

**AQUILINA SAN PEDRO, COSME SAN PEDRO, NORBERTO SAN PEDRO,
FLORA SAN PEDRO, GREGORIA SAN PEDRO, FELICIDAD SAN PEDRO,
GUILLERMO SAN PEDRO, RICARDO SAN PEDRO, NESTOR STA.
MARIA, EME...**

G.R. No. L-38270. August 31, 1976

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court in the two cases at bar (which are jointly decided be-cause of the common question of law presented) sets aside respondent court's[1] dismissal of petitioners' pending appeals on the strength of now settled jurisprudence adopting the liberal and realistic ruling that where the fact of due and timely perfection of the appeal is stated in the trial court's order approving the record on appeal without objection on the appellee's part and the correctness and veracity of the trial court's finding that the record on appeal is in order is not impugned or disputed by the adverse party, the appellate court should properly rely on such finding and let the appeal take its due course.

In the first case, L-38270, petitioners Aquilina San Pedro, et al. appealed from an adverse order of the Bulacan court of first instance dated July 14, 1972 dismissing their petition to review a land registration decree in favor of respondent Alejandro Mamot on the grounds of fraud, bad faith and deceit. Their record on appeal shows that after the adverse order was received by them on August 19, 1972, they filed timely on September 12, 1972 their notice of appeal and appeal bond[2] and filed later the record on appeal on October 23, 1972[3] which was approved without objection from adverse counsel and found to be in order by the trial court per its Order of February 15, 1973, duly reproduced therein as follows:

"There being no objection from counsel for the appli-cant, and for being in order, the Record on Appeal filed by petitioners-appellants Aquilina San Pedro, et al. on October 23, 1972, is hereby APPROVED.

"SO ORDERED."

The record of the case was duly elevated to the Court of Appeals wherein upon notice petitioners submitted in due course their printed record on appeal and filed their brief as appellants. Respondent (appellee) filed instead a motion to dismiss on the ground of non-compliance with the material data rule[4] . Petitioners in their comment thereon as required by respondent court submitted copy of the trial court's Order of October 16, 1972 which granted them, as prayed for, a 15-day extension from October 20, 1972 within which to file the record on appeal which was in fact filed on October 23, 1972, well within the extended period. Respondent court applied the rigid interpretation theretofore observed and granted dismissal of the appeal per its Resolution of January 16, 1974 and denied reconsideration on February 13, 1974, notwithstanding that petitioners invoked the more liberal approach in the earlier 1973 case of Berkenkotter vs. Court of Appeals[5] in favor of sustaining the right to appeal despite certain deficiencies in the record on appeal.

In the second case, L-38351, petitioner Fernando F. de Villa-Abrille appealed from an adverse judgment of the Manila court of first instance in an action for replevin instituted against him by the government at the instance of the Bureau of Internal Revenue declaring the government entitled to his garnished deposit of P37,531.38 in the Philippine Bank of Commerce. His record on appeal shows that after receipt of the adverse judgment on May 26, 1972[6] , and denial of his motion for reconsideration, he concededly filed timely on August 22, 1972 his notice of appeal and appeal bond[7] and filed later the re-cord on appeal on September 15, 1972, which was approved without objection from adverse counsel and found to be in order by the trial court per its Order of September 30, 1972, duly reproduced therein as follows:

"Finding defendants' Record on Appeal to be in order and there being no objection to its approval, the same is, as it is hereby ordered approved.

"The Clerk of Court is hereby ordered to transmit the record of this case immediately to the Court of Appeals."

The record of the case was duly elevated to the Court of Appeals wherein upon notice petitioner submitted in due course his printed record on appeal and filed his brief as defendant-appellant. Respondent as appellee filed instead a motion to dismiss on the ground of noncompliance with the material data rule. Respondent court held in its Resolution of January 11, 1974 that while "concededly, the notice of appeal and appeal bond in this case were filed pursuant to the provisions of section 3, Rule 41 of the Rules of Court",[8] still the two motions for extension granted him to file his record on appeal until September 15, 1972, within which time he did file his record on appeal "are not found in the record on appeal", and applying the previous rigid interpretation, ordered the dismissal of the appeal per its Resolution of January 11, 1974 and denied reconsideration on February 14, 1974 notwithstanding that petitioner invoked the more liberal ruling in the earlier 1973 case of Berkenkotter, supra.

The dismissals of the appeals must be set aside. As recently reaffirmed in Andaya vs. Court of Appeals,[9] since the similar case of Pimentel vs. Court of Appeals[10] where the record on appeal omitted the appellant's motion for a 30-day extension to perfect the appeal as well as the trial court's orders granting the same and an additional 5-day period to finalize the amended record on appeal, the Court has consistently ruled that "such omissions do not warrant the dismissal of the appeal where the trial court finds and declares in its order of approval of a Re-cord on Appeal, that it was filed 'on time' or 'within the reglementary period' or that the same was 'in order' and the correctness, accuracy or veracity of such finding are not impugned, questioned or disputed by the adverse party - since the appellate court may properly rely on the trial court's order of approval and determination of timeliness of appeal".

The Court therein stressed once again that "the reason for the material data rule is to obviate and eliminate waste of time that would be incurred by the appellate tribunal in requiring the lower court to forward the original record and in examining such records to determine the timeliness of the appeal; and where the trial court in its order approving the record on appeal finds and declares that the same was timely perfected or in order and the correctness and veracity of such finding and declaration are not disputed by the adverse party, the reason for the rule ceases because thereby the appellate court can rely thereon without the need of sending for, and of any further examination of the original records of the case".

Respondent court should have properly relied therefore on the trial court's unopposed order of approval of the record on appeal and express determination that the same was "in order", the correctness and veracity whereof have not been impugned or disputed by the adverse party.

There being no pretense on respondent's part nor showing that the appeal is frivolous or manifestly dilatory, the right to appeal of petitioners in the cases at bar must be upheld.

ACCORDINGLY , respondent court's dismissal orders of petitioners' appeals are set aside and the cases are remanded to respondent court for proper proceedings and prompt disposition of the appeals on the merits. Without costs.

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

[1] Both cases were resolved by the Court of Appeals' Second Division composed of JJ. H. Concepcion, Jr., ponente; G. Santos, and R. Puno, members.

[2] Rec. on Appeal, page 63.

[3] Idem, page 65.

[4] Rule 41, section 6.

[5] 53 SCRA 228 (Sept. 28, 1973) per Esguerra, J.

[6] Record on Appeal, page 60.

[7] Idem, p. 80.

[8] Respondent court's resolution of Jan. 11, 1974; Rollo, pp. 29-32.

[9] L-37124, May 5, 1976 and cases cited.

[10] 64 SCRA 475 (June 27, 1975), per Makasiar, J.

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