

THE IMPERIAL INSURANCE, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND VALDEMONTE FINANCE CORPORATION, RESPONDENTS.

G.R. No. L-28772. October 29, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

In civil case 62707 of the Court of First Instance of Manila, the Valdemonte Finance Corporation (hereinafter referred to as the respondent) obtained a judgment in its favor against the Imperial Insurance, Inc. (hereinafter referred to as the petitioner). The decision a quo dated April 29, 1966 ordered the petitioner to pay the respondent "the sum of P140,000 with interest thereon at the legal rate from the com-mencement of the action" until its full satisfaction, and the further sum of P10,000 "as attorney's fees and expenses of litigation," plus costs.

On May 26, 1966 the petitioner filed with the court a quo its notice of appeal, an appeal cash bond of P120, and its typewritten record on appeal. There being no opposition to the approval of the record on appeal, the court on June 4, 1966 approved the same and directed the transmittal of the record of the case, together with all the evidence adduced, to the Court of Appeals (hereinafter referred to as the respondent court). On April 26, 1967 the petitioner filed its brief as appellant in the case.[1]

On October 11 of the same year, the respondent moved to dismiss the appeal on the ground that the petitioner's record on appeal (whether typewritten or printed) fails to show on its face the per-fec-tion of the appeal within the period fixed by the Rules of Court. The petitioner filed its opposition.

Subsequently, the respondent court, in a resolution dated December 12, 1967, granted the respondent's motion to dismiss the petitioner's appeal, stating:

"The record on appeal, however, does not contain such important data as will show that ap-pellant had also filed its appeal bond and the date the same bond was filed. While established juris-prudence condones the absence of a formal notice of appeal and treats the filing of a record on appeal as a sufficient notice, the filing of an appeal bond is imperative and without such bond no appeal could, as a general rule, be perfected."

The petitioner's motion for reconsideration of December 28, 1967 was denied by the respondent court on February 7, 1968.

Hence, the present petition for certiorari, filed on February 28, 1968, seeking the reversal of the resolution of the respondent court on the ground that the said court gravely erred "in finding that petitioner's record on appeal failed to show sufficient data showing that petitioner's appeal had been perfected on time,," and in "granting respondent Valdemonte's motion to dismiss petitioner's appeal and in denying said petitioner's motion for reconsideration."

Section 6 of Rule 41 of the Rules of Court requires the inclusion in the record on appeal of

"... the order or judgment from which the appeal is taken, and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and necessary for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time." (emphasis supplied)

Non-compliance with that part of the foregoing section requiring the inclusion in the record on appeal of "such data as will show that the appeal was perfected on time" constitutes a ground for the dismissal of the appeal under section 1 (a) of Rule 50 which provides:

"SECTION 1. Grounds for dismissal of ap-peal. - An appeal maybe dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

"(a) Failure of the record on appeal to show on its face that the appeal was perfected within the period fixed by these rules."

Pursuant to sections 3 and 9 of Rule 41, the perfection of an appeal requires, inter alia, the filing of the appeal bond in due time and the approval of such appeal bond other than a cash bond.

We do not find in the record on appeal of the petitioner any mention of or reference whatsoever to the filing of the appeal bond. The failure of the said record on appeal to state that the petitioner filed an appeal bond and to mention the date of the filing of such bond constitutes a fatal omission of one of the essential data to apprise the appellate court of the timeliness of the appeal. The absence of a statement in the record on appeal of the filing of the appeal bond and the date of such filing amounts to non-compliance with the re-quirements, mandatory and jurisdictional in nature, of section 6 of Rule 41 and justifies the dismissal of the appeal.[2]

Concededly, sections 3, 4, 5 and 6 of Rule 41 of the Rules of Court make no express provision as to the precise sequence of the steps to be followed for the perfection of an appeal. All that the aforementioned sections require is that the party appealing shall file his notice of appeal, appeal bond and record on appeal within thirty days from notice of the order or judgment appealed from.

Verily, no rule requires the filing of the notice of appeal or the appeal bond ahead of the filing of the record on appeal. There-fore, where a party files his appeal bond within the period fixed by the Rules but after the submission of the record on appeal, the petitioner claims that "it is impossible to include in the record on appeal as thus prepared and filed, the filing of the appeal bond." We, however, find the excuse offered by the petitioner for the defect of its record on appeal belied by the record of this case. The record shows that the petitioner filed its notice of appeal, its appeal bond of P120 in cash which therefore required no express approval, and its typewritten record on appeal on the same day - May 26, 1966. The record evinces as well that the court a quo approved the record on appeal on June 4, 1966, and that the clerk of the said court a quo, on October 10, 1966, certified to the truth and correctness of the copies of the pleadings, order and decision included in the record on appeal. During the long intervening period of about four and one-half (4-1/2) months from May 26 to October 10, 1966, the petitioner exerted no effort whatsoever to ask the court a quo to allow the inclusion in the record on appeal of a statement certifying, with explicit mention of the proper dates, to the filing of its notice of appeal as well as its appeal bond within the period fixed by the Rules. Application for inclusion in the record on appeal of such a certification needed only minimum effort on the part of the petitioner. To sanction the stand of the petitioner - its feeble attempt to justify the non-inclusion in its record on appeal of data relating to the filing of the appeal bond because of the fact of the filing of the notice of appeal, appeal bond and record on appeal on the same day - would be to nullify and set at naught the provisions of section 1, paragraph (a) of Rule 50 of the Rules of Court. This we cannot countenance.

We do not here rule that a party appealing a case needs to file his notice of appeal and appeal bond before he files

his record on appeal. To repeat, compliance with sections 3, 4, 5 and 6 of Rule 41 of the Rules of Court only requires that the notice of appeal, appeal bond and record on appeal are all filed within the reglementary period. The procedural sequence of filing them the rules leave to the sound discretion of the party-appellant, provided he files them within the period fixed by the said rules. Of course, we neither exclude nor leave out the possibility that force of circumstances may impel a party-appellant to file his notice of appeal, appeal bond and record on appeal not only on the same day but also simul-taneously - that is, at the same time on the same day - or even probably, on the last day of the thirty-day period provided by the rules for the perfection of an appeal. Even in such eventuality, however, the intendment of section 1 (a) of Rule 50 is that the appellant must exercise the requisite care and take the necessary steps so that his record on appeal will show on its face, that his appeal was perfected on time.

The petitioner further claims that the respondent is in estoppel for failure to interpose any objection to the deficiency of the record on appeal upon its receipt of a copy of the typewritten record on appeal and, later, a copy of the printed record on appeal. It suffices to state that the provisions of the Rules of Court relating to the perfection of an appeal within the reglementary period consti-tute not only mandatory but also jurisdictional requirements. Failure to comply with such provisions causes the judgment complained of to become final and executory. As a consequence, the trial court loses jurisdiction to sanction an appeal therefrom, and the appellate court does not acquire jurisdiction to entertain the appeal. And any question as to the jurisdiction over a case may be raised at any stage of the proceedings.[3]

At the expense of being repetitious, we re-state what we stressed in two earlier cases[4] on this matter of non-statement in the record on appeal of essential data showing the perfection of the appeal in due time. We said:

"This Court notes with regret that although these requirements on the contents of a record on appeal have been in effect since 1964, there are still lawyers and litigants who do not comply with the same: either they have not perused the Revised Rules, or choose not to comply therewith. Liberality in this regard is by now unwarranted, and would be unjust to numerous litigants or counsel who exer-cise diligence in observing the Rules of Court."

Overlooking the jurisdictional defect, however, we are nonetheless persuaded, from a reading of the record, that the judgment a quo is substantially correct and morally just.

Civil case 62707 originated as an action for a sum of money filed by the respondent against the petitioner. The record shows that the respondent extended a discounting line in favor of the Ajax International Corporation; that to secure the payment of the discounted notes, the petitioner executed a surety bond in the amount of P140,000 in favor of the respondent; that, subsequently, the Ajax defaulted in the payment of several accounts amounting to more than P300,000, evidenced by invoices, assigned by it to the respondent; that the respondent, unable to collect from the Ajax, demanded from the petitioner the payment of the sum of P140,000, the latter's total liability as surety under the surety bond; and that the petitioner refused to pay.

The respondent predicated its action primarily on the surety bond liability of the petitioner. The petitioner, for its part, denied liability, alleging that the surety bond it issued secured the payment of the Ajax liabilities to the respondent only in relation to the discounting line, which discounting line included only promissory notes and excluded invoices.

The court a quo resolved the case mainly on the question of whether the discounting line included the accounts, evidenced by invoices, assigned to the respondent by the Ajax. In finding for the respondent, it relied on the terms of the surety bond executed by the parties. Such surety bond, according to the court, makes no specification as to the nature of the discounting line. Thus, considering the entire surety bond, the use therein of the words "promissory notes assigned" includes not only promissory notes, as the petitioner insists, but also

"... all receivables where a promise to pay an amount certain for a fixed period is made. The invoices discounted by the plaintiff [respondent herein] contain this promise or undertaking which has the character of a promissory note." [5]

ACCORDINGLY, the resolution of the respondent Court of Appeals of December 12, 1967 dismissing the petitioner's appeal is affirmed, at petitioner's cost.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Docketed as CA -G.R. 38346-R of the Court of Appeals.

[2] Reyes vs. Carrasco and CA, G.R. No. L-28738, March 31, 1971, 38 SCRA 296; Tello, et al. vs. CA, et al., G.R. No. L-32395, March 31, 1971, 38 SCRA 296; Workmen's Insurance Co., Inc. vs. Augusto, et al., G.R. No. L-31060, July 29 1971; De Guia vs. CA, et al., G.R. No. L-33101, July 30, 1971.

[3] Miranda vs. Guanzon, et al., 92 Phil. 168; Valera vs. CA, et al., G.R. No. L-29416, January 28, 1971, 37 SCRA 80.

[4] Workmen's Insurance Co., Inc. vs. Augusto, et al., supra; De Guia vs. CA, et al., supra.

[5] Record on Appeal, p. 22.

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