

MATEO PERALTA, PLAINTIFF AND APPELLANT, vs. ROMUALDO SOLON, DEFENDANT AND APPELLANT.

G.R. No. L-827. October 31, 1946

Ponente: FERIA, J.

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FERIA, J.:

The present case is pending before this court on appeal by both plaintiff and defendant from the judgment of the Court of First Instance of Cebu.

Defendant-appellant filed with this court a motion to dismiss the appeal of the plaintiff-appellant on the ground that said appeal was not perfected on time, because the plaintiff failed to file his notice of appeal and appeal bond within the period of thirty days from notice of the judgment.

Counsel for the plaintiff, in his reply to the motion for dismissal of the plaintiff's appeal, contends that the filing of the record on appeal within the period fixed by the Rules cures the lack of notice of appeal, and that, as the plaintiff had filed a motion for reconsideration or new trial as to the second cause of action, the running of the period of thirty days as to the whole case was suspended by the filing of said motion.

As to failure to file notice of appeal in this case, we have already decided that the plaintiff is correct in his contention, and therefore his appeal can not be dismissed on that ground. In the case of *Lopez vs. Lopez*, (p. 133, ante), this court held that the filling of the record on appeal under the Rules of Court (as the presentation of a bill of exceptions under the old Code of Civil Procedure) implies necessarily the filling of a notice of appeal, because the act of taking or perfecting an appeal is more expressive of the intention to appeal than the filing of notice to do so.

But the ground for dismissal on which the defendant relies with insistence in his motion for reconsideration is that the appeal bond was filed by the plaintiff ten days after the expiration of thirty days from the date the plaintiff was notified of the judgment, without counting the period from the filing of the motion for new trial to the notice to plaintiff of the order denying said motion. According to the certificate issued by the Acting Clerk of Court plaintiff received notice of the decision on April 4, 1946; filed a motion for new trial on April 29; received copy of order denying said motion on May 7, and executed and ratified the appeal bond on May 22, 1946.

Section 13 of Rule 41 of the Rules of Court provides that "where the notice of appeal, appeal bond, and record on appeal is filed but not within the period of time herein provided, the appeal shall be dismissed." And although, according to section 1, Rule 52 of the same Rule, the Court of Appeals and the Supreme Court (section 1, Rule 52) may, dismiss an appeal on its own motion or that of the appellee, for failure on the part of the appellant to file, within the period prescribed by the Rules of Court, the notice of appeal, appeal bond, or record on appeal, as there is nothing in the record to justify the failure to file the appeal bond on time in the present case, we have to dismiss the plaintiff's appeal.

The filing of an appeal bond is as necessary as the filing of notice of appeal and record on appeal for perfecting an

appeal and conferring appellate jurisdiction upon the appellate court. If we may consider an appeal as perfected on time, although the appeal bond has been filed, without justifiable reason, ten (10) days after the expiration of the period fixed by law, there would be no reason why we should not admit an appeal perfected at any time afterwards, that is, one month, three months, etc, after the expiration of the period fixed for perfecting the appeal. And to allow the parties to perfect an appeal at any time after the rendition of the judgment, would be to put no limit to the courts' proceedings, and leave the parties at a loss when they may rest assured of the full enjoyment of their property or right after the rendition of judgment in their favor.

In view of the foregoing, the appeal of the plaintiff-appellant is dismissed. So ordered.

Moran, C. J., Paras, Pablo, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

On September 10, 1946, this court denied the motion of defendant dated August 6, 1946, for dismissal of plaintiff's appeal. The motion alleged two grounds: (1) that plaintiff-appellant did not file any notice of appeal, and (2) that the appeal bond, executed and acknowledged by plaintiff-appellant on May 22, 1946, was not filed within the 30-day reglementary period which expired on May 12, 1946.

We concurred in the resolution of denial because the filing of the record on appeal, made before the expiration of the 30-day reglementary period, served also the purposes of a notice of appeal, and because the requirement to file an appeal bond was substantially complied with by plaintiff-appellant with the execution of one on May 22, 1946, before the clerk of the Court of First Instance.

On a motion dated September 25, 1946, the appellant prayed for the reconsideration of the resolution dated September 10, and this time the majority voted to grant the motion and to dismiss plaintiff's appeal, because his appeal bond was filed 10 days after the expiration of the 30-day reglementary period.

We disagree upon two grounds: (1) because plaintiff-appellant was denied the right to be heard as provided in section 2 of Rule 54, when a motion for reconsideration is granted, and (2) because the fact that the appeal bond had been filed 10 days after the 30-day reglementary period is a procedural technicality which should not be considered as a sufficient ground for dismissing the appeal.

According to section 1 of Rule 54, a motion for reconsideration shall be made ex parte and filed within 15 days after promulgation of a final order and, according to section 2 of the same Rule, if the motion is granted, as happens in the present case, "the adverse party shall be given time to answer, after which the court, in its discretion, may set the case for oral reargument." This has not been done in this case. Without giving plaintiff-appellant any time to answer the motion for reconsideration, the majority granted the motion and, by the resolution we are objecting to, ordered the outright dismissal of plaintiff's appeal. Evidently, the violation of the rule has affected a substantial right of plaintiff-appellant, and we refuse to lend our consent to such an unjust action.

The dismissal of plaintiff's appeal is premised on the fact that the appeal bond was filed 10 days after the 30-day reglementary period, as provided in section 3 of Rule 41. But it appears, upon the records of this case, that the violation is a technical one and does not impair or endanger the substantial right of any party.

According to section 5 of Rule 41, the appeal bond shall be in the amount of P60 unless the court shall fix a

different amount, which has not been done in this case. It shall only answer "for the payment of costs which the appellate court may award against the appellant." The appeal bond filed by plaintiff-appellant, notwithstanding a 10-day delay, had effectively guaranteed, and is guaranteeing, the payment of costs which may be awarded against plaintiff-appellant.

And even if no such appeal bond should have been filed, the payment of said costs is assured by the fact that there is on deposit with the clerk of the Court of First Instance the amount of P240 belonging to plaintiff-appellant, the deposit having been made since the complaint was filed on September 8, 1945.

Lastly, it appears that no costs at all are awarded against plaintiff-appellant, not even in the majority resolution dismissing his appeal, which conclusively shows that in the present case the appeal bond in question had no practical purpose.

Only on October 25, 1946, in dismissing the petition in *Manapat vs. De la Rosa, et al.*, No. L-1075, by unanimous vote of all justices taking part, it has been declared that it was "the policy of this court in adopting the Rules that cases must not be decided on mere technicalities of procedure but on their merits." (See also our decision in *Mitschiener vs. Barrios*, (76 Phil., 55).

In the present case, plaintiff's appeal is based on a mere technicality of procedure, empty for all practical purposes of any substantial meaning; while, as we have already shown, the procedure adopted in the dismissal was in open violation of Rule 54 a violation which impairs a substantial right of plaintiff-appellant.

Such is the irony of his fate that, because of an insubstantial technical violation of the rules, he is deprived of his right of appeal, and the deprivation is effected through a flagrant violation of the same rules. A judicial action justifying such an absurd legal situation unfailingly invites evisceration with disastrous results to public faith in the efficacy of legal procedures.

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