

ROSE INDUSTRIES, INC., PETITIONER, VS. THE COURT OF APPEALS AND SENTINEL INSURANCE COMPANY, INC., RESPONDENTS.

G.R. No. L-45581. December 29, 1978

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for review by certiorari of the February 1, 1977 resolution of the Court of Appeals in CA-G.R. No. SP-05821[1] which set aside its decision of November 3, 1976 dismissing the appeal of the private respondent, Sentinel Insurance Company, Inc..[2]

On May 7, 1975 petitioner, Rose Industries, Inc., instituted an action in the Court of First Instance of Rizal against Nemesio Azcueta, Sr., doing business under the name "Malayan Trading" and respondent Sentinel Insurance Company, Inc. docketed therein as Civil Case No. 21248, Branch XV. The complaint was for collection of a sum of money against the principal defendant Azcueta and against the herein respondent Sentinel as surety.

Upon agreement of the parties, the case was decided on the basis of their pleadings and memoranda by the Court of First Instance of Rizal. The decision in favor of Rose Industries, Inc. was rendered on December 29, 1975. A copy of said decision was received by Sentinel Insurance Company, Inc. on February 5, 1976.

On March 3, 1976 respondent Sentinel filed a motion for reconsideration of the decision. The motion was denied by the trial court on April 12, 1976. The order of denial was received by respondent Sentinel on May 6, 1976.

On May 7, 1976 respondent Sentinel filed a notice of appeal and appeal bond together with a motion for extension of time to file the record on appeal until May 30, 1976. Acting upon the motion, the trial court granted the respondent Sentinel up to May 30, 1976 within which to file its record on appeal.

On June 1, 1976, after the expiration of the first extension granted by the trial court, respondent Sentinel again filed a second motion for extension of time within which to file its record on appeal. The trial court granted the motion and gave respondent Sentinel five (5) days from May 30, 1976 within which to file its record on appeal. The last day for filing the record on appeal was, therefore, on June 4, 1976. However, the respondent Sentinel filed its record on appeal consisting of twelve (12) pages only on June 7, 1976.

The petitioner opposed the approval of the record on appeal on the ground that the same was filed out of time.

The respondent Sentinel filed a rejoinder on July 25, 1976 alleging that the delay in the submission of the record on appeal was due to the rains and flood caused by typhoon "Didang". The trial court issued its order dated July 28, 1976 dismissing the appeal of Sentinel Insurance Company, Inc. for failure to file the record on appeal on time.

A motion for reconsideration was filed by respondent Sentinel but the same was denied by the trial court in its order dated August 23, 1976. The decision having become final and executory, a writ of execution was issued by the trial court.[3]

The Sentinel Insurance Company, Inc. filed on September 1, 1976 a petition for mandamus with writ of certiorari and preliminary injunction with the Court of Appeals which granted the petition for preliminary injunction upon the filing of a bond of P1,000.00.

On November 3, 1976 the Court of Appeals dismissed the petition for mandamus with writ of certiorari and preliminary injunction and ordered the dissolution of the preliminary injunction.[4]

The Sentinel Insurance Company, Inc. filed a motion for reconsideration of the decision of the Court of Appeals.

The Court of Appeals issued on November 10, 1976 an order restraining the execution of the decision of the trial court.

On February 1, 1977 the Court of Appeals promulgated its resolution now subject of this petition, setting aside its decision of November 3, 1976 and ordering the trial court to give due course to respondent Sentinel's appeal and maintained the restraining order of November 10, 1976.

The only issue is whether or not the appeal of the respondent Sentinel Insurance Company, Inc. which was admittedly perfected out of time should be given due course.

It has been generally held that the requirements of the Rules of Court regarding the period to perfect an appeal are not only mandatory but are likewise jurisdictional.[5]

In *Garganta, et al., vs. Court of Appeals, et al.*, [6] the Supreme Court ruled that "An allowance by a Court of First Instance of an appeal which was not taken within the reglementary period; a denial by the same Court of a motion to dismiss an appeal taken beyond such period; and a denial by the Court of Appeals to dismiss such appeal, do not render the appeal valid, effective and legal. If an appeal be not taken within the reglementary period, the judgment becomes final x x x."

The right to appeal is not a part of due process of law. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law.[7]

There has, however, evolved out of jurisprudence a more liberal interpretation of the Rules of Court as regards the period to perfect an appeal. Thus, as early as July 18, 1946, this Court in the case of *Moya vs. Barton* [8] recognized the court's power and discretion to extend the period for filing the record on appeal in the interest of justice if it appears that the appellant does not have sufficient time to prepare and file it within the period prescribed by law, "either because the remaining period is very short, or the record on appeal is voluminous, or because of some other justifiable reason, provided the motion for extension is filed before the expiration of the period fixed by law."

It is true that the trial court is vested with discretion to allow or admit an appeal filed out of time. However, this discretion is not unconditional. "Interest of justice" cannot be invoked against the rule fixing the period within which to appeal without legal justification to warrant such action.[9]

In those cases where the Supreme Court justified a suspension of the Rules to afford a litigant an opportunity to prosecute his appeal filed out of time, emphasis was stressed on the merit of the appeal to justify consideration from the appellate tribunal.[10]

In the instant case, there is no showing of a legal justification to sanction the resolution of the Court of Appeals dated February 1, 1977 allowing the appeal of the private respondent Sentinel Insurance Company, Inc..

It is undisputed that the first extension of time to file the record on appeal of the respondent Sentinel was until May 30, 1976. The record shows that no record on appeal was filed on or before 30 May 1976. Instead, a second

motion for extension was filed on June 1, 1976, two days after May 30, 1976, the last day for filing the record on appeal. Evidently, therefore, the trial court erred in granting to the respondent Sentinel another five (5) days within which to file its record on appeal. The second motion for extension was filed when there was no more period to extend.

Significantly, respondent Sentinel did not avail of the five (5) day period granted by the trial court, assuming that the same was validly issued. Said respondent Sentinel filed its record on appeal only on June 7, 1976, three days after the five (5) day period had expired. No reason, therefore, now exists for the further liberality granted by the Court of Appeals to respondent Sentinel.

The excuse of the respondent Sentinel that it failed to file its record on appeal on time because of the floods caused by typhoon "Didang" has no merit. Metro Manila experienced a heavy down pour on May 18 and 21, 1976.[11] The respondent Sentinel had ample time to prepare its record on appeal after May 21, 1976. There is no reason why respondent Sentinel could not have filed its record on appeal on time when the same, as evident from the record, consists merely of twelve (12) pages. Undoubtedly, with the exercise of ordinary diligence, the respondent Sentinel could have seasonably filed its record on appeal.

Counsel for Sentinel Insurance Company, Inc., alleged in the trial court:

"3. That the undersigned, however, miscalculated the time he needs for the preparation of his pleadings for the Court of Appeals and he overshot his allocated period by two days x x x x. (Annex K-1)"[12]

The real cause, therefore, for the failure of respondent Sentinel to file the record on appeal on time was the negligence of its counsel.

We have taken the pain of going through the pleadings filed in the trial court to find if there is any valid reason to reverse the decision sought to be appealed from to prevent a miscarriage of justice. The trial court decided the case on the basis of the pleadings. There is nothing therein to warrant a reversal of the decision.

The surety bond executed by Nemesio Azcueta and the Sentinel Insurance Company, Inc. reads:

"S U R E T Y B O N D

KNOW ALL MEN BY THESE PRESENTS:

That we, MALAYAN TRADING represented herein by its Manager, NEMESIO AZCUETA with office address at No. 5873 Zobel Roxas Avenue, Makati, Rizal principal and SENTINEL INSURANCE COMPANY, INC., a corporation duly organized and existing under and by virtue of laws of the Philippines, as surety, are held and firmly bound unto ROSE INDUSTRIES, INC., Mandaluyong, Rizal in the sum of Pesos TWO HUNDRED FIFTY THOUSAND ONLY, (P250,000.00), Philippine Currency, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE AS FOLLOWS:

'To fully and faithfully guarantee faithful compliance with the terms and condition of the revolving credit line granted by the herein OBLIGEE to the herein PRINCIPAL, a copy of which is hereto attached and forming part hereof.'

WHEREAS, the ROSE INDUSTRIES, INC. requires said principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on his part of said obligation.

NOW, THEREFORE, if the above bounded principal shall in all respects duly and fully observe and perform all and singular the aforesaid covenants, conditions and agreements to the true intent and meaning thereof, then this obligation shall be null and void, otherwise to remain in full force and effect.

Liability of surety on this bond will expire on November 15, 1975 and said bond will be cancelled ten DAYS after its expiration, unless surety is notified of any existing obligations thereunder.

IN WITNESS WHEREOF, we have set our hands and signed our names on the 15th day of November, 1974 at the City of Manila.

IN THE PRESENCE OF:

MALAYAN TRADING By:

SGD.: NEMESIO AZCUETA

NEMESIO AZCUETA
(Principal)

SENTINEL INSURANCE
COMPANY, INC.

SGD.: HERNAN P. SAN LUIS

HERNAN P. SAN LUIS
(SURETY)"[13]

The solidary liability of the respondent Sentinel is clear. There is no question that Nemesio Azcueta failed to comply with his obligation to Rose Industries, Inc..

The appeal, therefore, of the respondent Sentinel, even if given due course, will serve no other purpose but merely to delay the administration of justice. The allowance of an appeal serves no useful purpose when it cannot be reasonably expected that the findings and conclusions of the trial court which are apparently correct will be modified substantially to warrant a different result.[14]

WHEREFORE, the petition for certiorari is hereby granted and the resolution of the Court of Appeals in CA-G.R. No. SP-05821 is set aside. The decision of the Court of Appeals promulgated on November 3, 1976 is reinstated. The decision of the Court of First Instance of Rizal, Branch XV, in Civil Case No. 21248 entitled "Rose Industries, Inc. vs. Nemesio Azcueta, Sr., et al.," is declared final and executory. No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Santos, and Guerrero, JJ., concur.

[1] Resolution, Rollo, pp. 43-49. Written by Justice Andres Reyes and concurred in by Justice B. S. de la Fuente and Justice Delfin Fl. Batacan.

[2] Annex "A", Rollo, pp. 22-26. Penned by Justice Godofredo P. Ramos and concurred in by Justice Andres Reyes and Justice B. S. de la Fuente.

[3] Annex "A", Decision of the Court of Appeals, Rollo, pp. 22-23.

[4] Ibid., Rollo, p. 26.

[5] Miranda vs. Guanzon, et al., 92 Phil. 168, 171.

[6] 105 Phil. 412, 417.

[7] Velasco vs. Court of Appeals, et al., L-31019, 51 SCRA 439; Bello vs. Fernando, 4 SCRA 135; Santiago vs. Valenzuela, 78 Phil. 397.

[8] 76 Phil. 831, 832.

[9] Trans-Philippines, Inc. vs. Court of Appeals, et al., 78 SCRA 154, 161.

[10] Ong Tiao Seng vs. Court of Appeals, et al., 81 SCRA 417, 423.

[11] Certification of PAGASA, Annex "G", Rollo, p. 50.

[12] Rollo, p. 26.

[13] Annex "B" to Comment on Petition, Rollo, pp. 75-76.

[14] Ong Ching vs. Hon. Jose Ramolete, et al., 51 SCRA 13, 20.

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