

**CARLITO V. SEMBRANO, PETITIONER, VS. HON. PEDRO A. RAMIREZ,
PRESIDING JUDGE, COURT OF FIRST INSTANCE OF MANILA,
BRANCH XXX AND NORTHERN MOTORS, INC., RESPONDENTS.**

G.R. No. L-45447. September 28, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

In this civil action for certiorari, the petitioner assails as grave abuse of discretion the undue liberality of the respondent judge[1] in giving due course to the private respondent's appeal despite its alleged late perfection.

The facts pertinent to the crucial issue are simple. On October 9, 1974, the private respondent corporation as plaintiff commenced in the respondent court a suit against the petitioner as defendant for the payment of the unpaid price of a 1971 Vauxhall Victor Car purchased by the petitioner from the private respondent.[2] On August 30, 1976, the respondent court dismissed the complaint. In the same decision, the private respondent was ordered to repair the alternator of the car within thirty (30) days from the finality of the judgment, after which the defendant should resume paying the installments due on the unpaid balance including interest, on the 15th day of each and every month in accordance with the promissory note, until fully paid.[3]

The private respondent-plaintiff received a copy of the decision on September 7, 1976.[4] On October 7, 1976, the last day for the private respondent to perfect its appeal,[5] it filed a Motion for Reconsideration. On the same date, the respondent court issued an order denying the said motion "not only for non-observance of the Rules on notice and hearing, but for lack of merit, for reasons apparent on the face of the decision itself." [6] Not being notified, the petitioner did not react to the Motion for Reconsideration.

The private respondent received a copy of the order denying its Motion for Reconsideration on October 20, 1976.[7] A day after, the private respondent filed a notice of appeal, appeal bond in the amount of P120.00. and Urgent Ex-Parte Motion for Extension of Time to File Record on Appeal.[8] The trial court granted the ex-parte motion in an order dated October 27, 1976.[9]

On October 27, 1976 and November 18, 1976, the petitioner-defendant filed his Opposition To Plaintiff's Motion For Plaintiff To File Record On Appeal (sic), and Opposition To Plaintiff's Record On Appeal And/Or Motion To Dismiss, respectively, alleging among others that the "plaintiff's right to appeal under Rule 41, Section 3 have (sic) already prescribed and the Honorable Court no longer have (sic) jurisdiction to grant plaintiff's motion because the decision have (sic) become final." [10] On December 4, 1976, the petitioner filed his Supplemental Opposition to Plaintiff's Motion For Approval Of Record On Appeal And/Or A Motion To Dismiss Appeal.[11]

On December 6, 1976, the respondent judge issued the questioned Order approving the private respondent's Record On Appeal, denying the petitioner's motion to dismiss appeal, and directing the Clerk of Court to forward the records of the case, together with the evidence, oral and documentary, to the Court of Appeals.[12] The petitioner's motion for reconsideration dated December 27, 1976 was also denied by the trial court in an order dated January 7, 1977.[13] Hence, this petition.

We rule for the petitioner.

The private respondent corporation failed to file seasonably its notice of appeal, and therefore the respondent Judge committed a grave abuse of discretion in giving it due course.

The crux of the controversy is the private respondent's Motion For Reconsideration dated October 6, 1976 filed on the last day of the then thirty (30)-day period to appeal from the decision of the trial court. In that motion, the private respondent was claiming more than the amount adjudged. The motion likewise shows that although the name of the counsel of the petitioner (defendant in the court below) was typed as having been furnished with a copy thereof, no proof of service (no acknowledgment of receipt and no registry receipt attached) and no notice of hearing are contained therein.[14]

The law is clear. Under the then applicable provisions of Rule 41, Section 3,[15] both parties had only thirty (30) days from receipt of the trial court's decision within which to file notice of appeal. The private respondent received a copy of the decision on September 7, 1987, so that he had only until October 7, 1976, the last day, to perfect its appeal, i.e., to file notice of appeal, appeal bond, and Record On Appeal. On the said last day, instead of filing a notice of appeal, the private respondent filed a Motion for Reconsideration.[16] The motion turned out to be fatally defective for, as earlier adverted to, it had no proof of service nor notice of hearing. The law[17] explicitly requires that notice of a motion shall be served by the applicant to all parties concerned at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it, and that the notice shall be directed to the parties concerned, stating the time and place for the hearing of the motion.[18] The three-day notice required by the rules is intended not for the benefit of the movant but to avoid surprises upon the adverse party and to give the latter time to study and meet the arguments interposed in the motion.[19] Service of a copy of the motion on the opposing lawyers and an indication of the time and place of hearing are mandatory requirements.[20]

In *Cledera vs. Sarmiento*,[21] the Court categorically ruled:

The provisions of the aforequoted rules are clear and are couched in simple language, understandable to any college student, even if he is not a student of law. Sections 4 and 5 of Rule 15 require that the notice shall be directed to the parties concerned and shall state the time and place for the hearing of the motion, which notice shall also be served to all parties concerned at least three (3) days before the hearing thereof, together with a copy of the motion and other supporting documents. x x x

The Court has invariably held that a motion without notice of hearing is a mere scrap of paper.[22] It does not toll the running of the period of appeal.[23] This requirement of notice of hearing equally applies to a motion for reconsideration.[24] Without such notice, the motion is pro forma. And a pro forma motion for reconsideration does not suspend the running of the period to appeal.[25]

Emphatically in *New Japan Motors, Inc. vs. Perucho*,[26] we held:

The lower court was right in labelling and declaring aforesaid January 8, 1973 motion for reconsideration "x x x a useless scrap of paper which should not merit the attention of the Court." Under Sections 4 and 5 of Rule 15 of the Rules of Court (not Rule 16 as erroneously stated by the lower court), a motion is required to be accompanied by a notice of hearing which must be served by the applicant on all parties concerned at least three (3) days before the hearing thereof and must state the time and place of hearing thereof. Section 6 of the same rule commands that "(N)o motion shall be acted upon by the Court, without proof of service of the notice thereof xxx." It is therefore patent that the motion for reconsideration in question is fatally defective for it did not contain any notice of hearing. We have already consistently held in a number of cases that the requirements of Sections 4, 5 and 6 of Rule 15 of the Rules of Court are mandatory and that failure to comply with the same is fatal to movant's cause (*Omico Mining Industrial Corp. vs. Vallejos*, 63 SCRA 285 [1975]; *Andrada vs.*

Court of Appeals, 60 SCRA 379 [1975]; *Sacdalán vs. Bautista*, 56 SCRA 175. [1974], citing numerous cases and *Cledera vs. Sarmiento*, L-32450-51, June 10, 1971, 39 SCRA 552.)

It is clear, therefore, in the light of established doctrines, that the respondent judge committed a grave abuse of discretion, amounting to a lack of jurisdiction, in giving due course to the private respondent's appeal. The order dated October 7, 1976 states as one of the reasons for the denial of the motion for reconsideration the non-observance of the rules on notice and hearing. For this alone, the respondent judge should have treated the motion as a mere scrap of paper and dismissed the appeal. But he did not. Perfunctorily he stated in the assailed order of December 6, 1976:

For the reason that this Court should not deny approval of a record on appeal so (as) to disallow a review of its decision by the appellate court in proper cases, and inasmuch as the inclusion in the record on appeal of the annexes referred to in the defendant's opposition will not affect his substantial rights, the Court resolves to overrule the defendant's opposition to the approval of the plaintiff's record on appeal and to deny his motion to dismiss appeal.[27]

We find that the liberality exhibited by the respondent judge in this regard is misplaced.

The perfection of an appeal within the statutory or reglementary period is mandatory and jurisdictional and the failure thereof renders final and executory the questioned decision and deprives the appellate court of jurisdiction to entertain the appeal.[28] The petitioner is correct in assailing the respondent judge's order. Where grave abuse of discretion has been palpably committed, or the broader interests of justice require exception, then certiorari lies in order that the error may be corrected and the injustice may be redressed.[29]

A final point. The private respondent in its Memorandum appeals for liberality that it may have ample opportunity to prove its claims on appeal and that a possible denial of substantial justice due to legal technicalities may be avoided. Be that as it may, equally important as substantive due process is procedural due process. The requirement of notice of hearing is an integral component of procedural due process. It is intended to afford the adverse parties a chance to be heard before the motion is resolved by the court.[30] This will enable the court to find out whether or not the adverse party is in conformity with the motion and, if he objects to it, to give him an opportunity to file his opposition.[31]

WHEREFORE, the Petition is hereby GRANTED. The Orders of the respondent court dated December 6, 1976 and January 7, 1977 are hereby SET ASIDE. The Decision of the respondent court in Civil Case No. 95566 dated August 30, 1976 is hereby declared FINAL and EXECUTORY. No costs.

SO ORDERED.

Melencio-Herrera (Chairman), Paras, Padilla and Regalado, JJ., concur.

[1] Hon. Pedro A. Ramirez, then Court of First Instance of Manila, Branch XXX.

[2] Rollo. 42, 61.

[3] Id., 43.

[4] Id., 12.

[5] At the time, the reglementary period within which to appeal from the Court of First Instance (now Regional Court) to the Intermediate Appellate Court (now Court of Appeals) was still thirty (30) days; now, it is fifteen (15) days.

[6] Id., 19, 44.

[7] Id., 20-22, 44, 63.

[8] The new rules on appeal from the Regional Trial Court to the Court of Appeals only require the filing of a notice of appeal, payment of docket and legal research fees, and a record on appeal only in certain cases.

[9] Id., 63.

[10] Id., 23-25, 44.

[11] Id., 44.

[12] Id., 10.

[13] Id., 11. 29-31.

[14] Id., 12-13.

[15] Rules of Court, Rule 41, Section 3 (Old Rule):

How Appeals is taken — appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. The time during which a motion to set aside the judgment on order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37.

But where such a motion (motion to set aside judgment or motion for new trial) has been filed during office hours of the last day of the period herein provided, the appeal must be perfected within a day following that in which the party appealing received notice of the denial of said motion.

But now, under Batas Pambansa Blg. 129, Chapter IV, Section 39 (New Rule):

Appeals. — The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: x x x

[16] Rollo, 12-13.

[17] Rules of Court —

Section 4. Notice. — Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion.

Section 5. Contents of notice. — The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion.

Section 6. Proof of service, to be filed with motion. — No motion shall be acted upon by the court, without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected.

[18] Azajar vs. Court of Appeals, No. L-40945, Nov. 10, 1986, 145 SCRA 333.

[19] E & L Mercantile, Inc. vs. Intermediate Appellate Court, No. L-70262, June 25, 1986, 142 SCRA 385.

- [20] Estipona vs. Navarro, L-41825, January 30, 1976, 69 SCRA 285.
- [21] Nos. L-32450-51. June 10, 1971, 39 SCRA 552.
- [22] Manakil vs. Revilla, 42 Phil. 81; Roman Catholic Bishop of Lipa vs. Municipality of Unisan. 44 Phil. 866.
- [23] Calero vs. Yaptinchay, No. L-27654, February 18, 1970, 31 SCRA 562; Sebastian vs. Cabal, L-25699, April 30, 1970, 32 SCRA 453.
- [24] Firme vs. Reyes, No. L-35858, August 21, 1979, 92 SCRA 713; Republic Planters Bank vs. Intermediate Appellate Court, No. L-63805, August 31, 1984, 131 SCRA 631.
- [25] Cruz vs. J.M. Tuason & Co., Inc., No. L-23749, April 29, 1977, 76 SCRA 543; Balquidra vs. Court of First Instance, No. L-40490, October 28, 1977, 80 SCRA 123; Garcia vs. Echiverri, No. L-44455, October 23, 1984, 132 SCRA 631.
- [26] No. L-44387, November 5, 1976, 74 SCRA 14.
- [27] Id., 10.
- [28] Cruz vs. Workmen's Compensation Commission, No. L42739, January 31, 1978, 81 SCRA 445; Luzon Stevedoring Corporation vs. Reyes, No. L-43469, June 30, 1976, 71 SCRA 655; Macabingkil vs. People's Homesite & Housing Corp., No. L-29080, August 17, 1976, 72 SCRA 326.
- [29] Rañeses vs. Teves, No. L-26354, March 4, 1976, 70 SCRA 4; Baluyot vs. Paño, No. L-42088, May 7, 1976, 71 SCRA 86; De Laureano vs. Adil, No. L-43345, July 29, 1976, 72 SCRA 148; Abuan vs. Valera, No. L-42452, August 10, 1976, 72 SCRA 301.
- [30] Estipona vs. Navarro, No. L-41825, January 30, 1976, 69 SCRA 285.
- [31] Fulton Insurance Co., vs. Manila Railroad Company, L-24263, November 18, 1967, 21 SCRA 974.

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