

**JESUSA LIQUIDO, CLEMENTINA LIQUIDO, CLEMENTINO LIQUIDO,
ADELENDEZ LIQUIDO, FRANCISCO LIQUIDO, FELICISIMA LIQUIDO,
JUAN LIQUIDO, JR., AND JOVITA LIQUIDO, PETITIONERS, VS. THE
HON...**

G.R. No. L-39631. October 23, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this appeal by Certiorari, we are called upon to review the Resolutions of respondent Court of Appeals[1] upholding the Order of the Court of First Instance of Surigao del Norte, Branch II, in its Civil Case No. 2107, disallowing petitioners' appeal for failure to file the Record on Appeal within the reglementary period, and for not having served upon private respondents a copy of the Appeal Bond.

It is undisputed that petitioners had up to January 19, 1974 within which to perfect an appeal from an adverse Decision in Civil Case No. 2107 wherein they were the defendants and private respondents the plaintiffs. Petitioners duly filed the Notice of Appeal and a property Appeal Bond on January 11, 1974 and January 19, 1974, respectively.

On January 18, 1974, or one day before the last day for the perfection of the appeal, petitioners moved for 15 days extension from deadline within which to submit their Record on Appeal, and prayed that the Motion be included in the Court's calendar of January 21, 1974.[2] The Motion, however, remained unacted upon as the Presiding Judge was out-of-town.

On February 1, 1974, or on the 13th day of the requested extension, petitioners filed their Record on Appeal.

The Trial Court disallowed the appeal on the ground that petitioners could not assume that their Motion for Extension would be favorably acted upon by the Court and that it was incumbent upon them to have followed up the outcome of their Motion with the Court. Petitioners' request for reconsideration was similarly denied.

On June 13, 1974, petitioners elevated the case to this Tribunal on Certiorari and Mandamus (G.R. No. L-38880), but we referred the same to respondent Court in our Resolution of July 12, 1974.[3]

On August 7, 1974, respondent Court affirmed the findings of the Court a quo and denied due course to the Petition. Reconsideration was likewise rejected. It is these Resolutions that are now assailed before us.

Following the trend of liberality in meritorious cases adopted by this Court in more recent years, we are constrained to reverse.

While it may be true that it was not for petitioners to have assumed that their prayer for extension would be granted, it is equally true that petitioners submitted their Record on Appeal within the extended period prayed for. Petitioners' Motion for Extension did not affect the substantive rights of private respondents as it merely sought to extend the period to file the Record on Appeal, which extension may be granted by the Trial Court upon

application made prior to the expiration of the original period.[4]

Neither can we sanction the dismissal of petitioners' appeal by the Trial Court due to petitioners' failure to serve respondents with a copy of the pro-party Appeal Bond. That bond was filed within the reglementary period. And while it may be that Section 3, Rule 41 of the Rules of Court[5] requires service in order that the adverse party could examine the bond and interpose any objection thereto, such notice cannot be considered jurisdictional and fatal to petitioners' appeal. As in the filing of Records on Appeal, this Court has invariably taken a liberal attitude in favor of an appellant in the matter of the filing of appeal bonds in relation to the perfection of appeals.[6] Where non-compliance with service of the Notice of Appeal, Appeal Bond, and Record on Appeal upon the adverse party did not cause any impairment of his right, it will not be considered a ground for dismissal and, in such event, the Court's discretion in giving due course to the appeal would be guided and tempered by the interests of justice.[7]

WHEREFORE, the Petition is granted. The challenged Resolutions of respondent Court of Appeals, dated August 7, 1974 and April 30, 1974, are hereby SET ASIDE. The Court of First Instance of Surigao del Norte, Branch II, is hereby directed to approve petitioners' Record on Appeal, to examine the sufficiency of petitioners' Appeal Bond, and if adequate, to give due course to petitioners' appeal.

No costs.

SO ORDERED.

Teehankee, (Chairman), Vasquez, Relova, and Gutierrez, Jr., JJ., concur.
Plana, J., took no part.

[1] Former Third Division composed of Justices Magno S. Gatmaitan, Chairman, Luis B. Reyes and Efren I. Plana, Members.

[2] p. 5, CA Rollo.

[3] p. 20, *ibid*.

[4] Manuel Yap vs. Court of Appeals, et al., G.R. No. L-51458, July 19, 1982, citing *Berkenkotter vs. Court of Appeals*, 53 SCRA 228 (1973).

[5] "SEC. 3. How appeal is taken. - Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37.

"But where such a motion has been filed during office hours of the last day of the period herein provided, the appeal must be perfected within the day following that in which the party appealing received notice of the denial of said motion."

[6] *Perla Cia. de Seguros, Inc. vs. Concepcion*, 104 SCRA 786 (1981)

[7] *Phil. Resources Development Corp. vs. Narvasa*, 114 Phil. 347 (1962).

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