

**HONORATO B. AQUINO AND ANGELINO M. BANZON, PETITIONERS,
VS. THE HONORABLE SERAFIN SALVADOR, JUDGE OF THE COURT
OF FIRST IN-STANCE OF CALOOCAN CITY, BRANCH XIV, AND
RENATO CALVEL...**

G.R. No. L-39337. March 25, 1983

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

On May 5, 1970, Renato Calvelo filed an action for the recovery of a sum of money against Honorato B. Aquino, Angelino M. Banzon, and Aurora B. Camacho with the Court of First Instance of Rizal, Caloocan City Branch, docketed therein as Civil Case No. C-1773. For failure of the defendants to appear at the trial of the case, a default judgment was rendered against them on January 12, 1973. The defendants received a copy of the decision on January 16, 1973, and on February 14, 1973, they filed a notice appeal, appeal bond, and record on appeal.[1]

On June 1, 1973, the plaintiff filed a motion to dismiss the appeal on the grounds that the defendants failed to file a separate notice of appeal, other than that included in the record on appeal; and that the appeal bond was filed out of time.[2]

On October 9, 1973, the trial court dismissed the appeal on the ground that the appeal bond was filed out of time since the appeal bond, which was in the form of a money order, although postmarked February 14, 1973, was actually received by the Court on March 9, 1973.[3]

Hence, the defendants Honorato B. Aquino and Angelino M. Banzon filed with the Court a petition for certiorari, with mandamus, to annul and set aside the order of the trial court dismissing their appeal.

Considering that an appeal bond is no longer required for an appeal (Interim Rules of Court, No. 18), so that the issue of whether or not the appeal bond submitted in this case had been timely filed, is moot and academic, the Court RESOLVED to ANNUL and SET ASIDE the order of the respondent Judge issued on October 19, 1973, and the Clerk of the Regional Trial Court of Caloocan City is directed to ELEVATE the records of Civil Case No. C-1773 to the proper appellate court for purposes of the appeal of Honorato B. Aquino and Angelino M. Banzon.

SO ORDERED.

Guerrero, Abad Santos and De Castro, JJ., concur.

Makasiar (Chairman), J., in the result. The appeal bond was mailed on time.

Escolin, J., in the result.

Aquino, J., on leave.

[1] Rollo, p. 8.

[2] Id., p. 32.

[3] Id., p. 3.

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