

SENECIO M. DURAN, PETITIONER, VS. COURT OF APPEALS (SPECIAL SECOND DIVISION COMPOSED OF JUSTICES RUPERTO G. MARTIN, CHAIRMAN, ARSENIO SOLIDUM AND JUAN O. REYES, MEMBERS), JOSE S...

G.R. No. L-33798. July 14, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

In this special civil action of certiorari, petitioner Senecio M. Duran contends that the Court of Appeals acted with grave abuse of discretion in issuing its resolution dated June 9, 1971, denying his motion to dismiss the appeal of the respondents Jose Chan, et al. That motion was based on the ground that the record on appeal does not show on its face that the appeal was perfected within the reglementary period.

The lower court's decision was rendered after the defendants, now respondents Jose Chan, et al., and their counsel failed to appear at the trial and the plaintiff submitted his evidence ex parte.

The record on appeal shows that defendants' counsel received a copy of the lower court's decision on July 29, 1970; that twenty days later, or on August 18, 1970, they filed a verified motion for new trial based on the ground, inter alia, that due to accident they and their counsel were not able to attend the scheduled hearing; that the said motion was supported by an affidavit of merits; that it was denied and a copy of the order of denial was served upon defendants' counsel on October 5, 1970, and that, as admitted by the petitioner, defendants' appeal was perfected on October 12, 1970 (p. 3, Motion to Dismiss Appeal, p. 18, Rollo).

However, it turned out that that admission was made under a mistake of fact because, after the petitioner had filed his petition herein, he discovered that the record on appeal was filed on October 22, 1970 or beyond the thirty-day reglementary period computed from the date the defendants received a copy of the lower court's decision. Hence, the petitioner contends that the defendants' appeal should be dismissed because it was not perfected within the reglementary period.

That contention is not correct. This case is similar to *Vda. de Borromeo vs. Court of Appeals and Borromeo*, 110 Phil. 155, where it was held that a motion for new trial based on the ground of mistake or excusable neglect may be treated as a petition for relief under Rule 38 of the Rules of Court and that the order denying that motion is appealable within thirty days from the receipt of a copy of the order of denial (See 2nd paragraph of sec. 2, Rule 41).

As explained in the *Borromeo* case, where, as in the instant case, the lower court's judgment in plaintiff's favor was rendered ex parte, because of the nonappearance of the defendant and his counsel, "it would be futile to appeal" from such judgment "because the aggrieved party would have no evidence upon which to rely to secure a reversal of the judgment" "unless he would rely for its reversal on insufficiency or perhaps inherent improbability of the evidence presented by the winning party." Hence, the appeal should be made from the order denying the

motion for new trial and the thirty-day period should be computed from the receipt of that order.

Applying to this case the ruling in the Borromeo case, the defendants had thirty days from October 5, or up to November 4, 1970, within which to perfect their appeal. Since their record on appeal was filed on October 22, 1970, its filing was within the reglementary period.

The petitioner points to an alleged "alteration" or falsification on page 104 of the printed record on appeal where the date "October 12, 1970" should read October 21, 1970 because the latter date is the date found in the typewritten record on appeal.

To explain that discrepancy, the defendants submitted three affidavits of the proofreaders who swore that the printing of the date, October 12, 1970, was a typographical error. We regard that explanation as satisfactory.

The petitioner argues that, because the record on appeal does not show the date when defendants' (now respondents') notice of appeal was filed, there was no compliance with the material data rule found in section 6, Rule 41 of the Rules of Court.

That argument is devoid of merit because it is based on the assumption that the thirty-day period should be computed from July 29, 1970 when the defendants were served with a copy of the decision. As already pointed out above, that period should be computed from October 5, 1970. Considering that the record on appeal was approved on October 27, 1970, it is evident that the notice of appeal dated October 12, 1970 was filed within that period.

The petitioner also contends that, because the names of all the defendants are not indicated in the title of the case, the defendants did not comply with the requirement in section 6 of Rule 41 that "the full names of all the parties to the proceedings shall be stated in the caption of the record on appeal". Compliance with that requirement is desirable but noncompliance therewith is not a ground for dismissing the appeal. It is not a new requirement. The 1940 Rules of Court contained that requirement.

In the instant case, although the caption of the record on appeal is deficient, the deficiency is supplied in paragraph II of the complaint found on page 2 of the printed record on appeal which contains the names of all the defendants.

It should be observed that the material data rule, which used to be construed stricti juris, has been relaxed in recent cases in order to avoid injustice and in consonance with the governing principle that procedural rules should be liberally construed to attain substantial justice (Sec. 2, Rule 1, Rules of Court; Del Rosario vs. Conanan, L-37903, March 30, 1977, 76 SCRA 136, 143).

Petitioner's last contention is that the certification of the clerk of court, stating that the pleadings found in the record on appeal are true copies of the originals found in the record, is not in conformity with section 10 of Rule 41 which requires that the clerk of court should further certify to the correctness of the dates of filing and receipt of the pleadings and other papers included in the record on appeal.

Apparently, the clerk of court followed the form of the certification prescribed in the 1940 Rules of Court and was not aware that the old form had been revised in the present Rules of Court. The incomplete certification in this case is not a ground for the dismissal of the appeal (See sec. 1, Rule 50, Rules of Court).

WHEREFORE, the petition is dismissed with costs against the petitioner.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

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