

BIENVENIDO U. RODRIGUEZ, NATIVIDAD U. RODRIGUEZ AND FELISA R. ABELEDA, PETITIONERS, VS. THE HON. COURT OF APPEALS (SPECIAL FIFTH DIVISION), PHILWOOD SAWMILL CO., INC. AND TIMES ...

G.R. No. L-37919. September 06, 1974

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition for review on certiorari to set aside the two resolutions of the Court of Appeals, dated October 24, and November 21, 1973, in its CA-G.R. No. 53056-R, entitled "Philwood Sawmill Co., Inc., plaintiff-appellee, vs. Bienvenido U. Rodriguez, et al," respectively dismissing the appeal of petitioner Rodriguez from the decision of the Court of First Instance of Manila in Civil Case No. 82692, and denying the motion for reconsideration thereof.

It appears that on October 20, 1972, the Court of First Instance of Manila rendered a decision in favor of plaintiff, now respondent, Philwood Sawmill Co., Inc., the dispositive portion of which reads as follows:

"WHEREAS, the Court hereby orders defendants Bienvenido U. Rodriguez and Times Surety and Insurance Company, Inc. to pay, jointly and severally, to the plaintiff the amount of P10,000.00 plus 6 per cent interest from March 23, 1971, to pay the amount of P1,000.00 as attorney's fees, and to pay the costs."

"By virtue of the indemnity agreement, defendant Bienvenido U. Rodriguez is ordered to pay under the cross-claim whatever amount the defendant, Times Surety and Insurance Company, Inc., is made to pay in this case."

A copy of the decision was received by counsel for defendant and third-party plaintiff, Times Surety and Insurance Co., Inc. But defendants Bienvenido U. Rodriguez and third-party defendant Natividad U. Rodriguez, hereinafter referred to as appellants, did not receive a copy of the aforesaid decision as per notation appearing on the envelope containing the same "returned to sender, reason no longer at."

On October 31, 1972, the Times Surety and Insurance Co., Inc. filed a motion for reconsideration of the aforesaid decision, but on November 9, 1972, an opposition thereto was filed by the plaintiff.

On November 21, 1972, the lower court issued a resolution amending the decision rendered on October 20, 1972, and the dispositive portion of which resolution reads as follows:

"WHEREAS, the decision be amended to the effect that cross-defendant Bienvenido U. Rodriguez and third-party defendants Natividad U. Rodriguez, Felisa R. Abeleda and Alfredo Abeleda be held liable jointly and severally to pay to Times Surety and Insurance Company whatever amount the latter is made to pay in this case."

On November 25, 1972, appellants filed a motion for reconsideration of the decision rendered on October 20, 1972.

On December 26, 1972, the lower court issued an Order denying appellants' motion for reconsideration. Appellants' counsel was sent a copy of said order of denial but the latter again failed to receive the same as evidenced by the notation on the envelope containing the same – "returned to sender, reason – no longer at."

On January 31, 1973, plaintiff filed a motion for the issuance of a writ of execution on the ground that the decision of October 20, 1972 had become final and executory.

On February 5, 1973, appellants announced their intention to appeal from the decision of October 20, 1972, as well as the Order of December 26, 1972, which denied their motion for reconsideration, by filing a notice of appeal and a personal appeal bond. On the same day, appellants also moved that they be granted an extension of 30 days from the expiry date to file their record on appeal.

On February 8, 1973, the Times Surety and Insurance Co., Inc. filed an opposition to plaintiff's motion for execution.

On February 13, 1973, appellants likewise filed an opposition to plaintiff's motion for execution on the ground that the decision sought to be executed had not yet become final and executory because the lower court failed to furnish their counsel with a copy of the order denying their motion for reconsideration at their counsel's new address at 513-515 L & S Bldg., 1414 Roxas Blvd., Manila. They also insisted that their motion for reconsideration was not pro-forma.

On February 21, 1973, the lower court issued an Order which reads as follows:

"Considering that the notice of appeal and appeal bond have been filed within the reglementary period as the order of denial of the motion for reconsideration was sent to a different address of the defendants' counsel, and in order to give opportunity for defendants to further ventilate the issues in the appellate court, the motion for execution of judgment is hereby denied."

"As prayed for, defendants are given 20 days from receipt of this order to file the records on appeal."

On March 16, 1973, appellants moved for an extension of 15 days from March 19, 1973 within which to file their record on appeal, which motion was duly granted.

On April 3, 1973, appellants filed their record on appeal which was approved by the lower court on May 12, 1973.

On May 29, 1973, the clerk of court of the lower court issued a certification as to the correctness of all pleadings, orders and the decision contained in said record on appeal.

On October 24, 1973, on motion of appellee, now private respondent Philwood Sawmill Co., Inc., the Court of Appeals issued a resolution dismissing the appeal, the dispositive portion reads as follows:

"IN VIEW OF THE FOREGOING, the instant motion to dismiss is hereby GRANTED and the appeal interposed by appellants is ordered dismissed for failure to comply with Sections 3 and 6 of Rule 41 and Section 1 (a) and (b), Rule 50 of the Revised Rules of Court, without pronouncement as to costs."

The main reason of the Court of Appeals in dismissing the appeal filed by appellants is that at the time the decision appealed from was rendered, the address of appellants' counsel was 315 Anita Bldg., 1300 Quezon Blvd. Ext., corner South (Timog) Avenue, Quezon City, so that the lower court sent a copy of the decision appealed from to appellants' counsel at said address but the same was returned unclaimed, the envelope containing the same bearing the notation – "returned to sender, reason – no longer at." The copy of the lower court's resolution of November 29, 1972, amending its decision of October 20, 1972, was also returned with the same notation on the envelope. So also with the lower court's order of December 26, 1972, denying appellants' motion for reconsideration.

The respondent Court held that although appellants' counsel filed on November 25, 1972, a motion for reconsideration of the decision and he used an address other than his address of record, that act was not equivalent to a formal notification to the lower court of counsel's change of address as his new address – Suite 513-515 L & S Bldg., 1414 Roxas Bldg., Manila – was merely placed right below the counsel's name in the motion for reconsideration. Hence it was right to send all notices to the address of record of appellants' counsel; that if said counsel did not receive a copy of the decision appealed from as well as the order denying his motion for reconsideration, it was due to his own fault. The respondent court's stand is based on the well-settled rules that it is inexcusable negligence for an attorney of record not to notify the court of his change of address; that if an attorney fails to receive notice of a court order or process because of such negligence, it is no excuse for relieving the client of the consequences of his counsel's shortcomings, the client being bound by the acts or omission of his counsel; and that attorneys are under obligation to adopt a system whereby they can always receive judicial notices and, whenever they change their addresses, they should so notify the court.

The respondent court held that since a copy of the decision appealed from was sent to counsel for appellants by registered mail at his Quezon City address at Anita Building, presumably on the date of its promulgation (October 20, 1972), it is safe to assume that he received his first notice from the postmaster on October 25, 1972, since Anita Building is very near the Quezon City Post Office. Service upon counsel for appellants was deemed completed and effected upon addressee's failure to claim his letter on the fifth day after he received the first notice from the postmaster, or on October 30, 1972 (See *Fojas vs. Navarro*, 32 SCRA 476). When counsel for appellants filed his motion for reconsideration, he had already consumed 26 days of the 30-day reglementary period, thus having only four (4) days left to perfect their appeal from receipt of the order denying their motion for reconsideration. If appellants had only four (4) days left and they did not claim from the Quezon City Post Office the registered letter containing the order of denial, dated December 26, 1972, the lower court concluded that when they filed their notice of appeal and appeal bond on February 5, 1973, the reglementary period had expired. It follows that the record on appeal filed on April 3, 1973, was also filed out of time.

On the other hand, petitioners insist that on November 25, 1972, when they filed their motion for reconsideration of the decision rendered on October 20, 1972, they simultaneously filed a formal notice of change of address of counsel which was duly stamped and received by the lower court on the same date November 25, 1972. This fact was duly considered by the lower court when on February 21, 1973, it issued the order denying the motion for execution of the judgment on the ground that the decision had not become final. Said order reads:

"Considering that the notice of appeal and appeal bond have been filed within the reglementary period as the order of the denial of the motion for reconsideration was sent to a different address of the defendants' counsel; and in order to give opportunity for defendants to further ventilate the issues in the appellate court, the motion for execution of judgment is hereby denied."

A thorough examination of the record of CA-G.R. No. 53056-R discloses that there was really a formal notice of change of address^[1] filed by the petitioners' counsel on November 25, 1972, which was duly received by the lower court on the same date. It is indeed unfortunate that the respondent court either totally ignored this claim or did not make any effort to verify if there was really such notice, as claimed by the petitioners. Such notice is Annex "A" of their opposition to the motion for execution, which is shown on pp. 90-91 and 95 of the printed Record on Appeal approved by the trial court.

This Court in *Ortalís vs. Hon. Court of Appeals, et al.*, L-36088, May 16, 1973, 51 SCRA, p. 1, reinstated an appeal which was dismissed by the respondent court when appellant failed to file her brief when the notice therefor was sent to counsel at an address different from his address of record. For the same reason and in like manner the dismissed appeal of petitioners should be reinstated and given due course.

FOR ALL THE FOREGOING, the petition is granted. The two resolutions of the Court of Appeals dated October 24, 1973, dismissing petitioners' appeal, and November 21, 1973, denying the motion for reconsideration thereof, are hereby nullified and set aside. The Court of Appeals shall reinstate and give due course to the appeal of petitioners Bienvenido U. Rodriguez, Natividad U. Rodriguez and Felisa R. Abeleda. Costs against the private respondents.

SO ORDERED.

Makalintal, C.J., Castro, Teehankee, Makasiar, and Munoz Palma, JJ., concur.

[1] Page 39, rollo.

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