

COMPAGNIE DES MESSAGERIES MARITIMES, PETITIONER, VS. THE COURT OF APPEALS AND A. A. R. BOTELHO, RESPONDENTS.

G.R. No. L-28381. September 11, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this Petition for Certiorari and Mandamus, the principal issue raised is whether or not respondent Court of Appeals had correctly refused to dismiss the appeal of private respondent A. A. R. Botelho in CA-G.R. No. 38989-R, entitled "Compagnie Des Messageries Maritimes vs. A. A. R. Botelho", upon petitioner's invocation of non-compliance with the material data rule.

We find no need to give an extended recital of the background facts that spawned the present controversy. Suffice it to relate that on October 28, 1966, the trial Court rendered a Decision in favor of petitioner, the dispositive portion of which reads:

"Wherefore, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the defendants, Gertrudis Carlos and A. A. R. Botelho to pay jointly and severally to the plaintiff Compagnie de Messageries Maritimes, the principal sum of US\$5,202.23 or its equivalent in Philippine Pesos; also US\$605.72 or its equivalent in Philippine Pesos representing expenses of litigation, with interest on both amounts at the rate of 6% per annum until fully paid, reckoned from the filing of the case on December 28, 1961, plus 25% of the total amount as attorney's fees in conformity with Article 2208 of the Civil Code, and costs.

Botelho's cross-claim is hereby dismissed."

Unsuccessful in obtaining reconsideration, respondent Botelho signified his intention to appeal. On December 10, 1966, the lower Court approved his Record on Appeal "there being no opposition".

While the appeal was pending before the Appellate Court, petitioner filed a Motion to Dismiss on the following grounds:

- "1. The Record on Appeal does not contain such data as will show that the appeal was perfected on time (Rule 41, sec. 6)
2. The Record on Appeal fails to show on its face that the appeal was perfected within the period fixed by the Rules of Court (Rule 50, sec. 1(a)."

Respondent acknowledged the omissions but maintained that they were due to excusable negligence, and asserted that there could be no dispute as to the fact that he had filed the Notice of Appeal, Record on Appeal and Appeal Bond well within the time prescribed by law. In support thereof he presented a Certification of the Clerk of Court of the trial Court attesting to the fact that the Decision, dated October 7, 1966, was received by respondent on October 28, 1966; that the Order dated November 21, 1966 was received by respondent on December 1, 1966; and that on December 7, 1966, respondent Botelho filed his Notice of Appeal. Respondent then prayed that the

Appellate Court authorize the insertion of the necessary data, or in the alternative, that the Record on Appeal be remanded to the Court of origin so that, in the interest of justice, the corresponding amendments could be effected.

On June 22, 1967, respondent Court of Appeals issued the challenged Resolution denying petitioner's Motion to Dismiss Appeal, thus:

"x x x RESOLVED to DENY plaintiff-appellee's motion to dismiss appeal, to instruct the Clerk of this Court to remand the original record on appeal to the court of origin, and to DIRECT the Clerk of Court of the Court of First Instance of Manila to insert in the original record on appeal the data contained in the certificate of the Clerk of Court dated June 7, 1967, and thereafter, to return immediately to this Court the original record on appeal."

The reconsideration of that Resolution sought by petitioner was denied, hence, this recourse.

We considered this case submitted for Decision on June 7, 1968.

The issue raised is whether or not respondent Court of Appeals acted correctly in refusing to disallow the appeal, which, in turn, would depend on whether or not the omissions, admitted to have been made, are fatal to said appeal.

We deny the Writs prayed for.

While it is true that we had previously adhered to the rigid application of the material data rule as held in the cases of *Government of the Phil. vs. Antonio*, 15 SCRA 119 (1965); *DBP vs. Spouses Santos, et al.*, 18 SCRA 113 (1966); and *J. Araneta vs. Madrigal*, 18 SCRA 446 (1966) among others, this Court has modified and liberalized that doctrine. We have ruled that the failure to show on the face of the Record on Appeal the date when the petitioner received the decision of the trial Court and such other data to show that the appeal was duly perfected is not a fatal defect, the trial Court's approval of the Record on Appeal having served to cure whatever defect or omission there may have been.[1] As held by this Court in no uncertain terms, speaking through the late Justice Salvador V. Esguerra in *Berkenkotter vs. Court of Appeals*, 53 SCRA 228 (1973), "no trial Judge in his right mind and who is aware of the serious responsibilities of his office would approve a record on appeal that was not timely filed."

In the case at bar, the deficiencies in the Record on Appeal consisted of the non-inclusion of the dates of receipt by respondent of copies of the Decision and of the Order of the lower Court, and the exact day in December, 1966 when the Notice of Appeal was filed. The Certification of the Clerk of Court of the trial Court, however, indicates the actual dates of receipt by respondent and shows beyond cavil of doubt that he had actually perfected his appeal on time, or on the 16th day from notice of the appealed Decision (Oct. 28, 1966) after deducting the period during which the Motion for Reconsideration filed therein was pending.

The fact, too, that respondent's Record on Appeal was approved by the trial Court "there being no opposition" strengthens the case in favor of respondent and weakens that of petitioner, who must be deemed to have waived the issue of timeliness and who was obviously relying on a mere technicality in seeking the dismissal of the appeal. The case of *Abando vs. Court of Appeals*, 83 SCRA 511 (1978) buttresses this view:

"x x x Petitioner had filed no opposition whatsoever to the approval of the record on appeal, which in fact was timely filed and perfected, and in the absence of any positive showing from the records that the appeal was in fact not timely perfected, he must be likewise deemed to have waived the objection of non-timeliness and can no longer be allowed to invoke it on mere technicality in the appellate court. It is to be noted that petitioner's insistence on such technicality (instead of awaiting respondent court's decision on the merits of respondents'

appeal) has only served to unduly delay the determination of the appeal to the prejudice of all concerned."

Corollarily, it should also be stated that a remand to the trial Court was unnecessary in the face of a positive showing that the appeal was timely perfected.

WHEREFORE, the Petition for Certiorari and Mandamus is dismissed and this case remanded to respondent Court of Appeals for determination of the appeal on the merits as expeditiously as possible.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

[1] Santos vs. Court of Appeals, 90 SCRA 223 (1979) citing Krueger vs. Court of Appeals, 69 SCRA 50 (1976); Villanueva vs. Court of Appeals, 68 SCRA 216 (1975); Pan American World Airways Inc., vs. Espiritu, 69 SCRA 36 (1976).

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