

CANADIAN PACIFIC AIR LINES, LTD., PETITIONER, VS. HON. COURT OF APPEALS, DRA. RIZALINA LLANES-RODAS AND CIPRIANO RODAS, RESPONDENTS.

G.R. No. L-32909. July 29, 1988

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals dismissing the petition for mandamus, filed by the Canadian Pacific Air Lines, Ltd., praying that the respondent Judge of the Court of First Instance of Rizal be ordered to approve its record on appeal (which was filed late) and give due course to its appeal from his decision awarding damages amounting to P215,674.01 to the private respondent Dra. Rizalina Llanes-Rodas for the loss of her two suitcases during her flight from Toronto to Manila on petitioner airline on November 29, 1966. The dispositive part of the decision dated December 3, 1968 of the trial court reads as follows:

"WHEREFORE, decision is hereby rendered in favor of the plaintiffs Dra. Rizalina Llanes-Rodas and Cipriano Rodas, and against the defendant Canadian Pacific Air Lines, Ltd.:

"1. Ordering the defendant to pay the plaintiff the sum of Twenty-Four Thousand Six Hundred Fifty-Eight United States Dollars and Twenty-Five Cents (U.S. \$24,658.25) or its equivalent in Philippine Peso at the rate of P3.88 Philippine Currency per \$1.00 United States Dollar, which is in the amount of P95,674.01, Philippine Currency;

2. Ordering the defendant to pay the plaintiffs the sum of P100,000.00 Philippine Currency, by way of moral and exemplary damages;

3. Ordering the defendant to pay the plaintiffs the sum of P20,000.00 Philippine Currency, as reasonable attorney's fees; and

4. Ordering the defendant to pay the costs of this proceedings." (p. 32, Record.)

The last day for perfecting an appeal by the defendant (herein petitioner) was on January 4, 1969. Although a notice of appeal and appeal bond were duly filed, no record on appeal was filed through the oversight of its counsel or some office clerk. A motion for extension of time to file the record on appeal, which had been prepared on January 4, 1969, was filed only on January 15, 1969, together with the record on appeal.

On plaintiff's motion, the trial Judge issued on January 25, 1969 an order dismissing the appeal for having been filed late.

Instead of filing a motion for reconsideration, petitioner filed on February 1, 1969, a petition for relief from the order dismissing its appeal. The petition was denied on June 23, 1969. Petitioner's motion for reconsideration was also denied.

On July 25, 1969, petitioner filed a notice of appeal, appeal bond, and record on appeal which were opposed by the private respondents as the notice stated that appeal would be taken not only from the Orders of June 23 and July 12, 1969, but also from the decision dated December 3, 1968, which according to the private respondents, had become final and unappealable.

The trial Judge in his order of September 17, 1969, denied the petitioner's appeal. The motion for reconsideration of said Order was also denied.

Petitioner sought relief by a petition for mandamus in the Court of Appeals (CA-G.R. No. 44215-R), but it dismissed the petition. It held that petitioner's appeal was not perfected on time because its counsel failed to hand to the messenger, for filing in court, the "Urgent Motion for Extension of Time to File Record on Appeal" which its counsel had allegedly prepared together with the Notice on Appeal. It found petitioner's counsel to have been grossly negligent.

The issue now before Us is: Did the Court of Appeals err in denying the petition for mandamus, thereby depriving the petitioner of its right to appeal the court's order denying the petition for relief, as well as the decision on the merits?

We hold that it did, for its decision contravenes Section 2, Rule 41 of the Rules of Court which provides:

"SEC. 2. Judgments or orders subject to appeal. - Only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other.

"A judgment denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that it is not supported by the evidence or it is contrary to law. (Underscoring supplied.)

"A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38."

Considering that the damages awarded by the trial court to the private respondents are not picayune, that under the new rules of procedure a record on appeal is not required for the perfection of an appeal in cases of this nature (Sec. 39 of B.P. Blg. 129), and that, furthermore, this new rule has been given retroactive effect by this Court (Alday vs. Judge Camilon, 120 SCRA 521; De Guzman vs. Court of Appeals, 137 SCRA 730), We resolve to give due course to the petitioner's appeal in Civil Case No. 10127.

WHEREFORE, the petition for certiorari is granted. The decision dated November 13, 1969 of the Court of Appeals in CA-G.R. No. 44215-R, as well as the order dated September 17, 1969 of Judge Delfin Flores in Civil Case No. 10127, are hereby set aside. The trial court (now Regional Trial Court of Rizal) is ordered to give due course to the petitioner's appeal in Civil Case No. 10127 and to elevate the records of the case to the Court of Appeals for review of the appealed decision on the merits.

Considering the long period of time that this case has languished in the docket of this Court, We declare this decision to be immediately executory, in the sense that no motion for extension of time to file a motion for reconsideration will be entertained.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Medialdea, JJ., concur.

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