

**POLICARPIO CASTRO AND NATALIA DY CASTRO, PETITIONERS, VS.
HON. COURT OF APPEALS, HON. ENRIQUE A. AGANA, SR., JUDGE OF
THE COURT OF FIRST INSTANCE OF RIZAL, PASAY CITY, AND
VIMAR...**

G.R. No. L-47410. July 29, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In this petition for certiorari and mandamus with prayer for the issuance of a writ of preliminary injunction, the petitioners-spouses Policarpio Castro and Natalia Dy Castro seek to set aside as having been issued with grave abuse of discretion amounting to lack of or in excess of jurisdiction the Court of Appeals' decision of June 3, 1977 and the resolution of September 1, 1977 in CA-G.R. No. SP-06276, denying a petition for certiorari and mandamus on the ground that the respondent court of first instance did not act with grave abuse of discretion when it refused to give due course to an appeal filed out of time.

On May 10, 1976, private respondent Vimarco Incorporated filed a complaint against the petitioners for a sum of money with damages with a petition for the issuance of a writ of preliminary attachment. The complaint alleged, among others, that on March 25 and 27, 1976, the petitioners, through deceit and misrepresentation obtained from the private respondent two (2) separate amounts of P200,000.00 and P50,000.00, respectively, for the purpose of purchasing rescada copra which the petitioners jointly undertook to deliver on April 4 and 10, 1976 at the bodega of Cheng Ban Yek Company located at San Juan, Rizal or at any other place designated by the private respondent's representative; that the petitioners were able to deliver P23,299.28 worth of copra only, thereby leaving a balance of P226,700.72 which the petitioners have failed and refused to deliver after misappropriating the money entrusted to them for that purpose; that due to said unjustified and malicious refusal by the petitioners to deliver the full quantity of copra agreed upon or to return the amount of P226,700.72, the private respondent was not able to comply with its contract with Cheng Ban Yek Company for the delivery of 275,000 kilos of copra thereby failing to realize a profit in the amount of P20,000.00 from the transaction in question and; that the petitioners should be made to pay exemplary damages in an amount to be determined by the trial court and 25% of the amount due under the two contracts as attorney's fees.

On May 28, 1976, the respondent judge of the Court of First Instance of Rizal, Pasay City, issued an ex-parte order granting the prayer for the issuance of a writ of preliminary attachment.

On June 25, 1976, the petitioners filed a motion to dissolve the aforesaid writ. The private respondent filed its opposition thereto.

On July 19, 1976, the petitioners filed their answer with counterclaim.

On September 29, 1976, the private respondent filed a motion for judgment on the pleadings in view of the petitioners' alleged admission of the material allegations of the complaint. The petitioners filed their opposition

thereto and a counter-motion to admit their amended answer.

On October 13, 1976, the respondent Court of First Instance issued an order granting the motion for judgment on the pleadings in a decision with the following dispositive portion:

"WHEREFORE, the opposition to the motion for judgment on the pleadings and counter motion to admit amended answer with counterclaim filed by the defendants is hereby denied for lack of merit and judgment on the pleadings is hereby rendered in favor of the plaintiff and against the defendants sentencing the latter to pay the former the sum of P208,700.72 which is the difference after deducting the partial payments in the total sum of P41,299.28 of the original indebtedness of the defendants in the amount of P250,000.00 with interest at the legal rate of 12% from May 19, 1976 until the same is fully paid, plus attorney's fees in the sum equivalent to 25% of the principal amount pursuant to the provisions of the written contracts, Annexes A and B of the complaint, and the costs of this suit."

Without filing a motion for reconsideration of the aforequoted decision, the petitioners, on November 26, 1976, filed their notice of appeal, appeal bond, and record on appeal. On December 17, 1976, the Court of First Instance denied the appeal on the ground that the same was not perfected within the reglementary period because, as per certification issued by the Postmaster of Quezon Capitol, Quezon Province, and the corresponding return card, Registered Letter No. 7184 addressed to Edmundo T. Zepeda, Lucena City (counsel for the petitioners), a copy of the decision was received by a certain Ruby Arriola, office clerk of Attorney Zepeda on October 26, 1976 at 4:50 p.m.

On January 20, 1977, the petitioners filed a petition for certiorari and mandamus with preliminary injunction with the Court of Appeals alleging that the lower court gravely abused its discretion in denying their appeal because it was on October 27, and not October 26, 1976 as ruled by the trial court, when the defendants received the notice of the decision.

On June 3, 1977, the Court of Appeals rendered a decision dismissing the petition holding that the petitioners' appeal was filed one day late and, therefore, the court a quo could not be said to have committed grave abuse of discretion in denying the same.

Reconsideration of the decision was sought by the petitioners but the Court of Appeals denied the motion.

Hence, this petition for certiorari and mandamus.

The only issue raised is whether or not the Court of Appeals issued its decision with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied a petition for certiorari and mandamus filed by the petitioners.

As a general rule, our policy in this Court towards invocation of the right to appeal has been one of liberality. (*Delas Alas v. Court of Appeals*, 83 SCRA 201).

As a matter of fact, the instant petition itself was denied on December 9, 1977 for having been filed late and for late payment of legal fees. The last day for filing the petition and paying the fees was September 28, 1977. The petition was filed and the fees paid only on December 5, 1977. Nevertheless, this Court reconsidered the resolution and eventually gave due course to the petition upon pleas that justice would thereby be served.

An appeal is an essential part of our judicial system. We have advised the courts to proceed with caution so as not to deprive a party of the right to appeal (*National Waterworks and Sewerage Authority v. Municipality of Libmanan*, 97 SCRA 138) and instructed that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities (*A-One Feeds, Inc. v. Court of Appeals*, 100 SCRA 590).

The rules of procedure are not to be applied in a very rigid and technical sense. The rules of procedure are used only to help secure not override substantial justice. (Gregorio v. Court of Appeals, 72 SCRA 120). Therefore, we ruled in Republic v. Court of Appeals (83 SCRA 453) that a six-day delay in the perfection of the appeal does not warrant its dismissal. And again in Ramos v. Bagasao (96 SCRA 395), this Court held that the delay of four (4) days in filing a notice of appeal and a motion for extension of time to file a record on appeal can be excused on the basis of equity.

Where the interests of justice would not be served by a policy of liberality, however, we cannot cite a lower court as having acted with grave abuse of discretion simply because it has correctly but strictly applied the rules. In the instant case, the decision of the respondent court is supported by the records. A remand for further proceedings, therefore, would only result in needless delays - a few more years perhaps of a tortuous journey through new proceedings in the trial court, an intermediate appeal, and another resort to this Court through a petition for review to finally achieve the same result which is an order to pay an admitted indebtedness.

The complaint filed by the private respondent stated that the petitioners secured two separate amounts of P200,000.00 and P50,000.00 to buy rescada copra for delivery to Cheng Ban Yek Company but after delivering only P23,299.28 worth of copra, misappropriated the rest of the money given to them.

The answer of the petitioners admitted the receipt of the amounts alleged in the complaint but denied that they were received through fraud and misrepresentation. The couple admitted that they were indebted in the amount of P200,000.00 to Mr. Victor Tiu Laurel, that the debt was subject to liquidation through monthly installments of P2,000.00 each and that they had already paid nine installments. The petitioners also questioned March 26, 1976 as the date of receipt, saying they did not receive the money on that date.

The petitioners likewise admitted the second indebtedness of P50,000.00 in their answer. They averred, however, that the real contract between them executed on the same date was a loan for copra to be delivered to Vimarco, Inc., that it expressly states the date of execution and date of expiration, the amount of copra to be delivered, as well as the agreed price thereof and that the document was signed by the representatives of the plaintiff and of the defendant.

The petitioners averred in their answer that they had been transacting business for several years without any conflict or disagreement through the founder and actual manager, Mr. Victor Tiu Laurel and that in practice, deliveries of copra were made and accepted even after the lapse of the agreed period. In connection with the petition for the issuance of a writ of preliminary attachment and the motion to dissolve the writ which had been issued, the parties also submitted various documents and other evidences.

As earlier stated, private respondent Vimarco, Inc. filed a motion for judgment on the pleadings on September 29, 1976. Acting upon this motion and the opposition thereto, the trial court rendered the decision which was later appealed to the Court of Appeals but one day late.

The decision of the court of first instance states:

"Upon a further perusal of the record, the Court finds it undisputed that the defendants-spouses received from, and are indebted to, the plaintiff in the sums of P200,000.00 and P50,000.00, respectively, for which the defendants, in their answer, admitted being liable to the plaintiff although they claim they have already made partial payments to the latter, i.e. P18,000.00 of the P200,000.00 and P23,299.28 of the P50,000.00. The partial payments made by the defendants to the plaintiff is a clear proof by itself that the monetary obligations by the former to the latter under Annexes A and B of the complaint are already due and demandable. Granting, *arguendo*, that the real agreement between the parties with respect to the P50,000.00 is that which is covered by Annex 1 of the answer and not Annex B of the complaint, none-theless, it appears that even under the

document marked as Annex 1 of the answer, the defendants were already liable to the plaintiff as of April 13, 1976 at which date they were already in mora. And on the matter of the P200,000.00, granting again, for the sake of arguments, the claim of the defendants that they did not receive the said amount from the plaintiff on March 26, 1976 as per Annex A of the complaint to be true, the fact remains, as admitted by the defendants in their answer, that at one time or another they received the said amount from the plaintiff for which, equity and law demand, they should restitute to the plaintiff now that it has already become due and demandable. Moreover, it is seriously doubted whether the defendants can question the genuineness and due execution of the document marked as Annex A of the complaint in view of their failure to make a specific denial thereof under oath as required by the rules.

"From the foregoing, its quite clear that the plaintiff is entitled to a judgment on the pleadings considering that the answer of the defendants fails to tender an issue and/or otherwise admits the material allegation of the complaint. That the defendants have made partial payments of their obligation and are, thereof, entitled to be credited therefor is a matter which is not so material as to necessitate the tedious process of going into trial. Suffice it to state that from the records, the plaintiff has not disputed said partial payments allegedly made to it by the defendants such that the same may be conceded in favor of the latter."

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In resolving the special civil action for certiorari and mandamus, the Court of Appeals limited itself to the question of whether or not the petitioners perfected their appeal on time. It ruled inter alia:

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Decisive here is the question of whether petitioners perfected their appeal on time. For if not, the other points raised - whether the court committed a grave abuse of discretion in issuing the writ of attachment and refusing to act on petitioners' motion to dissolve the same - become, so to speak, so much, 'water under the bridge'. In support of his allegation that his law office received the copy of the decision on October 27, 1976, not on October 26th, petitioners' counsel submitted an affidavit of his office-clerk, Ruby Ariola, wherein the latter states that he received the registered mail containing the copy of the decision on that date, October 27, 1976. And in apparent attempt to bolster Ariola's claim, he (counsel) called the court's attention to the Record Book of the Postmaster of Lucena City (Annex 'AA'; Petition; Annex 'B', Answer to the Petition) observing that from the naked eye 'the number '6' appears to be not only re-written but also heavily indented and appear-ing to cover 'the number '7', the top portion of which can still be seen.' He, therefore, deduces or suspects that there was some tampering with the date. By whom, he did not say but it is apparent that he means the Postmaster or one of the latter's employees. But this is pure specula-tion or conjectures; in fact, he failed to present a single piece of concrete or solid evidence in support of his suspicion. Ariola's affidavit is, of course, of no account being self-serving. Anyway, anent the particular point, the Postmaster, on December 7, 1976, issued the following Certification (Annex 'A', Answer to the Petition):

""TO WHOM IT MAY CONCERN:

"Our record shows that Registered Letter No. 7184 addressed to Atty. EDMUNDO ZEPEDA, Lucena City from CFI, Branch 28, Pasay City was deli-vered to his authorized repre-sentative RUBY ARIOLA on October 26, 1976 at 4:50 p.m.

"Issued and signed by me this 7th day of December, 1976, Lucena City.

(SGD.) EMILIO M. MATAYA

Postmaster

Quezon Capitol, Quezon'

"What is more, in the course of the oral hearing of the case before this Court, petitioners admitted that they cannot conceive of any reason or motive why the Postmaster of Lucena City would attempt to tamper or alter their re-cords. In any event, we fully agree with the following comment of private respondents in their Answer:

"'Petitioners' insinuation that there was tampering of the date October 26, 1976 is not only irresponsible and reckless but one characterized by malice and bad faith, as it tends to cast aspersion on the integrity and reputation of the Postmaster in Lucena City and his receiving clerk as well as of counsel for respondent Vimarco, Inc. Said insinuation of tampering is a desperate effort on the part of counsel for Petitioners to gain one more day to preserve their right to appeal, which had been lost through their own inexcusable neglect. That a copy of the decision dated October 13, 1976 was received by Petitioners through their counsel on October 26, 1976 and not on October 27, 1976 as they would like this Court to believe, is clearly shown by the following:

"a. The certification of the Postmaster of Lucena City dated December 7, 1976 and hereto attached and marked as Annex 'A' shows beyond doubt that Petitioners received through counsel a copy of the decision of the Court dated October 13, 1976 on October 26, 1976. Under Section 5 of Rule 131 of the Revised Rules of Court, there is a presumption that official duty has been regularly performed.

"b. Even without said presumption, the Record Book of the Office of the Postmaster in Lucena City, indubitably indicates the different entries made therein which show that at 4:50 in the afternoon of October 26, 1976 the following papers were received by their respective addressees or their agents:

Place of Origin:

Reg. No.

Addressee

Atty. Francisco San Gabriel

under Reg.

No. 18829

Atty. Edmundo

Zepeda

CFI Rizal, Br.

XXVIII

under Reg.

No. 7184

Atty. Edmundo

Zepeda

SSS Q. C.

under Reg.

No. 336745

Engr. Kuy Yu

GSIS Mla.

under Reg.

No. 42869

Edilberto Almonte

GSIS Mla.

under Reg.

No. 35466

Woodrow Laurel

"A xerox copy of said leaf of the Record Book of the Office of the Postmaster of Lucena City is hereto attached and marked as Annex 'B' (This is Annex AA of the Petition).

"If it is true as claimed by Petitioners through counsel that the date regarding the receipt of a copy of the decision under Regis-try Receipt No. 7184 was tampered with in such a way that instead of appearing as October 27, 1976 it was made to appear as October 26, 1976, how can Petitioners account for the three (3) subsequent entries which were all dated October 26, 1976? Even the last two (2) entries reveal that the date was October 26, 1976 and definitely not October 27, 1976.

"c. The Postmaster at Lucena City will testify to the effect that interested parties pressed upon him to change the date of receipt of the decision dated October 13, 1976 from October 26, 1976 to October 27, 1976 but the former, fully aware of the criminal consequences of such an illegal act, stoutly refused to do so.

"With the above, it becomes crystal clear that Petitioners through counsel have come to this Court with unclean hands and if for this alone, they do not deserve to obtain relief from the adverse effects of their own inexcusable neglect.'

"From the foregoing therefore, it is clear that petitioners' appeal here was filed one day late, hence, the Court a quo could not be said to have committed grave abuse of discretion in denying the same."

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For the petitioners to show that the Court of Appeals also acted with grave abuse of discretion in not finding a grave abuse of discretion in the acts of the trial court, there has to be a showing likewise of substantial justice having been denied them. Non-compliance with the rules on the filing of an appeal can be condoned only if the greater interests of justice would thereby be served. In the instant case, a relaxing of the rules would result only in the continued delayed payment of an admitted indebtedness already many years overdue. The facts and equities of the case lean strongly in favor of the private respondent.

WHEREFORE, the petition for certiorari and mandamus is hereby DISMISSED for lack of merit. The temporary restraining orders dated January 27, 1978 and November 7, 1979 are SET ASIDE.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.
Vasquez, J., on leave.

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