

EULALIA ALFONSO AND MARIO MABABANGLOOB, PETITIONERS, VS. HON. COURT OF APPEALS, AMADO C. DIZON AND PACIENCIA DIZON, RESPONDENTS.*G.R. No. L-37068. July 18, 1974*

Ponente: TEEHANKEE, J.

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The Court sets aside the appellate court's dismissal of petitioner's appeal on the ground that although the printed record on appeal does not show that petitioners had in fact timely filed such appeal bond in postal money order, such fact is to be determined from an examination of the original (not the printed record on appeal with its inadvertent errors and omissions) record on appeal as forwarded to the appellate court. Here, such examination has readily shown that the actual fact of timely filing of the appeal bond is shown on the face of the original notice of appeal which were both timely filed with the original record on appeal on the same day, as verified by the appellate court. Hence there was manifestly substantial if not literal compliance with the material data rule. (Rule 41, section 6).

Under date of June 26, 1972, a decision was rendered upon a partial stipulation of facts and after trial by the Rizal court of first instance recognizing petitioners' ownership of the residential lot involved but declaring private respondents owners of the house under litigation (partly built on petitioners' lot) and ordering respondents to pay petitioners P37.50 monthly from May 15, 1964 when petitioners acquired the property at public auction until removal of the house.

Reconsideration having been denied by the trial court's order received on December 28, 1972, petitioners dissatisfied with the award of the house to respondents filed on December 29, 1972 (concededly well within the 30-day reglementary period and all of the material dates being shown on the face of the original of the record on appeal, except for the fact of filing of the appeal bond which was not incorporated therein) a notice of appeal from this adverse portion of the trial court's judgment to the Court of Appeals, together with the record on appeal and the appeal bond in Philippine Postal Money Order bearing No. A-8889196 in the sum of P120.60.[1]

Petitioners' record on appeal was approved by the trial court at the hearing of January 26, 1973, without any written or verbal objection from respondents despite due notice.

In due course, petitioners paid on March 30, 1973 the appellate court's docket fee and filed therewith on April 25, 1973 their sixty-eight (68)-page printed record on appeal, furnishing respondents with copies thereof.

Respondents thereafter filed on May 14, 1973 a motion to dismiss the appeal alleging that petitioners-appellants did not comply with Rule 41, section 6 as the record on appeal did not contain "such data as will show that the appeal was perfected on time."

Despite opposition and notwithstanding there being no question as to the record on appeal showing on its face the timeliness of the filing of the notice of appeal and of the record on appeal, respondent appellate court per its

resolution of June 6, 1973 ordered the dismissal of the appeal on the ground that the printed record on appeal "does not contain any averment whatsoever that the plaintiffs-appellants [petitioners] have filed an appeal bond within the reglementary period." [2] Reconsideration was denied; hence, the present petition which the Court has resolved to treat as a special civil action in view of the simple issues involved and to expedite the determination thereof.

Respondents, upon being required to comment, merely insisted on petitioners' failure to literally "comply with the mandatory and jurisdictional nature" of the cited Rule, without denying petitioners' averment that they did timely file on December 29, 1972 the appeal bond in postal money order together with their notice of appeal and the original record on appeal; neither did they make any attempt of showing that petitioners' appeal was insubstantial.

The Court in its resolution of September 24, 1973 required respondent court "to verify and inform the Court ... whether such appeal bond was actually so filed with the trial court on December 29, 1972 together with the notice of appeal and record on appeal."

Respondent court's compliance of November 16, 1973 confirmed that the fact of filing of the appeal bond in the sum of P120.60 in postal money order is duly shown on the face of the original typewritten record on appeal and notice of appeal (annex "A" thereof) on file with respondent court, as follows:

"The Record on Appeal, both the printed and typewritten copies, does not mention whether the appellants filed their appeal bond or not. However, upon verification of the original typewritten record on appeal on file with this Court, a xerox copy thereof is attached as Annex 'A' to the original of this pleading there appears on the bottom the following data:

O.P. No. P9358371

Amt. Paid P120.60

Date 1-13-73

M.O. No. A-8889196

dated 29, 1972 [3]

"We could readily see on the face of the notice of appeal (Annex 'A') that there was a postal money order sent to, and received by the lower court. The amount paid was P120.60 which must be the appeal bond together with the commission mentioned in Sec. 2(e), Rule 141 of the Rules of Court. Although it did not mention the month when the appeal bond was sent but only the date — 29, the presumption is that it was sent on December (29), 1972. Certainly, the exact date must have been mentioned on the face of the postal Money Order but the clerk of the lower court obviously failed to indicate.

"The registry receipts appearing on the left hand margin of Annex 'A' are proofs of service by registered mail. One of them may be the mail matter which contained the postal money order while the other may be for the copy of the typewritten record on appeal furnished the appellee. Both registry receipts were stamped by the post office December 29, 1972.

"We are, therefore, constrained to presume that the notice of appeal, the appeal bond and the record on appeal were filed with the trial court on December 29, 1972. [4]"

Since the fact of timely filing of the appeal bond is duly shown on the face of the original notice of appeal filed with the original record on appeal as verified by respondent court, there was manifestly substantial if not literal compliance with the cited Rule and the dismissal of the appeal must be set aside.

In *Ever Ice Drop Factory vs. Court of Appeals*, [5] where the printed joint record on appeal did not include petitioners' notice of appeal to show the timeliness thereof and the official payment of the appeal bond (which

were duly shown in their original notice of appeal which was, however, inadvertently not incorporated in the printing of the joint record on appeal contrary to the agreement of the parties), the appellate court dismissed the appeal "there being nothing in said printed record on appeal to show when petitioners were served with a copy of the decision subject of their appeal."

The Court, speaking through Justice Barredo, held that "(I)n their motion for reconsideration, petitioners point out, without denial of private respondents, that while it is true that their notice of appeal was not included in the joint record on appeal as printed and filed with the appellate court, said notice 'marked as page(s) 5 and 6, — (can) be found in between pages 205 and 206, sewed to the original record on appeal' and 'the official receipt of payment of the appeal bond which was attached to the said notice of appeal was marked as page 4,'" and "(C)learly, therefore, the alleged failure of petitioners to comply with Section 6 of Rule 41 found by the Court of Appeals would be true only, if the printed joint record on appeal alone is used as basis. Actually, however, the original thereof on file also with said appellate court bears out the contention of counsel that petitioners' notice of appeal and joint record on appeal are in order."

The Court thus reiterated the rule of substantial compliance and of the need of examining the original record on appeal as filed with the trial court and forwarded to the appellate court (as against the printed record on appeal) as laid down in *Design Masters vs. Court of Appeals*[6] by Chief Justice Concepcion thus: "(T)he printed record on appeal in L-31510 does not show the date on which it was filed with the trial court, but such date is stamped on the original record on appeal, which was approved by said court and forwarded to the Court of Appeals. Section 6, Rule 41 of the Rules of Court, obviously refers to the record on appeal filed with the trial court, not to the record on appeal printed in the appellate court. At any rate, the Court of Appeals is in a position to determine the date, aforementioned, by examining the original record on appeal thereto, forwarded, and, hence, forming part of its own records. Accordingly, petitioner's record on appeal meets the objective of said provision of the Rules of Court, which may be deemed to have been substantially complied with."

ACCORDINGLY, respondent court's resolution of dismissal of petitioners' appeal is hereby annulled and set aside and respondent court is directed to proceed with the determination of petitioners' appeal on its merits after the filing of the parties' respective briefs.

SO ORDERED.

Makalintal, C.J., Zaldivar, Castro, Fernando, Barredo, Makasiar, Antonio, Esguerra, Fernandez, Munoz Palma, and Aquino, JJ., concur.

* Sixth division then composed of Serrano, E.S. Reyes, A and Canonoy, M., JJ.

[1] Per the verified petition, the postal money order was issued by the Manila post office. The sum of 60 centavos above the appeal bond amount of P120.00 represents clerk's commission.

[2] Rollo, pp. 23-24.

[3] The year is erroneously typed as 1973 in the appellate court's compliance; a clear clerical error as may be seen from the text and the original referred to.

[4] Italics supplied.

[5] 47 SCRA 305, 308-309 (Oct. 30, 1972); italics supplied

[6] 38 SCRA 297, 318 (March 31, 1971); italics supplied.

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