

CARLOS DIMAYUGA, PETITIONER, VS. PHILIPPINE COMMERCIAL & INDUSTRIAL BANK AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-42542. August 05, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari seeking to set aside the resolutions of the respondent Court of Appeals dated: (a) September 30, 1975, dismissing the appeal of petitioner in CA-G.R. No. 57556-R entitled "Philippine Commercial and Industrial Bank, Plaintiff-appellee vs. Pedro C. Tanjuatco, et. al., Defendants-appellants", (b) November 21, 1975 denying petitioner's motion for reconsideration, and (c) January 13, 1976 denying petitioner's second motion for reconsideration.

Petitioner Carlos Dimayuga is the defendant-appellant in a case for collection of sum of money against whom the decision was rendered by the trial court on May 28, 1974.

Plaintiff, who is now the respondent in the instant petition, is a banking institution duly organized and existing under and by virtue of the laws of the Philippines and is the creditor of petitioner.

On February 6, 1962, petitioner borrowed from the plaintiff the sum of ten thousand (P10,000.00) pesos as evidenced by a promissory note executed and signed by Pedro Tanjuatco and Carlos Dimayuga. The indebtedness was to be paid on May 7, 1962 with interest at the rate of ten percent (10%) per annum in case of non-payment at maturity as evidenced by and in accordance with the terms and conditions of the promissory note executed jointly and severally by defendants.

In the aforementioned promissory note, Carlos Dimayuga bound himself to pay jointly and severally with Pedro Tanjuatco interest at the rate of 10% per annum on the said amount of P10,000.00 until fully paid. Moreover, both undertook to "jointly and severally authorize the respondent Philippine Commercial and Industrial Bank, at its option to apply to the payment of this note any and all funds, securities or other real or personal property of value which hands (sic) on deposit or otherwise belonging to anyone or all of us." (p. 56, RA; Rollo, p. 15).

Upon the default of the promissory to pay, a complaint was filed on July 11, 1969 by the Philippine Commercial and Industrial Bank for sum of money.

Defendant Carlos Dimayuga, now petitioner, however, had remitted to the plaintiff (now respondent) the amount totalling P4,000.00 by way of partial payments made from August 1, 1969 to May 7, 1970 as evidenced by corresponding receipts thereto. These payments were nevertheless applied to past interests, charges and partly on the principal.

On May 28, 1974, the trial court rendered a decision holding defendants jointly and severally liable to pay the plaintiff the sum of P9,139.60 with interest at 10% per annum until fully paid plus P913.96 as attorneys' fees and costs against defendants.

On July 11, 1974, petitioner filed a motion alleging that since Pedro Tanjuatco died on December 23, 1973, the money claim of the respondents should be dismissed and prosecuted against the estate of the late Pedro Tanjuatco as provided in Sec. 5, Rule 86, New Rules of Court. On June 22, 1974, the trial court denied the motion for lack of merit.

Not satisfied, the petitioner appealed to the respondent court. The appeal was opposed by the respondent PCIB in a motion to dismiss the appeal, on the ground that the record on appeal did not disclose data showing that the appeal was perfected on time. In opposition to the respondent's motion to dismiss, the petitioner Carlos Dimayuga insisted that the appeal was perfected on time. On September 30, 1975, the Court of Appeals in a resolution dated September 30, 1975 dismissed the appeal for failure of the Record on Appeal to show on its face that the appeal was timely perfected.

Hence, this petition.

It is alleged by herein petitioner that the Court of Appeals erred in dismissing the appeal on the ground that the printed records on appeal failed to show that it was perfected on time.

On March 18, 1976, the respondent Philippine Commercial and Industrial Bank filed its comment. In the resolution dated April 2, 1976, the Supreme Court through its Second Division resolved to treat the petition for review as a special civil action and required both parties to submit their simultaneous memoranda.

On May 10, 1976, the petitioner submitted his memorandum while private respondent submitted its corresponding memorandum on May 25, 1976.

The main issue in this case is whether or not the Court of Appeals erred in dismissing the appeal for failure of the Record on Appeal to show on its face that the appeal had been timely perfected.

Among others, respondent PCIB's objection to this appeal is predicated on the fact that petitioner failed to state in his record on appeal the date when he received the copy of the decision, the denial and/or granting of the second motion filed although the same may be found in a motion for reconsideration. Respondent bank insisted that petitioner's belated act in reciting the data in a motion for reconsideration of the resolution of the Court of Appeals did not cure this defect.

This issue has long been laid to rest. Although no record on appeal is now required to take an appeal (section 39, BPB 129), this Court had long discarded the rigid application of the material data rule (section 6, Rule 41) in appeals from Courts of First Instance to the Appellate Court (*Luzon Concrete Products, Inc. v. Court of Appeals*, 135 SCRA 463 [1985]; *Abando v. C.A.*, 83 SCRA 511 [1978]). Thus, the mere absence of a formal order granting the motion for extension of time to file record on appeal should not be fatal to the petitioner if the record on appeal filed within the requested period was approved by the court a quo. The approval thereof, as in the case at bar, carries with it the approval of the motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal (*Berkenkotter v. Court of Appeals*, 53 SCRA 22 [1973]). The appellate court may properly rely on the trial court's order of approval and could determine therefrom without sending for or examining any other records that the appeal was perfected on time as expressly found by the trial court (*Saura Import & Export Co., Inc. v. Court of Appeals*, 83 SCRA 276 [1978]).

In fine, the appeal interposed by the petitioner from the decision of the trial court should be given due course. However, to remand the case to the Court of Appeals would only delay the final disposition of this case. On the other hand, this Court has consistently ruled that remand of a case to a lower court for the reception of evidence is not necessary where the Supreme Court could resolve the dispute already based on the records before it (*Quisumbing v. C.A.*, 122 SCRA 704 [1983]; *Board of Liquidators vs. Zulueta*, 115 SCRA 549 [1982]; *Velasco v.*

C.A., 95 SCRA 617 [1980]). A case involving an interlocutory order which would have been referred to the Court of Appeals was decided by the Supreme Court if only to make up for time lost (*Sacdalan v. Bautista*, 56 SCRA 176 [1974]). Finally, in view of the long pendency of a case, this Court finds “that the greater interest of justice demands that the case should be disposed on the merits at this stage x x x” (*Limpan Investment Corporation v. Sundiam*, 157 SCRA 209 [1988]).

From the evidence presented, there can be no dispute that Carlos Dimayuga bound himself jointly and severally with Pedro C. Tanjuatco, now deceased, to pay the obligation with PCIB in the amount of P10,000.00 plus 10% interest per annum. In addition, as above stated, in case of non-payment, they undertook among others to jointly and severally authorize respondent bank, at its option to apply to the payment of this note, any and all funds, securities, real or personal properties, etc. belonging to anyone or all of them. Otherwise stated, the promissory note in question provides in unmistakable language that the obligation of petitioner Dimayuga is joint and several with Pedro C. Tanjuatco.

It is the position of the petitioner that Pedro Tanjuatco having died on December 23, 1973, the money claim of PCIB should be dismissed and prosecuted against the estate of the late Tanjuatco.

This contention is untenable.

It is well settled under the law and jurisprudence that when the obligation is solidary, the creditor may bring his action in toto against the debtors obligated in solidum. As expressly allowed by Article 1216 of the Civil Code, the creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. “Hence, there is nothing improper in the creditor's filing of an action against the surviving solidary debtors alone, instead of instituting a proceeding for the settlement of the estate of the deceased debtor wherein his claim could be filed.” (*Imperial Insurance Inc. v. David*, 133 SCRA 317 [1984]). The choice is undoubtedly left to the solidary creditor to determine against whom he will enforce collection (*PNB v. Independent Planters Association Inc.*, 122 SCRA 113 [1983]).

WHEREFORE, the resolutions of the Court of Appeals dated September 30, 1975, November 21, 1975 and January 13, 1976 are Reversed and Set Aside. The appeal interposed by petitioner-appellant is Dismissed for lack of merit and the decision of the Court of First Instance of Manila, Branch VI dated May 28, 1974, is Affirmed in toto.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Davide, Jr., JJ., concur.

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