

PERLA COMPAÑIA DE SEGUROS, INC., PETITIONER, VS. HON. ALFREDO B. CONCEPCION AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF CAVITE, BRANCH IV-TAGAYTAY CITY AND MIGUEL ILAGA...

G.R. No. L-56590. May 29, 1981

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court hereby sets aside the questioned orders of respondent judge disapproving herein petitioner's appeal bond in Civil Case No. TG-438 of the Court of First Instance of Cavite, Branch IV, Tagaytay City, upon the ground that said bond "is void and unenforceable for lack of a principal debtor or obligation," and peremptorily declaring his judgment under appeal as having become final and executory and ordering execution thereof. A mere technical defect or imperfection in the filing of an appeal bond does not render the decision subject of the appeal immediately final and executory, for where said bond is in substantial conformity with the provisions of the law such that its legal effect accomplishes the objective of insuring to the appellee the payment of the costs of appeal, the appeal should be given due course.

In an action for the enforcement of a commercial vehicle comprehensive insurance policy with damages, judgment was rendered by respondent judge sentencing petitioner as defendant to pay respondent-plaintiff Ilagan "the total sum of P18,773.58 minus the sum of P500.00 representing the deductible franchise, plus attorney's fees in the amount of P5,600.00 or the total sum of P23,873.58, with interest thereon at the rate of 36% per annum from February 21, 1978 until said amount shall have been fully satisfied; and to pay the costs."

From said judgment, petitioner-defendant timely filed a notice of appeal, appeal bond and a record on appeal. But the herein private respondent, the prevailing party in the lower court, filed therein a motion to dismiss the appeal and for the issuance of a writ of execution, impugning the validity of petitioner's appeal bond as having no principal debtor and therefore void.

Despite opposition, respondent judge upheld respondent's contention and denied due course to the appeal and further directed the issuance of the corresponding writ of execution a judgment, in his questioned Order of January 28, 1981, as follows:

"No issue exists regarding the seasonable filing of the notice, bond and record of appeal. The issue centers on the efficacy of the appeal bond executed by Rodrigo Y. Arandia and Porfirio B. Yabut, both lawyers, as 'sureties', whereby they 'jointly and severally bind (themselves) in favor of Miguel Ilagan, x x x for the payment of cost x x x.'

"As correctly pointed out by the plaintiff, the disputed appeal bond is void and unenforceable for lack of a principal debtor or obligation. Indeed, while the sureties bound themselves to pay, jointly and severally, 'such an undertaking presupposes that the obligation is enforceable against someone else besides the (sureties), and the latter could always claim that it was never (their) intention to be the sole person obligated thereby.'

(Manila Rail-road Co., et al. vs. Alvendia, 17 SCRA 154, 156.)

"It, therefore, follows that the judgment rendered in this case had become final and executory, because the defendant had not filed any appeal bond in due time."

Reconsideration was denied in respondent judge's Order of March 27, 1981. Hence, this petition for certiorari which we find to be meritorious.

Section 5 of Rule 41 of the Rules of Court reads:

"Section 5. Appeal Bond. The appeal bond shall answer for the payment of costs. It shall be in the amount of one hundred and twenty pesos (P120) unless the court shall fix a different amount. If the appeal bond is not in cash, it must be approved by the court before the transmittal of the record on appeal to the appellate court."

The last sentence of the above quoted section presupposes that before elevating the record on appeal to the appellate court, the trial court has the duty to pass upon the sufficiency of the appeal bond, and it is called upon to require the party-appellant within a period of time to fully comply with the requirements as to said appeal bond in case of some defect in its execution, in the same manner it requires correction or amplification of a deficient record on appeal. Thus, it behooves the trial court upon opposition to the effectivity of an appeal bond to examine it, to declare it lacking of the requirements if it be so, and then to require and allow the appellant to complete or amend it in accordance with instructions within a reasonable period, so as to perfect the appeal.[1]

Indeed, as in the filing of records on appeal,[2] the Court has invariably taken a liberal attitude in favor of the appellant when it comes to the filing of appeal bonds in relation to perfection of appeals.[3]

Thus, it has been held that an appeal bond is sufficient when it is in substantial conformity with the provisions of the law as long as the legal effect is to insure to the appellee the payment of all costs required by law.[4]

In *Javier Cruz vs. Enriquez*,[5] which is similar to the case at bar, the respondent judge therein ordered the disapproval of the appeal bond after discovering that the same consisted merely in the signatures of two lawyers. The Court ruled therein as follows:

"This provision of law[6] does not prescribe a special form for appeal bond. It only requires that the same be for the amount of sixty pesos, (at that time) 'conditioned for the payment of costs which the appellate court may award against the appellant.' The bond in question complies substantially with the provision of law, and we see no reason why the respondent judge found it defective. When he approved the record on appeal, there has been an implied approval of the original bond, and we find no reason either why after such approval, he had to disapprove said bond and dismiss the appeal on the allegation that the new bond was filed out of time. Furthermore, granting that the first bond was really defective, justice demands that herein petitioners, as appellants in that case, be given an opportunity to cure its defect by filing, as they did, another bond. In dismissing the appeal the respondent judge has entirely overlooked the fact that the second bond was not a new one but merely a correction of the original supposedly defective bond. x x x.

"Respondent Laserna vigorously contends that under the inherent powers of the court to amend and control its process and orders so as to make them conformable to law and justice, the dismissal of the appeal on the ground that the first bond was defective and the second one was filed out of time, should be sustained; but under the facts obtaining in the case, this contention is evidently untenable for the original bond, in our opinion, is not defective, and even granting that it were, petitioners herein were diligent in curing the supposed defect by filing a new bond in order to protect their right to appeal. Certainly, the respondent judge should not have been strictly technical in the application of the rules, for in so doing he has deprived herein petitioners of their right to appeal, or at least to perfect it within the time allowed by law."

There is no question in the instant case, as acknowledged in the challenged order, that the record on appeal, notice

of appeal and the appeal bond were filed on time. However, as in the above cited case of Cruz, the appeal bond in question was executed by petitioner's lawyers, Attys. Rodrigo Y. Arandia and Porfirio B. Yabut, both lawyers of the law firm representing herein petitioner as defendant in the main case, as well as in the case at bar, whereby they did "hereby jointly and severally bind ourselves in favor of Miguel Ilagan, in the amount of One Hundred Twenty Pesos (P120.00) conditioned for the payment of costs which the appellate court may award against appellants." Clearly enough, this undertaking, albeit not signed by herein petitioner as party-appellant, effectively insures to the appellee the payment of costs and is, therefore, in substantial compliance with the requirement of the cited Rule, for they certainly are estopped from denying principal liability under the said bond, as baselessly feared by respondent judge in his Order.

One additional observation. The authority cited by respondent judge in the questioned order, Manila Railroad Company (MRC) vs. Alvendia,[7] wherein the appeal bond was held void and unenforceable for lack of a principal debtor or obligation since the MRC as co-appellant of the Manila Port Service was not a signatory to the bond, has been superseded by the decision of this same court in the later case of Manila Railroad Company vs. Alvendia[8] where we held that the Manila Port Service must be deemed part of the Manila Railroad Company and not a separate entity in a suit against the MRC based on arrastre operations undertaken by it through its "agents and subsidiary," the Manila Port Service. Similarly, in this case the lawyers as agents and attorneys of petitioners properly executed the appeal bond in their own name but for the benefit and on behalf of petitioner as their client, who has in turn ratified as principal the execution of said appeal bond with the very prosecution of this action, as evidenced by the verification of the petition at bar by petitioner's vice-president.[9]

ACCORDINGLY, judgment is hereby rendered setting aside respondent judge's orders of January 28, 1981 and March 27, 1981 and ordering respondent judge to give due course to the appeal and to transmit the records to the Court of Appeals for proper proceedings and determination of the appeal on the merits. With costs against private respondent.

SO ORDERED.

Makasiar, Guerrero, De Castro*, and Melencio-Herrera, JJ., concur.

[1] See Javier Cruz et al. vs. Enriquez etc., et al., 103 Phil. 62.

[2] Krueger vs. Court of Appeals, 69 SCRA 50; Lopez vs. Lopez, 77 Phil. 133; Peralta vs. Solon, 77 Phil. 610

[3] Contreras vs. Dinglasan, et al., 79 Phil. 42; Espartero vs. Ladaw, et al., L-5181, February 24, 1953; Javier Cruz, et al. vs. Enriquez, etc., et al. supra; Vicencio et al. vs. Tumulad, et al., 106 Phil. 1042.

[4] Contreras vs. Dinglasan, et al., supra.

[5] Supra.

[6] Referring to section 5, Rule 41; note in brackets and emphasis supplied

[7] 17 SCRA 154.

[8] 20 SCRA 210.

[9] Rollo, at pages 11-12.

* Justice Pacifico P. de Castro was designated to sit in the First Division vice Justice Ramon C. Fernandez who is

on leave.

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