

ITT PHILIPPINES, INC., PETITIONER, VS. COURT OF APPEALS AND ERDULFO C. BOISER, RESPONDENTS.*G.R. No. L-30810. October 29, 1975*

Ponente: MARTIN, J.

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This is a petition for review of the decision of the respondent Court of Appeals in CA-G.R. No. 42895-R[1] issuing a Writ of Mandamus to the Court of First Instance of Rizal commanding it to give due course to the appeal of private respondent Erdulfo C. Boiser, from the order of said court denying said respondent's "Omnibus Motion for Relief of Judgment, New Trial, to Recall the Writ of Execution and to Suspend Execution", pursuant to Section 1 of Rule 45 of the Revised Rules of Court.

On December 11, 1964 petitioner ITT Philippines, Inc. filed in the Court of First Instance of Rizal (Pasig Branch) an action (Civil Case No. 8503) against private respondent Erdulfo C. Boiser to collect payment of the latter's alleged indebtedness. Private respondent filed his answer on February 15, 1965. Petitioner then moved to declare private respondent in default but his motion was denied as private respondent has already filed his answer.

On the scheduled pre-trial of the case on August 24, 1965, private respondent failed to appear. It was reset for September 30, 1965 since private respondent was not duly notified of the scheduled pre-trial. Again, it was postponed as there was no showing that the notice thereof was received by private respondent. Once more, the pre-trial for November 23, 1965 was reset for January 6, 1966.

With the appointment of Judge Samuel F. Reyes as Immigration Commissioner, Judge Herminio C. Mariano took over the case and set the case again for another pre-trial for September 6, 1966. When private respondent failed to appear, the lower court ordered the Deputy Clerk of Court to determine whether private respondent was duly served with notice of the pre-trial on September 6, 1966. Upon verification, the lower court found no report of the Deputy Clerk in the expediente of the case.

On February 20, 1967, the petitioner through counsel filed a motion to declare private respondent in default. Acting on said motion, the lower court on March 4, 1967, issued the following order:

"Finding the Motion dated February 20, 1967 filed by the plaintiff to declare defendant Erdulfo C. Boiser in default to be well taken, it appearing that said defendant failed to file his answer within the reglementary period, said defendant is hereby declared in default.[2]

On July 27, 1967, the lower court rendered judgment on the case and upon motion of the petitioner issued its order of April 24, 1968 authorizing the execution of the judgment.

On July 10, 1968 private respondent filed an "Urgent Omnibus Motion for Relief of Judgment, New Trial, to Recall the Writ of Execution and to Suspend Execution," claiming that he came to know of the order declaring him in default only on July 5, 1968 when the Special Sheriff left a copy of the writ of execution in his residence in Tagbilaran, Bohol. In support of his motion private respondent brought to the attention of the trial court an

affidavit alleging "that the Postmaster of Tagbilaran, Bohol, with malice and fraud aforethought, deliberately withheld from him . . . all and every information about the receipt of his mail by that post office, particularly the one containing the decision of the court in Civil Case No. 8503, and instead he, the Postmaster, unceremoniously returned as unclaimed by the addressee the said mail containing the decision notwithstanding the fact that the required number of notices usually sent to addressees of registered mails were never sent" which "may be attributed to the critical comments made" by private respondent who is a radio commentator in Tagbilaran against the alleged mismanagement by the Postmaster of the official business of the post office.

On July 22, 1968, the aforesaid "Urgent Omnibus Motion for Relief of Judgment, New Trial, to Recall the Writ of Execution and to Suspend Execution" was denied.

On August 10, 1968, private respondent filed his Notice of Appeal from the decision of the lower court and from the order denying his "Urgent Omnibus Motion for Relief of Judgment, New Trial, to Recall the Writ of Execution and to Suspend Execution". The record on appeal and the appeal bond were subsequently filed on August 24, 1968.

In due time petitioner filed an urgent motion to dismiss the appeal filed by private respondent from the decision of the lower court and the order denying the aforesaid omnibus motion. The lower court granted the motion to dismiss appeal. Private respondent moved for reconsideration of the order of dismissal of his appeal but the motion for reconsideration was denied.

Private respondent took the case to the Court of Appeals on a petition for "Mandamus with Preliminary Injunction" praying, among others, for the issuance of a "writ of preliminary injunction restraining the respondent Judge and Special Sheriff and all other officers of the law . . ., from carrying out or threatening to carry out the order of execution," . . . "ordering the respondent Judge to give due course to the appeal perfected on time" . . . "and to elevate to this Honorable Court the record on appeal, notice of appeal, appeal bond and the entire evidence, oral and documentary, submitted in said Civil Case No. 8503." The respondent Court of Appeals granted the petition for private respondent and issued the writ of mandamus commanding the lower court to give due course to the appeal of private respondent from the order denying his Urgent Omnibus Motion for Relief of Judgment, New Trial, to Recall the Writ of Execution and to Suspend Execution. Petitioner filed a motion for reconsideration of the decision of the respondent Court of Appeals but said motion was denied.

Hence, this petition for review on certiorari of the decision of the respondent Court of Appeals, pressing upon the following errors:

I

"IN NOT HOLDING THAT A WRIT OF MANDAMUS IS NOT AVAILABLE TO COMPEL THE TRIAL COURT TO GIVE DUE COURSE TO THE PATENTLY FRIVOLOUS AND DILATORY APPEAL OF RESPONDENT BOISER.

II

IN DISREGARDING THE FACT CONCLUSIVELY ESTABLISHED IN THE RECORDS THAT RESPONDENT BOISER FILED HIS PETITION FOR RELIEF MORE THAN SIXTY (60) DAYS FROM SERVICE OF THE DECISION UPON HIM.

III

IN NOT HOLDING THAT RESPONDENT BOISER IS NOT ENTITLED TO RELIEF FROM THE JUDGMENT, BECAUSE IN HIS ANSWER HE ADMITTED EVERY ALLEGATION IN THE COMPLAINT AND PRESENTED NO DEFENSE WHATSOEVER.

IV

IN NOT HOLDING THAT RELIEF FROM JUDGMENT IS NOT AVAILABLE TO RESPONDENT BOISER BECAUSE IT WAS DUE TO HIS OWN INEXCUSABLE NEGLIGENCE THAT HE LOST HIS RIGHT TO AVAIL HIMSELF OF OTHER REMEDIES.

V

IN NOT HOLDING THAT RESPONDENT BOISER WAS NOT DENIED DUE PROCESS OF LAW."

Initially, the petitioner questions the propriety of the grant of the writ of mandamus by the respondent Court of Appeals compelling the trial court to give due course to the appeal of private respondent which according to it is patently frivolous and dilatory. Well established is the doctrine that under Sections 13 and 14 of Rule 41 of the Revised Rules of Court[3] unless the appeal is abandoned, the only ground for dismissing an appeal in the trial court is the failure of the appellant to file on time the notice of appeal, appeal bond, or record on appeal.[4] This is not, however, the ground upon which petitioner has predicated his motion to dismiss the appeal in question. What petitioner claims in its motion to dismiss private respondent's appeal is that the same presents no justiciable controversy and therefore frivolous. In several cases[5] this Court has consistently held that the question as to whether or not the appeal is frivolous is not within the jurisdiction of the trial courts but for the appellate court to determine. Otherwise, it would be easy for trial courts to frustrate meritorious appeals by the simple expedient of dismissing them on the pretext that they are frivolous or dilatory.

Petitioner further claims that the respondent Court of Appeals erred in disregarding the fact that private respondent filed his petition for relief from the judgment of default against him more than sixty (60) days from services of the decision upon him. Petitioner submits that private respondent was deemed to have been properly served with the copies of the questioned decision and order of default of the trial court after he failed to claim his mail from the post office within five (5) days from the date of the first notice of the postmaster to private respondent pursuant to Section 8, Rule 13, Revised Rules of Court.[6] Petitioner relies heavily on the presumption that the postmaster had discharged properly and regularly his duties or performed acts required by law, in accordance with the law and the authority conferred on him which had not been allegedly rebutted even by the affidavit executed by private respondent alleging fraud on the part of the postmaster.

It is true that under the Revised Rules of Court, it is presumed that official duty has been regularly performed;[7] that a public official has properly and regularly discharged his duties, or performs acts required by law, in accordance with the law and the authority conferred on him, and that he will not do any act contrary to his official duty or omit to do anything which such duty may require.[8] This presumption, however, cannot apply to the case at bar. In one case,[9] this Court had occasion to review the prevailing jurisprudence on the matter and after going over several relevant cases[10] finally arrived at the conclusion that —

"Consequently, it cannot be too much to expect that when the post office makes a certification regarding delivery of registered mail, such certification should include the date not only as to whether or not the corresponding notices were issued or sent but also as to how, when and to whom the delivery thereof was made. Accordingly, the certification in the case at bar that the first and second notices addressed to Atty. Narvasa had been "issued" can hardly suffice to requirements of equity and justice. It was incumbent upon the post office to further certify that said notices were reportedly received. When there are several related acts supposed to be performed by a public officer or employee in regard to a particular matter, the presumption of regularity in the performance of official functions would not arise and be considered as comprehending all the required acts, if the certification issued by the proper office refers only to some of such acts, particularly in instances wherein proof of whether or not all of them have been performed is available under the law or office regulations to the officer making the certification. In other words, the omission of some of the acts in the

certification may justify the inference that from the proof available to the officer there is no showing that they have also been performed. Of course, where the certification is worded in general terms that reasonably comprehend performance of all the related acts, the presumption of regularity holds as to all of them."

In the case before Us, there is nothing in the records to show as to how, when and to whom the delivery of the registry notices of the registered mails of private respondent was made and as to whether said registry notices were received by private respondent. It was incumbent upon the postmaster to make a certification that the registry notices were issued or sent to private respondent and that the latter had received them. Thus, when the postmaster failed to make such certification, the presumption of regularity in the performance of his official functions would not lie. Hence, it was a grave error on the part of the lower court to consider private respondent to have been duly served with the copies of the questioned decision and order of default of the trial court by applying to him Section 8, Rule 13 of the Revised Rules of Court which provides:

"x x x Service by registered mail is completed upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time."

Furthermore, the affidavit of private respondent pointing to the fraud allegedly committed by the postmaster refutes the presumption of regularity of official functions relied upon by the trial court. Said affidavit reads:

"x x x that the Postmaster of Tagbilaran, Bohol, with malice and fraud aforethought, deliberately withhold from defendant, who is herein petitioner, all and every information about the receipt of his mail by that post office, particularly the one containing the decision of the court below in the above-mentioned Civil Case No. 8503, and instead he, the Postmaster, unceremoniously returned as unclaimed by the addressee the said mail containing the decision notwithstanding the fact that the required number of notices usually sent to addressees of registered mails were sent to petitioner "which may be attributed to the critical comments made by said petitioner who is a radio commentator in Tagbilaran, in the recent past about the nasty, inept and corrupt method by which the said postmaster mismanages the official business of the post office in Tagbilaran. Hence, in retaliation, he purposely kept the petitioner ignorant of his mails in the post office."

With the presentation of the foregoing affidavit, the burden has shifted to the petitioner to prove that there was no such fraud committed by the postmaster in the handling of the registered mails of private respondent and in the sending of the corresponding registry notices to the latter regarding them, by producing the postmaster personally in court to belie the charge against him or at the very least by presenting counter affidavits refuting the claim of the latter. Petitioner could have even cited the postmaster to testify on the manner the registered mails of private respondent were handled by his office, whether the corresponding registry notices were sent to him and whether the corresponding notices were actually received by the latter. In the absence of any proof that the registry notices regarding the "unclaimed" registered letters addressed to private respondent were actually received by him and in the face of his submission that he received the copy of the decision and the order of default against him only on July 5, 1968 when a Special Sheriff left a copy of the writ of execution on the case at his residence in Tagbilaran, Bohol, it is evident that when private respondent filed his "Urgent Omnibus Motion for Relief of Judgment, New Trial, To recall the Writ of Execution and to Suspend Execution", he was well within the reglementary period within which to file petition for relief from judgment provided by Section 2, Rule 38 of the Rules of Court and the trial court was therefore in error in dismissing the appeal of private respondent from the order denying his "Omnibus Motion for Relief of Judgment, New Trial, to Recall the Writ of Execution and to Suspend Execution." Consequently, the respondent Court of Appeals acted correctly in issuing the writ of mandamus to compel the trial court to give due course to the appeal of private respondent for under Section 15, Rule 41 of the Revised Rules of Court "when erroneously a motion to dismiss an appeal is granted or a record on appeal is disallowed by the trial court, a proper petition for mandamus may be filed in the appellate court."

IN VIEW OF THE FOREGOING, the judgment of the respondent Court of Appeals is hereby affirmed. With costs against petitioner.

SO ORDERED.

Teehankee, (Acting Chairman), Makasiar, Aquino, and Concepcion, Jr.,[*] JJ., concur.

Esguerra, J., on leave.

Muñoz Palma, J., took no part.

[*] Designated in lieu of Muñoz Palma, J.

[1] Case entitled "Erdulfo Boiser, petitioner, vs. The Honorable Herminio C. Mariano, Judge of the Court of First Instance of Rizal, et al., respondents."

[2] p. 8, C.A., Decision.

[3] Sections 13 and 14, Rule 41, Revised Rules of Court provide:

"Section 13. Effect of failure to file notice, bond or record on appeal. — Where the notice of appeal, appeal bond or record on appeal is not filed within the period of time herein provided, the appeal shall be dismissed."

"Section 14. Motion to dismiss appeal. — A motion to dismiss an appeal on any of the grounds mentioned in the preceding section, may be filed in the Court of First Instance prior to the transmittal of the record to the appellate court."

[4] Republic vs. Rodriguez, et al., L-26056, May 29, 1969.

[5] Republic vs. Gomez, G.R. No. L-17852, May 31, 1962, 115 Phil. 361; Dasalla, et al. vs. Caluag, et al., G.R. No. L-18765, July 31, 1963; GSIS vs. Cloribel, et al., G.R. No. L-22236, June 22, 1965; and Republic vs. Rodriguez, supra.

[6] "Section 8. Completeness of service. — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is completed upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time."

[7] Sec. 5(m), Rule 131, Revised Rules of Court.

[8] De la Cruz vs. Association Zanjera Casilian, 46 O.G. 4813.

[9] Hernandez, et al. vs. Navarro, et al., No. L-28296, November 24, 1972.

[10] Pielago vs. Generosa, 73 Phil. 654; Martinez vs. Martinez, 90 Phil. 697; Aldecoa vs. Arellano, 113 Phil. 75; Islas vs. Platon, 47 Phil. 162; Viacrucis vs. Estenzo, et al., 115 Phil. 556; Fojas, et al. vs. Navarro, No. L-26365, April 30, 1970; Grafil vs. Feliciano, No. L-27156, June 30, 1967; Enriquez vs. Bautista, 79 Phil. 220; Cabuang vs. Bello, 105 Phil. 1135; Grospe vs. C.A., 106 Phil. 1144; and Cayetano vs. Ceguerra, No. L-18831, January 30, 1965.

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