

PARSONS HARDWARE CO., INC. AND HON. JUDGE ARSENIO SOLIDUM, PETITIONERS, VS. MARIANO MEDINA, RESPONDENT.

G. R. No. L-14206. February 28, 1962

Ponente: DE LEON, J.

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DE LEON, J.:

This is a petition to review on certiorari the decision of the Court of Appeals in CA-G. R. No. 22958-R.

In the Court of First Instance of Manila, Parsons Hardware Co., Inc. instituted an action (Civil Case No. 31879) against Mariano Medina for a sum of money. After trial, decision was rendered by the trial judge against the defendant who was notified thereof on January 11, 1958. On February 2, 1958, the defendant filed his notice of appeal, appeal bond and record on appeal. The trial judge, upon objection of Parsons Hardware Co., Inc. to the record on appeal, ordered its amendment. The order, which is dated February 8, 1958, reads as follows:

"Upon consideration of the Record on Appeal tendered by the defendant and the opposition thereto by the plaintiff, the Court hereby orders said defendant to amend his record on appeal by including therein the pleadings, motions and orders pointed out in said opposition, with the exception of the order directing the parties to submit simultaneous memoranda and their memoranda. Said defendant is also required to make the necessary corrections of the typographical errors and omissions specified in said opposition, and for this purpose, the defendant is given five (5) days within which to submit an amended record on appeal. The hearing of the amended record on appeal is set for February 22, 1958, at 10:00 a.m."

On February 15, 1958, the defendant received a copy of the above order. After the expiration of the five-day period, no amended record on appeal was filed with the trial court. However, on February 22, 1958, the date set for its hearing, the trial judge—apparently in order to give the defendant an opportunity to file his amended record on appeal—transferred the hearing to March 1, 1958.

On February 25, 1958, defendant Medina filed a "CONSTANCIA" averring that certain pleading ordered to be included in the record on appeal need not be included therein. On March 1, 1958, the date scheduled for the hearing, the defendant again failed to submit his amended record on appeal. Nevertheless, the trial court, upon its own motion, granted the defendant another five days within which to file the same. The extension was contained in an order dated March 1, 1958 which reads as follows:

"Counsel for the defendant is hereby granted another period of five (5) days from his receipt of a copy thereof within which to comply with the order of this Court of February 8, 1958, directing him to submit an amended record on appeal in conformity with said order."

A copy of the above order was served upon the defendant on March 8, 1958.

On March 12, 1958, defendant Medina filed a "MOCION" praying that he be allowed to insert various documents in the record on appeal. The motion was set for hearing on March 22, 1958. After hearing, the trial court denied the motion in the following order:

"Upon consideration of the motion filed by counsel for the defendant, praying that certain insertions be made in the record on appeal tendered by him, and the opposition thereto by the plaintiff, the Court finds that said motion is not in accordance with the Rules and is hereby denied."

The defendant received notice of the order on March 29, 1958.

After the denial of the defendant's motion, but on a date which the record does not disclose, a motion for issuance of writ of execution was filed by plaintiff Parsons Hardware Co., Inc. and the defendant received a copy thereof on March 28, 1958. Within four days after receipt of the motion for execution or on April 1, 1958, the defendant filed his amended record on appeal. Hearing of the same was set on April 12, 1958, the very same date on which the plaintiff's motion for execution was scheduled to be heard.

On April 12, 1958, the trial court acting upon the motion for execution and the amended record on appeal, granted the former, but disapproved the latter in an order which reads:

"Upon consideration of the amended record on appeal tendered by the defendant and the opposition thereto by the plaintiff, the Court finds that said amended record on appeal was presented beyond the legal period and the same is hereby disapproved.

"As prayed for by the plaintiff, let a writ of execution be issued."

Not satisfied with the above order of the trial court, defendant Medina filed a petition for the issuance of a writ of mandamus with preliminary injunction with the Court of Appeals against the trial judge and Parsons Hardware Co., Inc. The petition prayed for the suspension of the carrying out of the order of execution and the approval of the amended record on appeal. On June 30, 1958, the Court of Appeals granted the petition. Hence, Parsons Hardware Co., Inc. brought this petition for review.

We find merit in the petition.

According to the Rules of Court, "if the trial judge orders the amendment of the record, the appellant, within the time limited in the order, or such extension thereof as may be granted, shall redraft the record by including therein, in their proper chronological sequence, such additional matters as the court may have directed him to incorporate, and shall thereupon submit the redrafted record for approval, upon notice to the appellee, in like manner as the original draft." (Section 7, Rule 41.) In the present case, appellant Medina, the respondent herein, failed to file his amended record on appeal not only within the time ordered by the trial judge, but also within the subsequent extensions granted to him. It was only after he received a copy of the appellee's (Parsons Hardware Co., Inc. the petitioner herein) motion for the issuance of the writ of execution that he filed his amended record on appeal. However, the trial judge disapproved it, because it was presented out of time.

The rule in this jurisdiction is to the effect that if the record on appeal is filed outside the reglementary period, it is discretionary upon the trial judge to approve or disapprove the same, and mandamus will lie only when he manifestly and grossly abused his discretion. (*Lituaña vs. Oliveros*, 38 Phil. 630, 631; *Bustamente vs. Tirona*, 73 Phil. 665.) In the case at bar, the appellant, notwithstanding the several extensions granted to him within which to file his amended record on appeal, failed to submit the same on time without giving any reason for the delay. And it was only after he was notified of the motion for execution that he filed his amended record on appeal. Under these circumstances, We think that the trial judge acted correctly and did not commit any abuse of discretion in disapproving the same. On account of the disapproval, the appeal was never perfected. (Section 9, Rule 41, Rules of Court.) The decision, therefore, became final and the issuance of the writ of execution was in order.

The Court of Appeals—considering the filing of the "CONSTANCIA" and "MOCION" by respondent as revealing his intention to obey the order of the court—is of the opinion that the "trial court could have stretched a little more

or its desire to be liberal so as to attain substantial justice." We think, however, that such opinion would open the door to the use of dilatory tactics and hamper the effectiveness of our judicial processes. Mere "intention to obey" is not compliance with the rules. The respondent should have filed his amended record on appeal on time and if he wanted to include or exclude certain documents therein, he could have done so by asking the court at the hearing for its approval.

The respondent appeals to a liberal interpretation of the rules and the avoidance of technicalities in order that the merits or demerits of the case may be decided on appeal. We have no objection to the liberal interpretation of the rules, but such interpretation must also be reasonable. The respondent has repeatedly failed to take the necessary steps for the correction of the record on appeal within the time prescribed by the trial judge and such failure is one of the grounds for the dismissal of an appeal. (Section 1 [g], Rule 52, Rules of Court; to the same effect, *De Castro vs. Court of Appeals*, 75 Phil., 824.)

In view of the foregoing, the decision of the Court of Appeals in CA-G.R. No. 22958-R is hereby set aside and the order of the Court of First Instance of Manila in Civil Case No. 31879 dated April 12, 1958 is hereby affirmed all respects. Without costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes and Dizon, JJ., concur.

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