

**MICAELA AGGABAO, PETITIONER, VS. PHILIPPINE COMMERCIAL
& INDUSTRIAL BANK, THE SPOUSES ROMUALDO ESPADA AND
DEMETRIA ESPADA, AND THE HON. COURT OF APPEALS,
RESPONDENTS.**

G.R. No. L-39833. February 20, 1976

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court reverses the appealed decision of the Court of Appeals and issues the writ of mandamus for the giving of due course to petitioner's timely appeal from the trial court's adverse judgment. When it is evident from the trial court's orders that it granted petitioner-appellant at first an indefinite reasonable period within which to file an amended record on appeal due to its having amended its original decision and later a final fixed period of twenty days, the limited ten-day period supplied by Rule 41, section 7 "if no time is fixed in the order" for the filing of an amended record on appeal has no application and the trial court gravely erred in rejecting the appeal timely filed within the extended period granted by it.

An adverse judgment was rendered after trial by the court of first instance of Negros Occidental[1] dismissing petitioner's complaint (as plaintiff) against private respondents (as defendants).

Within the reglementary period, petitioner filed her original record on appeal. But the trial court issued subsequently an amendatory order dated May 24, 1973 amending its original decision by including a total award of P6,000.00 attorneys' fees against petitioner.

Under date of May 25, 1973, the trial court issued an order "holding in abeyance" its action on the approval of petitioner's original record on appeal as follows:

"The resolution on the approval of the record on appeal filed by plaintiff is held in abeyance until after the amendatory order of this Court dated May 24, 1973 and the objections thereto by defendant Espada spouses shall have been incorporated in said record on appeal, after which the plaintiff is ordered to set for hearing the approval of the amended record on appeal with notice to opposing parties."

Under date of July 31, 1973, the trial court after noting that the amended record on appeal had not been filed, issued its Order giving petitioner a final period of 20 days from notice thereof within which to file the same, as follows:

"WHEREFORE, the plaintiff is given a period of 20 days from receipt of copy of this order within which to comply with the aforementioned order, otherwise this Court shall be constrained to declare this appeal abandoned."

On September 3, 1973 within the extended 20-day period granted her, petitioner filed the amended record on appeal.

Upon opposition and motion to dismiss the appeal filed by respondents Espada spouses, however, on the basis of Rule 41, section 7 providing that

**** * If the trial judge orders the amendment of the record, the appellant, within the time limited in the order, or such extension thereof as may be granted, or if no time is fixed by the order within ten (10) days from receipt thereof, shall redraft the record by including therein, in their proper chronological sequence, such additional matters as the court may have directed him to incorporate, and shall thereupon submit the redrafted record for approval, upon notice to the appellee, in like manner as the original draft,"

the trial court dismissed petitioner's appeal per its Order of October 19, 1973 on the ground that since its May 25, 1973 Order did not fix a time for submitting the amended record on appeal, the 10-day period fixed in the cited Rule should apply and its own July 31, 1973 Order subsequently fixing a final 20-day period should be disregarded for being beyond its jurisdiction since it was issued after the ex-piration of said 10-day period.

Reconsideration was denied by the trial court per its Order of December 2, 1973 wherein it disregarded the final 20-day extension granted per its July 31, 1973 Order for the filing of the amended record on appeal and while admitting that petitioner "had complied therewith" now reasoned that "it is pertinent to state that the Court was moved to issue the said order by its desire to remind the plaintiff of her failure to comply with its order dated May 25, 1973, and to give plaintiff the opportunity to remedy the situation, if it was still possible,"[2] and upheld respondents Espadas' contention that its said Order granting a final 20-day extension from notice was invalid, for having been issued after the expiration of the 10-day period fixed by Rule 41, section 7.

On mandamus to the appellate court, said respondent court affirmed the trial court's action dismissing the appeal, as follows:

"It is thus evident that on July 31, 1973 when the court below granted the extension of 20 days, the ten-day period had long expired; and there was no more period to extend. Consequently, the court below exceeded its jurisdiction in giving the petitioner-plaintiff the extension of 20 days. It also follows that the decision sought to be appealed from became final and there is no more appeal. It results that mandamus does not lie."

Hence, the present petition for review, which the Court treated as a special civil action after receipt of respondents' comments and declared submitted for decision without need of briefs, in the interest of an expeditious determination thereof.

Both the appellate and trial courts fell into a common error in accepting respondents' mistaken contention that the trial court's May 25, 1973 Order did not fix a time for the filing of the amended record on appeal and that consequently, after the lapse of the 10-day period supplied by the cited Rule when no time is fixed by the trial court, petitioner's period for filing the amended record on appeal ipso facto expired, notwithstanding the trial court's July 31, 1973 Order granting petitioner a final 20-day extension.

While the trial court did not fix a specific time limit in its May 25, 1973 Order for the filing of the amended record on appeal, it certainly did not mean thereby that the alternative fixed 10-day period supplied by the cited Rule "if no time is fixed by the order" should apply since it had precisely provided therein that it was "holding in abeyance" its resolution on the approval of petitioner's original record on appeal until after incorporation therein of its amendatory order of the preceding day amending the original decision and of certain objections thereto after which petitioner was yet to comply with its order to set for hearing the approval of the amended record on appeal (when under the cited Rule, a record on appeal, whether original or amended, need not be set for hearing).

In other words, it is quite clear that the trial court was granting petitioner an indefinite period of time as would be reasonably necessary for her to comply with the directive in the May 25, 1973 Order, apparently having in mind that petitioner had already complied with all the requirements for perfecting her appeal but that petitioner was

now required to incorporate additional pleadings and orders because of its amendment of the original decision after the filing of the original record on appeal.

That the trial court did not thereby mean that the 10-day period supplied by the cited Rule "if no time is fixed by the order" should apply and that this was likewise the understanding of the parties is manifestly evident from the following factual and legal considerations: –

- No objection was presented by respondents to the indefinite period of time granted by the trial court, during which time it would "hold in abeyance" its resolution on the approval of the record on appeal;
- Upon the lapse of the Rule's ten-day period on June 29, 1973, no motion to dismiss the appeal was filed by respondents;
- On the contrary, after the lapse of over a month without the amended record on appeal having been filed, the trial court issued motu proprio its July 31, 1973 Order this time specifying a definite period and giving petitioner a final fixed period of 20 days within which to do so, under pain of having her appeal declared abandoned, and again no objection whatever was heard from respondents; and
- Petitioner's period for perfecting her appeal after the trial court amended its decision per its previous day's amendatory Order of May 24, 1973 commenced anew for another thirty (30) days and could not legally be shortened to ten (10) days, even if the trial court were minded (which it obviously was not) to so expressly shorten it in its May 25, 1973 Order.

Under the facts and circumstances of record, the Court is satisfied that since the amended record on appeal was admittedly filed within the 20-day extended period granted in the trial court's July 31, 1973 Order, the lesser ten-day period supplied by Rule 41, section 7 "if no time is fixed in the order" finds no application, and mandamus should issue for the giving of due course to the appeal timely perfected by petitioner-appellant.

Accordingly, the decision of respondent appellate court is reversed and judgment is hereby rendered ordering the trial court to approve petitioner's amended record on appeal and to elevate her appeal to the Court of Appeals for prompt disposition on the merits. With costs in all instances jointly and severally against private respondents.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

[1] Presided by Judge Jose Coscolluela, Jr.

[2] Cited in Court of Appeals' decision, Rollo, p. 32.

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