

INDUSTRIAL COMPANY, INC., PETITIONER, VS. COURT OF APPEALS AND PEREZ HONG, RESPONDENTS.

G.R. No. L-30083. October 22, 1970

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Petition for review by certiorari of the resolutions of the Court of Appeals, dismissing the appeal in CA-G.R. No. 40816-R, and denying therein appellant's motion for reconsideration of the resolution of dismissal. The facts and issue in this case are simple and undisputed.

Perez Hong, a merchant engaged in the buying and selling of rice and sugar sacks, filed in the Court of First Instance of Manila an action (Civil Case No. 60463) against the Industrial Company, Inc., a manufacturer of jute bags or sacks, for recovery of the sum of P114,752.50 allegedly representing deposit for, or advance payment of, sacks which the defendant failed to deliver to the plaintiff, with legal interest thereon from the date of default, plus attorneys' fees and costs. The defendant corporation accordingly filed its answer, denying the material averments of the complaint.

On 17 July 1967, after the case was duly heard, the court rendered judgment for the plaintiff, finding that there had really been diversion or misdelivery, at defendant's fault, of certain shipments of jute sacks, the value of which were improperly charged against the plaintiff's money in defendant's possession and which amount was not returned to the former. Consequently, the defendant was ordered to pay to the plaintiff the total sum of P118,752.50, attorneys' fees in the amount of P3,000.00 and the costs of the suit. On 19 August 1967, the defendant filed an appeal bond and notice of its intention to appeal to the Court of Appeals. On 24 October 1967, the trial court approved defendant's record on appeal, and directed the clerk of said court to elevate the record, together with all the evidence, to the appellate court where the case was later docketed as CA-G.R. No. 40816-R. On 5 March 1968, the defendant-appellant filed its printed record on appeal with the Court of Appeals, furnishing the plaintiff-appellee with copies thereof.[1]

On 18 July 1968, plaintiff-appellee filed in the Court of Appeals a motion to dismiss the case, on the ground that the record on appeal failed to show on its face that the appeal was made on time. The motion was at first denied; but on a motion for reconsideration, the prayer of appellee (herein private respondent) was granted, and the case was dismissed by resolution of the Court of Appeals of 19 November 1968. When the appellate court denied the appellant's motion for reconsideration of the dismissal-order, the latter came to this Tribunal by way of the present petition for certiorari.

The controversy here centers on the following averments in the record on appeal:

"13. That on July 17, 1967, the Honorable Court promulgated its decision, copy of which was received by the defendant on July 20, 1967, and which is hereto attached as Annex 'M';

"14. That on August 19, 1967, defendant filed an appeal bond and a notice of appeal copy of which is hereto attached as Annex 'N';

"15. That on the same date defendant moved for and was granted up to September 15, 1967, with-in which to file record on appeal; this period was further extended to October 15, 1967;"

the record on appeal having been admittedly filed on 14 October 1967.

Claiming that the above-quoted allegations do not meet the requirement of Section 6 of Revised Rule 41, to include in the record on appeal such data as would show that the appeal was perfected on time, respondent Perez Hong points out that no copy of petitioner's motions and of the alleged orders of the lower court, extending the period to file the record on appeal until 15 October 1967, were included in the said record on appeal. Neither is there showing in the same record on appeal, according to respondent, when the petitioner had received the orders granting his motions for extension. Hence, it is alleged that the filing of the record on appeal on 14 October 1967 was made out of time. For his part, petitioner disputed the allegations and asserts that there was compliance with the Rules in the case.

We sustain petitioner's contention. Section 6 of Revised Rule 41 is clear:

"SEC. 6. Record on Appeal; form and contents thereof. -- The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include 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. x x x"

As thus provided, the following things must appear and be included in the record on appeal: (1) the full names of all the parties to the proceedings, to appear in its caption; (2) the order or judgment from which the appeal is being taken; (3) copies of 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 issues involved"; and (4) such data as will show that the appeal was perfected on time.

Considering that appellant's motions for extension of the period within which to file the record on appeal, as well as the orders of the court granting the same, are neither related to the judgment from which appeal is being taken, nor necessary to the proper understanding of the issue or issues involved therein, there actually exists no imperative necessity to incorporate copies thereof in the record on appeal. As regard this case, therefore, it is enough, for purposes of the rule, that the record on appeal should contain data or information by which the reviewing tribunal, without going into the original records, may be apprised of the timeliness or untimeliness of the appeal. And this was substantially satisfied when the defendant (herein petitioner) re-cited in the record on appeal that he was notified of the decision being appealed on 20 July 1967; that the notice of appeal and appeal bond were filed on 19 August 1967; that at his instance, the period to file the record on appeal was extended by the lower court -- first, up to 15 September 1967, and again, until 15 October 1967; that the record on appeal was actually presented on 14 October 1967[2], or before the extended period therefor had expired. By such recital in the record on appeal, the appellate court was readily informed that the prescribed period for filing the said record had been observed. If the recitals in the record on appeal concerning the extensions of the period for filing it were in any way incorrect or untrue, it was incumbent upon respondent herein, or his counsel, to have objected in due time to the approval of the said appeal record by the trial court.

The rulings rendered in previous cases[3] passed upon by this Court, and cited by respondent, are not here applicable. For unlike in the present case, there was nothing in the respective records on appeal involved in the rulings invoked that indicated when appellants were notified of the appealed decisions or orders, nor were there data in the said records on appeal that would have enabled the appellate court to determine by itself whether the appeals were timely made or not.

It is evident, in the circumstances, that the dismissal of the appeal by the Court of Appeals was improper.

WHEREFORE, the resolutions of the Court of Appeals under review are hereby set aside, and the appeal in CA-G.R. No. 40816-R is ordered reinstated for consideration and resolution on its merits by the respondent Court of Appeals. No costs.

Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.

Concepcion, C.J., on official leave.

Villamor, J., did not take part.

[1] Page 9, Petitioner's Brief.

[2] Page 3, Respondent's Brief.

[3] Government of the Phil. vs. Antonio, L-23736, 19 Oct. 1965, 15 SCRA 119; DBP vs. Santos, L-26387, 27 Sept. 1966, 18 SCRA 113; Araneta vs. Madrigal & Co., Inc., et al., L-26227-28, 25 Oct. 1966, 18 SCRA 446; Jocson vs. Robles, L-23433, 10 Feb. 1968, 22 SCRA 521; Dequito vs. Lopez, L-27757, 28 March 1968, 22 SCRA 1352; Anot vs. Bermudo, L-29417, 21 September 1968, 25 SCRA 53.

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