

NEGROS STEVEDORING CO., INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND DELGADO STEVEDORING CO., INC., RESPONDENTS.

G.R. No. L-36003. June 21, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for certiorari, mandamus and prohibition with preliminary injunction to review and set aside the Resolution of the Court of Appeals, Eighth Division," dated 30 October 1972, in CA-G.R. No. 49755-R, which set aside its own Resolution, dated 28 September 1972, dismissing private respondent's appeal for failure to file its appellant's brief.

On 29 May 1967, petitioner Negros Stevedoring Co., Inc. (NESCO, for short) brought an action in the Court of First Instance of Manila against private respondent Delgado Stevedoring Co., Inc. (DELGADO, for short) for the collection of the sum of P175,514.63, which allegedly represents losses and damages sustained by NESCO by reason of the sinking of its barge known as NESCO Barge 109, together with attorney's fees and costs.[1]

After hearing, the trial court rendered judgment in favor of NESCO. DELGADO appealed the decision to the Court of Appeals. The latter, through its Clerk of Court, sent to DELGADO a Notice to File Brief, dated 15 May 1972, which was received by the latter on 18 May 1972.[2] The reglementary period for filing appellant's Brief lapsed, with DELGADO failing to file one; hence, the Court of Appeals, in a Resolution, dated 28 September 1972, *motu proprio* dismissed the appeal.[3]

On 16 October 1972, DELGADO filed a Motion for Reconsideration of said order of dismissal,[4] to which motion, NESCO filed an opposition, dated 19 October 1972. DELGADO's motion for reconsideration and reinstatement of its case was based primarily on the following excuse:

"Upon an inquiry made immediately upon receipt of the aforesaid order (dismissing the appeal), it appears that:

(a) the Notice to File Brief was received on May 13, 1972. [sic]

(b) thru inadvertence, the said notice was referred to an associate of a (the same) law firm other than Atty. Samson S. Alcantara, who has been handling the said case from the beginning.

(c) that Atty. Melquiades Paredes, to whom the notice was referred took no action thereon in the belief that Atty. Alcantara had already been advised thereof.

(d) that Atty. Alcantara knew of the receipt of the notice to file brief only upon receipt of the Notice to [sic] Dismissal of the appeal."[5]

On 30 October 1972, the respondent Court of Appeals, in a minute resolution, resolved to 1) grant DELGADO's motion for reconsideration, 2) set aside its Resolution of 28 September 1972, 3) give due course to the appeal, and 4) admit DELGADO's Brief.[6]

NESCO then sought to have the resolution of 30 October 1972 reconsidered. On 14 November 1972, it filed a Motion for Reconsideration and To Strike Out the Appellant's (DELGADO) Brief, to which the latter filed no opposition.[7]

On 22 November 1972, the respondent court resolved to deny NESCO's motion and required it to file its appellee's Brief.[8]

Hence, this petition.

The sole issue raised herein by the petitioner is whether or not the respondent court gravely abused its discretion in reinstating the appeal of DELGADO, which had been previously dismissed for failure to file appellant's Brief on time, and in admitting its appellant's Brief.

In *Ganzon v. Chavez*, the Court, thru Mr. Justice Sabino Padilla, held that:

"Granting that the power or discretion to reinstate an appeal that had been dismissed is included in or implied from the power or discretion to dismiss an appeal, still such power or discretion must be exercised upon a showing of good and sufficient cause x x x. There must be such a showing which would call for, prompt and justify its exercise. Otherwise, it cannot and must not be upheld." [9]

The point then to determine is whether the delay in filing DELGADO's appellant's Brief was due to a good and sufficient cause. The Court notes that the Notice to File Brief was received on 18 May 1972 by a clerk in the law office of DELGADO's counsel. Thru inadvertence, the clerk referred said notice to an associate lawyer of the law firm, other than Atty. Samson S. Alcantara, who had been handling, from the beginning, the case of DELGADO, Atty. Melquiades Paredes, a lawyer of the same law firm to whom the notice had been mistakenly referred, took no action on said notice in the belief that Atty. Alcantara had already been advised of it. And it was only thereafter that Atty. Alcantara learned of said notice, when he received the notice of dismissal of DELGADO's appeal for failure to file the appellant's brief within the reglementary period.[10]

The excuse proffered by DELGADO's counsel cannot be considered a good and sufficient cause or justification for the failure to file on time the appellant's Brief. It is evident from the reason given by DELGADO's counsel that there was negligence not just on the part of the receiving clerk who inadvertently handed the notice to a lawyer, not in charge of the case, but, also in the part of the latter who did nothing to inform the lawyer in the same law firm, handling the case, of said notice, and principally, on the part of the lawyer handling the case who was just waiting for the notice, without doing anything to find out whether such notice might have already been received by the law firm.

The negligence committed in the case at bar cannot be considered excusable, nor is it unavoidable. Time and again the Court has admonished law firms to adopt a system of distributing pleadings and notices, whereby lawyers working therein receive promptly notices and pleadings intended for them, so that they will always be informed of the status of their cases. The Court has also often repeated that the negligence of clerks which adversely affect the cases handled by lawyers, is binding upon the latter.

In the case at bar, even if we were to grant that the law firm of private respondent's counsel had an efficient system which merely faltered in this instance, still, the omission of the lawyer to whom the notice was inadvertently given in not informing the lawyer concerned, in the belief that the latter had already been advised of the notice, is gravely irresponsible and inexcusable. Considering that the lawyer to whom the notice had been inadvertently given is an associate of the same law firm of DELGADO's counsel, and it would not take up so much of his time if he were to inform the lawyer concerned about an important notice, like a Notice to File Brief, whose reglementary period starts upon receipt, then, the conduct of said lawyer, in the case at bar, is unjustifiable.

His reliance on his own belief that the lawyer concerned had already been advised of the notice is also unfounded considering that the copy of said notice was with him, so there was absolutely no ground for him to presume that Atty. Alcantara had already been informed about it.

As to the lawyer who was handling the case, his complacency in waiting for the notice despite the lapse of a period of time, without even inquiring from the clerks in the office as to whether such notice had already been received, or by simply investigating with the Court of Appeals as to the status of his appeal, considering that he allegedly had the draft of his appellant's brief prepared and that he was just waiting for the notice to file it, all suggest that the lawyer concerned failed to give the entire devotion he owed to the interest of his client^[11] and to exercise the necessary care and diligence required of him as a member of the legal profession, to the detriment of his client. As held in *Philippine Suburban Development Corporation v. Court of Appeals*:

"The frequency of such cases which needlessly clog the court dockets and would render meaningless the guidelines set by the Rules of Court and jurisprudence for an orderly and expeditious procedure in the determination of law suits, constrains us to reiterate the Court's admonition in *Juane v. Garcia* [25 SCRA 801 (1968)], thus —

xxx. "It is painful enough for a litigant to suffer a setback in a legal battle. It is doubly painful if defeat is occasioned by his attorney's failure. . . It is only when some such situation comes about that the negligent lawyer comes to realize the grave responsibility that he has incurred to his client and to the cause of justice. It is then that the lawyer is reminded that in his oath of office he solemnly declared that he 'will conduct himself as a lawyer accordingly to the best of his knowledge and discretion.' Too late. Experience indeed is a good teacher. To a lawyer, though, it could prove very expensive."^[12]

Based on the foregoing, it is clear that there was failure to show a good and sufficient cause which would call for, prompt and justify the reinstatement of the appeal. Hence, the Court holds that the respondent Court of Appeals gravely abused its discretion when it reinstated the appeal and admitted the appellant's Brief, despite the latter's failure to file it on time.

WHEREFORE, the Temporary Restraining Order issued by this Court on 29 December 1972 is hereby made permanent. The respondent Court of Appeals is ordered to DISMISS the appeal in CA-G.R. No. 49755-R and to REMAND the case to the trial court for execution.

SO ORDERED

Yap, C.J. (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[1] Record on Appeal, p. 2.

[2] Annex A, Rollo. p. 23.

[3] Annex C Rollo. p. 31.

[4] Annex D. Rollo., p. 32.

[5] Rollo, p. 71.

[6] Petitioner's Memorandum, p. 3.

[7] Id.

[8] Id.

[9] 108 Phil. 9.

[10] Sec. 10, Rule 46, Rules of Court.

[11] Canons of Legal Ethics, XV.

[12] G.R. No. L-33448. 17 September 1980, 100 SCRA 113.

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