

**ARISTON MAQUI AND GAUDENCIO MAQUI, PETITIONERS, VS. THE
HON. COURT OF APPEALS, MARIA MAQUI ASSISTED BY HER
HUSBAND VENANCIO CARBONELL, AND PEDRO MAQUI,
RESPONDENTS.**

G.R. No. L-41609. February 24, 1976

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court sets aside respondent court's peremptory dismissal of petitioners' appeal because the typewritten copies of the record on appeal for its use (as already approved by the trial court and elevated to it) were submitted three (3) days beyond the sixty-day reglementary period, although the slight delay was for excusable reasons and respondents-appellees were duly and timely served with their copies of the same and had no cause for complaint.

Petitioners as defendants-appellants timely perfected their appeal from an adverse judgment of the La Union court of first instance in a recovery of possession of real estate case filed against them by private respondents as plaintiffs-appellees.

Petitioners' sixty-day deadline under Rule 46, section 5 for submitting typewritten or mimeographed[1] copies of the record on appeal as approved and elevated to the appellate court by the trial court fell due on June 14, 1975. Their counsel, Atty. Benjamin Rivera Sarmiento, submitted the copies of the typewritten record on appeal admittedly three (3) days late on June 17, 1975 but two copies thereof were timely and personally served on respondents' counsel on June 13, 1975.

On June 30, 1975, respondents filed a "Motion to Dismiss Defendants-Appellants' Typewritten Record on Appeal" for having been submitted three (3) days late to respondent appellate court.

Required to comment, petitioners' counsel cited the fact that respondents had no cause for complaint as they were duly and timely served with copies of the record on appeal. As to the three-day delay in submitting the copies of respondent court, he assumed the blame therefor and asked that he, and not his innocent clients, be punished therefor and prayed that respondent court "mete out substantial justice to the litigants by hearing the instant appeal on the merits by denying (respondents') technical objection."

Respondent court[2] per its Resolution of August 13, 1975 "RESOLVED that the MOTION TO DISMISS be GRANTED on the ground of LATE FILING of the Record on Appeal (Section 3, Rule 41, Revised Rules of Court), and that the counsel for appellants be required to SHOW CAUSE within ten (10) days from receipt hereof, why DISCIPLINARY action should not be taken against him for failure to comply with his duty as a lawyer (late filing of Record on Appeal)."

Petitioners' counsel filed an Urgent Motion for Reconsideration and Compliance with the above cited show-cause Resolution, whose contents were summarized by respondent court in its Resolution of September 22, 1975, as follows:

"1. Sec. 3, Rule 41, is not applicable and applicable provision is Sec. 1, Rule 50 in relation to Sec. 5, Rule 46, Revised Rules of Court, which does not mention late filing of Record on Appeal as ground to dismiss appeal;

"2. There was substantial compliance with sec. 5, Rule 46, because counsel filed Record on Appeal three (3) days late due to inclement weather which prohibited him, having chronic asthma and recurrent arthritis, from going out;

"3. No cause for disciplinary action against counsel who has no contract on amount of fees with poor client, and even bought with his own funds the necessary paper and other materials and personally typed Record on Appeal in question; xxx xxx xxx"

In its said Resolution of September 22, 1975, respondent court, after reciting respondents' grounds of opposition that "(1) Counsel for appellants admitted late filing of Record on Appeal (three [3] days) and that it was due to his negligence; (2) Under Rule 50 Sec. 1 (b), the late filing of Record on Appeal is ground to dismiss appeal; (3) Allegation of 'stormy weather', etc. are beside the point," passed sub silentio the question of disciplinary action against Atty. Sarmiento (apparently being satisfied with his explanation) and "RESOLVED, in view of the meritorious grounds of the OPPOSITION thereto, that the MOTION FOR RECONSIDERATION be DENIED."

Hence, the petition at bar, which the Court resolved to treat as a special civil action and declared submitted for decision without need of briefs for an expeditious determination of the simple issues involved.

1. Respondent court gravely erred, as urged by petitioners, in citing Rule 41, section 3 and Rule 50, section 1(b) as authority for its dismissing the appeal simply because its typewritten copies of the record on appeal were submitted to it three (3) days late.

Rule 41, section 3 provides a thirty-day period in the court of first instance from notice of its judgment within which to file an appeal to the Court of Appeals by filing a notice of appeal, and appeal bond and a record on appeal, and section 13 of the same Rule authorizes dismissal of the appeal by the court of first instance where such requirements are not filed within the said reglementary 30-day period. The cited Rule clearly has no application, for petitioners had timely perfected their appeal in the court of first instance and what is involved here are merely the printed or typewritten copies of the record on appeal (as approved in the Court of First Instance and transmitted to the Court of Appeals[3]) which the appellants are required to submit to the appellate court after notice from its clerk of receipt of the record on appeal from the trial court.[4]

Rule 50, section 1(b) which provides that "An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, *** (for) (b) Failure to file, within the period prescribed by these rules, the notice of appeal, appeal bond or record on appeal" as one of the grounds for dismissal of appeal by the Court of Appeals explicitly refers also to failure of the appellant to timely comply with the three requirements for perfecting an appeal in the court of first instance which may be raised anew in the Court of Appeals notwithstanding the trial court's allowance of the appeal.[5] The cited Rule clearly has no application likewise for the reason already stated that there is no question nor dispute that petitioners had timely perfected the appeal in the court of first instance.

2. Petitioners' counsel rightfully contended that he had substantially complied with the requirement of submitting to respondent court the typewritten copies of the record on appeal within the 60-day period provided in Rule 46, section 5, although three days late because of the stormy weather which aggravated his chronic asthma and recurrent arthritis and prevented him from leaving his home to file or mail the record on appeal.[6] He had timely served respondents-appellees with their copies of the record on appeal on June 13, 1975.

The three-day delay in the submittal of respondent court's copies of the record on appeal could not possibly

prejudice any substantial rights. Not a single day of delay in the progress of the appeal was incurred, since the briefs were yet to be filed upon notice for the purpose which was yet to be issued by respondent court's clerk upon receipt of the transcripts and exhibits from the trial court.[7]

A rigid adherence to the technical rules of procedure disregards the fundamental aim of procedure to serve as an aid to justice, not as a means for its frustration,[8] and the objective of the Rules of Court to afford litigants just, speedy and inexpensive determination of their controversy. Thus, excusable imperfections of form and technicalities of procedure or lapses in the literal or rigid observance of a procedural rule or non-jurisdictional deadline provided therein should be overlooked and brushed aside as trivial and indecisive in the interest of fair play and justice when public policy is not involved, no prejudice has been caused the adverse party and the court has not been deprived of its authority or jurisdiction.[9]

3. Outside of the jurisdictional period of thirty (30) days for the perfection of an appeal in the court of first instance, (under Rule 50, section 1 [b], non-observance of which deprives the appellate court of jurisdiction to entertain the appeal, supra,[10] the Court has held in effect in *Philippine National Bank vs. Philippine Milling Co., Inc.*,[11] that Rule 50, section 1 which provides specific grounds for dismissal of appeal manifestly "confers a power and does not impose a duty. What is more, it is directory, not mandatory."

The Court there stressed through then Chief Justice Roberto Concepcion that "failure of the appellant ... to serve and file the required number of copies of his brief" within the reglementary period (Rule 50, section 1[f]) did not make it the appellate court's "ministerial duty to dismiss the appeal and remand the case for execution to the court of origin" since it had "discretion to dismiss or not to dismiss (the) appeal" and that "said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case."

Here, far from being "beside the point" as contended by respondents, Atty. Sarmiento's zeal and fidelity to his clients (petitioners)(with whom he had no fixed contract for professional services) to the extent of himself buying the needed coupon bond and carbon paper and personally typing the records on appeal when he realized that "appellants were encountering insurmountable difficulties in raising the necessary money for the printing of the Record on Appeal"[12] deserved commendation and certainly called for the exercise of sound discretion by a summary denial of respondents' motion to dismiss as based on a totally trivial and petty ground.

ACCORDINGLY, respondent appellate court's Resolutions dismissing petitioners' appeal are set aside and the case is remanded to it for further proceedings and disposition of the appeal on its merits. With costs against private respondents.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

[1] As permitted by the Court's en banc Resolution of September 17, 1974.

[2] Special First Division composed of Pascual, J. acting chairman, and de Castro and Agcaoili, JJ. members.

[3] See Rule 46, Sec. 3.

[4] See Rule 46, Secs. 4 and 5.

[5] This was formerly provided in Rule 52, section 1 (a) of the Old Rules of Court and is now found in Rule 50, section 1 (b) as above quoted. As applied in *Garganta vs. Court of Appeals*, 105 Phil. 412, 418, "if an appeal be not taken within the reglementary period, the judgment becomes final and the legality of the allowance of the appeal and of the denial of the motion to dismiss the appeal by the trial court and the appellate court, to which the

appeal had been forwarded, may always be raised because it concerns the jurisdiction of the appellate court, a point which may be raised at any stage of the proceedings in the appellate court."

[6] Counsel thus stated his plight: "(T)he last day of the sixty (60) day period within which to file and serve the printed or typewritten Record on Appeal was on June 14, 1975, which is a Saturday. From the evening of the next day Sunday, through the whole of the next day Monday, until about noon Tuesday, June 17, 1975, the weather was stormy, and it did not rain but it poured. In the 'squatter area' of Roxas District, Quezon City, where undersigned Counsel for appellants resides, this weather was most especially inclement. Afflicted with chronic asthma and recurrent arthritis which are triggered off by such severe weather, undersigned Counsel had no other recourse but to file, as he did file, the Record on Appeal which he himself had to personally type, on the afternoon of said June 17, 1975." (C.A. Record, p. 144).

[7] See Rule 46, sections 8 and 9.

[8] *Economic Ins. Co. vs. Uy Realty Co.*, 34 SCRA 744, 749.

[9] Cf. *Alonso vs. Villamor*, 16 Phil. 315.

[10] See fn. 5.

[11] 26 SCRA 712, 715 (1969), involving a petition to dismiss the appeal for failure to timely file a motion for extension of time to file appellant's brief.

[12] C.A. Record, page 146.

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