

**AMADEO GARCIA, PETITIONER, VS. COURT OF APPEALS,
PEOPLE'S HOMESITE & HOUSING CORPORATION,
ELPIDIO UNGRIA, CATALINA CAPINDING, AND BRUNO SUBDIAGA,
RESPONDENTS.**

G.R. No. L-35234. May 26, 1977

Ponente: FERNANDO, J.

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FERNANDO, J.:

The setting aside by respondent Court of Appeals of its previous resolution of June 18, 1970 dismissing the appeal of respondents for failure of their record on appeal to disclose on the face thereof that it was perfected on time prompted petitioner to file this certiorari and prohibition proceeding. Petitioner's motion to dismiss appeal, at first favorably acted on by respondent Court, pointed out that from what was stated in the record on appeal, namely the decision being rendered on January 12, 1970 and the notice of appeal being filed on February 25, 1970 with the appeal bond and record on appeal coming three days later, it could not be said that the record on appeal was perfected on time. Petitioner, as plaintiff-appellee, cited *Atlas Consolidated Mining Co. v. Progressive Labor Association*[1] to show that such procedural requirement was both mandatory and jurisdictional. Respondent Court, as noted, was in agreement as shown by its resolution of June 18, 1970 dismissing the appeal.

Private respondents duly filed their motion for reconsideration. It was granted in the assailed resolution of August 12, 1970. Respondent Court first took note of the certification by the clerk of the lower court that while the decision was dated January 12, 1970, a copy was not served on counsel until February 2, 1970 and that the notice of appeal, the cash bond, and the record on appeal were all filed on March 30, 1970. Then came this portion of the resolution sought to be nullified: "From the foregoing proofs as submitted by the appellants, it can readily be seen that their appeal was perfected within the reglementary period. Besides, the Order of the lower court dated April 21, 1970, which states that 'said record on appeal as well as the corresponding appeal bond and notice of appeal have been seasonably filed' by the appellants, which Order now forms part of the original record on file before this Court, deserves commensurate weight which can not just be ignored, unless of course the contrary appears, a situation which is not true in the present case. It therefore becomes imperative that a liberal interpretation of our procedural rules concerning the perfection of appeal be resorted to and not technicalities of procedure or imperfection of form in derogation of the intent and purpose of said procedural rules so that the real matter in dispute may be submitted to the judgment of the court. For it is indeed too harsh if not malevolent to dismiss an appeal, which appears to have been perfected within the reglementary period, just because appellant's counsel in the preparation of the record on appeal failed to observe the technical procedure required, an omission which we consider as a harmless error which does not in anyway prejudice the movant plaintiff-appellee. In fact the movant never registered any opposition to the approval of appellants' record on appeal in the lower court." [2]

Parenthetically, it may be observed that the approach taken by the respondent Court, the opinion being rendered by the then Associate Justice Hermogenes Concepcion, Jr., now a member of this Court, has gained the approval of this Tribunal. Justice Muñoz Palma, in *Krueger v. Court of Appeals*, [3] referred to *Berkenkotter v. Court of*

Appeals,[4] a 1973 decision, as the first decision to reflect the current trend. The liberal doctrine has been followed by this Court whenever the material data rule is invoked to dismiss an appeal.[5]

Respondents were required to answer, and thereafter the parties filed their respective memoranda. Then, on May 4, 1977, petitioner filed a motion to withdraw petition. It alleged: "1. That the petition in this case seeks to annul the questioned order of respondent Court, reinstating the appeal of private respondents in CA-46220-R; 2. That on September 17, 1976, respondent Court rendered its decision in CA-46220-R, in favor of petitioner, the dispositive portion of which reads: '[Wherefore], with the modification that defendant-appellant PHHC is not liable for attorney's fees and costs, the decision appealed from is [affirmed]. With costs against private appellants,' thereby rendering the petition in this case moot and academic; * * *'[6] Under the circumstances, it was understandable why no useful purpose would be served in deciding this controversy, petitioner having won on the merits. That was his prayer in the above motion.

WHEREFORE, this petition for certiorari and prohibition is dismissed for having become moot and academic. No costs.

Barredo, Antonio, Aquino, and Martin, JJ., concur.
Concepcion, Jr., J., on leave.

[1] L-27125, September 15, 1967, 21 SCRA 110.

[2] Resolution of August 12, 1970, 2-3.

[3] L-41063, January 20, 1976, 69 SCRA 50.

[4] L-36629, September 28, 1973, 53 SCRA 228.

[5] Cf. *Philippine Bank of Communications v. Court of Appeals*, L-37362, Nov. 29, 1973, 54 SCRA 217; *Alfonso v. Court of Appeals*, L-37068, July 18, 1974, 58 SCRA 43; *Marcelo Steel Corp. v. Court of Appeals*, L-35851, Oct. 8, 1974, 60 SCRA 167; *Pimentel v. Court of Appeals*, L-39423, June 27, 1975, 64 SCRA 475; *Heirs of Ceferino Morales v. Court of Appeals*, L-37229, Oct. 21, 1975, 67 SCRA 304; *Republic v. Court of Appeals*, L-40495, Oct. 21, 1975, 67 SCRA 322; *Luna v. Court of Appeals*, L-37123, Oct. 30, 1975, 67 SCRA 503; *Villanueva v. Court of Appeals*, L-29719, Nov. 28, 1975, 68 SCRA 216; *Rodriguez v. Court of Appeals*, L-37522, Nov. 28, 1975, 68 SCRA 262; *Pan American World Airways v. Espiritu*, L-35401, Jan. 20, 1976, 69 SCRA 36; *Aggabao v. Philippine Commercial and Industrial Bank*, L-39833, Feb. 20, 1976, 69 SCRA 354; *Diola v. Court of Appeals*, L-36455, April 30, 1976, 70 SCRA 511; *Canturna v. Court of Appeals*, L-40934, April 30, 1976, 70 SCRA 563; *Andaya v. Court of Appeals*, L-37124, May 5, 1976, 71 SCRA 20; *San Pedro v. Court of Appeals*, L-38351, Aug. 31, 1976, 72 SCRA 537.

[6] Motion to Withdraw Petition, April 26, 1977.

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