

ATLAS TIMBER COMPANY, NAPOLEON S. ROSALES, EDMUNDO M. SATORRE, AND REGINO S. ROSALES, PETITIONERS, VS. FIRST WESTERN BANK AND TRUST CO., RESPONDENT.

G.R. No. L-27534. May 29, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition for review on certiorari of the resolution of the Court of Appeals dated March 18, 1967, in its C.A.-G.R. No. 37640-R entitled "First Western Bank and Trust Company vs. Atlas Timber Company", the text of which reads as follows:

"Upon consideration of the motion filed by appellee praying that the decision be declared final and executory with regards to appellants Atlas Timber Co., Napoleon S. Rosales, Edmundo M. Satorre and Regino S. Rosales, and of the opposition thereto filed by said appellants, the Court RESOLVED TO DISMISS, as it HEREBY DISMISSES, the appeal interposed by defendants Atlas Timber Co., Napoleon S. Rosales, Edmundo M. Satorre and Regino S. Rosales, for the reason that the record on appeal does not show on its face that said defendants' appeal was perfected on time i.e., their notice of appeal is not included in said record on appeal (Govt. vs. Antonio, L-23736, October 19, 1965)."

The factual background of this case is as follows:

On August 27, 1965, respondent First Western Bank and Trust Company (Western Bank for short) originally filed with the Court of First Instance of Manila Civil Case No. 62317 against Atlas Timber Company and Meridian Assurance Corporation for collection of the amount of \$21,933.38, representing the alleged unpaid balance of the purchase price of a core veneer machinery purchased and imported by Atlas Timber Company (hereinafter referred to as Atlas) from Orbeta Enterprises of World Trade Center in San Francisco, California, U.S.A. Western Bank allegedly financed the importation by paying the purchase price to Orbeta Enterprises for and on behalf of Atlas which was composed of Messrs. Napoleon S. Rosales, Edmundo M. Satorre and Regino S. Rosales, as partners. Meridian Assurance Corporation came into the picture because of a surety bond it executed for Atlas in favor of the Western Bank (Annex "B", p. 12 Rollo) to indemnify the latter for losses or damages under the financing arrangement above mentioned.

On March 9, 1966, the Court of First Instance rendered judgment in favor of Western Bank, dispositive portion of which reads as follows:

"WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants, jointly and severally, for the sum of \$21,933.38 or its equivalent in pesos at the rate of P3.9390 to a dollar, with interest at the legal rate from the filing of the complaint, and the costs of the suit, provided, however, that this judgment should not be enforced against the individual partners before the properties of the partnership have been exhausted."

Copy of the decision was received by Meridian Assurance Corporation on March 14, 1966, while Atlas received its copy on the 16[th] of March, 1966. (Annex "C" p. 56 Rollo)

On April 15, 1966, Atlas filed its motion for reconsideration of the decision but the motion was denied by the trial court in its order dated May 9, 1966, copy of which was received by Atlas on May 21, 1966, which was a Saturday. On May 23rd, 1966, the first working day following receipt of the order, May 22[nd] being a Sunday, Atlas filed its notice of appeal and likewise posted the required appeal bond. On the same day Atlas manifested that it adopted defendant-appellant Meridian Assurance Corporation's record on appeal (earlier approved on May 14, 1966) as their joint record on appeal. The manifestation was approved by the trial court in its order dated June 28, 1966, as follows:

"As prayed for by the defendants, the record on appeal submitted by the defendant Meridian Assurance Corporation is deemed to be joint record on appeal of all the defendants; and there being no objection, it is hereby approved, and the Clerk of Court is hereby ordered to transmit the same, together with all evidence, oral and documentary, to The Court of Appeals."

On February 22, 1967, Western Bank filed with the Court of Appeals a motion praying, inter alia: to declare the decision of the Court of First Instance final and executory with regards to the appellants, Atlas and Napoleon S. Rosales, Edmundo M. Satorre and Regino S. Rosales, and to dismiss Atlas' appeal. The motion was opposed by the petitioners, but on March 18, 1967, the Court of Appeals dismissed petitioners' appeal and likewise denied its motion for reconsideration. Hence this petition in which Atlas assigns as sole error:

That the Court of Appeals erred in dismissing these petitioners' appeal on the sole and only ground that the Record on Appeal does not show on its face that said defendants' appeal was perfected on time, i.e., their notice of appeal is not included in said Record on Appeal.

We have time and again consistently stressed that the provision of Section 6, Rule 41,[1] of the Rules is mandatory and jurisdictional and that failure to comply therewith is a ground for dismissal of the appeal.[2] This requirement is amply buttressed by another section of another rule,[3] so as to emphasize to the utmost the significance of strictly adhering to the procedure laid down. These rules have the force and effect of law and are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy dispatch of judicial business.

In the case at bar, there is no dispute that petitioner Atlas' appeal was perfected within the reglementary period provided by the Rules. From the time the Company received a copy of the trial court's decision on March 16, 1966, until it filed its motion for reconsideration on April 15, 1966, the 30-day period had not yet lapsed. The reglementary period stopped to run on April 15, 1966, and started to run again on May 21, 1966, when Atlas received a copy of the order denying its motion for reconsideration. Since the 21[st] of May, 1966, fell on a Saturday and the next day, Sunday, May 22[nd], was a non-working day, Atlas' filing of the notice of appeal and appeal bond on Monday, May 23, 1966, the 1st working day following receipt of notice of the order of denial, was done within the reglementary period. Indubitably Atlas substantially complied with the mandatory provisions of law and its appeal was perfected on time. The trial court did right when it issued its order dated June 28, 1966, approving the manifestation of Atlas to adopt, as their joint record on appeal, the Record on appeal earlier filed by Meridian Assurance Corporation, in accordance with Section 8 of Rule 41 of the Rule.[4]

It is, however, contended by the respondent and sustained by the Court of Appeals that Atlas' appeal should be dismissed (as in fact it was so dismissed) on the ground that the record on appeal of Meridian Assurance Corp. adopted by Atlas does not show that its appeal was perfected on time because its notice of appeal is not included or shown in the record on appeal.

Respondent's premise is correct as nowhere in the record on appeal filed by Meridian Assurance Corporation filed on March 29, 1966, later amended and approved on May 14, 1966, is there any reference made to Atlas' notice of

appeal or to the filing of an appeal bond. This must necessarily be so because Atlas filed its notice of appeal, appeal bond and a manifestation to adopt the record on appeal of Meridian Assurance Corporation only on May 23, 1966, when its motion for reconsideration was denied, and when the record on appeal of Meridian Assurance Corporation had already been filed. The omission, therefore, to include these facts can be attributed to the normal processes of the proceedings and not to the fault or omission of Atlas. The Company took adequate steps to comply with the rules on perfecting an appeal and the "lapse" in the literal observance of the rule that the record on appeal should show on its face that the appeal was perfected on time may be overlooked without doing violence to the rules and to the rights of the adverse party. As held in the case of *Ethel Case and Minna Hantz vs. Fernando Jugo*, L-832, 43 O.G. 4620, 4624:

"Lapses in the literal observance of a rule of procedure will be overlooked when they do not involve public policy, when they arose from an honest mistake or unforeseen accident, when, they have not prejudiced the adverse party and have not deprived the court of its authority. Conceived in the best traditions of practical and moral justice and common sense, the Rules of Court frown upon hair-splitting technicalities that do not square with their liberal tendency and of the ends of justice."

The plain truth cannot be ignored that Atlas perfected its appeal within the reglementary period and to Us this is what decisively matters. The rules should not be interpreted "to sacrifice the substantial right of the appellant in the sophisticated altar of technicalities with impairment of the sacred principles of justice."^[5] As held in *Alonso vs. Villamor*:^[6] "There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created not to hinder and delay, but to facilitate and promote the administration of justice."

The omission in this case is harmless and purely technical. To take advantage of it and uphold the Court of Appeals would not sit well with our sense of justice and fairness. We noted, too, the fact that in the trial court respondent herein neither filed a motion to dismiss nor objected to the petitioners' motion that they be allowed to adopt Meridian Assurance Corporation's record on appeal. This is evident from the aforequoted order of the trial court of June 28, 1966.

The cases of *Government vs. Antonio*, 15 SCRA 119; *Alvero vs. de la Rosa*, 76 Phil. 428; *Bello vs. Fernando*, Jan. 30, 1962, cited by respondent in support of its stand, are not in point. In these cases the appellant either failed to file a notice of appeal and/or appeal bond or filed the same outside the reglementary period, in violation of the mandatory and jurisdictional provision of Section 6, Rule 41, in relation to Section 1 of Rule 50 of the Rules. For non-compliance with aforesaid rule, they had to suffer the consequence of their failure and their appeal was properly dismissed.

WHEREFORE, the petition is granted and the resolution of the Court of Appeals, dated March 18, 1967, dismissing petitioners' appeal is hereby nullified and set aside. The Court of Appeals shall give due course to petitioners' appeal. No costs

SO ORDERED.

Castro, (Chairman), Teehankee, Makasiar, Muñoz, Palma, and Martin, JJ., concur.

[1] Sec. 6. Record on appeal; form and contents thereof. — The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the order or judgment from which the appeal is taken, and, in, chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and necessary for the proper understanding of

the issue involved, together with such data as will show that the appeal was perfected on time. . . ."

[2] *Government vs. Antonio* L-23736, October 19, 1965; *Development Bank of the Phil. vs. Santos* 18 SCRA 113; *Araneta vs. Madrigal* 18 SCRA, 446; *Atlas Consolidated Mining Dev. Corp. vs. Progressive Labor Association* 21 SCRA 110; *Ozaeta vs. CA* 42 SCRA 79; *Reyes vs. Carrasco* 38 SCRA 296.

[3] Sec. 1, Rule 50. Grounds for dismissal of appeal. An APPEAL MAY BE DISMISSED BY THE Court of Appeals, on its own motion or on that the appellee, on the following grounds: (a) Failure of the record on appeal to show on its face that the appeal was perfected within the period fixed by these rules; (b) Failure to file, within the period prescribed by these rules, the notice of appeal, appeal bond or record on appeal.

[4] Sec. 8. Joint record on appeal — Where both parties are appellants they may file a joint record on appeal within the time fixed by section 3 of this rule, or that fixed by the court.

[5] *International Tobacco Co., Inc. vs. Yatco* 55 O.G. No. 5,811; *Alonso vs. Villamor* 16, Phil. 315; as cited in *Martin, Rules of Court in the Philippines*, 1969 ed. 135.

[6] 2352, July 26, 1910, 16 Phil. 315, 321.

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