

PHILIPPINE RABBIT BUS LINES, INC., PETITIONER, VS. GALAURAN & PILARES CONSTRUCTION CO. AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-35630. November 25, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Petitioner is the plaintiff-appellee and private respondent Galauran & Pilares Construction Company is the defendant-appellant in CA-G.R. No. 46884-R of the Court of Appeals.

On May 18, 1971, notice was sent by the Court of Appeals to counsel for private respondent, Atty. Arturo A. Joaquin, requiring him to file private respondent's brief in said G.R. No. 46884-R within forty-five (45) days from notice. Likewise, a copy of said notice was sent to petitioner's counsel, Atty. Angel A. Sison, who received it on June 3, 1971.

On March 23, 1972, petitioner filed a MOTION TO DISMISS APPEAL due to failure on the part of private respondent "to file the appellant's brief within the period provided by the rules as in fact no appellant's brief what-soever has been filed by the aforesaid defendant-appellant."

Private respondent, thru counsel, opposed the motion to dismiss appeal "on the ground that undersigned counsel has not yet received as of this date a notice from the Clerk of Court, that all the evidence, both oral and documentary, are already attached to the record as provided for in Section 10, Rule 46 of the Revised Rules of Court."

On April 27, 1972, the Court of Appeals issued a resolution dismissing the appeal "for appellant's failure to file his brief."

On May 12, 1972, private respondent, thru counsel, filed a Motion for Reconsideration on the ground, among others, that he "sincerely and honestly swear that no notice to file Brief coming from this Honorable Tribunal has been brought to his attention x x x; that defendant-appellant (herein private respondent) has a valid and meritorious appeal and it will be to the interest of justice if this case will be laid to this Honorable Tribunal to be decided on the merit." The Motion for Reconsideration was opposed by herein petitioner.

On June 21, 1972, the Court of Appeals denied private respondent's Motion for Reconsideration.

On July 6, 1972, private respondent filed a second Motion for Reconsideration on the ground, among others, that "failure to file appellant's brief on time is not attributable to the fault of counsel; that the interest of justice demands a liberal application of the Rules of Court in order that this case be finally determined on its merits, not on mere technicality." Petitioner opposed the second Motion for Reconsideration.

On July 25, 1972, the Court of Appeals denied private respondent's second Motion for Reconsideration. However, on July 24, 1972, respondent, thru counsel, filed a Motion to Admit Appellant's Brief attaching thereto a copy of

said brief. This was opposed by petitioner, inviting the court's attention that the filing of the brief was an attempt to circumvent the order dismissing the appeal.

On August 8, 1972, respondent Court of Appeals issued a resolution (Exhibit M - Petition) which reads:

"Acting upon appellant's 'Motion to Admit Brief' filed on July 24, 1972 together with appellant's brief and appellee's 'Opposition' filed on July 27, 1972; the Court RESOLVED that this Court's resolutions dated April 27, 1972, dismissing the appeal; Resolution dated June 21, 1972 denying the motion for reconsideration; Resolution dated July 25, 1972, denying appellant's 'Motion for Leave to File and Admit Second Motion for Reconsideration' are all SET ASIDE and the appeal is hereby REVIVED. Appellant's brief filed on July 24, 1972 is deemed ADMITTED; and Appellant is REQUIRED to forward to this Court the registry return card evidencing appellee's receipt of copies of appellant's brief within 5 days from notice hereof."

Petitioner filed a Motion for Reconsideration. This was denied by the court on September 28, 1972 and petitioner was required to file its brief within forty-five (45) days from notice.

Hence, this petition for certiorari with preliminary injunction filed by the Philippine Rabbit Bus Lines, Inc., with prayer that the resolutions of the Court of Appeals, dated August 8, 1972 and September 28, 1972, respectively, be set aside and that the appeal of private respondent Galauran & Pilares Construction Company in CA-G.R. No. 46884-R, be dismissed.

Answering the petition, private respondent contends that in issuing the questioned resolutions, dated August 8, 1972 and September 28, 1972, respondent Court of Appeals "acted in the exercise of its sound discretion and within its jurisdiction as the same are in line with the interest of justice to enable the case to be resolved on its merits rather than on mere technicality; and that it is an inherent power of the court to amend and control its process and orders so as to make them conformable to law (Rule 135, Sections 5-9, Rules of Court) and justice."

The petition is devoid of merit. It does not raise any genuine jurisdictional issue. Certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. Its function is to keep an inferior court within its jurisdiction; only jurisdictional questions may be raised in a petition for certiorari, including matters of grave abuse of discretion which is equivalent to lack of jurisdiction. As stated in the case of *Fernando vs. Vasquez*, 31 SCRA 288, "The office of a writ of certiorari has been reduced to the correction of defects of jurisdiction solely and cannot be legally used for any other purpose. It is truly an extraordinary remedy and in this jurisdiction, its use is restricted to truly extraordinary cases - cases in which the action of the inferior court is wholly void; where any further steps in the case would result in a waste of time and money and would produce no result whatever; where the parties, or their privies, would be utterly deceived; where a final judgment or decree would be nought but a snare and a delusion, deciding nothing, protecting nobody, a judicial pretention, a recorded falsehood, a standing menace."

In the case at bar, there was no grave abuse of discretion, amounting to lack of jurisdiction, committed by respondent Court of Appeals (1) when it set aside its resolution dated April 27, 1972, dismissing the appeal, and the resolution dated June 21, 1972, denying the motion for reconsideration; and, (2) revived the appeal and admitted appellant's brief filed on July 24, 1972. It cannot be said that respondent Court of Appeals acted capriciously, arbitrarily and whimsically considering that "the rule is always in favor of liberality in construction so that the real matter in dispute may be submitted to the judgment of the court. Imperfections of form and technicalities of procedure should be disregarded, unless substantial rights would otherwise be prejudiced (*Clorox Company vs. Director of Patents, et al.*, 20 SCRA 965)."

Further, it cannot be said that the order of dismissal of the appeal by the respondent appellate court had become final and executory after fifteen (15) days from receipt thereof by private respondent. The resolution, dated April

27, 1972, dismissing the appeal was received by private respondent's counsel on May 6, 1972. On May 12, 1972, the period was suspended when counsel filed a motion for reconsideration. The period commenced to run again on June 27, 1972 when the resolution, dated June 21, 1972, was received by counsel. The period was again suspended on June 29, 1972 when the second motion for reconsideration was filed, aside from the fact that on July 24, 1972, private respondent, thru counsel, had filed a motion to admit appellant's brief, together with the brief itself.

WHEREFORE , the petition for certiorari is hereby DISMISSED for lack of merit.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur

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