

RAYMUNDO SERIÑA, SATURNINA SERIÑA, LINO SERIÑA, LADISLAO M. SERIÑA, TIRSO SERIÑA, FAUSTINO M. SERIÑA, JUAN M. SERIÑA, ZOSIMO M. SERIÑA, ROSALIA SERIÑA, GOMOLO, VICTORICO, CORAZO...

G.R. No. L-28661. February 21, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

There has been too much preoccupation in this case with a mere technicality that in our view has prejudiced, the petitioners' substantive rights. We do not feel they have committed a procedural, lapse that should prevent them from prosecuting their appeal, which has already been unduly delayed as it is. The respondent court must be reversed.

From a decision of the Court of first Instance of Misamis Oriental, copy of which was served on them, the petitioners decided to appeal. Accordingly, they (filed their notice of appeal on January 4, 1966, the record on appeal on January 5, 1966, and the cash appeal bond on January 6, 1966.[1] The record on appeal was approved by the trial court on January 14, 1966.[2] No objection was raised by the private respondent.

Twenty months later, on September 20, 1967, the private respondent moved to dismiss the petitioners' appeal on the ground that the record on appeal did not show on its face that the appeal bond had been filed on time.[3] The motion was denied on October 10, 1967.[4] The Court of Appeals held that "as the appeal bond was in cash, there was no need of approval. Failure to mention in the record on appeal that it was a cash bond is merely a matter of insubstantial emission." [5]

On timely motion, however, the resolution was reconsidered and set aside. In a resolution adopted by a 4 to 1 vote on December 29, 1967, the respondent court[6] held that the failure to show on the face of the record on appeal that the appeal bond had been filed within the reglementary period was "jurisdictionally fatal." [7] The lone dissenter argued that the omission was "not a fatal defect, nor even a defect at all." [8]

The pertinent provision is Rule 41, Section 6, of the Rules of Court, reproduced in full as follows:

"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, copied 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. If an issue of fact is to be raised on appeal, the record on appeal shall include by reference all the evidence, oral and documentary, taken upon the issue involved. The reference shall specify the documentary evidence by the exhibit numbers or letters by which it was identified when admitted or offered at the hearing, and the oral evidence by the names of the corresponding witnesses. If the whole oral and documentary evidence in the case is to be included, a statement to that effect will be sufficient without mentioning the names of the witnesses or the numbers or

letters of exhibits. Every record on appeal exceeding twenty (20) pages must contain a subject index."

The private respondent contends that the appeal was properly dismissed because the record on appeal did not comply with the requirement that it should contain "such data as will show that the appeal was perfected on time." He noted that no mention was made therein of the filing of the appeal bond on January 6, 1966. He stressed that this information was necessary to determine if the appeal had been seasonably made.

In his authoritative work on the Rules of Court, Chief Justice Manuel V. Moran observed that the purpose of Section 6 was to enable the appellate court to determine by merely reading the record on appeal if a case had been elevated to it within the reglementary period. In fact, he said, this was the reason for the addition to the original provision of the phrase "together with such data as will show that the appeal was filed on time" when the Rules of Court were revised in 1941.[9]

"Obviously, this amendment would become useless and its purpose completely defeated if it were interpreted as directory in nature as to allow the appellate court to exercise discretion to give due course to appeals upon mere issues and the same waste of time that were sought to be eliminated by the amendment." [10]

Thus, in *Government of the Philippines v. Antonio*, [11] the Court held through Justice J.B.L. Reyes that the requirement was "mandatory and jurisdictional." In that case, the record on appeal was held insufficient for not including the data required by the rule regarding the material dates to show "that the appeal was perfected on time."

It should be mentioned at this juncture, in justice to the respondent court, that its resolution of December 29, 1967 was based on this case.

In subsequent cases, however, the Court has made disposed to be liberal in the interpretation of the above-cited rule, and to regard substantial compliance therewith as sufficient. In *Saura Import and Export Co., Inc. v. Court of Appeals*, [12] for example, it was held:

"The petitioner claims that the dismissal of the appeal by the respondent appellate court is improper since there was substantial compliance with Section 6, Rule 41 of the Revised Rules of Court in view of the presentation of the xerox copies of the cover and first page of the original record on appeal showing on the right upper margin thereof the date when the original record on appeal was filed in the trial court. The petitioner further claims that the respondent Bank never objected in the trial court that the original record on appeal was not filed on time and, therefore, estopped from questioning the same in the respondent appellate court.

Indeed, the record shows that the trial court approved the record on appeal without opposition on the part of the respondent Bank. With the existence of said order, there is every reason to assume that the appeal was perfected on time."

The decision also quoted the earlier ruling in *Pimentel v. Court of Appeals*, [13] thus:

"x x x where the trial court finds and declares in its Order approving the Record on Appeal that it was filed on time or within the reglementary period and the correctness and veracity of such finding are not questioned, impugned or disputed by the adverse party, then even though the Record on Appeal may not have included in the motion for extension of time to file the same in the trial court's order granting the extension, the dismissal of the appeal is not warranted and constitutes a grave abuse of discretion, for there has been a substantial compliance with the material data requirement of Rule 41, Section 6, and the appellate court may properly rely on the trial court's order of approval and could determine therefrom without sending for or examining any other records that the appeal was perfected on time as expressly found by the trial court."

The above rulings are applicable to the case at bar. As in the antecedent cases, there was also no objection on the herein private respondent to the record on appeal when it was filed with the trial court. Indeed, it was only one

and half years after its approval that it occurred to him to question it in the Court of Appeals.

Except for the prevailing doctrine then, the respondent court might have relied on such approval as proof that the appeal had been perfected within the reglementary period, especially so since it was eight days after the filing of the record on appeal. Surely, the trial judge would not have approved the record on appeal without first ascertaining that the appeal had already been filed.

It is also worth considering that the filing of the appeal bond could not have been mentioned in the record on appeal at the time it was filed on January 5, 1966, as the appeal bond had not yet been filed on that date. This was done only on the following day.

In his dissenting opinion, Justice Magno S. Gatmaitan suggests that the subsequent filing of the appeal bond could have been indicated in the record on appeal as a marginal note but says this duty belonged to the clerk of court. We disagree; the responsibility was the petitioners'. At any rate, we have already observed that the duty was not imperative and is deemed excused by the other circumstances of this case, not the least of which is the private respondent's tardy objection. Moreover, despite the procedural lapse, there is no gainsaying that the appeal was indeed perfected on time because the notice of appeal, the record on appeal and the appeal bond were all filed within the reglementary period.

The petitioners have not in our view committed such a serious omission as to deserve the dismissal of their appeal. Even the private respondent cannot deny that the appeal was perfected on time and merely faults the record on appeal because of what he calls a fatal defect. The defect was not fatal and in any event should be deemed waived by his failure to object seasonably, if not cured by the subsequent timely filing of the appeal bond. Reinstatement of the petitioners' appeal is therefore in order.

Once again we end as in *Leyte v. Cusi*:

"While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses like this that do not really impair the proper administration of justice. If the Rules of Court are intended to insure the orderly conduct of litigation, it is because of the higher objective they seek, which is the protection of the substantive rights of the parties." [14]

WHEREFORE, the resolution of the respondent Court of Appeals dated December 29, 1987, is SET ASIDE and the petitioners' appeal REINSTATED, with costs against the private respondent. This decision is immediately executory.

SO ORDERED.

Narvasa (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 27.

[2] Ibid., p. 28.

[3] Id., pp. 42-45.

[4] Id., p. 53.

[5] Id.

[6] Penned by Justice Salvador V. Esguerra, A. Mojica, E. Soriano and P. Martin; JJ. Concurring and M. Gatmaitan, J. dissenting.

[7] Rollo, p. 10.

[8] Ibid., p. 13.

[9] Moran, Comments on the Rules of Court, Vol. 2, 1970 ed.

[10] Ibid., p. 430

[11] 15 SCRA 119.

[12] 83 SCRA 275.

[13] 64 SCRA 475.

[14] 151 SCRA 496.

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