

**E. RAZON, INC., PETITIONER, VS. THE HONORABLE JOSE L. MOYA,
JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA (BRANCH X)
AND HARTFORD FIRE INSURANCE COMPANY, RESPONDENTS.**

G.R. No. L-31690. February 24, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

An appeal by Certiorari from the Decision of the Court of Appeals, promulgated on November 24, 1969, denying the Petition for Mandamus filed by the petitioner in CA-G.R. No. 43953-R, as well as from the Resolution of said Court dated February 5, 1970, denying petitioner's Motion for Reconsideration.

On February 20, 1969, respondent Hartford Fire Insurance Co. filed Civil Case No. 75781 before the Court of First Instance of Manila against petitioner E. Razon, among others, for a sum of money. The case was raffled to respondent Judge.

On May 19, 1969, a pre-trial conference was held during which the parties entered into the following stipulations:

"1. That the SS' YAMANASHI MARU' discharged into the custody of E. Razon, Inc. the cargo described in the complaint, as evidenced by the Permit to Deliver Imported Goods marked Exhibits 'A' and 'A-1', but E. Razon, Inc. did not deliver the cargo to the consignee, the International Textile Mills, Inc.;

"2. That in view of this fact, the plaintiff is withdrawing the complaint as against the defendants Nippon Yusen Kaisha and Warner Barnes & Co., Ltd.;

"3. That the only question to be decided between the plaintiff and the defendant E. Razon, Inc. is whether the Revised Management Contract is applicable to this case, the formal claim made by the consignee, marked Exhibit 'B', having been filed only on April 15, 1968, after the lapse of the period of 30 days fixed in said contract from the arrival of the vessel on February 22, 1968, and the filing of the import entry on March 8 of the same year;

"4. That E. Razon, Inc. further admits, under the First Cause of Action, paragraphs 1, 2, and 3;

"5. And that this case shall be deemed submitted for decision upon the filing of memoranda by the plaintiff and E. Razon, Inc. within 20 days from May 19, 1969."[1]

Memoranda having been filed, respondent Judge rendered a Decision on July 11, 1969 holding that the Revised

Management Contract did not apply to the case at bar since there was total non-delivery of the shipment, and condemned petitioner to pay respondent Hartford the sum of a little more than P8,000.00 (no copy of the Decision appears of record).

Copy of the aforesaid Decision was received by Razon's counsel on July 18, 1969. On August 7, 1969, Razon filed its Notice of Appeal, and Appeal Bond stating that it was appealing to the Court of Appeals. On August 15, 1969, it filed its Record on Appeal. Hearing thereon was set by respondent Judge for September 6, 1969 but before that date or, on August 27, 1969, Hartford's counsel filed a Motion to Dismiss Appeal on the ground that as only a question of law was involved, the appeal should have been by Certiorari to the Supreme Court. Said Motion was set for hearing also on September 6, 1969. However, prior thereto, or on August 30, 1969, respondent Judge dismissed the appeal stating:

"As only questions of law may be raised in the appellate court because this case was decided upon a stipulation of facts submitted by the parties and no evidence was presented by the parties and as Republic Act No. 5440, amending Section 17 of the Judiciary Act of 1948, provides that the Supreme Court shall have exclusive jurisdiction to review, affirm, reverse or modify on certiorari decisions of Courts of First Instance in cases in which only errors or questions of law are involved, and no petition for certiorari having been filed by the defendant E. Razon, Inc., on motion of the plaintiff, the appeal by the defendant to the Court of Appeals is dismissed." [2]

Discovering that said Order had been issued pre-maturely, respondent Judge set it aside in his Order of September 8, 1969 but reiterated the order of dismissal of the appeal thus:

"The motion to dismiss the appeal of the defendant E. RAZON, INC., having been inadvertently resolved before the date set for its hearing, the order of August 30, 1969, granting the motion is set aside.

"At the hearing of the motion held on September 6, 1969, Atty. de Leon, the defendant's counsel, opposed it on the ground that the appeal to the Court of Appeals is proper because the defendant intends to raise issues of fact before the appellate court.

"This argument is manifestly untenable. This case was decided on a stipulation of facts agreed upon by the parties. There is, therefore, no dispute about the facts and no questions of fact may be possibly raised by the parties on appeal.

"For this reason, the order of August 30, 1969, is reiterated and the appeal by the defendant E. Razon, Inc., to the Court of Appeals is dismissed.

"As prayed for by the plaintiff, it is allowed to withdraw its motion for execution pending appeal" (italics supplied) [3]

On September 13, 1969, respondent Judge ordered the execution of the Decision on the ground that it had become "final and executory." Razon's plea for reconsideration was denied.

On September 20, 1969, Razon filed an original action for Mandamus before the Court of Appeals praying that respondent Judge be ordered to approve the Record on Appeal and give due course to its appeal.

On November 24, 1969, the Court of Appeals[4] applying Republic Act 5440, which was approved on September 9, 1968, denied Mandamus on the ground that since only questions of law were involved, appeal should have been directed to this Court and that it was the duty of respondent Judge to refuse to give due course to the appeal.

The Appellate Court was in error in upholding the disallowance of the appeal.

Concededly, issues that involve pure questions of law are within the exclusive jurisdiction of this Court. However, Rule 41 of the Rules of Court does not authorize the Trial Court to disallow an appeal on the ground that there is no question of fact, but only a question of law, involved. "The only instance provided in the Rules when the Trial Court may dismiss an appeal is under section 14 of Rule 41, upon the ground that either the notice of appeal, appeal bond, or record on appeal has not been filed on time".[5] "Where the appeal is presented on time, attended by the requirements of the law, the same should be given due course.[6] An appeal, being an essential part of our judicial system, Courts are enjoined to facilitate its taking due course."[7]

Under the circumstances of the case, therefore, what respondent Judge should have done was to have given due course to the appeal, and it would have been up to the Appellate Court to certify the case to the proper Tribunal for having been erroneously brought before it.[8]

However, although procedural error was committed in the disallowance of the appeal, a Writ of Mandamus to compel the Trial Court to approve the appeal would serve no useful purpose. As embodied in the Stipulations of Fact the only question to be decided was whether the Revised Management Contract between Razon and the consignee is applicable to the case. As held by respondent Judge, there having been total non-delivery of the shipment, the contract is inapplicable. That finding is supported by our rulings in *Reliance Surety & Insurance Co. vs. Manila Railroad Co.*,[9] and in *Shell Co. of the Phil. Ltd. vs. Compania General de Tabacos de Filipinas*. [10] No substantial prejudice would be caused Razon, therefore, in not compelling by Mandamus the approval of its appeal. There would be no denial to it of substantial justice, it being readily recognizable that there is very little likelihood, if at all, that a consequent appeal can ever succeed. That appeal would be futile and "would only mean a waste of time to the parties and to this Court." [11]

WHEREFORE, Certiorari is hereby denied, with costs against petitioner.

SO ORDERED.

Makasiar and Guerrero, JJ., concur.

Teehankee, J., (Chairman), concurs in a separate opinion.

Fernandez, J., in the result.

[1] pp. 2-3, Brief for Private Respondent.

[2] p. III, Decision.

[3] pp. IV-V, Decision.

[4] Composed of Villamor, Presiding Justice, Gatmaitan (ponente) and Martin, JJ.

[5] *Agoncillo vs. Court of Appeals*, 48 SCRA 147 (1972).

[6] Section 3, Rule 41.

[7] Republic vs. Gomez, 5 SCRA 368 (1962).

[8] Section 3, Rule 50, Rules of Court.

[9] 10 SCRA 809 (1964).

[10] 14 SCRA 763 (1965).

[11] Paner vs. Yatco, 87 Phil. 271, 274 (1950).

CONCURRING OPINION

TEEHANKEE, J.:

I concur and wish to add only that since the approval on September 9, 1968 of Republic Act No. 5440, all appeals to this Court on only questions or errors of law from the Courts of First Instance are no longer a matter of right by record on appeal as formerly provided by Rule 42 of the Rules of Court but by a petition for review on certiorari as similarly provided for appeals from the Court of Appeals to this Court under Rule 45, whereunder as provided in Section 3 thereof, "A review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor." Petitioner's intransigence and insistence on appealing by record on appeal to the Court of Appeals, notwithstanding that its attention had been called that under Republic Act No. 5440 its appeal should be by review on certiorari to this Court since the case was decided on the parties' stipulation of facts and therefore no questions of fact could possibly be raised by it on appeal was patently frivolous and dilatory and the Court of Appeals therefore correctly denied mandamus.

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