

ISABEL ANDAYA, PETITIONER, VS. THE COURT OF APPEALS AND BENEDICTO RAMOS, RESPONDENTS.

G.R. No. L-37124. May 05, 1976

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court sets aside respondent court's dismissal of petitioner's appeal and remands it for prompt disposition on the merits on the strength of controlling jurisprudence adopting the liberal acid realistic position that where the fact of due and timely perfection of the appeal is stated in the trial court's order approving the record on appeal and the correctness and veracity of such finding are not impugned or disputed by the adverse party, the appellate court should properly rely on the same and let the appeal take its due course.

Respondent Court of Appeals upon motion of private respondent Benedicto Ramos (plaintiff-appellee in the Court of First Instance of Bulacan) and over the opposition of petitioner (defendant-appellant) issued its questioned Resolution of April 26, 1973, dismissing petitioner's pending appeal, as follows:

"According to page 9, original Record on Appeal, defendant's counsel received copy of decision on 4 Sept., 1972, but on p. 29, it is 4 Oct. 1972. However, in his opposition to motion to dismiss appeal, p. 65, rollo, the true date of receipt by him was 4 September 1972. Since he filed motion for new trial on 19 Oct. 1972, he had consumed 45 days, therefore, even if he received denial thereof on 19 December 1972, and on same date he filed notice of appeal and appeal bond, this was already too late. It is true that in his opposition to the motion to dismiss the appeal, he contends that in the lower court, he had on 4 October 1972 moved for extension by 15 days to file his motion for reconsideration, and this was granted by order of 9 Oct. 1972. Unfortunately, these incidents are not at all reflected in the original Record on Appeal submitted to this Court. IN VIEW WHEREOF, this Court is constrained to sustain the motion for dismissal, and the appeal is ordered dismissed." [1]

While respondent court ruled in rigidly applying the material data rule [2] that petitioner's filing of the notice of appeal and appeal bond on the very same day (December 19, 1972) that she received notice of the trial court's order denying her motion for reconsideration "was already too late", since she filed said motion only on the 45th day from receipt of the adverse decision, the unquestioned and undisputed fact is that she had timely moved for and was granted a 15-day extension to file such motion for reconsideration, only that such motion and order granting the extension were not incorporated in the original Record on Appeal.

What is more, petitioner's Record on Appeal faithfully and duly recited the due dates of filing and texts of her Motion for Reconsideration and respondent's Opposition thereto (which made no pretense that the motion was filed too late or out of time). The Record on Appeal further duly recorded, as indicated in respondent court's Resolution, the text of the trial court's order denying reconsideration and that on the date of its receipt on December 19, 1972, petitioner filed her notice of appeal and appeal bond.

While respondent court's dismissal of the appeal was based solely on the non-inclusion in the Record on Appeal of the 15-day extension granted by the trial court for the filing of petitioner's motion for reconsideration, it may be

mentioned that the Record on Appeal did not include either the 20-day extension for filing thereof which had been granted petitioner by the trial court. It is however undisputed that the Record on Appeal was duly filed on January 8, 1973 within the 20-day extension and set for hearing on January 20, 1973, and that respondent and counsel did not appear nor file any objection thereto.

In its January 22, 1973 Order, the trial court after noting that only petitioner's counsel appeared at the hearing for approval of the Record on Appeal, approved petitioner's appeal bond (filed earlier on December 19, 1972[3]) and granted petitioner's counsel five (5) days as prayed for by him "within which to make the necessary corrections as pointed out by the court from the original record". And in its February 2, 1973 Order, the trial court finding the Record on Appeal "as finally corrected . . . to be in order" approved the same and ordered the clerk of court to transmit the same to the appellate court in compliance with the requirements of the Rules of Court.

Petitioner's motion for reconsideration of respondent court's dismissal of her appeal was denied. Hence, the petition at bar which was submitted for decision on September 8, 1975 on petitioner's brief alone after respondent's counsel's manifestation that they were submitting the case without any brief:

The dismissal of the appeal is set aside.

Since the June, 1975 case of *Pimentel vs. Court of Appeals*[4] where the Record on Appeal did not include the appellant's motion for a 30-day extension to perfect the appeal, the trial court's order granting the extension nor its subsequent order granting appellant a 5-day period to finalize the amended Record on Appeal, the Court has adopted the liberal and realistic position premised on the earlier 1973 case of *Berkenkotter vs. Court of Appeals*[5] that such omissions do not warrant the dismissal of the appeal where the trial court finds and declares in its order of approval of a Record on Appeal that it was filed "on time" or "within the reglementary period" or that the same was "in order"[6] and the correctness, accuracy or veracity of such finding are not impugned, questioned or disputed by the adverse party — "since the appellate court may properly rely on the trial court's order of approval and determination of timeliness of appeal".[7]

As succinctly stated in *Pimentel*, the reason for the material data rule is "to obviate and eliminate waste of time that would be incurred by the appellate tribunal in requiring the lower court to forward the original record and in examining such records to determine the timeliness of the appeal;" and where the trial court in its order approving the record on appeal finds and declares that the same was timely perfected or in order and the correctness and veracity of such finding and declaration are not disputed by the adverse party, the reason for the rule ceases "because thereby the appellate court can rely thereon without the need of sending for and of any further examination of, the original records of the case".

Here, as already indicated, the timeliness of the filing of petitioner's motion for reconsideration (although the order granting the 15-day extension therefor was not included in the record on appeal) is not questioned by respondent, who in fact filed an opposition thereto[8] on its merits and was sustained by the trial court which denied reconsideration.[9] Neither has the fact of timeliness of the filing of the Record on Appeal within the extended period granted by the trial court (although the extension order was again excluded in the record on appeal) been placed in question or impugned by respondent who in fact filed no opposition thereto and no brief in this Court. As already stated, such fact of timeliness was in effect certified by the trial court in its order of approval of the corrected record on appeal, so much so that respondent court did not touch upon this point at all in its dismissal of the appeal.

There being no pretense on respondent's part nor showing that the appeal is frivolous or manifestly dilatory, petitioner's right to appeal must be upheld.

Accordingly, respondent court's dismissal of petitioner's appeal is set aside and the case is remanded to respondent court for proper proceedings and prompt disposition of the appeal on its merits. Without costs.

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

[1] Annex A, petition, Rollo, p. 38; emphasis supplied.

[2] Rule 41, section 6.

[3] Record on Appeal, pp. 40-41.

[4] 64 SCRA 475 (June 27, 1975), per Makasiar, J.

[5] 53 SCRA 228, 236 (Sept. 28, 1973), per Esguerra, J.

[6] Krueger vs. Court of Appeals, L-41063, Jan. 20, 1976, and cases cited, per Muñoz Palma, J.; Rodriguez vs. Court of Appeals, 68 SCRA 262 (Nov. 28, 1975), per Antonio, J.; and Villanueva vs. Court of Appeals, 68 SCRA 216 (Nov. 28, 1975), per Esguerra, J.

[7] Luna vs. Court of Appeals, 67 SCRA 503 (Oct. 30, 1975). See also Morales vs. Court of Appeals, 67 SCRA 304 (Oct. 31, 1975), per Martin, J.

[8] Record on Appeal, page 36.

[9] Record on Appeal, page 39.

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