer any period to extend. Compliance with the period provided by law for the perfection of an appeal is not merely mandatory but it is jurisdictional requirement, and failure to perfect an appeal within the reglementary period renders the judgment of the court final.[18]

In view of the foregoing, the respondent Court of Appeals committed an error amounting to an abuse of discretion in denying the petitioner's motion to dismiss the appeal of private respondent Luzon Stevedoring Corporation.

ACCORDINGLY, the petition for certiorari and prohibition is granted and the respondent Court of Appeals' Resolutions of October 29, 1975 and December 2, 1975 are set aside for being null and void, and the appeal of private respondent Luzon Stevedoring Corporation in CA-G.R. No. 57671-R is hereby dismissed. The temporary restraining order hereto-fore issued by this Court is hereby made permanent, perpetually prohibiting the respondents from proceeding with the appeal in said case, except to dismiss it. Costs against private respondent Luzon Stevedoring Corporation.

Concepcion, Jr. and Santos, JJ., concur.

Barredo, J., concurs in a separate opinion.

Aquino, J., dissents.

Fernando, J., (Chairman), concurs in the result.

[1] Entitled "Trans-Philippines Tobacco Co., Inc., Plaintiff-Appellee, versus Luzon Stevedoring Corporation, Defendant-Appellant".

[2] Entitled "Trans-Philippines Tobacco Co., Inc., Plaintiff, versus Luzon Stevedoring Corporation, Defendant, for Damages".

[3] 4 SCRA 135.

[4] Record on Appeal, p. 87. Italics supplied.

[5] Docketed as CA-G.R. No. 57671-R.

[6] Annex "A", Petition.

[7] Annex "C", Ibid.

[8] Annex "D", Ibid.

[9] Annex "E", Ibid.

[10] Sees. 3, 5 and 9, Rule 41 of the Revised Rules of Court; *Espartero v. Ladaw*, 92 Phil. 704; *Philippine Resources Development Corporation v. Narvasa*, 4 SCRA 414.

[11] *Moya v. Barton*, 76 Phil. 831. Italics supplied.

[12] *Director of Lands v. Maurera, et al.*, 37 Phil. 410; *Layda v. Legaspi*, 39 Phil. 83; *Alejandro v. Endencia*, 64 Phil. 321; *Moya v. Barton*, supra; *Alvero v. De la Rosa*, 76 Phil. 428; *Caisip v. Cabangon*, 109 Phil. 150; *Sy It v. Tiangco*, 4 SCRA 436; *Vivo v. Arca*, 13 SCRA 771; *Galima v. Court of Appeals*, 16 SCRA 140; *Nuguid vda. de Haverer v. Martinez*, 62 SCRA 162.

[13] *Berkenkotter v. Court of Appeals*, 53 SCRA 228.

[14] *Cumplido v. Mendoza*, 11 SCRA 477, 481.

[15] *Alvero v. De la Rosa*, supra; *Moya v. Barton*, supra; *Lopez v. Lopez*, 77 Phil. 133; *Peralta v. Solon*, 77 Phil. 610; *Santiago v. Valenzuela*, 78 Phil. 397; *Bello v. Fernando*, 4 SCRA 135.

[16] 74 Phil. 235.

[17] Reyes v. Sta. Maria, 48 SCRA 1, 7.

[18] Antique Sawmills, Inc. v. Zayco, et al., 17 SCRA 316.

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CONCURRING OPINION

BARREDO, J.:

I concur fully in the very able main opinion of Mr. Justice Antonio, and I would like to add a few words in justification of the judgment reversing the resolutions here in question of the Court of Appeals.

It is admitted by herein respondent Luzon Stevedoring Company that apart from its motion filed on December 27, 1974 for the extension of its period to file its record on appeal up to January 18, 1975, it did not file any other motion for further extension of said period. In other words, it allowed the very period it had itself fixed for the filing of its record on appeal to expire without taking any step to file the same, and the only explanation it can give for such omission is that the court had not yet acted on its motion for extension. I consider such an excuse puerile, specious and totally lacking in candor. What is more, it shows very little respect for the court. When a party asks for an extension of the period to file a jurisdictional paper and fixes within the limits of the rules the day it would actually do such filing, it becomes its inescapable duty to act within the period thus fixed by itself, should the court for one reason or another fail to act within such period, for although the court may act on his motion and grant it even after the period has expired, it cannot, when it comes to the filing of a record on appeal, grant him more time than he has asked for, once the reglementary period together with the extension asked for has already expired. It is settled that a trial court cannot extend the period for appeal after it has already expired. And the appellant does not even have to check on whether or not his motion for extension has been granted, for even if he assumes that it has been or would be favorably acted upon, there is no warrant at all for any expectation on his part that the court would act in excess of its jurisdiction. On the other hand, if his motion is denied there is nothing else he can do. The discretion of the court under Section 7 of Rule 11 to extend periods for filing even after their expiration refers exclusively to the filing of answers and other pleadings the filing of which has no jurisdictional import. Besides a record on appeal is not a pleading within the concept of Rule 6.

In regard to these postulations, I might observe that respondent's counsel cannot say that he has been caught unaware. To start with, according to the record, petitioner had repeatedly and consistently opposed the approval of respondent's appeal in the trial court from the very inception of the latter's effort in that direction. More importantly, in January of 1975 when all the incidents in question took place, counsel have by then read already or learned of the Court's ruling in Berkenkotter, cited in the main opinion. Therein the concurring opinion of this writer in Sta. Maria, also relied upon by Mr. Justice Antonio here, was adopted approvingly by the Court. These decisions were handed down way back in November 20, 1972 (Sta. Maria) and September 28, 1973 (Berkenkotter), or at least more than a year before respondent here attempted to make the appeal in dispute. There is therefore no excuse for counsel to have ignored the following unequivocal explanation of the points now under discussion:

"x x x In the case of Reyes v. Sta. Maria, L-29554, November 20, 1972, We held that if the motion for

extension filed within the reglementary period is not acted upon and the extension period asked for lapses without the record on appeal having been filed, the motion did not suspend the running of the period and the right to appeal is lost. But the concurring opinion of Justice Barredo, joined by the then Chief Justice, is very pertinent. He said:

'As long as the motion is filed within the original period, the court does not lose its jurisdiction to act on it even after the expiration of said period, but in such an event, the appellant assumes the risk of denial, for if the motion is denied, and such denial takes place after the period for appeal has already lapsed, the filing of the motion is not considered as having suspended said period. However, if the motion is granted, then the appeal may be deemed as made timely, provided the corresponding notice of appeal have been filed within the prescribed period.'

"He went on to say:

'Similarly, the mere filing within the original period for appeal of a motion for extension of time to submit the record on appeal would not have the effect of extending the period for appeal if such motion is denied after the period has already lapsed. However, if the motion is granted, the extension requested is tacked to the original period, even IF THE FAVORABLE ORDER IS ISSUED AFTER THE EXPIRATION OF THE LATTER. In any event the record on appeal must be filed within the extension asked (which petitioner in this case complied with), for once said period expires and no record on appeal has yet been filed, the court loses jurisdiction to approve the extension unless the delay is due to fraud, accident, mistake or excusable neglect.' (Italics Supplied)" (53 SCRA, 233-234.)

In the instant case, there is not the least indication that respondent was impeded from filing its record on appeal on or before January 18, 1975 by any fraud, accident, mistake or excusable neglect. My considered view is that here, We have a case of either simple ignorance of the law or plain inattention, certainly inexcusable, to the jurisdictional requirements laid down by the rules and in extant jurisprudence in the procedure for appeals.

Accordingly, the Court of Appeals erred in promulgating the impugned resolutions which condoned and sanctioned, not only a grave abuse of discretion, but an actuation of the trial court manifestly in excess of its jurisdiction. My vote is to grant the petition.

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