

KEATER HUANG, ET AL., PLAINTIFF-APPELLANTS, VS. ASSOCIATED REALTY DEVELOPMENT CO., INC., DEFENDANT-APPELLEE.*G. R. No. L-26421. October 29, 1966*

Ponente: RUIZ CASTRO, J.

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The plaintiffs Keater Huang, et al., on February 2, 1966, filed an "amended bill of costs" in civil case 24091 of Branch III of the Court of First Instance of Manila, praying therein that the same be assessed and taxed as costs against the defendant Associated Realty Development Co., Inc., and that an alias writ of execution be issued for the satisfaction thereof. The Clerk of said court, on March 23, 1966, issued a "taxation of costs", but because this did not include the sum of P206.85, representing the premium on an attachment bond paid to the Associated Ins. & Surety Co., Inc., the plaintiffs appealed to the Judge of said Branch III of the Court of First Instance, contending that the sum in question should have been allowed as part of the costs. In his order of May 30, 1960 the Judge sustained the position taken by the Clerk of Court.

From that order, the plaintiffs have appealed to this Court after their motion for reconsideration thereof was denied.

The counsel for the defendant, on September 20, 1966, moved to dismiss the appeal on the ground that the order in question is not appealable, citing section 1-(i) of Rule 50, in relation to section 1 of Rule 56, Revised Rules of Court.

The order appealed from reads as follows:

"It appearing that from the taxation of the costs, dated March 23, 1966 made by the Clerk of Court, the docket fee paid by the plaintiff covered by Official Receipt No. A-5070202 in the sum of P24.00 with the Supreme Court has not been included and since such kind of fee is allowed as costs under Sec. 11 (c), Rule 42 of the Rules of Court, said docket fee is hereby ordered included in the taxation of costs and to that effect, the taxation of costs made by the Clerk should be amended so that the grand total thereof shall be P243.00. The premium in the attachment bond and appeal bond paid by the plaintiffs are not allowed as costs and hence the Court denies the same." (underlining ours.)

It is our view that the motion to dismiss the appeal may not be sustained on the ground invoked by the appellee. The quoted order is not interlocutory because it definitely ruled as not allowable costs the sum paid by the appellants as premium on the attachment bond. There is nothing more that needs to be done with the claim in the lower court. The order puts an end to the litigation, and, in the absence of a timely appeal, may be executed in the ordinary course of law. We therefore hold that the order of May 30, 1966 is appealable.

The issue proposed to be taken up on appeal is, whether the amount paid as premium on the attachment bond in connection with civil case 24091 is taxable as costs. We hold the contrary, because under the clear provisions of section 10 of Rule 142, Revised Rules of Court (sec. 10 of Rule 131, old Rules of Court, which is a reproduction of sec. 492 of the Code of Civil Procedure), it is unmistakably not one of the enumerated items that may be

recovered as costs by a prevailing party against a losing party in an action or proceeding in the Court of First Instance. We hereunder quote section 10 of Rule 142:

"Costs in Courts of First Instance.- In an action or proceeding pending in a Court of First Instance, the prevailing party may recover the following costs, and no other:

- (a) For the complaint or answer, fifteen pesos;
- (b) For his own attendance, and that of his attorney, down to and including final judgment, twenty pesos;
- (c) For each witness necessarily produced by him, for each day's necessary attendance of such witness at the trial, two pesos, and his lawful traveling fees;
- (d) For each deposition lawfully taken by him, and produced in evidence, five pesos;
- (e) For original documents, deeds, or papers of any kind produced by him, nothing;
- (f) For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies;
- (g) The lawful fees paid by him in entering and docketing the action or recording the proceedings, for the service of any-process in action, and all lawful clerk's fees paid by him,"(underscoring ours)

Hunter, Kerr & Co. vs. Murray, 48 Phil. 499, 505, cited by the appellants in their opposition to the motion to dismiss, is completely irrelevant in this case. The pertinent portion of the decision reads as follows:

"As to the costs and legal expenses entitled to preference under section 79 of Act No. 1956, section 492 of the Code of Civil Procedure enumerates the lawful costs which may be recovered, and section 79 of Act No. 1956 aforesaid authorizes the payment of lawful expenses, among which the premium paid upon the bond, which the law requires before an attachment bond may be issued, may very well be included. The only costs and lawful expenses, therefore, to which the appellant is entitled in the Court of First Instance of Manila are: x x x; For the premium upon the bond, P211.06; x x x." (underscoring ours)

Hunter, Kerr & Co. vs. Murray was an insolvency proceeding, and it was by express mandate of section 791 Act 1956, otherwise known as "The Insolvency Law", that this Court considered the premium paid on the attachment bond as one which may well be included as part of costs. Thus, section 79 provides:

"When an attachment has been made and is not dissolved before the commencement of proceedings in insolvency, or is dissolved by an undertaking given by the defendant, if the claim upon which the attachment suit was commenced is proved against the estate of the debtor, the plaintiff may prove the legal costs and disbursements of the suit, and of the keeping of the property, and the amount thereof shall be a preferred debt."

The premium paid on the attachment bond in the present case sought to be included as part of costs arose from civil case 24091 which is not an insolvency proceeding; for this reason section 79, Act 1956, may not be invoked as authority for its recovery. All, therefore, that the appellants may recover as costs are only those allowed by section 10 of Rule 142 of the Rules of Court, and no more; no exercise in mental dexterity can read into the ambit of the said section the sum paid as premium on the attachment bond.

This appeal should, therefore, be dismissed outright on the ground that it is manifestly and palpably frivolous and completely devoid of merit. On the face of the record on appeal before us as well as the pleadings filed by both parties, there is absolutely no prospect "that the order in question will be reversed or even modified, in view of the unequivocal provisions of section 10 of Rule 142 of the Rules of Court governing costs which the prevailing party may recover in the Court of First Instance. Permitting this appeal to continue is purposeless; it can only result in a

needless waste of time and effort and useless expense on the part of the parties and of this Court.

On at least three previous occasions, this Court summarily dismissed the appeal on the self-same ground: that the appeal was manifestly frivolous and completely devoid of merit. Thus:

"x x x Although, as a general rule, an appeal should not be dismissed on a ground which goes to the merits of the cause or to the right of plaintiff or defendant to recover, yet, in exceptional instances, an appellate court may order the dismissal when the appeal appears to be manifestly and palpably frivolous. And where, as in the instant case, the dismissal has been ordered by the trial court, it will not be disturbed in the appellate court if the latter finds the appeal to have been interposed ostensibly for delay. It has been held that a frivolous appeal is one presenting no justiciable question, or one so readily recognizable as devoid of merit on the face of the record that there is little, if any, prospect that it can ever succeed. The instant case is one such instance in which the appeal is evidently without merit, taken manifestly for delay." (De la Cruz, et al. vs. Blanco, et al., 73 Phil. 596) (underscoring ours)

In refusing to approve the record on appeal, the respondent Judge seems to have labored under the impression that the appellant and herein petitioner was appealing from the court's decision of September 12, 1947, this, judging from the ground or reason given for the refusal, namely, that the record on appeal was filed beyond the reglementary period. But in reality the appeal was being taken from the order of January 8, 1948, denying the petition to set aside the decision of September 12, 1947, a petition presumably based on section 2, Rule 38 of the Rules of Court. That order of denial was, of course, proper and complete, the respondent Judge was bound to approve it and he may be compelled to do so by a writ of mandamus. So, strictly and legally speaking, the present petition for mandamus may be granted. However, before acting upon the petition, we may inquire into the facts involved in order to determine whether once the writ of mandamus is granted and the case is brought up here on appeal, the appellant has any chance, even possibility of having the basic decision of the trial court of September 12, 1947, set aside or modified; for if the appellant has not that prospect or likelihood, then the granting of this writ of mandamus and the consequent appeal would be futile and would mean only a waste of time to the parties and to this Court. This inquiry can easily be made from a copy of the record on appeal now before us as well as the pleadings filed by both parties." (Paner vs. Yatco, 87 Phil. 271, 274.) (underscoring ours)

And in Manila Railroad Company vs. Ballesteros, et al., G.R. No. L-19161, April 29, 1966, this Court, citing De la Cruz vs. Blanco and Quevedo, supra, and Paner vs. Yatco, supra, denied a petition for mandamus to set aside an order dismissing an appeal and to order the respondent court to give due course to said appeal, after having found that the issues to be taken up in the intended appeal are no longer justiciable questions which would justify the issuance of the peremptory writ, for there was no possible doubt pursuant to the provisions of law therein involved, that the plaintiffs in that case (respondents in the petition for mandamus) were entitled to the judgment rendered in their favor which was the subject of the intended appeal.

The issues proposed to be taken up on appeal, as set forth in the petition, are whether or not Dionisio Abello acted with reckless negligence while driving petitioner's bus at the time of the accident, and whether or not petitioner may be held liable on account of such negligence, considering that he was not its employee. These are no longer justiciable questions which would justify our issuing the peremptory writ prayed for. The first is a question of fact on which the affirmative finding of respondent court is not reviewable by Us; and the second is one as to which there can be no possible doubt in view of the provisions of the Civil Code and of the Motor Vehicle Law hereinbefore cited. There would be no point in giving the appeal due course."

ACCORDINGLY, the instant appeal is hereby dismissed, with treble costs against the plaintiffs-appellants.

Concepcion, C.J., Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Sanchez, JJ., concur.

Barrera, J., on leave.

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