

**PHILIPPINE RESOURCES DEVELOPMENT CORPORATION,
PETITIONER, VS. THE HONORABLE JUDGE GREGORIO S. NARVASA,
ET AL., RESPONDENTS.**

G.R. No. L-12803. February 27, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On July 25, 1952, Woodward & Dickerson, Inc. filed a complaint for damages consisting of unrealized profits against Philippine Resources Development Corporation before the Court of First Instance of Manila, and on the strength of an affidavit executed by one Alfred Segal, a writ of preliminary attachment was secured by plaintiff against certain properties of defendant. Defendant filed an answer with counterclaim while at the same time it impleaded as third party the firm Hinderson-Trippe (Philippines) Inc. who acted as broker of the plaintiff in the execution of the contract involved in the litigation. This answer was later amended with the permission of the court.

After the parties had submitted their evidence which mainly consisted in depositions taken of certain Americans residing in the United States and documents that had a bearing on the transaction in question, together with the testimony of some witnesses relative to certain acts done by the above named Alfred Segal, the trial court rendered on April 8, 1957 a decision sentencing defendant to pay to plaintiff the sum of \$35,328.83 to be converted into pesos at the current rate of exchange on the date of payment, with legal interest thereon from the filing of the complaint until paid, plus an amount equal to the exchange tax due thereon, should there be any, and the sum of P7,500.00 as attorney's fees, and the costs of action.

On May 3, 1957, or 20 days after receipt of the decision, defendant filed a notice of appeal, an appeal bond in the amount of P60.00, and the record on appeal, copies of which, with the exception of the appeal bond, were furnished to counsel for plaintiff. On May 8, 1957, counsel for plaintiff filed his opposition to the approval of the record on appeal setting forth therein the reasons on which it is based. Counsel for defendant in due time answered this written opposition, but before the court has acted on the incident, plaintiff's counsel filed a motion to dismiss the appeal on the ground that he has not been furnished with copy of the appeal bond within the reglementary period as required by the rules. Counsel for defendant also replied to this motion arguing that the main ground on which it is based was of no moment considering that nothing relative thereto was mentioned by him in plaintiff's opposition to its record on appeal. Nevertheless, just to meet the objection, defendant served upon plaintiff copy of the appeal bond which its counsel has overlooked to serve before. In addition, plaintiff filed a motion for execution pending appeal.

On June 17, 1957, the trial court issued two orders, one granting the motion for execution pending appeal, and another dismissing the appeal on the ground that defendant failed to furnish plaintiff with a copy of the appeal bond as required by the rules. Contending that the trial court acted with grave abuse of discretion in issuing the orders above adverted to, defendant interposed the present petition for certiorari.

Under Section 3, Rule 41, of the Rules of Court, an appeal may be taken by serving upon the adverse party and filing with the trial court within 30 days from notice of the judgment a notice of appeal, an appeal bond, and a record on appeal. This section clearly requires that not only shall the three documents be filed with the court within the period of 30 days but that copies thereof shall be served upon the adverse party. This requirement is made in order that the adverse party may not only be notified of the intention of the appellant to take the case to the appellate court but also to afford him an opportunity to register his opposition to any of them if he desires to do so.

There is no question that defendant has filed within the reglementary period its notice of appeal and record on appeal with the trial court and has at the same time served copies thereof upon plaintiff, but, as it is admitted, it overlooked to serve the plaintiff with a copy of the appeal bond. Apparently, defendant has failed to comply with an important requirement for the perfection of its appeal, but, we ask, is that failure of such a nature as to affect the substantial right or interest of the plaintiff?

Our answer is in the negative considering that the appeal bond merely consists in the amount of P60.00 and the same was filed with the court within the reglementary period. Such failure cannot certainly affect any substantial right of plaintiff, as may be inferred from the fact that when plaintiff registered its opposition to the approval of the record on appeal it did not mention that failure as one of the grounds of its opposition. As a matter of fact, no opposition has ever been advanced to the sufficiency of the bond. As the Court of Appeals has observed in one case: "Where non-compliance with service of the notice of appeal, appeal bond and record on appeal upon the adverse party does not cause an impairment of his right, it will not be considered a ground for dismissal and in such an event the court's discretion in giving due course to the appeal would be guided and tempered with the interest of justice" (*Villanueva vs. Fernandez*, CA-G. R. No. 1797-R). To this comment we agree. Indeed, it would be most unfair if the appeal be defeated on a mere technicality considering the nature of the decision appealed from which condemns the defendant to pay an amount which under the circumstances may reach a total of P100,000.00, as well as the defenses set up by defendant which dispute the findings of the trial court.

The order issued by the trial court granting plaintiff's petition for execution is also improvident considering that the same is not supported by good reasons and plaintiff has already secured an attachment of the properties of defendant.

Wherefore, petition is granted. The trial court is hereby ordered to give course to defendant's appeal, with costs against respondent corporation.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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