

**MANUEL B. MINTU, PETITIONER, VS. HON. COURT OF APPEALS,
SOUTHERN LINES, INC., AND/OR NEGROS NAVIGATION CO., INC.,
RESPONDENTS.**

G.R. No. L-36854. September 19, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court herein sets aside the appellate court's peremptory dismissal of petitioner's appeal for allegedly having been filed two days late, more than three years after its submittal for decision in January, 1970, since the factual question of timeliness of the perfection of the appeal had been twice raised by respondent in the court of origin and twice resolved by said court against respondent and it is manifest from the record that the appellate court's misconception of late filing (by two days) was due to its having disregarded the fact of record that the last day for perfection of the appeal (the day following receipt of notice of denial of motion for reconsideration) had been declared a special public holiday and was therefore extended ipso jure to the next succeeding business day.

The petition for review by certiorari of respondent appellate court's resolution of March 21, 1973 dismissing petitioner's appeal with costs was filed on June 8, 1973.

Petitioner's appeal as plaintiff-appellant was taken by him to the appellate court[1] from an adverse judgment by the Cavite court of first instance dismissing his action for damages against defendants-appellees for breach of contract of carriage and failure to deliver cargo and instead requiring him to pay P500 attorneys' fees to each of the two defendants companies.[2]

After service of the decision on petitioner on January 11, 1968, denial of his motion for reconsideration and filing on March 23, 1968 of his notice of appeal, appeal bond and motion for ten-day extension of time from receipt to file his record on appeal, which extension was granted by the lower court simultaneously with its order dated April 15, 1968 approving the record on appeal dated April 1, 1968 thus filed, the appeal was given due course by respondent appellate court.

Petitioner's eighty-nine (89) pages-record on appeal thus approved was duly printed, and the parties filed their respective printed briefs with petitioner having filed his printed reply brief on January 14, 1970,[3] after which the appealed case was deemed submitted for decision.

Respondent court, as per its resolution of March 21, 1973, however, ordered the dismissal of the appeal jointly with five (5) other ap-peals on the ground that "the notice of appeal and appeal bond were filed (on March 23, 1968) two (2) days late. His record on appeal was filed only on April 4, 1968, or 18 days late, as the motion for extension of time did not operate to extend the period for appeal which had already expired,"[4] as follows:

"xxx xxx On January 11, 1968, plaintiff received a copy of the decision. On February 10, 1968, he filed his motion for reconsideration which was denied on March 8, 1968. On March 23, 1968, plaintiff filed his notice of appeal and appeal bond and also a motion for extension of time. From January 11, 1968, when a copy of the

decision was received by the plaintiff to February 10, 1968, when he filed his motion for reconsideration, a period of exactly thirty (30) days already elapsed, so that he had only one (1) day within which to perfect his appeal. But he filed his notice of appeal and appeal bond only on March 23, 1968. Even assuming that he received the order of denial on March 21, 1966 (should be 1968), the date of his notice of appeal, the notice of appeal and appeal bond were filed two (2) days late. His record on appeal was filed only on April 4, 1968, or 18 days late, as the motion for extension of time did not operate to extend the period for appeal which had already expired."

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"It is the settled rule that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional and failure to perfect an appeal, as legally required, renders the judgment of the court below final and executory and deprives the appellate court of jurisdiction to entertain the appeal xxx xxx."

Since the issue submitted hinges simply on whether petitioner-appellant's filing on March 23, 1968 of his notice of appeal, appeal bond and motion for extension was timely made on the basis of the undisputed dates and facts of record, the Court as per its resolution of August 23, 1973 resolved after receipt of respondent Negros Navigation Co. Inc.'s[5] comment to consider the petition for review as a special civil action and said respondent's comments as its answer to the petition and the case thereupon submitted for decision for a prompt and expeditious determination thereof. Petitioner further filed on the same day, August 23, 1973 an extensive reply to comment.

As correctly stated by the appellate court, petitioner, having received on January 11, 1968 a copy of the adverse decision filed his motion for reconsideration on February 10, 1968, the last of the thirty-day reglementary period for perfecting his appeal "so that he had only one (1) day within which to perfect his appeal.

Since he received the lower court's order of denial of his motion for reconsideration on March 21, 1968[6] plaintiff under Rule 41, section 3[7] admittedly had up to the following day, March 22, 1968, within which to perfect his appeal. But March 22, 1968 was declared as a special public holiday in Cavite, Manila and other provinces and cities under Presidential Proclamation No. 366 dated March 18, 1966 to commemorate the birthday of General Emilio Aguinaldo. Hence, petitioner-appellant's period to perfect his appeal was extended to the first working day immediately following thereafter, i. e. March 23, 1968.[8]

The appellate court therefore erred in dismissing the appeal under its misconception that the filing by petitioner on March 23, 1968 of his notice of appeal, appeal bond and motion for extension of time to file record on appeal was two days late, since it disregarded the plain fact (expressly stated by the lower court in its order of approval of the record on appeal and brought to its attention in petitioner's motion for reconsideration which it peremptorily denied) that the last day for perfection of the appeal, March 22, 1968 had been declared a special public holiday and was therefore extended ipso jure to the next succeeding business day, March 23, 1968.

The corollary statement of the appellate court that the record on appeal "filed only on April 4, 1968 (was) 18 days late, as the motion for extension of time did not operate to extend the period of appeal which had already expired" was equally erroneous, since as already shown, the motion for extension had been timely filed on the last day therefor as extended by law to March 23, 1968 and therefore the lower court had properly deemed the record on appeal as timely filed within the extended period.

By no means of computation can one arrive at the mathematically wrong result of "18 days late" stated by the appellate court, even if March 22, 1968 (the last day) had not been declared a special public holiday in Cavite, Manila, etc. and April 4, 1968 were considered as the date of filing of the record on appeal as erroneously stated by the appellate court. (From March 22 to April 4 would give only a total of 13 days.) The Court is satisfied that

the record on appeal was filed by registered mail on April 2, 1968[9] which put its filing within and on the tenth day of the ten-day period covered by the motion for extension. This is but in accordance with "the practice before courts of justice to consider the mails as an agent of the Government - so the date of mailing is always considered as the date of filing of any petition, motion or paper." [10] The record on appeal [11] shows on its face that copies thereof were also served by registered mail on the same date, April 2, 1968 on adverse counsels.

Parenthetically, it should be noted, as pointed out in *Design Masters, Inc. vs. Court of Appeals*, [12] the printed record on appeal does not show the date of filing thereof which is stamped on the original record on appeal, and the appellate court may determine such date by examining the original record on appeal and determine that the "record on appeal meets the objective of (Rule 41, section 6), which may be deemed to have been substantially complied with. "

The fundamental question of whether petitioner had timely perfected his appeal, with the filing of his notice of appeal, appeal bond and motion for extension to file record on appeal on March 23, 1968 since March 22, 1968 had been declared a special public holiday and with the actual filing of his record on appeal by registered mail on April 2, 1968 was actually twice threshed out by respondent in the lower court and resolved adversely against it in two orders of the lower court. In no instance did respondent claim that assuming that petitioner's motion for extension of time to file record on appeal was timely filed on March 23, 1968 that petitioner's record on appeal dated April 1, 1968 had not been timely filed within the extended period granted by the lower court.

Upon filing on March 23, 1968 of petitioner's notice of appeal, appeal bond and motion for extension, respondent filed its "motion to dismiss appeal" dated April 2, 1968 claiming that the same were filed late by one day. [13] The lower court, upon petitioner's opposition citing the fact of March 22, 1968 having been declared a special public holiday in Cavite, overruled respondent's motion and approved petitioner's record on appeal ordering its transmittal to the appellate court as per its order dated April 15, 1968, wherein it held that "(I)t appearing that the thirtieth day within which to perfect the appeal fell on March 22, 1968, which was a special public holiday in Cavite and other provinces, the filing of the notice of appeal, appeal bond and urgent motion for extension of time to file record on appeal on March 23, 1968 is considered within the reglementary period xxx xxx." [14]

Respondent further filed its "amended motion to dismiss plaintiff's appeal and opposition to approval of record on appeal" dated April 15, 1968 praying "that the record on appeal dated April 1, 1968 be denied approval" on the ground that the filing on March 23, 1968 of the notice of appeal and appeal bond were filed "after a period of 32 days from date of the judgment." [15] The lower court denied the same for lack of merit per its order dated April 23, 1968. [16]

Since the factual question of timeliness of petitioner's perfection of his appeal had been twice raised in the lower court and resolved in petitioner's favor, the appellate court's peremptory dismissal *motu proprio* on March 21, 1973 of petitioner's appeal, more than three years after its submittal for decision with the filing of petitioner's reply brief on January 14, 1970 must be set aside as having been issued improvidently and in excess of its jurisdiction and authority.

The Court notes with regret that the palpable error committed by respondent appellate court of peremptorily dismissing petitioner's ap-peal on the purported ground of its having been filed two days late when in fact it had been timely filed by virtue of the last day for perfection of appeal having been declared a special public holiday and extended *ipso jure* to the next succeeding business day could have been avoided had it but paid heed to petitioner's motion for reconsideration of April 5, 1973, expressly calling attention to such declaration of a special public holiday as specially noted by the lower court in its order overruling respondent's objection of tardiness and approving petitioner's record on appeal.

The Court has had occasion to note similar obvious errors committed by respondent appellate court in other cases that have needlessly taken up its time and attention that it could have justly devoted to meritorious cases. In *Ortalis vs. Court of Appeals*,^[17] where petitioner-accused's appeal was dismissed by respondent appellate court for alleged failure of her counsel to file appellant's brief, it turned out that the notice to file brief had been mis-addressed to her counsel at Iloilo City when his address of record and law office have always been in Bacolod City, but the appellate court "turned a deaf ear to his correct claim that the notice was not received by him and persisted in its refusal to reconsider the dismissal of the appeal. " The Court there observed that "(F)or this ineptitude and obstinacy, petitioner had to come to this Court for relief and incur additional expense. An undue delay in the administration of justice as well as unnecessary expense in obtaining the same was thereby perpetrated. "

In *Soberano vs. Court of Appeals*,^[18] the appellate court upon its attention having been called by this Court, acknowledged "an involuntary error consisting in exchanging numbers of cases in the dispositive part of its decision, but which can easily be seen from reading the body of its decision and reasoning" and ordered *nunc pro tunc* the amendment of its judgment so as to correct the mix-up in the two case numbers it had given therein and to grant certiorari in Case 01458 and dismiss the petition for certiorari in Case 01457, instead of the other way around as per its original judgment, which correction it had originally refused to make notwithstanding its obvious error having been brought to its attention in therein petitioner's motion for reconsideration - prompting the Court to "express the sense that the obvious mistake herein involved could have been avoided had due attention been given *en consulta* to the motion for reconsideration petitioner had filed within the reglementary period."

The appellate court's inattention in the cited instances leading it to issue patently erroneous dismissals that find no support in the re-cord and to refuse to correct the glaring errors notwithstanding timely motions for reconsideration filed by the party adversely affected is hardly reflective of the diligence, circumspection and thoroughness expected of the second highest court of the land. The Court has herein dwelt at length on these time-consuming and needless errors which negate the very purpose of motions for reconsideration of giving the court concerned an opportunity to itself correct its own errors, in the expectancy that the appropriate remedial measures indicated will be taken to avoid their recurrence and thus enhance the judiciary's great task of rendering a just, orderly, inexpensive and efficient determination of every action and proceeding.

ACCORDINGLY, the appellate court's resolution dismissing petitioner's appeal is hereby set aside and it is hereby directed to proceed with the exercise of its appellate jurisdiction and decide the case on its merits. No costs, none having been prayed for.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Antonio, and Esguerra, JJ., concur.
Makasiar, J., on leave.

[1] Docketed as Case CA-GR. No. 41660-R entitled "Manuel B. Mintu, plaintiff-appellant vs. Southern Lines, Inc. et al., defendants-appellees."

[2] Docketed as Civil Case No. N-795 of the Cavite court.

[3] Petition, page 7.

[4] Note in parenthesis and emphasis furnished.

[5] The other respondent Southern Lines, Inc., despite notice on its counsel, failed to file any comment.

[6] Record on appeal, page 64.

[7] "But where a motion has been filed during office hours of the last day of the period herein provided, the appeal must be perfected within the day following that in which the party appealing received notice of the denial of said motion." (Rule 41, sec. 3, second paragraph).

[8] See *Meralco vs. PSC*, 18 SCRA 651; Sec. 31, Rev. Adm. Code: "Pretermission of holiday. - Where the day, or the last day, for doing any act required or permitted by law falls on a holiday, the act may be done on the next succeeding business day."

[9] Registry receipt, Annex C, petition.

[10] *Caltex (Phil) Inc. vs. Katipunan Labor Union*, 98 Phil. 340, 342. See Rule 13, section 1, providing for date of mailing as the date of filing.

[11] At page 68.

[12] 38 SCRA 297, per Concepcion, C. J. See also *Ozaeta vs. C.A.*, 42 SCRA 79, per Barredo, J. stating that it is the trial court's duty to determine whether or not the appeal has been actually perfected on time and "to allow the amendment of a record on appeal in order to include therein any relevant omitted data," and *Ever Ice Drop Factory vs. CA*, 47 SCRA 305.

[13] Record on appeal, pp. 72-75.

[14] *Idem.*, pp. 76-77.

[15] *Idem.*, pp. 83-87.

[16] *Idem.*, p. 88.

[17] L-36088, May 16, 1973, per Esguerra, J.

[18] L-36452 and L-36587, Resolution considering petition as withdrawn by virtue of correction, prom. August 14, 1973.

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