

JOSE V. ANDRADA, HON. JUDGE JUAN O. REYES AND THE CITY SHERIFF OF MANILA, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, LUZON CEMENT CORPORATION, SIXTO L. OROSA, JR., ERNESTO...

G.R. NO. L-31791. October 30, 1974

Ponente: BARREDO, J.

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BARREDO, J.:

Review of the decision of the Court of Appeals in its CA-G.R. No. 43558-R, Luzon Cement Corporation et al. vs. Hon. Juan O. Reyes, setting aside the order of the trial court dismissing the appeal of herein private respondent and ordering the execution of its decision.

In Civil Case No. 68903 of the Court of First Instance of Manila, Jose Andrada vs. Luzon Cement Corporation et als., after due trial, the court rendered judgment in favor of plaintiff. Within the reglementary period, the defendants, herein private respondents, filed their notice of appeal, appeal bond and record on appeal. Petitioner opposed the approval of the record on appeal on the ground that certain important papers or pleadings had been omitted therefrom. In view of said opposition, the court issued on March 31, 1969 an order directing private respondents to correspondingly redraft their record on appeal and to submit the redrafted record for approval on April 15, 1969.

On April 12, 1969 private respondents filed a "Manifestation and Motion" stating that the papers and pleadings ordered to be incorporated related more to the case of the intervenor, Cielito Zamora, and that the latter should be the one ordered to include the same in her record on appeal. The said "Manifestation and Motion" did not, however, contain any notice of hearing. Instead, the notice under it simply asked the clerk of court to submit the same to the court "immediately upon receipt thereof." (p. 11, Decision, Court of Appeals.) And, relevantly, copy of said "Manifestation and Motion" was received by petitioner Andrada only on April 23, 1969, on which date said petitioner filed a motion seeking the dismissal of the appeal.

On April 15, 1969, the court issued an order this wise:

"It appearing that the time to file the re-drafted Record on Appeal is supposed to be up to this day and since it is possible that the defendants might have sent said re-drafted Record on Appeal by mail, or may file that today, the consideration of the re-drafted Record on Appeal is hereby postponed to April 29, 1969, at 8:30 a.m."

At the hearing on April 29, 1969, respondents insisted they were under no obligation to redraft their record on appeal while petitioner pressed for the dismissal of the appeal. Subsequently, on May 27, 1969, the court issued the following order:

"It appearing that defendants have not complied with the order of the Court dated March 31, 1969, directing them to incorporate in their Record on Appeal the pleadings recited in plaintiff's opposition (Paragraph 2

thereof), and the order dated April 15, 1969, setting the consideration of the Record on Appeal as re-drafted to April 29, 1969, notwithstanding, the motion to dismiss appeal is granted, and the appeal interposed by said defendants is hereby dismissed."

Accordingly, petitioner filed a motion for execution of the judgment whereas the respondents moved for reconsideration of the above order. On July 17, 1969, the court resolved the incidents thus:

"Submitted for resolution before this court are (1) Motion for execution filed by plaintiff; (2) Motion for Reconsideration and Opposition to Motion for Execution; and (3) Opposition to the defendants' motion for reconsideration and reply to the opposition to motion for execution.

"After considering the grounds alleged in the motion for reconsideration and not finding the same to be well taken, the motion to reconsider the order of the court dated May 27, 1969, dismissing defendants' appeal is hereby denied.

"For being well taken, the motion for execution is granted."

Upon these facts, the Court of Appeals held it was grave abuse of discretion on the part of the trial court to have dismissed the appeal, on the theory that inasmuch as no action, whether of approval or denial, appears to have been taken by the trial court on respondents' "Manifestation and Motion" of April 12, 1969, the above order of May 27, 1969 had no legal basis. Moreover, the appellate court considered as inoffensive the defect in the notice of hearing in the "Manifestation and Motion", claiming that petitioners' filing an opposition thereto may be considered as a waiver of the defect.

We cannot agree. This Court has repeatedly made it clear not only that a notice addressed to the Clerk of Court requesting him to "set the foregoing motion for the consideration and approval of this Honorable Court immediately upon receipt hereof" does not comply with the requirements of Section 5 of Rule 15 but also that subsequent action of the court thereon does not cure the flaw, for a motion with a notice fatally defective is a "useless piece of paper." (*Sacdan vs. Bautista*, 56 SCRA 175.) Indeed, considering that it is not disputed that petitioner was actually served copy of the "Manifestation and Motion" only on April 23, 1969, it stands to reason that no proof of such service could have been presented to the court on April 15, 1969, the day of the hearing of the record on appeal set by the court, hence, the court was without authority to act thereon. (*Manakil vs. Revilla*, 42 Phil 81, 84.)

In denying petitioners' motion for reconsideration, the appellate court held:

"By way of justifying the non-action of the respondent Judge on petitioners' manifestation and motion, we note that the respondents have, in the main, presented practically the same arguments which we have already considered and discussed extensively in the decision. They have, nevertheless, presented the transcript of stenographic notes for the hearing held on April 29, 1969 (Annex A, Motion), with which to point to this Court that they have actually objected to petitioners' manifestation and motion for not having been served with copy thereof at least three (3) days before the hearing of the same; and that the petitioners have taken the adamant stand that they would not re-draft their record on appeal. The respondents have also advanced a new argument in that any resolution which the respondent Judge may render on petitioners' manifestation and motion dated April 11, 1969, would be moot, academic and a sheer waste of time in view of the subsequent dismissal of the appeal taken by the intervenor in the same Civil Case No. 68903.

We have gone over the transcript of stenographic notes (Annex A, Motion) and we found nothing therein indicating that petitioners' manifestation and motion praying "that the Order of this Honorable Court, dated March 31, 1969, be directed only to the intervenor and not to the defendants", was actually acted upon, one way or the other, by the respondent Judge and the petitioners accordingly notified of said action.

On page three thereof, the respondent Judge is shown to have remarked: "x x x, I have already ruled on the matter and you must have received my order of April 15 which did not grant your motion. x x x The order of April 15, 1969, however, as already pointed out in the decision, merely postponed the consideration of the re-drafted record on appeal of the petitioners as to April 29, 1969 and, from this, we opined that petitioners' manifestation and motion could not be considered to have been denied impliedly since the postponement order is not, in any manner, inconsistent with petitioners' manifestation and motion, or read to mean that said manifestation and motion has been overruled.

It appears in the transcript of stenographic notes (p. 2, Annex A, Motion) that the private respondent has, indeed, objected to petitioners' manifestation and motion on the ground that it was not served on him on or before April 15, 1969 and it was only on April 23, 1969, that he received copy thereof. We are of the opinion, however, that this fact could not justify the respondent Judge in not resolving petitioners' manifestation and motion. The demands of substantial justice have been satisfied by private respondent's actual receipt of petitioners' manifestation and motion. The purpose of the requirement that notice of motions be served by the applicant or movant to all parties concerned is to afford the latter the opportunity to be heard at the hearing thereof and voice their views on the motion, either by acquiescing with it or by objecting thereto. (Laserna vs. Cruz [CA], 51 O.G. 5225.)"

It is our considered view that the Court of Appeals has misconstrued the import of the trial court's order of April 15, 1973. The remark of Judge Reyes that by his said order, he had not granted respondents' motion is to Us substantially correct, since it is obvious from a reading of the order that the hearing set for April 29, 1969 was for the consideration of the "redrafted Record on Appeal," meaning that the original one was insufficient. Withal, We cannot look with favor at the adamant attitude of respondents relative to His Honor's order for them to redraft their record on appeal. Section 7 of Rule 41 expressly provides that "(i)f the trial judge orders the amendment of the record, the appellant x x x shall redraft the record by including therein . . . such additional matters as the court may have directed him to incorporate." These are not vain words. Much less do they give appellant rather than the court the last say on what should be included or not in the record on appeal. Unless the ground for non-compliance with the court's order is clear and substantial, due regard for the trial court's authority to act in the premises and to exercise its judgment demands that its action should not be disturbed.

In the transcript of stenographic notes referred to in the denial resolution of the Court of Appeals and which are quoted in the petition in this case, the following exchange of words between the court and respondents' counsel appear:

"COURT:

What happened? You are withdrawing the appeal?

ATTY. DE OCAMPO:

No, Your Honor. After we received the order, we filed a motion stating that the documents or pleadings which the plaintiff required us to incorporate in our record on appeal are all pleadings referring to the intervention and not to the defendants in this case. So, we filed that motion asking the Honorable Court that the intervenor should be ordered to amend her record on appeal. All the incidents which took place between the plaintiff and the defendants were all incorporated in the record on appeal.

ATTY. CALINGO:

But, if your Honor please, the alleged motion of the defendants is practically worthless because it was not served to me on or before April 15, 1969 which is the deadline for compliance with the order of this Honorable Court. As a matter of fact, I only came to know of that motion on April 23, 1969 when I received a copy thereof but that was

after the deadline had already expired and that is the reason why I filed my motion to dismiss defendants' appeal in due time. Besides, defendants' alleged motion is only for delay and pro-forma because as shown in my written opposition thereto the pleadings which were sought to be incorporated in their record on appeal do not only pertain to the intervenor but also to the defendants themselves.

ATTY. DE OCAMPO:

If the Honorable Court will see, I believe all the pleadings were included in our record on appeal and therefore only the intervenor should amend her record and not the defendants.

COURT:

You call Atty. Rivera so that he can examine this.

ATTY. DE OCAMPO:

The reason why the intervenor is not here, we do not know whether they are going to file a record on appeal or we are going to file a joint record on appeal.

COURT:

Probably it will not be your concern. You just look only after your own. I have already ruled on the matter and you must have received my order of April 15 which did not grant your motion. By then, you should have taken immediate steps to comply with my order so that all pleadings mentioned should have been included in your record on appeal.

ATTY. DE OCAMPO:

But Your Honor, only the intervenor should amend because some of the pleadings which will refer to the intervention, the defendants were not given copies, Your Honor.

COURT:

But you should have consulted the records here. They are in the records.

ATTY. DE OCAMPO:

Yes, Your Honor, but we maintain that only the intervenors should amend and not the defendants. We already submitted our record on appeal and we included everything."

(Pp, 6-7, Petition.)

From the foregoing, We cannot discern any disposition of respondents to abide by the ruling of the court which could not have cost them much effort to comply with.

PREMISES CONSIDERED, the decision of the Court of Appeals is reversed and respondents' petition for certiorari, prohibition and mandamus granted by the appellate court is dismissed, with the consequence that the orders of the trial court dismissing respondents' appeal and granting the issuance of the writ of execution of its judgment stand. Costs against private respondents.

Fernando, Chairman, Antonio, Fernandez and Aquino, JJ., concur.

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