

MANUEL YAP, PETITIONER, VS. HON. COURT OF APPEALS, RAYMOND AND LYDIA TOMASSI, RESPONDENTS.

G.R. No. L-51458. July 19, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Petitioner herein seeks to set aside respondent Court of Appeals'[1] Decision of May 22, 1979 and its Resolution of July 26, 1979 in CA-G.R. No. 07966-SP, sustaining the trial Court's action disapproving petitioner's Record on Appeal for having been filed out of time.

The antecedent facts follow:

On September 11, 1973, private respondents, spouses Raymond Tomassi and Lydia Tomassi, filed a complaint for Damages against petitioner Manuel Yap, before the Court of First Instance of Cebu, Branch XIII, docketed as Civil Case No. R-13571.

Petitioner-defendant filed his Answer with Special Defenses and Counterclaim, after which, trial ensued. On January 31, 1978, the Trial Court rendered judgment against petitioner, ordering him to pay private respondents P30,000.00, as moral and exem-plary damages, P20,000.00, as actual damages, P5,000.00, as attorney's fees, and the costs of suit.

Copy of the Decision was received by petitioner-defendant on February 10, 1978. He filed, on March 2, 1978, a Notice of Appeal, and on March 7, 1978, a Cash Appeal Bond and Motion for Extension of twenty days from March 13, 1978 (or until April 2, 1978) within which to file his Record on Appeal. Said Motion was not acted upon by the Trial Court. On March 30, 1978, or within the extended period prayed for, petitioner submitted his Record on Appeal. On the same date, respondents filed a Motion for the Issuance of Writ of Execution alleging that the Decision had already become final and executory as petitioner's Motion for extension of time to file Record on Appeal failed to comply with the requirements of the Rules of Court on Motions, and therefore, did not toll the running of the period to perfect an appeal.

On April 24, 1978, the trial Court disapproved petitioner's Record on Appeal, stating:

"The records show that on March 7, 1978, defendant filed a MOTION FOR EXTENSION OF TIME TO FILE RECORD ON APPEAL, but since said motion did not contain any notice of hearing, the COURT did not act on it. The reglementary period expired on March 13, 1978, without any extension granted to defendant. It is rather, too presumptuous, on the part of the defendant to assume that the Court would grant the extension just because he prayed for it.

IN VIEW OF THE FOREGOING, the approval of defendant's RECORD ON APPEAL is hereby denied for having been filed out of time."

Petitioner moved to reconsider the said Order, but reconsideration was denied by the Trial Court. Petitioner then filed with the Court of Appeals a Petition for "Certiorari and Mandamus" docketed as CA-G.R. No. 07966-SP,

praying that the Trial Court be ordered to approve his Record on Appeal and give due course thereto.

On May 22, 1979, the Court of Appeals dismissed the Petition ruling that the Trial Court did not commit grave abuse of discretion in disapproving the Record on Appeal as the same was filed beyond the prescribed period.

Reconsideration of the Decision was sought by petitioner but respondent Court denied the same for lack of merit.

Petitioner hied to this Court, with the present Petition for Review on Certiorari, posing the following queries:

"1. Is a motion for extension of time to file record on appeal, a litigated and contentious motion which requires a notice of hearing before it may be acted upon by the trial court or is it one that may be heard ex-parte and therefore does not need a notice of hearing?

"2. In disapproving petitioner's record on appeal which was filed within the extended period prayed for, did the Court of Appeals not depart from the liberal posture adopted by the Honorable Supreme Court in a long line of cases to disregard technicalities that cases may be decided on their merits?"

It is not disputed that petitioner's Notice of Appeal, Cash Appeal Bond, and Motion for Extension to File Record on Appeal were seasonably filed, and that the Record on Appeal was submitted within the extended period requested. The only issue is whether the said Motion for extension should mandatorily comply with the requirements of the Rules on Motions before the same may be acted upon by the trial Court. Sections 4, 5 and 6 of Rule 15 provide:

"Section 4. Notice. - Notice of a motion shall be served by the applicant to all parties concerned at least three days before the hearing thereof, together with a copy of the motion, and other papers accompanying it. The Court, however, for good cause may hear a motion on shorter notice, specially on matters which the Court may dispose of on its own motion.

"Section 5. Contents of Notice. - The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion.

"Section 6. Proof of service to be filed with motion. - No motion shall be acted upon by the court, without proof of service of the notice hereof, except when the court is satisfied that the rights of the adverse party or parties are not affected." (Underscoring supplied)

As a general rule, notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand that his right be not affected without an opportunity to be heard.[2] The three-day-notice required by law is intended not for the benefit of the movant but to avoid surprises upon the adverse party and to give the latter time to study and meet the arguments of the motion.[3]

The Motion in question does not affect the substantive rights of private respondents as it merely seeks to extend the period to file the Record on Appeal, which extension may be granted by the Trial Court upon application made prior to the expiration of the original period.[4] Neither was there any claim that said Motion, which was grounded on justifiable reason, was interposed to delay the appeal. As early as *Moya vs. Barton*, 76 Phil. 831 1946, this Court held that a Motion requesting an extension within which to file Record on Appeal may be considered as one which may be heard ex-parte. In *Que Tiac vs. Republic*, 43 SCRA 56 1972, it was similarly held that a telegraphic Motion for extension of time to file a Record on Appeal is addressed to the discretion of the Court, which may act thereon ex-parte. And in the more recent case of *Commercial Union Assurance Company Limited vs. Lepanto Consolidated Mining Company*, 86 SCRA 79, 98 1978, this Court ruled that the Trial Court has the power and authority to act on an ex-parte Motion for extension of time to file the Record on Appeal, which was filed within the original period prescribed by the Rules since the said Motion did not appear to be a litigated or a contentious Motion and may be acted upon even without proof of service on adverse party.

In the same case, this Court held:

x x x While the earlier cases pertinent to the issue command mandatory compliance with Sections 4, 5 and 6 of Rule 15 of the Rules of Court, the weight of the authorities recently promulgated by the Supreme Court culminating in *Amante v. Sunga*, 64 SCRA 192 and *Pimentel vs. Court of Appeals*, 64 SCRA 475, tend towards liberally giving every litigant the assistance in obtaining a fair, expeditious and reasonable determination of his rights as he seeks recourse to the court of law for justice without technicalities and without strict adherence to the letter of the Rules, thereby promoting their objective. x x x"

Accordingly, we find for petitioner. Dismissal of appeals on purely technical grounds is frowned upon as the policy of the Court is to encourage the hearing of appeals on the merits.[5] Litigants should be afforded every opportunity to establish the merits of their cases without the constraints of technicalities.[6]

WHEREFORE, the Petition is granted. The questioned Decision and Resolution of respondent Court of Appeals dated May 22, 1979 and July 26, 1979, respectively, are hereby annulled and set aside. The Court of First Instance of Cebu, Branch XIII, is hereby directed to approve petitioner's Record on Appeal and to elevate the same to the Court of Appeals.

No costs.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Plana, Vasquez, and Relova, JJ., concur. Gutierrez, Jr., J., no part.

[1] Former Second Division, composed of JJs. Lourdes P. San Diego, Hugo E. Gutierrez, Jr., Serafin R. Cuevas (ponente).

[2] *Amante vs. Sunga*, 64 SCRA 192 1975, citing 60 C.J. S. 15.

[3] *J. M. Tuason & Co. Inc. vs. Magdangal*, 4 SCRA 84 1962.

[4] *Berkenkotter vs. Court of Appeals*, 53 SCRA 228 1973.

[5] *Calasiao Farmers Cooperative Marketing Association, Inc. vs. Court of Appeals*, 106 SCRA 630 1981.

[6] *A-One Feeds, Inc. vs. Court of Appeals*, 100 SCRA 590 1980.

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