

MARINDUQUE MINING & INDUSTRIAL CORPORATION, SAN REMIGIO MINES, INC., AND REAL COPPER MINE AGENTS, INC., PETITIONERS, VS. THE HON. JUDGE EDUARDO D. ENRIQUEZ, AS PRESIDING JUDGE, ...

G.R. No. L-26485. June 07, 1971

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/cb6954815eb8/>

MAKALINTAL, J.:

In Civil Case No. 7206 of the Court of First Instance of Negros Occidental (for certiorari and prohibition), Marinduque Mining and Industrial Corporation (referred to hereafter simply as MARINDUQUE), et al. vs. The Hon. Jose Y. Feliciano, etc. et al., petitioners questioned the validity of an order of the then Undersecretary of Agriculture and Natural Resources, acting for then Secretary Feliciano, cancelling and declaring null and void Lode Lease Contract No. V-79, covering eleven (11) mining claims located in the province of Negros Occidental, which MARINDUQUE had previously acquired from its co-petitioners San Remigio Mines, Inc. and Real Copper Mine Agents, Inc. Herein private respondents were impleaded as respondents below because it was at their instance and upon their action that the Secretary issued the order of cancellation.

On a motion to dismiss by private respondents, Judge Eduardo D. Enriquez, presiding the court to which the case was assigned, issued an order on March 21, 1966 dismissing the petition. Petitioners moved to reconsider but their motion was denied in an order dated May 14, 1966.

On May 19, 1966 petitioners filed their notice of appeal and appeal bond for P120.00, but failed to serve a copy of said bond upon the lawyer for private respondents. On the ground of such failure and of the fact that no motion had been filed for the approval of the appeal bond, private respondents filed on May 31, 1966 a motion for denial of the appeal. Petitioners opposed, and private respondents countered with various supplemental motions raising additional objections to the appeal bond.

On July 21, 1966 respondent Judge issued an order disapproving the appeal bond and thereby denying petitioners' appeal. Their subsequent motion for reconsideration was likewise denied, and they came up to this Court on the instant petition for mandamus with preliminary injunction. A provisional injunctive writ was issued on September 13, 1966, pursuant to this court's resolution of the previous September 7.

Aside from the failure of petitioners to serve private respondents with a copy of the appeal bond, the other objections raised by the latter are: (1) that the bond so executed was defective, in that it appeared to be only for MARINDUQUE and not for its co-petitioners SAN REMIGIO and REAL; and (2) that the bond was signed for MARINDUQUE by one of the petitioners' lawyers, Arsenio B. Yulo, Jr., who as such lawyer had no authority to sign for the principal. In connection with this last objection, petitioners submitted to the court below on July 15, 1966 a certificate of the corporate Secretary of MARINDUQUE to the effect that the latter's board of directors had ratified and confirmed by resolution dated June 11, 1966 the authority of Attorney Yulo, Jr. to sign the appeal bond for the company, and, in the alternative, offered to put up a cash bond in lieu of the surety bond objected to.

The specific issues raised by petitioners are as follows:

- " 1. Whether or not failure to serve a copy of an appeal bond upon the adverse party within the 30-day period to perfect an appeal, due (it is alleged) to inadvertence, is sufficient ground to disallow the appeal;
- "2. Whether or not it was necessary for petitioners to secure court approval of their appeal bond;
- "3. Whether or not an appeal bond signed by the lawyer on behalf of his clients is defective, and if so whether or not the defect could be cured by ratification of his act or by substitution of a cash bond in lieu of the surety bond."

It is undisputed that the appeal bond was filed on time, together with the notice of appeal, but that no copy thereof was served upon private respondents. Section 3 of Rule 41 provides that "appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal." It may be noted, first, that under this rule the service upon the adverse party and the filing with the court are both essential requirements and treated on the same level of importance for purposes of the perfection of the appeal; and second, that the three things that must be served and filed are a notice of appeal, an appeal bond and a record on appeal, each also as important as the others, although it has been held that the record on appeal may itself constitute the notice, if filed on time. Failure to file an appeal bond on time would be as fatal as failure to file a record on appeal. Service of such record on the adverse party on time is mandatory, and there is no reason why a similar service with respect to the appeal bond should be accorded a different treatment.

Section 5 of Rule 41 provides that the appeal bond shall answer for the payment of costs, fixes it at P120.00 unless the court shall fix a different amount, and requires, if the bond is not in cash, that it be approved by the court before the record on appeal is transmitted to the appellate court. This requirement of the court's approval contemplates that the adverse party must be notified and given a chance to object to the bond, for there may indeed be good grounds for objection, not only in regard to the sufficiency of the amount but also to the terms of the bond insofar as they may affect the validity or enforceability of the obligation of the appellant and of the surety. The present instance is a case in point. Of the three appellants only MARINDUQUE appears as principal in the bond, and the one who signed in its behalf is its lawyer, Attorney Arsenio B. Yulo, Jr., whose authority to do so is not otherwise indicated, and in fact has not been shown to exist at the time, such that to cure the defect the board of directors of the company had to pass a resolution on June 11, 1966 ratifying and approving the action he had taken. It may thus be seen that if the failure to serve a copy of the appeal bond upon private respondents had not been raised by them and had been treated as an inconsequential matter the defect aforementioned would not have been brought to the fore and no steps to cure it would have been taken, to the possible prejudice of said respondents.

In the case of *Capinpin vs. Ysip*, L-14018, August 31; 1959 (106 Phil. 168) this Court held:

"The only question involved herein is whether the appeal has been perfected in due time. It is well settled that in order to perfect an appeal from the Court of First Instance, appellant should serve upon the adverse party and file with the court a notice of appeal, an appeal bond and a record on appeal, within 30 days from notice of order or judgment; so that failure of appellant to meet these three requirements would render his contemplated appeal unperfected and the decision becoming thereby final and executory."

A similar ruling was laid down in *Espartero vs. Ladaw*, 49 O.G. 1439.

The rule requiring service of a copy of the appeal bond upon the adverse party is, of course, not so inflexible as to admit of no exception regardless of any excusable cause for non-compliance. In *Philippine Resources Development Corporation vs. Hon. Judge Gregorio S. Narvasa, et al.*, L-12803, February 27, 1962, (4 SCRA 414)

relied upon by herein petitioners, the defendant-appellant overlooked to serve the plaintiff with a copy of the appeal bond on time. This Court said:

"Under Section 3, Rule 41, of the Rules of Court, an appeal may be taken by serving upon the adverse party and filing with the trial court within 30 days from notice of the judgment a notice of appeal, an appeal bond, and a record on appeal; This section clearly requires that not only shall the three documents be filed with the court within the period of 30 days but that copies thereof shall be served upon the adverse party. This requirement is made in order that the adverse party may not only be notified of the intention of the appellant to take the case to the appellate court but also to afford him an opportunity to register his opposition to any of them if he desires to do so.

There is no question that defendant has filed within the reglementary period its notice of appeal and record on appeal with the trial court and has at the same time served copies thereof upon plaintiff, but, as it is admitted, it overlooked to serve the plaintiff with a copy of the appeal bond. Apparently, defendant has failed to comply with an important requirement for the perfection of its appeal, but, we ask, is that failure of such a nature as to affect the substantial right or interest of the plaintiff?

Our answer is in the negative considering that the appeal bond merely' consists in the amount of P60.00 and the same was filed with the court within the reglementary period. Such failure cannot certainly affect any substantial right of plaintiff, as may be inferred from the fact that when plaintiff registered its opposition to the approval of the record on appeal it did not mention that failure as one of the grounds of its opposition. As a matter of fact, no opposition has ever been advanced to the sufficiency of the bond."

Petitioners cannot derive comfort from the decision just cited. If anything, it bolsters respondents position. For here they precisely raised non-compliance with the rule regarding service as a ground for their objection to the appeal, and pointed out a defect in the appeal bond which could have prejudiced them. The attempt to cure that defect does not excuse such non-compliance; otherwise hardly any objection would prosper, considering that an appellant could always neutralize it, as by amending the terms of the bond, or increasing its amount if insufficient, or even filing a new bond altogether, and then saying that after all no substantial right or interest of the appellee has been affected.

In their memorandum petitioners make reference to an affidavit purportedly executed by the secretary of Attorney Aisenio Yulo, Jr. and submitted to the lower court to show that the failure to serve a copy of the appeal bond upon respondents was due to an honest mistake and inadvertence. No copy of said affidavit is attached to the record before us; nor do petitioners explain just what such mistake or inadvertence consisted of. However, from the discussion of this particular point in the memorandum for private respondents, it appears that Atty. Yulo instructed his secretary to take "charge of perfecting the appeal," and that the latter in turn gave the copy of the appeal bond to a messenger for him to serve it on respondents. No reliable explanation for his failure to do so is given, no statement by him having been presented. Under the circumstances the claim of excusable negligence cannot be accepted.

Nor is petitioners' plea that they have been unduly deprived of the right to appeal from the order dismissing their petition below of sufficient weight to grant the writ they pray for. The right to appeal is purely statutory, which must be prosecuted within the time and pursuant to the procedure prescribed for it. It is not an inherent right and is not a necessary element of due process (*Bello vs. Fernando*, 4 SCRA 135; *Santiago vs. Valenzuelo*, 78 Phil. 397).

In view of the foregoing, we are of the opinion that respondent Judge neither abused his discretion nor unlawfully neglected the performance of a duty specifically enjoined by law, nor excluded petitioners from the exercise of a right to which they were clearly entitled, so as to justify the remedy now sought by petitioners.

WHEREFORE, the writ prayed for is denied, and the preliminary injunction issued by this Court on September 13, 1966, is dissolved, with costs.

Concepcion, C.J., Reyes, J.B.L, Dizon, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.