

VICTOR NATOR, PETITIONER, VS. THE HONORABLE JOSE RAMOLETE, JUDGE OF COURT OF FIRST INSTANCE OF CEBU, AND DOUGLAS ALFON, RESPONDENTS.

G.R. No. L-47188. December 19, 1980

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari and prohibition, with prayer for writ of preliminary injunction, questioning as grave abuse of discretion the order dated June 22, 1977,[1] by respondent Judge Jose R. Ramolete of the Court of First Instance of Cebu, Branch III, in Civil Case No. R-14167, entitled, "Douglas C. Alfon, plaintiff, versus Victor Nator, defendant", dismissing the appeal of petitioner in that case, on the ground that the appeal bond[2] filed by him is void, pertinent portions to wit:

"A perusal of the appeal bond, indeed, shows that there appears the signature of the above-named persons as sureties without the signature of the defendant Victor Nator as principal. The mere recital in the appeal bond, 'We, Bernardito A. Florido and Eriberto M. Suson, as sureties' does not suffice to make the bond binding on herein defendant Victor Nator, there being no showing that the same was autho-rized by him. It is not indicated either in the sig-natures of the two (2) persons or in the acknowledg-ment that the act was that of defendant Victor Nator, or that the latter had empowered Bernardito A. Flo-rido and Eriberto M. Suson to execute the bond in his behalf.

"Since the signatures for the bond are only those of Bernardito A. Florido and Eriberto M. Suson, the result would be that the appeal bond is void and unenforceable for lack of principal debtor or obliga-tion, following the rule laid down by the Supreme Court in the case of Manila Railroad Co., et al. vs. Alvendia, et al., 17 SCRA 154. x x x.

"The Court, guided by the above jurisprudence on the matter, finds and declares the appeal bond of herein defendant Victor Nator null and void. Thus, no appeal is deemed perfected by him against the decision dated March 31, 1977.

"PREMISES CONSIDERED, let the appeal of herein defendant Victor Nator be, as it is hereby, Dismissed.

"SO ORDERED." [3]

Petitioner also questions the order dated August 12, 1977, which denied his motion for reconsideration of the aforementioned questioned order, and the order dated September 19, 1977, which denied his second motion for reconsideration.

This Court issued a temporary restraining order on December 7, 1977, effective as of that date and continuing until otherwise ordered.[4]

Pertinent facts of records are:

On September 9, 1974, respondent filed an action against peti-tioner with the Court of First Instance of Cebu, as

Civil Case No. 14167, entitled "Douglas Alfon vs. Victor Nator," for damages, which was assigned to Branch III, presided by respondent Judge.

After trial, respondent Judge rendered a decision on March 11, 1977 in favor of private respondent Douglas Alfon. Petitioner interposed a timely appeal, by filing on May 6, 1977, the notice of appeal, the record of appeal and the appeal bond. The appeal bond, in the form of a surety bond, with counsels for petitioner, Bernardito A. Florido and Eriberto M. Suson, as sureties,[5] was filed.

On June 22, 1977, respondent Judge issued the controverted order, declaring the bond void for lack of signature of the principal obligor petitioner Nator, and dismissing the appeal in Civil Case No. 14167.[6]

Hence, the present petition, after petitioner's first and second motions for reconsideration of the contested order were denied.

The only issue before this Court is the validity of the appeal bond filed by petitioner Nator in Civil Case No. R-14167. Respondent Judge declared it void in his order of June 22, 1977, invoking the ruling in the case of Manila Railroad Co., et al. vs. Alvendia, et al.,[7] to the effect that since the appeal bond filed therein was signed by only the Manila Port Service and the Surety Company, and not by the Manila Railroad Company, and since the Manila Port Service, as a mere subsidiary of the Manila Railroad Company, cannot sign the appeal bond for the latter, without authority from it. The appeal is not perfected with respect to the Manila Railroad Company since it did not file an appeal bond. Stated otherwise, this Court ruled in that case that the appeal bond filed by the Manila Port Service and the Surety Company did not bind the Manila Railroad Company.

The respondent Judge in invoking the ruling in the aforementioned case to declare void the appeal bond filed in the pre-sent case, overlooked the fact that this Court in the case of Manila Railroad Company and Manila Port Service vs. Alvendia, et al.,[8] revoked the ruling in the previous case that the appeal bond executed by the Manila Port Service did not bind the Manila Railroad Company, for the latter decision declared the Manila Port Service as a mere agent and subsidiary of the Manila Railroad Company, and therefore the appeal bond filed by the former was binding on the latter.

The decision of this Court in the second aforementioned case, declaring the appeal bond filed by the agent Manila Port Service as binding on the principal Manila Railroad Company, favors the validity of the appeal bond filed in the present case, since the sureties Attys. Bernardito A. Florido and Eriberto M. Suson who signed the appeal bond in Civil Case No. R-14167, are lawyers of appellant-petitioner Victor Nator in said civil case, who may be considered as agents of the principal-petitioner Nator. There is no doubt about the authority given by the petitioner to file appeal bond to his agents Attys. Florido and Suson, because he authorized them to appeal the decision of the trial court in Civil Case No. R-14167, and an appeal from a decision of the Court of First Instance to the Court of Appeals requires the filing of notice of appeal, an appeal bond, and a record on appeal.[9]

Section 5, Rule 41, of the Revised Rules of Court, which provides for an appeal bond for the payment of costs, does not prescribe a special form for appeal bond. A bond duly subscribed by two persons as sureties, who bind themselves solidarily, to pay the amount required (in this case, P120), conditioned on the payment of costs which the appellate court may award against the appellant, is in substantial compliance with the provisions of law and is not defective.[10]

Judicial bonds are contractual in nature. They constitute a special class of contracts of guaranty since they are given by virtue of judicial order. Even if the appeal bond is defective, a situation not true in the present case, as long as it is not void and given in good faith and not for the purpose of delay, the trial Court may order its amendment. The appeal should not be dismissed without giving the appellant an opportunity to perfect the bond

or to file a new bond. This Court even held that an appeal bond signed by one bondsman is not defective as to justify dismissal of the appeal. The appellant must be given a chance to rectify the error.[11]

Since Our conclusion is that the appeal bond filed in Civil Case No. R-14167, is valid and in accordance with law, it naturally follows that the respondent Court committed a grave error amounting to abuse of discretion when it declared the appeal bond void and dismissed the appeal on that ground alone.

WHEREFORE, the orders dated June 22, 1977, August 12, 1977, and September 19, 1977, by the respondent Judge in Civil Case No. R-14167, of the Court of First Instance of Cebu, Branch III, are reversed and set aside, the appeal bond filed therein declared valid and legal, the temporary restraining order issued on December 7, 1977, made permanent, with costs against private respondent Alfon.

SO ORDERED.

Abad Santos and De Castro, JJ., concur.

Barredo, (Chairman), J., In the spirit of liberality, I concur in the result.

Aquino, J., see opinion below.

[1] pp. 7-8, rollo.

[2] pp. 5-6, Id.

[3] pp. 7-8, Id.

[4] p. 20, Id.

[5] pp. 5-6, Id.

[6] pp. 7-8, Id.

[7] 17 SCRA 154.

[8] 20 SCRA 211, 212-213.

[9] Sec. 3, Rule 41, Revised Rules of Court.

[10] Javier, et al. v. Enriquez, et al, 103 Phil. 62; Contreras v. Dinglasan, 79 Phil. 42; Vicencio, et al. v. Tumulad, et al., G.R. No. L-13399, Jan. 30, 1960.

[11] Ramirez vs. Arrieta, et al., G.R. No. L-19183, November 29, 1962.

CONCURRING OPINION

AQUINO, J.:

I concur.

The appeal bond questioned in this case is the same as the appeal bond in Vicencio and Simeon vs. Tumulad, 106 Phil. 1042 and Javier Cruz vs. Enriques, 103 Phil. 62 where that kind of appeal bond was held to be sufficient.

Just the same, I am of the opinion that to obviate any controversy the petitioner, as appellant, should deposit the sum of P120 as appeal bond.

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