

EVER ICE DROP AND ICE CREAM FACTORY, YUSAY CHOO, CHUA BOK KIAN, ONG HOC GAN, AND TAN TIA, PETITIONERS, VS. HON. COURT OF APPEALS, LUCILA PONCE VDA. DE RAMOS, BEATRIZ RAMOS, MYRN...

G.R. No. L-33366. October 30, 1972

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for review of the resolution of the Court of Appeals in CA-G.R. No. 46042-R, Lucila Ponce Vda. de Ramos, et al. vs. Ever Ice Drop and Ice Cream Factory, et al., dismissing the appeal of petitioners Ever Ice Drop and Ice Cream Factory, Yusay Choo, Chua Bok Kian, Ong Hoc Gan and Tan Tia, from a judgment against them together with others whose appeal was not, however, dismissed. Ground of this petition is that in dismissing their appeal, the Court of Appeals erred in holding that their record on appeal which was a joint one with the said other appellants does not show on its face that their appeal was made on time, contrary to the requirement of Section 6, Rule 41 and the decisions of this Court interpreting the same.

We had initially denied this petition, but upon motion for reconsideration of the petitioners, We decided to recon-sider said denial and to give due course to it, per Our resolution of July 16, 1971 reading thus:

"In G.R. No. L-33366, Ever Ice Drop and Ice Cream Factory, et als., vs. Honorable Court of Appeals, et als., it appearing from the motion for reconsideration of petitioners, dated June 14, 1971, and not denied by the private respondents, in their opposition thereto, that the failure of the printed joint record on appeal submitted to the Court of Appeals to show on its face the data regarding the timeliness of the perfection of petitioners' appeal, required by Section 6 of Rule 41 of the Rules of Court, is due only to the omission thereof in the printing of the original joint record on appeal, which in fact contained said data, hence the only issue for determination by the Court is whether or not such omission in printing is a ground for dismissal, within the contemplation of Section 1 of Rule 50, in the interest of a more expeditious termination of this appeal, the Court resolved to REQUIRE the parties to state, within five (5) days from notice hereof, why this case may not be considered submitted for decision on the basis of the petition, the motion for reconsideration of petitioners and the respective oppositions thereto to private respondents, without the usual brief of the parties."

The dismissal resolution of the appellate court states its factual premises as follows:

"It appears that plaintiffs-appellees filed an action for damages against two groups of defendants — Apollo Lacap and Fidel Lagman composing the first group of defendants, and Ever Ice Drop and Ice Cream Factory, Yusay Choo, Chua Bok Kian, Ong Hoc Gan, Tan Tia and Roman Cabusay, composing the other. Incidentally, defendant, Ever Ice Drop and Ice Cream Factory is a commercial partnership with Yusay Choo, Chua Bok Kian, Ong Hoc Gan and Tan Tia, as members, the first named defendant being the managing partner.

"On May 2, 1970, the trial court rendered judgment in favor of the plaintiffs and against the defendants. Atty. Fidel Zosimo Canilao, representing the first group of defendants, received a copy of the decision on May 22, 1970. On June 2, 1970, said counsel filed a notice of appeal and deposited the appeal bond with the trial court.

On June 15, 1970, said counsel submitted the record on appeal for approval.

"It further appears that on June 20, 1970, Atty. Job Mariano, representing the second group of defendants, who shall hereafter be referred to in this resolution as the oppositors, filed a petition to be allowed to adopt the record on appeal submitted by Atty. Canilao, stating among others, that he filed a notice of appeal on behalf of his clients and deposited the corresponding appeal bond on June 11, 1970. It is also stated that in the notice of appeal, Atty. Mariano requested for a 30-day extension of time within which to submit the record on appeal, which request was granted by the trial court.

"On June 30, 1970, the oppositors were allowed to adopt the record on appeal submitted by Atty. Canilao provided that the notice of appeal of the oppositors be incorporated in the record on appeal."

In the light of these facts and considering that the printed joint record on appeal does not in fact include the notice of appeal which the trial court ordered to be incorporated therein, and there being nothing in said printed record on appeal to show when petitioners were served with a copy of the decision subject of their appeal, the Court of Appeals dismissed the said appeal under the authority of Section 1 of Rule 50 and the decision of this Court in *Jocson vs. Robles*, 22 SCRA 521, 524 as well as *Anota vs. Bernardo, Jr.*, 25 SCRA 53.

In their motion for reconsideration, petitioners point out, without denial of private respondents, that while it is true that their notice of appeal was not included in the joint record on appeal as printed and filed with the appellate court, said notice "marked as page(s) 5 and 6, - (can) be found in between pages 205 and 206, sewed to the original record on appeal" and "the official receipt of payment of the appeal bond which was attached to the said notice of appeal was marked as page 4." And it is not disputed that said notice of appeal, certified true copy of which is Annex B of the petition, reads:

"NOTICE OF APPEAL

COME NOW the Defendants, Ever Ice Drop and Roman Cabusay, through the undersigned counsel and unto this Honorable Court respectfully state:

1. That this Honorable Court rendered a decision dated May 2, 1970 which was received by the undersigned counsel on May 22, 1970, in the above entitled case No. 2194, *Lucila Ponce Vda. de Ramos, et al., vs. Ever Ice Drop and Ice Cream Factory, Yusay Choo, Chua Bok Kian, Ong Hoc Gan, Tan Tia, Apollo S. Lacap, Roman Cabusay, and Fidel Lagman*; an excerpt of the dispositive part of the decision is as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiffs and against the defendants. The defendants Apollo Lacap and Fidel Lagman are hereby ordered to pay jointly and solidarily the plaintiffs, two-thirds (2/3) of the amounts hereinbelow specified; and the defendants Ever Ice Drop and Ice Cream Factory, Inc., the commercial partners therein, Yu Say Choo, Chua Hok Kian, Ong Hoc Gan, and Tan Tia and Roman Cabusay are hereby ordered to pay jointly and solidarily the plaintiffs, one-third (1/3) of the following amounts:

P270,000.00 — as damages representing the loss of the earnings of the deceased Atty. Francisco M. Ramos;

20,000.00 — as moral damages for mental anguish of the wife of Atty. Francisco M. Ramos;

12,000.00 — as death damages;

10,000.00 — as damages representing reasonable attorney's fees; and

5,004.00 — as actual damages representing funeral expenses.

Finally, the defendants hereinabove-named are hereby ordered to pay jointly and solidarily, in the same

propor-tion, the costs of the suit.

SO ORDERED.

Guagua, Pamp., May 2, 1970.

2. That Ever Ice Drop and Roman Cabusay, Defendants, through the undersigned counsel would like to appeal the decision of this Honorable Court to the Court of Appeals of the Philippines, since the decision appealed involves the erroneous applicability of the law in the said case, and the wrong appreciation of facts relative to the granting of damages to the Plaintiffs;

3. That the undersigned counsel would like to further request this Honorable Court that the submission of the record on appeal be extended to 30 days from the date of this Notice of Appeal.

Manila, for Guagua, Pampanga, June 11, 1970.

Clearly, therefore, the alleged failure of petitioners to comply with Section 6 of Rule 41 found by the Court of Appeals would be true only, if the printed joint record on appeal alone is used as basis. Actually, however, the original thereof on file also with said appellate court bears out the contention of counsel that petitioners' notice of appeal and joint record on appeal are in order. In *Design Masters, Inc. vs. Honorable Court of Appeals, et al.*, We held:

"The printed record on appeal in L-31510 does not show the date on which it was filed with the trial court, but such date is stamped on the original record on appeal, which was approved by said court and forwarded to the Court of Appeals. Section 6, Rule 41 of the Rules of Court, obviously refers to the record on appeal filed with the trial court, not to the record on appeal printed in the appellate court. At any rate, the Court of Appeals is in a position to determine the date aforementioned, by examining the original record on appeal thereto, forwarded, and, hence, forming part of its own records. Accordingly, petitioner's record on appeal meets the objective of said provision of the Rules of Court, which may be deemed to have been substantially complied with." (38 SCRA 297)

Similarly, in the present case, it can be said that the printing of the record on appeal is not indispensable to the jurisdiction of the appellate courts, the sole purpose of such printing being convenience in the handling, keeping and reading of the record on appeal. Inasmuch as Rule 41 is in that portion of the rules pertaining to the stage of the appeal process taking place in the trial court, it is but logical that the frame of reference, when the completeness of a record on appeal, as therein provided, is in question, must be the contents of said record as filed with said court, and not necessarily those of the printed one filed with the appellate court.

Moreover, under Section 7 of Rule 46, it is the appellee who is called upon to check on the record on appeal as printed and to state his objections thereto within thirty days from receipt of his copies thereof, hence, the absence of any such objection may be taken into account in determining whether or not it should be dismissed by reason of any irregularity in the printed record on appeal. Of course, the same provision further says that "no alterations, omissions, or additions in the printed record shall be allowed, and a violation of this prohibition shall be a ground for the dismissal of the appeal," but this proscription cannot refer to unintentional omissions or errors of the printing press in that regard, particularly if appellee has not exercised the diligence the rule imposes on him to check the same and make the corresponding objections before the court. Accordingly, when, as in the case at bar, the objection is made after the period fixed in said section and it turns out that the omission is a result of an unintentional error of the printing press, as must have happened in this case, because it is not seriously denied that the original record on appeal, as sent to the printing press, included the notice of appeal in question, it would be purely technical and hardly equitable, to make petitioners suffer from such omission, which could have even been

due to honest oversight on the part of counsel for the other appellants who, it is not also denied, was the one who took the original of the said record from the Court of Appeals to the printing press and must have been the one who gave the instructions for its printing. In any event, since the original record on appeal which is before the Court of Appeals is complete and complies with the requirements of the rules, We hold that it was improper for the Court of Appeals to ignore said original. Of course, the duty of appellee under this section to make the necessary objections does not relieve the appellant of the obligation to see to it, on his own part, that the printing is done correctly. It should be observed, in this connection, that the revised rules did away with the intervention of the clerk of court in the printing of the record on appeal precisely to make the parties assume all the responsibility in regard thereto. Counsel for petitioners would not have found himself in his present situation had he taken the trouble of checking the complete-ness of the printed record in question. Although he is not blameless, the Court has opted to be considerate, this being the first occasion of this nature, and the explanation given by counsel is not entirely devoid of plausibility.

All relevant circumstances considered, We believe and so hold that the interests of justice and equity demand that We grant, as We hereby grant the petition. The resolutions of the Court of Appeals mentioned at the outset hereof dismissing the appeal of petitioners are set aside and said court is ordered to proceed with the exercise of its appellate jurisdiction over the merits thereof, with costs against private respondents.

Concepcion, C.J., Zaldivar, Fernando, Teehankee, Antonio, and Esguerra, JJ., concur.

Ruiz Castro and Makasiar, JJ., reserve their votes.

Makalintal, J., on official leave.

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