

CLARA E. VDA. DE SAYMAN, ANACORITA S. DE MACAYRA, OSIAS E. SAYMAN, HEIRS OF THE LATE IGNACIO SAYMAN; FAUSTINA VDA. DE SAYMAN, MOTHER OF THE LATE DEMOCRITO SAYMAN; WILFREDO SAYMA...

G.R. Nos. L-29479 & 29716. February 21, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

A sea disaster that occurred on December 22, 1959 gave rise to the instant proceeding. A vessel owned by private respondent Carlos A. Go Thong & Company capsized while entering the mouth of the river in Caraga, Davao, resulting in the loss of the lives of five passengers. Petitioners Clara E. Vda. de Sayman, et al. in G.R. No. L-29479, and petitioners Potenciana Vda. de Odo, et al. in G.R. No. L-29716, filed separate civil actions in the Court of First Instance of Davao for recovery of damages against the owner of the vessel for breach of contract. The two cases were jointly heard and a decision was rendered by the trial court therein holding the private respondent liable to the petitioners in the total sum of P53,715.00.

Private respondent received copy of the decision of the trial court on September 30, 1964. It filed a motion for new trial and/or reconsideration which was denied by the trial court. Upon such denial, private respondent filed a record on appeal. The petitioners objected to the said record on appeal in view of the omission of certain pleadings therein. The trial court sustained the objections of the petitioners and ordered the private respondent to redraft or amend its record on appeal. The private respondent having failed to submit the amended record on appeal within the ten-day period prescribed in Section 7, Rule 41, of the Rules of Court, the petitioners filed a motion for execution which was granted. A motion of the private respondent to reconsider the order granting execution was denied for being pro-forma.

The private respondent subsequently filed a petition for relief, to which the petitioners filed their answer. The petition for relief was denied by the trial court in its order of June 16, 1965. The private respondent immediately filed a notice of appeal from said order. Before the records were elevated to the Court of Appeals, the respondent filed a motion to adopt the record on appeal it filed with respect to the main case, and to amend the same by incorporating therein the record on appeal with respect to the denial of the petition for relief. (For clarity and convenience purposes, We shall adopt the designation made by the parties of referring to the record on appeal on the main case as the First Part thereof, and the record on appeal with respect to the petition for review as the Second Part of the record on appeal.)

Heeding the opposition of the petitioners, the trial court denied the motion of the private respondent to include in the record on appeal the First Part thereof. When the appeal from the denial of the petition for review was elevated to the Court of Appeals, the private respondent filed a motion in said Court to order the elevation of the First Part of the record on appeal. The said motion was opposed by the petitioners, and they in turn filed a separate motion to dismiss the appeal from the denial of the petition for relief. In a Resolution dated June 6, 1968,

the Court of Appeals granted the motion of the private respondent to order the elevation of the First Part of the record on appeal, and in another Resolution of the same, it denied the motion of petitioners to dismiss the appeal.

These two Resolutions of the respondent Court of Appeals constitute the subject-matter of the instant petition for certiorari.

In their brief, the petitioners have imputed to the respondent Court of Appeals the commission of the following errors:

"I

THE HON. COURT OF APPEALS ERRED IN GRANTING THE MOTION OF THE RESPONDENT TO ELEVATE THE FIRST PART OF THE RECORDS ON APPEAL WHICH WAS FILED BY HIM BEYOND THE REGLEMENTARY PERIOD IN THE TRIAL COURT;

II

THE HON. COURT OF APPEALS ERRED IN NOT HOLDING THAT THE ORDERS OF THE COURT OF FIRST INSTANCE OF DAVAO ON SIMILAR MOTION DENYING IT TWICE BEFORE THE ELEVATION OF THE RECORD ON APPEAL IN THE PETITION FOR RELIEF ON AUGUST 21, 1967, IS RES JUDICATA ON THE ORDER IN QUESTION ISSUED ON JUNE 6, 1968;

III

THE HON. COURT OF APPEALS ERRED IN NOT DISMISSING THE APPEAL ON THE GROUND THAT THE JUDGMENT ON THE MERITS IS ALREADY FINAL, UNAPPEALABLE AND EXECUTORY;

IV

THE HON. COURT OF APPEALS ERRED IN NOT HOLDING THAT THE EXCUSE OFFERED BY THE RESPONDENT IN ITS FAILURE TO APPEAL IS THE MOST HACKNEYED AND HABITUAL SUBTERFUGE EMPLOYED BY LITIGANTS WHO FAILED TO OBSERVE THE PROCEDURAL REQUIREMENTS PRESCRIBED BY THE RULES OF COURT;

V

THE HON. COURT OF APPEALS ERRED IN NOT HOLDING THAT THE PETITION FOR RELIEF OF THE RESPONDENT IS INSUFFICIENT IN FORM AND SUBSTANCE;

VI

THE HON. COURT OF APPEALS ERRED IN NOT HOLDING THAT THE RESPONDENT CANNOT ASSAIL THE FINAL JUDGMENT IN QUESTION ON THE GROUNDS THAT THE PETITION FOR RELIEF LACKS THE ALLEGATION THAT THE JUDGMENT SOUGHT TO BE SET ASIDE IS NOT SUPPORTED BY THE EVIDENCE OR IT IS CONTRARY TO LAW, BESIDES THE FACT THAT IT HAS NO AFFIDAVIT OF MERIT;

VII

THE HON. COURT OF APPEALS ERRED IN DISREGARDING THE DISCRETION OF THE TRIAL COURT;

VIII

THE HON. COURT OF APPEALS ERRED IN NOT HOLDING THAT THE RESPONDENT DESIRES TO ACHIEVE INDIRECTLY WHAT IT FAILED TO ACCOMPLISH DIRECTLY;

IX

THE HON. COURT OF APPEALS ERRED IN NOT HOLDING THAT THE RESPONDENT DESIRES TO CONTROL THE END OF THIS LITIGATION;

X

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE APPEAL IS FRIVOLOUS AND DILATORY;

XI

THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING THE APPEAL ON THE GROUND THAT THE RECORD ON APPEAL CONTAINS NO DATA SHOWING THAT THE APPEAL WAS PERFECTED ON TIME;

XII

THE HON. COURT OF APPEALS ERRED IN NOT DISMISSING THE APPEAL ON THE GROUND THAT THE SAME WAS NOT ELEVATED WITHIN THIRTY DAYS FROM ITS APPROVAL;

XIII

THE HON. COURT OF APPEALS ERRED IN DENYING THE MOTION TO DISMISS FILED BY THE PETITIONERS."

We do not consider it necessary to pass upon or discuss each and every error assigned by the petitioners. The only pertinent issue requiring Our determination in this certiorari proceeding is whether or not the respondent Court of Appeals acted without or in excess of jurisdiction, or with grave abuse of discretion in issuing the two Resolutions mentioned above which ordered the elevation of the First Part of the record on appeal and denied the motion to dismiss the appeal being taken by the private respondent. We are not concerned with the issue of whether the appeal in the main action was filed outside of the reglementary period. Indeed, by filing the petition for relief, private respondent thereby assumed that the judgment in the main case had already become final and executory. Otherwise, the recourse to the remedy of filing a petition for relief is unauthorized and inappropriate. (*Villa Rey Transit, Inc. vs. Far East Motor Corporation*, 81 SCRA 298.)

Neither do We feel called upon to decide, at this stage and in this proceeding, whether or not the trial court acted correctly in denying the petition for relief, or on the sufficiency of the allegations contained in the petition for relief, or on the validity of the excuse offered by the private respondent in failing to file its amended record on appeal within the reglementary period, or on the failure of the respondent Court to dismiss the appeal in the main case.

The question before Us is: In an appeal from a denial of a petition for relief under Rule 38 of the Rules of Court, should the record on appeal relative to the main case be elevated to the appellate court together with the record on appeal with respect to the proceedings had in the petition for review? More precisely, the appropriate inquiry is, did the Court of Appeals act without or in excess of jurisdiction or with grave abuse of discretion in so authorizing the elevation of the First Part of the record on appeal.

The second paragraph of Section 2, Rule 41, Rules of Court, provides as follows:

".....

A judgment denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that it is not supported by the evidence or it is contrary to law.

....."

As may be seen from the above-quoted provision, an appeal is allowed from the denial of a petition for relief filed pursuant to Rule 38 of the Rules of Court. The rule goes farther than merely permitting such an appeal by explicitly prescribing that in the course of such appeal, "a party may also assail judgment on the merits, upon the ground that it is not supported by the evidence or it is contrary to law." The posture assumed by the petitioners runs against the clear mandate of the rule. Petitioners would want to limit the appeal taken from the denial of the petition for relief to the issue of whether or not such denial was correct. Such a contention is not only contrary to the literal terms of the statute, but it also contravenes the practical reasons underlying the same.

A petition for relief under Rule 38 of the Rules of Court is in effect a second opportunity for an aggrieved party to ask for a new trial. As a matter of fact, the grounds therefor, to wit, fraud, accident, mistake, or excusable negligence, also constitute the grounds for new trial under Section 1, paragraph (a) of Rule 37. It also provides that if a petition for relief shall be granted, the effect of the same is as if a timely motion for new trial had been granted. (Sections 6 and 7, Rule 38, Rules of Court.) It is further required in filing a petition for relief that there must be a showing, not only of the alleged fraud, accident, mistake, or excusable negligence relied upon, but also of the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. (Section 3, Ibid.) When an appeal from the denial of the petition for relief is taken, therefore, the appellate court is confronted not only with the necessity of determining the existence of any of the grounds relied upon, whether it be fraud, accident, mistake, or excusable negligence, but also, and primarily so, with the question of the merit of the petitioner's cause of action or defense, as the case may be. While the Rules do not so state, it must be assumed that, of the two factors that must be shown by the petitioner, to wit, the ground relied upon and the merit of the petitioner's case, decisive importance should be given to the latter. A showing of fraud, accident, mistake, or excusable negligence is easy to do, and the court or the adverse party is oftentimes without means to disprove the alleged existence of any of said grounds. What matters more than the validity of the ground relied upon is the right of a party to have his full day in court, and to render substantial justice despite lapses in the observance of technical rules.

In determining whether or not the denial of the petition for relief filed in the trial court shall be sustained or reversed, as the case may be, the appellate court must be apprised of the merit of the case of the party that assails such denial. The consideration of the merit of such appeal is not intended to be an empty exercise of determining whether or not the appellant had been the victim of fraud, accident, mistake, or excusable negligence which resulted in prejudice to his rights. There is a necessity of finding out whether granting him the relief prayed for would not be a useless ceremony and sheer waste of time. There is no point in allowing the petitioners herein to appeal the decision rendered by the trial court if, after all, the said decision does not merit a reversal or at least a modification. In the language of the rule, they should be able to show that the judgment that they complain of is "not supported by the evidence or is contrary to law." This may only be done if the record of the main case is elevated to the appellate court.

It must be further considered that the petition for relief filed by the private respondent was against the orders of the trial judge disallowing their appeal for having been allegedly taken out of time. Should the appellate court reverse the denial of such petition for relief, the effect of such reversal would be to allow the appeal from the decision in the main case. In that eventuality, if the contention of the petitioners shall be, sustained, the result would be a two-stage proceeding productive of delay, namely, (1) The elevation of the record with respect to the denial of the petition for relief and, after the same shall have been decided favorably to the appellant, and (2) The elevation of the record with respect to the main case in connection with the appeal being taken therefrom. This cumbersome and time-consuming procedure is precisely what is sought to be avoided by the rule in prescribing

that, in connection with the appeal from the denial of the petition for relief, the appellant may, in the same proceeding, assail the judgment complained of as being contrary to law or as not supported by the evidence. This is keeping faith with the avowed purpose of the Rules "to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding" (Section 2, Rule 1). Needless to state, the benefit to be derived from the conclusion herein reached will redound not only to the private respondent but equally to the petitioners themselves.

In assailing the failure of the Court of Appeals to dismiss the appeal from the denial of the petition for relief, the petitioners argue that the record on appeal contains no showing that the appeal was perfected on time, and that the record on appeal was not elevated within thirty days from its approval as required by Section 3, Rule 46, of the Rules of Court. The first contention, for which the petitioners cite the case of *Government of the Philippines vs. Antonio*, 15 SCRA 119, had lost its validity in view of the abandonment of the doctrine laid down therein in several subsequent decisions of this Court. With respect to the failure to elevate the record on appeal within the thirty-day period prescribed in Section 3, Rule 46, Rules of Court, suffice it to state that the dismissal of the appeal on said ground as authorized in Section 1(c) of Rule 50, Rules of Court, is not mandatory but merely discretionary. The petitioners have not shown an abuse of the discretion of the respondent Court of Appeals in refusing to dismiss the appeal from the denial of the petition for relief on that ground. On the contrary, it appears that the delay in the elevation of the record on appeal was due to the various incidents that transpired in view of the issuance by the trial court of the orders which were sought to be set aside by the private respondent, and which they only succeeded in doing so in the certiorari proceedings in the respondent Court of Appeals.

WHEREFORE, the petition for certiorari is hereby DENIED, with costs against the petitioners.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova and Gutierrez, Jr., JJ., concur.

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