

**RICARDO JANDOG, DORENDA CORDOVA, CRISTITUTO MANALO, JR.,
AURELIO BARO, FELIX BARO, RODELLIO BARO, JOSE BARO, AND
ALFONSO ALDAYA, PETITIONERS, VS. COURT OF APPEALS, AND
TERESA OC...**

G.R. No. L-39344. September 18, 1978

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari to set aside the Resolution of respondent Court of Appeals, dated April 2, 1974, dismissing petitioners' appeal in CA-G.R. No. 54313-R, Teres Ocampo vs. Ricardo Jandog, et al., for failure of the amended record on appeal to show on its face that the appeal was perfected within the period prescribed by law as well as its Resolutions, dated May 27, 1974 and June 21, 1974, denying petitioners' motions for reconsideration.

Below, in the Court of First Instance of Davao (Branch IX), the herein petitioners were defendants in Civil Case No. 128, an action initiated by herein private respondent for recovery of possession and damages. After due trial, judgment was rendered in favor of private respondent and against the petitioners.[1]

Thereafter, petitioners filed their notice of appeal,[2] appeal bond[3] and record on appeal.[4]

Acting upon private respondent's motion to dismiss appeal[5] and the opposition[6] thereto, the court a quo issued, on January 17, 1973, an Order[7] treating petitioners' opposition as a petition for relief from judgment and dismissed their appeal, copy of which was received by petitioners on January 20, 1973.[8] Reconsideration[9] of this order was denied on February 15, 1973.[10] Thereupon, petitioners filed a second motion for reconsideration,[11] which the trial court, likewise, denied on March 19, 1973.[12]

Dissatisfied, the petitioners filed their notice of appeal, signifying their intention to appeal the aforesaid order of January 17, 1973 to the Court of Appeals, their appeal bond and their record on appeal, on April 10, 1973.[13] In an Order[14] dated July 30, 1973, the trial court approved petitioners' Amended Record on Appeal and directed the elevation of the records of the case to the Court of Appeals.

After the records of the case were elevated to the Court of Appeals, and while the case was pending therein, private respondent filed two (2) petitions to dismiss the appeal.[15] Resolving private respondent's second petition to dismiss appeal,[16] respondent appellate court in its Resolution,[17] dated April 2, 1974, dismissed the petitioners' appeal, for failure of the amended record on appeal to show on its face that the appeal was perfected within the period prescribed by law.

On May 7, 1973,[18] petitioners filed a motion for reconsideration[19] which respondent appellate court denied in its Resolution[20] dated May 27, 1974. On June 14, 1974,[21] petitioners filed a second motion for reconsideration,[22] which respondent appellate court also denied per its Resolution,[23] dated June 21, 1974.

Hence, the instant petition.

The main purpose of Section 6, Rule 41 of the Rules of Court in requiring that the record on appeal shall include such data as will show that the appeal was perfected on time, "is to enable the appellate court to determine on the basis of the record on appeal itself and without the need of any independent evidence, that the appeal has been perfected on time,"[24] and thus "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." [25]

It should be recalled that the dismissal of petitioners' appeal by respondent appellate court is premised upon the fact that the amended record on appeal does not show when petitioners received the Order of the trial court, dated March 19, 1973, denying their second motion for reconsideration, nor does it contain any statement that they were granted the right to file an amended record on appeal and the period within which the same should be filed with the trial court. Thus, respondent appellate court concluded that there is no way of determining whether or not the Amended Record on Appeal was filed with the period for appealing.

It is, however, a fact of record that the trial court in its Order, dated July 30, 1973, approved the Amended Record on Appeal, stating: "The objection to the Amended Record on Appeal by the plaintiff having been corrected by the defendants, the Amended Record on Appeal * * * is (are) hereby approved." The said order of approval, the veracity of which has never been impugned nor objected to, by private respondent, clearly implies that the appeal was filed on time, i.e., the notice of appeal, the appeal bond and the record on appeal were all filed within the reglementary period for appealing. Hence, respondent appellate court could have relied on the aforesaid order of approval and ruled that the appeal was perfected on time. As pointed out by this Court in the case of *Berkenkotter vs. Court of Appeals*, [26] "no trial Judge in his right mind and who is aware of the serious responsibilities of his office, would approve a record on appeal that was not timely filed."

Besides, We find no cogent reason behind the appellate court's requirement that the Amended Record on Appeal should also state that the petitioners were granted the right to file an amended record on appeal and the period within which the same should be filed, in order that the said court could determine whether or not the appeal was perfected on time. Almost always, the "amended" record on appeal is filed after the lapse of the 30-day period for appealing. However, the fact that the amended record on appeal was filed after the reglementary 30-day period, does not render the perfection of the appeal thereof untimely, because the amended record on appeal is deemed to have been filed within the reglementary period. Thus, in the case of *Rodriguez, et al. vs. Court of Appeals, et al.*, [27] this Court, speaking thru Mr. Justice Antonio, held:

"In the case before Us, with the findings * * * *, of the court below that the amended record on appeal 'is in order and in accordance with law' clearly implying that the amended record on appeal was filed on time the veracity of which is not impugned by private respondents. We find no logical purpose to be served by the appellate Court's requirement that the Amended Record on Appeal should also state the date when appellants received the order requiring them to amend the record on appeal for the purpose of enabling said Court to ascertain whether or not the appeal was perfected on time.

"As early as the case of *Vda. de Oyson vs. Vinon*, [28] We ruled that: 'The fact that the amended record on appeal was submitted after the reglementary 30-day period, did not render the perfection thereof untimely, because the amended record on appeal is deemed to have been filed on the presentation of the original, which was done within the reglementary period.' As We explained in *Philippine Independent Church v. Juana Mateo, et al.*, [29] 'amendment presupposes the existence of something to be amended, and, therefore, the tolling of the period should relate back to the filing of the pleading sought to be amended * * *.' [30]

In conclusion, it may not be amiss to state that in view of the more liberal ruling that We have enunciated in recent cases,[31] "the trend" now "of the rulings of this Court is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, freed from the constraints of technicalities." [32]

ACCORDINGLY, the resolution of the Court of Appeals dated April 2, 1974, dismissing petitioners' appeal, and the subsequent resolutions, dated May 27, 1974 and June 21, 1974, denying petitioners' motions for reconsideration, are hereby reversed and set aside. Case remanded to the Court of Appeals for decision on the merits.

No pronouncement as to costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Santos, JJ., concur.

[1] p. 19, rollo.

[2] pp. 19-20, rollo.

[3] pp. 20-21, rollo.

[4] pp. 137-138, Amended Record on Appeal.

[5] pp. 139-142, Amended Record on Appeal.

[6] pp. 142-149, Amended Record on Appeal.

[7] pp. 150-152, Amended Record on Appeal.

The Order, dated January 17, 1973, reads in part as follows:

"In opposing plaintiff's motion to dismiss the appeal, defendants alleged that their inability to file within the reglementary period the record on appeal was due to excusable negligence. The Court shall treat this opposition as a petition for relief from judgment and shall decide whether to give due course to appeal on the grounds alleged thereto.

"The record on appeal bears the date of December 29, 1972, meaning that it was finished only on said date. The real reason therefore for the failure of defendants to file on time their record on appeal was that it was only prepared and finished on December 29, 1972, the last day for its filing. This does not constitute excusable negligence.

"WHEREFORE, the appeal filed by defendants is dismissed."

[8] p. 21, rollo.

[9] p. 22, rollo.

[10] pp. 22-23, rollo.

[11] p. 23, rollo.

[12] Ibid.

[13] Ibid, pp. 205-207, Amended Record on Appeal.

[14] p. 25, rollo. The pertinent portion of said Order reads as follows:

"The objection to the Amended Record on Appeal filed by Plaintiff having been corrected by the defendants, the Amended Record on Appeal and the Appeal Bond are hereby approved.

x x x x x x x x

"Let the original Amended Record on Appeal, together with the certification of correctness, certified true copy of minutes of the proceedings and the order of approval and the original of the documentary evidence be forwarded to the Court of Appeals.

"SO ORDERED." (pp. 208-209, Amended Record on Appeal).

[15] Annexes "E" and "F", pp. 45, 47, rollo.

[16] Annex "F", p. 47, rollo.

[17] Annex "H", p. 59, rollo. The said Resolution reads in part as follows:

"From the foregoing, it would appear that the Notice of Appeal and the Appeal Bond in the amount of P120.00 were filed on April 6, 1973, or 17 days from date of the lower court's order of March 19, 1973, denying the defendant's second motion for reconsideration, or within the 30-day period for appealing. However, there is no showing in the Amended Record on Appeal when the defendant received the Order of March 19, 1973. The same only mentions that the Record on Appeal is dated April 6, 1973. Neither is there any showing when it was actually filed.

"The original record on appeal is not among the records elevated to this Court. There is only the typewritten Amended Record on Appeal, on the upper-right hand corner of the first page of which appears the stamp mark of the Court of First Instance of Davao del Norte, Tagum, bearing the date "6-7-73" as ostensibly being the date when the Amended Record on Appeal was filed in said Court. But there is no statement anywhere in the said Amended Record on Appeal, that appellant was ever granted by the lower court the right to file an amended record on appeal nor the period within which the same was to be filed. There is, therefore, no way of determining whether the Amended Record on Appeal filed in the lower court on June 7, 1973 was filed within the period for appealing.

"The statement contained in the Amended Record on Appeal that the "Record on Appeal dated April 6, 1973 together with the Notice of Appeal and Appeal bond in cash, were all filed within the reglementary period to appeal as prescribed by the Rules of Court" (pp. 154-155, original Amended Record on Appeal) is a mere conclusion of the appellant, and not a statement of any data as required by Section 6, Rule 41 of the Rules of Court. It is also noted that the Record on Appeal which in the aforecited pleading (above) is said to be dated April 6, 1973 was submitted only on June 7, 1973 x x x.

"In view of all the foregoing, the instant appeal is hereby DISMISSED for failure of the Amended Record on Appeal to show on its face that the appeal was perfected within the period prescribed by law." (pp. 61-63, rollo.)

[18] p. 26, rollo.

[19] Annex "I", p. 69, rollo. Pertinently, the motion for reconsideration states that:

"x x x. On May 31, 1973, plaintiff-appellee's counsel filed in the lower court his objection to the approval of the Record on Appeal, hence, the lower court under date of June 1, 1973, issued an order with the following tenor:

'As prayed for, defendants' counsel is given five (5) days to amend the Record on Appeal as indicated in

plaintiff's motion dated May 31, 1973. He is, likewise, given a period of ten (10) days to act on the motion for execution filed by the plaintiff.

'SO ORDERED.

'Given in open court this 1st day of June 1973, at Tagum, Davao, Philippines.'

x x x x x x x x

"The above order was received by defendants-appellants on June 16, 1973, consequently defendants- appellants 'filing their amended Record on Appeal on June 7, 1973, with the lower court has been done on time." (p. 70, rollo.)

[20] Annex "J", p. 75, rollo.

[21] p. 27, rollo.

[22] Annex "K", p. 76, rollo. Attached thereto as annexes are the following:

(1) Certified true copy of the first page of the original Record on Appeal, on the upper-right hand corner of which bears the stamp mark of the Court of First Instance of Davao, bearing the date "4-10- 73", as the date of the original record on appeal was filed with the said court. (Annex "A", p. 87, rollo.)

(2) Certification of the Clerk of Court that the Record on Appeal was filed on April 10, 1973. (Annex "B", p. 88, rollo.)

(3) Certification of the Clerk of Court that the Order of March 19, 1973, denying defendants' second motion for reconsideration was received by defendants on March 31, 1973. (Annex "C", p. 89, rollo.)

[23] Annex "L", p. 90, rollo. The dispositive portion of said Resolution reads as follows:

"WHEREFORE, considering that the Order of the trial court dated June 1, 1973, granting to defendants a period of five (5) days to amend the Record on Appeal, submitted by appellants, does part of the records elevated to this Court, nor does it show that the Amended Record on June 7, 1973 was filed on time, the motion for reconsideration is DENIED." (p. 92, rollo.)

[24] Marcelo Steel Corp., et al. vs. Court of Appeals, et al., L-35851, October 8, 1974, 60 SCRA 181.

[25] Pimentel vs. Court of Appeals, L-39428 and L-39684, June 27, 1975, citing Araneta vs. Madrigal & Co., Inc., L-26227-28, October 25, 1966, 18 SCRA 446, 449-450; Government vs. Antonio, L-23735, October 19, 1965, 15 SCRA 119.

[26] L-36629, September 20, 1973, 53 SCRA 236.

[27] L-37522, November 28, 1975.

[28] L-19360, July 26, 1963, 8 SCRA 455.

[29] L-14793, April 22, 1961, 111 Phil. 752.

[30] See also Rodriguez vs. Court of Appeals, L-37522, Nov. 28, 1975, 68 SCRA 262.

[31] See Pimentel vs. Court of Appeals, L-39423 and L-39864, June 27, 1975; Morales vs. Court of Appeals, et al., L-37229, Oct. 21, 1975; Republic of the Philippines vs. Court of Appeals, et al., L-40495-96, Oct. 21, 1975.

[32] Rodriguez vs. Court of Appeals, et al., supra.

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