

CARCO MOTOR SALES, INC., PETITIONER, VS. HON. COURT OF APPEALS AND COMMERCIAL CREDIT CORPORATION, RESPONDENTS.

G.R. No. L-44609. August 31, 1977

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court sets aside respondent appellate court's dismissal of petitioner's appeal for failure to file appellant's brief within the original reglementary period, notwithstanding that such failure had been due to the fault and negligence of petitioner's counsel's office secretary and petitioner had thereafter promptly filed its appellant's brief within the inextendible ninety-day period uniformly granted as a matter of course by respondent court to all parties.

Respondent court in its resolution of June 9, 1976 *motu proprio* dismissed petitioner's pending appeal before it as defendant-appellant for failure to file appellant's brief as per the docket report. It turned out that from January 1, 1976 to April 15, 1976, one Mrs. Yolanda V. Fontanilla acted as office secretary of petitioner's counsel Petronilo A. de la Cruz; that on April 8, 1976 counsel handed to her for filing with respondent court a motion for 90-day extension up to July 16, 1976 to file appellant's brief but that she completely forgot about it and included the same "accidentally among the personal effects/papers that (she) brought along with (her) when she left her job on April 15, 1976 during the Lenten Season's as per her affidavit of June 18, 1976 submitted with petitioner's motion for reconsideration; and counsel learned of her failure to file the motion for extension only upon receipt in mid-June, 1976 of respondent court's dismissal of the appeal.

Petitioner through counsel promptly filed its motion for reconsideration of June 30, 1976 pleading accident and/or excusable mistake and praying to be given the same 90-day period up to July 16, 1976 (which it had asked for in the original motion for extension that was not filed) to file its brief. On July 16, 1976, petitioner did file the appellant's brief accompanied with a manifestation of the same date praying for admission thereof and for setting aside of the earlier resolution dismissing its appeal.

Private respondent-appellee filed its opposition thereto and in its Resolution of September 1, 1976 respondent court denied reconsideration and reinstatement of the appeal, ruling that "(T)he opposition appears to be very well founded; appellant's only excuse is non-filing of motion for extension due to oversight as though just because motion for extension is filed, it is mandatory to grant. In view whereof, denied. "

Hence, the petition at bar.

We start from the premise that the negligence of petitioner's counsel's office secretary in having failed to file with respondent court the motion for 90-day extension entrusted to her as mitigated by counsel's prompt filing of appellant's brief within the said 90-day period which is uniformly granted as a matter of course by respondent court to all litigants should not warrant the imposition of the capital penalty of dismissal of petitioner's appeal.

This premise is strengthened by the fact that petitioner's brief as filed shows that it is not perfunctory or dilatory in

nature but on the contrary presents strong prima facie arguments for hearing the side of petitioner-appellant instead of an outright dismissal. For under the appealed decision, petitioner-appellant was sentenced to pay respondent-appellee the sum of P118,466.67 with 14% interest thereon per annum besides P10,000.00 attorney's fees under two (2) trade acceptances drawn by Champion Auto Supply, Inc. (Champion) and accepted by petitioner-appellant and thereafter endorsed and negotiated by Champion to respondent-appellee allegedly without notice to petitioner, so much so that petitioner coursed all its payments as the same fell due to Champion and fully paid and liquidated the entire amount with Champion without any protest, formal or verbal, from respondent-appellee. Hence, petitioner challenges the appealed judgment in that notwithstanding Champion's having acknowledged that petitioner's accounts had been fully paid, petitioner would be held liable still to pay respondent the same amount.

The imperatives of justice, fairness and equity may therefore be rightly invoked by petitioner for reinstatement of its appeal and determination thereof on its merits.[1]

As held by the Court in *Gregorio vs. Court of Appeals*,[2] "(T)he expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter and may be waived by the parties. Even after the expiration of the time fixed for the filing of the brief, the reviewing court may grant an extension of time, at least where no motion to dismiss has been made. Late filing or service of briefs may be excused where no material injury has been suffered by the appellee by reason of the delay or where there is no contention that the appellee's cause was prejudiced. "

And as stressed in *Obut vs. Court of Appeals*,[3] where compelling circumstances are cited by the appellant that would warrant an examination and review by the appellate court as the reviewer of the findings of fact made by the trial court, "a liberal application of the rules becomes imperative and conversely an over strict or rigid enforcement of the reglementary period for the filing of briefs, extensions of which for justifiable reasons are after all addressed to the sound discretion of the court, is to be shunned and avoided lest a grave miscarriage of justice be committed."

On the whole, we are persuaded that the higher interests of justice and fairness justify the setting aside of respondent court's peremptory dismissal of petitioner's appeal for failure to file appellant's brief within the original reglementary period due to a cause not entirely attributable to its fault or negligence[4] and that the exercise of the Court's "inherent right" to reinstate an appeal that was dismissed as the result of fraud, mistake or unavoidable casualty[5] is fully justified under the circumstances of the case at bar.

ACCORDINGLY, respondent appellate court's resolutions dismissing petitioner's appeal are hereby set aside. The case is remanded to respondent court which is directed to admit petitioner's brief as defendant-appellant and to give due course to its appeal and decide the same on the merits. No costs.

Makasiar, Muñoz Palma, Martin, Fernandez, and Guerrero, JJ., concur.

* First Division composed of Acting Presiding Justice Magno S. Gatmaitan and Justices Mama D. Busran and Samuel F. Reyes.

[1] See *Oyao vs. People*, 75 SCRA 424 (Feb. 28, 1977); *Cucio vs. Court of Appeals*, 57 SCRA 64 (1974).

[2] 72 SCRA 120 (July 28, 1976), per Martin, J.

[3] 70 SCRA 546, 552 (Apr. 30, 1976), per Muñoz Palma, J.

[4] Cf. *Padasas vs. Court of Appeals*, 56 SCRA 619 (1974), per Fernando, J., citing *Montecines vs. Court of*

Appeals, 53 SCRA 14 (1973).

[5] Cf. Celestino vs. Court of Appeals, 67 SCRA 22, 29 (1975), per Aquino, J.

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