

**JOSE P. TAMBUNTING AND JOSEFINA ARNAIZ, PETITIONERS, VS.
THE HON. COURT OF APPEALS, FRANCISCO PARULAN, SR., FELISA
DE LA CRUZ AND FRANCISCO PARULAN, JR., RESPONDENTS.**

G.R. No. L-40768. February 27, 1976

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court reverses respondent court's dismissal of petitioners' appeal and remands it for prompt disposition on the merits on the strength of controlling jurisprudence that the trial court's approval of the record on appeal carries with it the approval of the motion for extension notwithstanding the absence or non-inclusion of an order granting such extension and that the appellate court may properly rely on the trial court's order of approval of the record on appeal and express finding therein of its timeliness where the factual correctness and veracity of such finding are not impugned or disputed by the adverse party.

The petition at bar amply shows and there is no dispute that petitioners' appeal to respondent Court of Appeals from the adverse judgment of the Quezon City court of first instance (in a consignment and release of real estate mortgage case filed by respondents as plaintiffs against them) was timely perfected.

Petitioners' record on appeal as filed with the trial court shows on its face that after receipt on May 13, 1974 of the trial court's order denying reconsideration of the judgment, petitioners filed on May 17, 1974 their notice of appeal and appeal bond and a motion for a 30-day extension to file their record on appeal; on June 17, 1974 (erroneously stated in the record on appeal as June 16, 1974 [a Sunday] they filed a second motion for a ten-day extension from June 16, 1974 to file the record on appeal, which they actually filed on the last day of the requested extended period on June 26, 1974.

Since the trial court's orders granting the extensions were not yet received by petitioners as of the date of filing on June 26, 1974 of the record on appeal, they merely stated therein that on blank dates, the trial court granted their motions for extension providing a blank space for the insertion of the texts of the orders.

In its order of July 18, 1974,[1] the trial court approved petitioners' record on appeal expressly finding that "the record on appeal was filed within the reglementary period and there being no opposition," granted in effect the second motion for extension[2] and denied respondents' motion for execution pending appeal as unmeritorious.[3]

The record on appeal was duly elevated to the Court of Appeals which issued to petitioners under date of November 18, 1974 the corresponding notice for payment of docketing fees and filing of the printed record on appeal. Petitioners ad cautelam filed with respondent Court of Appeals a motion for leave to incorporate into the printed record on appeal on the blank spaces provided in their original record on appeal as approved by the trial court the dates and texts of the trial court's orders granting their two motions for extension. The printed record on appeal with the blank spaces filled up was filed by petitioners on January 13, 1975 within the 60-day reglementary period.

Required to comment, respondents filed a motion to dismiss the appeal based principally on the material data rule (that the record on appeal "miserably failed to show on its face that the appeal was perfected on time") and the "gross and inexcusable negligence" of petitioners in waiting for six months to correct their record on appeal rather than having made the corrections in the trial court.

Respondent court in its resolution of February 17, 1975 ordered the dismissal of the appeal for non-inclusion of the two orders granting the extensions; and in its resolution of May 15, 1975 denied reconsideration.

Hence, the petition at bar, which the Court per its Resolution of September 12, 1975 (after receiving respondents' comment) resolved to treat as a special civil action and declared submitted for decision for an expeditious determination of the simple issue involved.

The doctrine of *Berkenkotter vs. Court of Appeals*[4] well over a year before respondent court's dismissal resolution of February 17, 1975 is controlling and calls for the reversal of the dismissal of the appeal. The Court held therein that "The mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the petitioner if the record on appeal filed within the requested extension period was approved by the Court a quo. As previously stated, the approval thereof carries with it the approval of the motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal. 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."

Furthermore, respondent court's dismissal of the appeal must likewise be set aside by virtue of the liberal position adopted by the Court since *Pimentel vs. Court of Appeals*[5] to the effect that where the trial court finds and declares (as in the case at bar) "in its order of approval of a record on appeal that it was filed 'on time' or 'within the reglementary period' and the correctness, accuracy and veracity of such finding are not impugned, questioned or disputed by the adverse party, the non-inclusion in the record on appeal of a motion and order for extension of time for the filing of the same is not fatal and does not warrant dis-missal of the appeal - since the appellate court may pro-perly rely on the trial court's order of approval and determination of timeliness of appeal." [6]

Petitioners therefore have good cause to complain of their having been unduly deprived of their right of appeal, and more importantly, of the right to pursue what they allege to be good grounds for questioning on appeal the correctness of the computation of the sums of money involved in the case.

The Court is not unaware, on the other hand, of respondents' plea that the delay in the adjudication of their complaint "bring(s) incalculable anguish to poor and sickly private respondents, among which is their inability to get financing for their basic needs, from the sale or mortgage of their only property, subject of this suit, the title of which is still held by petitioners who are bigtime pawnshop operators." [7] But this case, as other similar cases, serves but to stress the validity of the principle that it is best that a case or appeal be decided on its merits with deliberate dispatch rather than be dismissed with undue haste on a technicality. Had respondents not precipitately moved to dismiss the appeal on a technicality that was already rejected in *Berkenkotter*, supra, the time and effort needlessly taken up by the present case would not have been wasted and the appeal might well have been on its way to final determination on its merits by now.

Accordingly, respondent court's resolution dismissing petitioners' appeal is hereby set aside and the case is remanded to respondent court for prompt disposition of the appeal on its merits. Without costs.

Makasiar, Esguerra, Muñoz Palma, and Concepcion, Jr.,[*] JJ., concur.

[1] As transmitted as part of the record on appeal to the appellate court by the clerk of the trial court, as required

by Rule 41, sec. 11.

[2] Cf. Republic vs. CA, L-40495-96, Oct. 21, 1975. The first motion for extension was granted in an order dated May 23, 1974, Annex 1 or Annex E, petition.

[3] The pertinent text of the order of approval reads:

"For resolution are three motions: (1) motion for extension of time to file record on appeal: (2) motion for execution pending appeal and (3) motion for approval of the record on appeal.

"Considering that the record on appeal was filed within the period sought in the motion for extension, a resolution of said motion be-comes academic.

"The grounds, alleged in the motion for execution pending appeal, can not be considered meritorious, therefore the same is hereby denied.

"Since the record on appeal was filed within the reglementary period and there being no opposition, the same is hereby approved" (Rollo, p. 67, italics supplied).

[4] 53 SCRA 228, 236 (Sept. 28, 1973), per Esguerra, J.

[5] 64 SCRA 475 (June 27, 1975) per Makasiar, J.

See also Krueger vs. Court of Appeals, L-41063, Jan. 20, 1976, per Muñoz Palma, J. for series of similar recent rulings by the Court.

[6] Luna vs. Court of Appeals, L-37123, Oct. 30, 1975.

[7] Rollo, p. 129.

[*] Designated vice Martin, J. who took no part.

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