

DEVELOPMENT BANK OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. SPOUSES ADRIANO V. SANTOS & MARTINA HABACON AND EVARISTO PICAZO, DEFENDANTS, EVARISTO PICAZO, DEFENDANT AND APP...*G.R. No. L-26387. September 27, 1966*

Ponente: DIZON, J.

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Before Us is appellee's motion to dismiss the appeal interposed by Development Bank of the Philippines, upon the sole ground that the record on appeal fails to disclose on its face that the appeal was taken within the period fixed by the Revised Rules of Court, in violation of Rule 50, paragraph (a), in connection with Rule 56, Section 1 and Rule 41, Section 6, of the same Rules.

In support of his contention appellee calls attention to the fact that while the record on appeal shows that the appealed order of February 11, 1966 (p. 38, Record on Appeal) dismissing the case against appellee was received by appellant's counsel on March 16, 1966 (p. 39, *supra*), and that a motion for reconsideration of said order was filed on March 23 of the same year - which motion was denied in an order dated April 11 - said record on appeal fails to disclose the date when appellant received notice of the aforesaid order denying its motion for reconsideration. Thus, appellee argues, it is impossible to determine, on the basis of the contents of the record on appeal, whether or not the appeal was taken within the period provided by law, after deducting the period during which the motion for reconsideration was pending.

Appellant filed an opposition to the motion to dismiss claiming that its record on appeal was filed on May 12, 1966, the last day of the period for the filing thereof as extended by the lower court in its order dated April 27, 1966 granting appellant's Urgent Motion for Extension of Time, a copy of which order was attached to the opposition as Annex A. Appellant further avers that the noninclusion of the order Annex A in the record on appeal was due to the fact that when the record was being prepared on April 28, 1966, appellant had not yet been served with a copy of said order. Appellant further argues that said omission was corrected by appellee's failure to object to the approval of the record on appeal at the hearing held in the lower court for the approval or disapproval thereof.

It is, therefore, a fact that while the record on appeal states the date when the order of dismissal appealed from was received (March 16, 1966); that a motion for reconsideration thereof was filed one week later (March 23, 1966) and that said motion for reconsideration was denied by the lower court on April 11 of the same year, the record on appeal does not show the date when appellant received notice of the order of denial - an important date for the determination of whether or not the record on appeal was filed on time. It appears in this connection that the order of April 11, 1966 denying appellant's motion for reconsideration is reproduced on pp. 184-6 of the record on appeal, followed immediately by a statement to the effect that on April 20 of the same year, appellant filed its notice of appeal and appeal bond (p. 186, *supra*). Next comes a statement to the effect that on April 25,

1966, appellant filed an Urgent Motion for Extension of Time to file its record on appeal, which motion appears on pp. 187-8 of the record on appeal, but nothing appears thereafter to show that the said Urgent Motion for Extension was submitted to and granted by the Court, nor to show the date when appellant received notice of the order granting the aforesaid motion for extension.

Upon the above facts, We are of the opinion that our decision in *Government of the Philippines etc. vs. Luis Antonio et al.*, (G. R. No. L-23736) is squarely applicable to the present case. The pertinent portion of said decision reads as follows:

"The deficiencies pointed out are fatal. For the reason that in ordinary appeals the original record is not forwarded to the appellate court, and because the dates when an applicant received the notice of the pertinent orders or judgment under appeal, and of the denial of his motion for reconsideration or new trial, are facts within the exclusive knowledge of said appellant, the Revised Rules of Court place upon the appellant the burden of showing that his appeal is timely, and for that purpose prescribe (Rule 41, Sec. 6) that the record of appeal shall include 'such data as will show that the appeal was perfected on time'. This requirement is mandatory and jurisdictional, for unless appeal is perfected on time the appellate court acquires no jurisdiction over the appealed case, and has power only to dismiss the appeal (*Bello vs. Fernando*, L-16970, Jan. 30, 1962; *Caisip vs. Cabangon*, L-14684, August 26, 1960; *Espartero vs. Ladaw*, 49 Off. Gaz., 1439). The certification of the record on appeal by the trial court, after expiration of the period to appeal can not restore the jurisdiction which has been lost (*Alvero vs. de la Rosa*, 76 Phil. 428, 433, and cases cited). The principle is confirmed by Rule 50, section 1, subpar. (a), heretofore quoted."

WHEREFORE, the appeal interposed by appellant is hereby dismissed, without costs.

Concepcion, C.J., Reyes, J.B.L., Barrera, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Regala, J., no part.

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