

B. E. BERKENKOTTER, PETITIONER, VS. COURT OF APPEALS AND ISIDRO CLIMACO, RESPONDENTS.

G.R. No. L-36629. September 28, 1973

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition to review the resolution of the Court of Appeals in its CA - G. R. No. 51763, dated February 28, 1973, which dismissed petitioner's appeal from the judgment of the Court of First Instance of Negros Occidental, Branch VI, dismissing plaintiff's complaint in its Civil Case No. 212-7377 entitled "B. E. Berkenkotter, Plaintiff, vs. Angustia Siokon, Pedro Rodriguez and Isidro Climaco, Defendants". On June 11, 1969, judgment therein was originally rendered in favor of the plaintiff and against the defendants by Judge Carlos Abiera, the dispositive portion of which reads as follows:

"The preponderance of evidence is in favor of plaintiff and against defendants, the court not seeing its way clear into believing any pretensions of the latter.

"WHEREFORE, the Court renders judgment in favor of the plaintiff and against defendants as follows:

1. Declaring null and void the Deed of Absolute Sale executed by defendants Angustia Siokon and Pedro Rodriguez infavor of Isidro Climaco on the ground that same is fictitious and fraudulent and the price very fantastic, and order the annulment and cancellation of the Transfer Certificate of Title issued in favor of defendant Isidro Climaco;
2. Ordering the defendant, Angustia Siokon, to execute a Deed of the land in question in favor of plaintiff, and to transfer the Certificate of Title in favor of the plaintiff;
3. Ordering the defendants jointly and severally to pay the plaintiff on the first cause of action P25,000.00, on the second cause of action, P20,000.00, on the third cause of action, P15,000.00 as actual damages, and P10,000.00 as attorneys fees;
4. Ordering the defendants Angustia Siokon and Pedro Rodriguez, to pay plaintiff the sum of P300.00 per hectare per year for the use and occupation a the premises from the time of the filing of this action until final delivery to the plaintiff, and to pay the costs."

On September 1, 1969, the defendants filed a motion for reconsideration of the decision which was opposed by the plaintiff. On October 24, 1969, defendant Climaco filed a re-ply to plaintiff's opposition to the motion for reconsideration. On August 13, 1970, he filed a "motion to dismiss and/or new trial" and on December 19, 1970, he also filed a Supplement to the motion for reconsideration and new trial.

On March 30, 1971, the same Judge Carlos Abiera rendered an Amended Decision completely reversing the decision of June 11, 1969, and sentencing the plaintiff, now petitioner, to pay total damages of P175,000.00 and attorney's fees of P5,000.00, copy of which amended decision was received by plaintiff on November 15, 1971. On the twenty-ninth day thereafter, or on December 14, 1971, plaintiff filed a motion for reconsideration of the Amended Decision, which was opposed by defendant. The motion was denied by Judge Serafin A. Camilo on

May 17, 1972, and a copy of the order of denial was received by plaintiff on June 13, 1972.

On the same day, June 13, 1972, plaintiff filed a notice of appeal, an appeal bond and an ex parte motion for extension of time (five days from June 13) within which to file the record on appeal which was filed two days later, or on June 15, 1972.

On July 14, 1972, defendants objected to the approval of record on appeal but the court through another Judge, Osterwaldo Emilia, who succeeded Judge Abiera, approved the record on appeal, appeal bond and notice of appeal in an Order dated November 14, 1972. The record on appeal was subsequently elevated to the Court of Appeals where the case is now docketed as CA-G.R. No. 51763-R.

The order granting the motion for five-day extension to file the record on appeal does not appear in the record on appeal, but a certificate by the Clerk of Court as to its approval is therein incorporated. (See p. 179, printed Record on Appeal.)

In the Court of Appeals defendant Climaco filed on January 17, 1973, a motion to dismiss the appeal on the ground that it was not perfected within the 30-day reglementary period, the last day for its filing being June 14, 1972, and not June 15th which is the 31st day. The defendant claims that plaintiff filed his record on appeal one day late as the court neither approved nor denied the motion for extension of time to file the same, citing in support of his claim *Escolin v. Garduño*, 57 Phil. 611; *Capinpin v. Ysip, et al.*, G.R. No. L-14018, August 31, 1959; *Alejandro v. Endencia*, 64 Phil. 321. On the other hand, plaintiff resists the motion to dismiss on the strength of the ruling in *Baquiran v. CA*, July 31, 1961, 2 SCRA, 873, and *Layda v. Legaspi*, 39 Phil. 83. In a resolution dated February 28, 1973, the Court of Appeals dismissed the case. Its order reads as follows:

"For resolution is defendant appellee Isidro Climaco's motion dated January 17, 1973, to dismiss the appeal, together with appellant's opposition thereto and appellee's reply to said opposition.

"Since the record on appeal does not really show on its face that the motion for extension of time to file it had been approved, no order to the effect having been incorporated or made reference to in the record on appeal, and since, absent such order, the filing of the record on appeal on June 15, 1972, admittedly was out of time by one day, and this Court having to be bound by decisions of the Supreme Court that have uniformly held this defect to be jurisdictional; in view thereof, it is constrained to dismiss, as it now dismisses, this appeal."

Hence this petition for review. In view of the urgent nature of the case, this Court after receiving respondent's comment which it treats as the answer to the petition, resolved to consider it as a special civil action of certiorari calling for immediate decision.

The issue in this case is whether the appeal was perfected on time. The specific question to settle is: Did the filing on June 13, 1972, of the ex parte motion for extension of five days within which to file the record on appeal, which was done on the 29th day of the 30-day reglementary period, interrupt the running of said period, considering that the Court did not act on said motion but subsequently approved the record on appeal in its Order of November 14, 1972, or 152 days after the lapse of the 30-day period?

This Tribunal has repeatedly construed section 6, Rule 41, of the Rules of Court as mandatory and jurisdiction 1, non-compliance with which justifies dismissal of appeal.[1] In the recent case of *Sison v. Gatchalian, et al.*, L-34709, June 15, 1973, this Court, literally adhered to the Rule and held:

"This case is particularly worth emphasizing because the only defense, if defense it can be called, of private respondents, as shown in their answer, is that 'it is true that on the last day of the original period (April 28, 1971), the typewritten record on appeal was not yet filed. But one day before the deadline, in lieu thereof, were filed (1) the notice of appeal (2) the appeal bond and (3) the motion for extension of time to complete record

on appeal. Which motion was granted on this same day (April 27, 1971) it was filed. So, the last day to perfect appeal was then May 12, 1971. As the typewritten record on appeal (the only one remaining of the three requirements of an appeal) was filed on May 3, 1971, same was perfected nine (9) days earlier than the last day granted under the extension.' As was emphasized however, by petitioner in her memorandum in lieu of oral argument: 'In their answer, private respondents have taken great pains to show that their appeal was perfected on time. But this Honorable Court has already held that the actual perfection of the appeal is not material to the question. (See *Government v. Antonio*, 15 SCRA 119; *Araneta v. Madrigal*, 18 SCRA 446; *Marsman v. Syquia*, 44 SCRA 116.) This is obviously so because the purpose of the requirement is to avoid additional work and unnecessary waste of time in having to examine the evidence that may be submitted by the parties, which would contribute to delay and would consume time badly needed by the appellate courts for more meritorious cases.' "

Continuing, the Court further stated:

"Nor should there be any misgivings that to view the matter thus in accordance with what has been constantly held by this Court, is, as alleged by private respondents, to put a premium on technicality. What is readily apparent is that we are not justified in treating his appeal any differently. This is not to deny what was noted by Justice Teehankee in *Workmens Insurance Co. Inc. v. Augusto*, 40 SCRA 123, 'For a party to seek exception for its failure to comply strictly with the statutory requirements for perfecting its appeal, strong compelling reasons such as serving the ends of justice and preventing a grave miscarriage thereof must be shown, in order to warrant the Court's suspension of the Rules. There are no such strong compelling reasons that would call for a relaxation of the iron-clad doctrine. The only issue on the merits as was made clear in the reply memorandum of petitioner, 'is whether or not the private respondents are purchasers in good faith as to a 36 square meter portion of a piece of land.' "

However, the instant case is distinguishable from the above-cited case. Petitioner herein actually filed on June 13, 1972, (within the 30-day reglementary period) his notice of appeal, appeal bond and an ex parte motion for extension of five days from June 13th to file the record on appeal. Before they expiration of the time asked, or on June 15, 1972, he filed his record on appeal which was approved by the Court after defendant's objection and hearing thereof on November 14, 1972. Admittedly the court neither approved nor denied the ex parte motion for extension of time to file record on appeal. In the case of *Reyes v. Sta. Maria*, L-29554, November 20, 1972, We held that if the motion for extension filed within the reglementary period is not acted upon and the extension period asked for lapses without the record on appeal having been filed, the motion did not suspend the running of the period and the right to appeal is lost. But the concurring opinion of Justice Barredo, joined by the then Chief Justice, is very pertinent. He said:

"As long as the motion is filed within the original period, the court does not lose its jurisdiction to act on it even after the expiration of said period, but in such an event, the appellant assumes the risk of denial, for if the motion is denied, and such denial takes place after the filing of the motion is not considered as having suspended said period. However, if the motion is granted, then the appeal may be deemed as made timely, provided the corresponding notice of appeal have been filed within the prescribed period."

He went on to say:

"Similarly, the mere filing within the original period for appeal of a motion for extension of time to submit the record on appeal would not have the effect of extending the period for appeal if such motion is denied after the period has already lapsed. However, if the motion is granted, the extension requested is tacked to the original period, even IF THE FAVORABLE ORDER IS ISSUED AFTER THE EXPIRATION OF THE LATTER. In any event the record on appeal must be filed within the extension asked (which petitioner in this case complied with), for once said period expired and no record on appeal has yet been filed, the court loses jurisdiction to approve the extension unless the delay is due to fraud, accident, mistake or excusable neglect." (Italics

Supplied)

We subscribe fully to this view and make it applicable here even if there was no formal grant of the motion for extension in view of the subsequent approval of the record on appeal.

The petitioners-defendants in the *Reyes v. Sta. Maria* case were notified of the decision on July 3, 1967. On July 25, 1967, or twenty-two (22) days thereafter, petitioners through counsel filed a notice of appeal and an urgent motion ex-parte to appeal as pauper, together with an ex-parte motion for an extension of thirty days from August 3, 1967, the supposed last day of the reglementary period, within which to file the record on appeal. When said motions were filed on July 25, 1967, the respondent Judge had already left for vacation and no one presided in his court. Consequently, no action was taken on both motions during the remaining eight (8) days for perfecting the appeal. Petitioners in the *Reyes* case failed to file their record on appeal within the 30-day period they requested and the trial Judge denied both motions for lack of merit upon his return. In sustaining the dismissal of the appeal, We stated:

"Notwithstanding that the petitioners fixed the period of 30-days in their motion for extension to begin from August 3, 1967, yet they failed to file their record on appeal within the period they requested. They cannot invoke the inaction of the court due to the authorized absence of the Presiding Judge as justification for having a longer or indefinite period."

In the case at bar, petitioner filed his record on appeal within the period of time requested and although no order of approval nor denial of the ex-parte motion for extension was issued, the Order of the Court on November 14, 1972, approving the notice of appeal, appeal bond and record on appeal amounts to and should be construed as a ratification or approval of the motion for extension. It has always been the view of this Court that the period within which the record on appeal and appeal bond should be perfected and filed, may, however, be extended by order of the court, upon application made, prior to the expiration of the original period. (*Galima et al. v. Court of Appeals, et al.*, L-21046, January 31, 1966; *Alvero v. De la Rosa*, 76 Phil. 428; *Vivo v. Arca*, L-21589, April 30, 1965; *Caisip v. Cabangon*, L-14684, August 26, 1960; *Sy It v. Tiangco*, L-18376, February 27, 1962). What decisively matters is that the motion for extension of time to file the record on appeal is filed before the expiration of the 30-day period prescribed by the rules. In *Valero v. CA, et al.*, L-36667, June 29, 1973, this Court, through Mr. Justice Barredo, sustained the petitioner's claim that he appealed on time, considering that the record on appeal was filed within the extended period given to her upon motion filed before the expiration of the reglementary period but approval of which was granted thereafter. It may not be amiss to state here that although there is no vested right in technicalities (*Alonso v. Villamor*, 16 Phil. 315), in meritorious cases like the present case a liberal (not literal) interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the intent and purpose of the rules - the proper and just determination of a litigation (*Ronquillo v. Marasigan*, 5 SCRA 312). As Mr. Justice Teehankee, in his concurring opinion in *Sison v. Gatchalian*, June 15, 1973, aptly said:

"It should finally be stated that in most, if not all, cases wherein the Court applied the rule and sustained dismissal of the appeal for failure to show on the face of the record on appeal the timeliness of the appeal, the Court invariably did so after satisfying itself of the existence of a rational basis for the result reached by the trial court in the decision sought to be reviewed by the lost appeal. Applying the same paramount consideration of substantial justice, the Court proceeded on the balancing principle that mandamus to compel approval and certification of an appeal even if otherwise well grounded, procedurally speaking, has to be denied where it is evident that there is no merit in the appeal and it would serve no useful purpose to reinstate the same."

A reading of the record on appeal discloses that petitioner has a meritorious case and, therefore, the "element of rigidity should not be affixed to procedural precepts and made to cover the matter." (*Carillo v. Allied Workers*

Asso. 24 SCRA 566) The mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the petitioner if the record on appeal filed within the requested extension period was approved by the Court a quo. As previously stated, the approval thereof carries with it the approval of the motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal. No trial Judge in his right mind and who is aware of the serious responsibilities of his office, would approve a record on appeal that was not timely filed. There is every reason, therefore, to apply the principle of substantial justice to the instant case for the following considerations: first; the court is given the discretion to extend the period for filing the record on appeal, notice of appeal and appeal bond, provided the notice for extension of time is filed within the 30-day reglementary period; second, there is every reason to assume that the record on appeal was "filed on time" because it was approved after due hearing by the Court in its Order dated November 14, 1972; and last, but not the least, considering the merits of the case, to dismiss petitioners appeal would not serve the ends of justice.

WHEREFORE, the petition is granted and the respondent Court's order of February 28, 1973, dismissing petition-er's appeal is set aside, and the Court of Appeals shall give due course to petitioner's appeal. No costs.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Antonio, JJ., concur.

[1] Development Bank of the Phil. v. Santos, 18 SCRA 113; Araneta v. Madrigal, 18 SCRA 446; Atlas Consolidated Mining & Dev. Corp. v. Progressive Labor Asso., 21 SCRA 110; Ozaeta v. CA, 42 SCRA 79; Reyes v. Carrasco, 38 SCRA 296; Workmens Ins. Co. v. Augusto, 40 SCRA 123; Imperial Ins. Inc. v. CA, 42 SCRA 97.

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