

JESUS G. CABALZA, PETITIONER, VS. COURT OF APPEALS[] AND FAR EAST REALTY INVESTMENT, INC., RESPONDENTS.*G.R. No. L-37994. October 29, 1976*

Ponente: TEEHANKEE, J.

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The Court in the two cases at bar (which are jointly decided because of the common question of law presented with reference to the proper application of the material data rule) sets aside respondent court's dismissal of the petitioners' pending appeals on the strength of doctrinal jurisprudence declaring the liberal and realistic ruling that where the fact of due and timely perfection of the appeal is stated in the trial court's order approving the record on appeal without objection on the appellee's part and the correctness and veracity of the trial court's finding that the record on appeal is in order is not impugned or disputed by the adverse party, the appellate court should properly rely on such finding and let the appeal take its due course.

In the first case, L-37994, petitioner Jesus G. Cabalza as defendant appealed per his Amended Notice of Appeal filed on June 19, 1972 "from (a) the Order, dated March 28, 1972, declaring defendant in default; (b) the ex-parte Decision of April 12, 1972 and (c) the Order, dated May 16, 1972, denying defendant's Motion to Set Aside Order of Default and for New Trial x x x "[1] of the Manila court of first instance, manifesting that he had earlier filed on June 2, 1972 with his original Notice of Appeal his cash appeal bond. The lower court had rendered judgment against petitioner in favor of private respondent Far East Realty Investment, Inc. sentencing petitioner inter alia to pay respondent the balance allegedly due on a P6,000-promissory note in the sum of P4,550.00 with interests and 10% attorney's fees and reversing the original judgment of October 11, 1971 of the Manila city court dismissing respondent's complaint and declaring the obligation as having been fully settled and discharged.

The lower court in an extended Order of August 23, 1972[2] denied "for lack of factual and legal merits" respondent's "Joint Motion to Dismiss Appeal and for Issuance of Writ of Execution" and having overruled respondent's objection, approved as "in order" petitioner's 192-page Record on Appeal.[3]

Nevertheless, upon elevation of the record to respondent appellate court, respondent filed therein a petition to dismiss appeal dated October 20, 1973 on the ground of failure to state complete data showing timely perfection of the appeal. Notwithstanding petitioner's comment that he had in his opposition to respondent's motion to dismiss appeal in the lower court stated all the material data in detail[4] and that the lower court had found respondent's objections to be without "factual and legal merits", respondent appellate court granted the petition and ordered dismissal of petitioner's appeal per its Resolution of November 13, 1973 and denied reconsideration per its Resolution of December 6, 1973.

In the second case, L-39277, petitioner Beatriz de Zuzuarregui Vda. de Reyes, as an heir of the estate of the late Antonio de Zuzuarregui appealed from the Rizal court of first instance's (at Quezon City) Order of March 26, 1973 granting her co-heirs' Motion (after reopening the closed estate proceedings) to correct an alleged typographical error in the statement of area of a parcel of land in Antipolo, Rizal in the project of partition duly

signed by all the heirs and approved by the probate court wherein the land was stated to have an area of 83,781 square meters when its actual area was almost ten times larger or an area of 803,781.51 square meters or an understatement by 720,000.51 square meters. Petitioner had accepted in the project of partition another property instead of her 1/16 share in the Antipolo land in the belief that its area was only 83, 781 square meters, but now opposed the petition of her co-heirs alleging that they had intentionally and fraudulently concealed its true area and prayed that she be awarded her rightful 1/16 share in the unaccounted excess area of 720,000 square meters amounting to 45,000 square meters.

Petitioner filed on May 7, 1973 her 36-page record on appeal and on May 26, 1973, the lower court after noting expressly the lack of any opposition thereto approved the same as having been filed "in due time and in order".

Upon elevation of the record to respondent appellate court, and after petitioner had filed her appellant's brief, respondent filed a motion to dismiss the appeal on the ground of non-compliance with the material data rule. (Rule 41, section 6). Respondent appellate court disregarded as a "conclusion" the lower court's express finding of the timeliness of the appeal and ordered per its Resolution of August 15, 1974 the dismissal of the appeal on the ground that petitioner's record on appeal did not show when the appeal bond was filed nor petitioner's date of receipt of the adverse order of March 26, 1973.

Hence, the petitions at bar which the Court finds to be meritorious.

In the first case, the record on appeal expressly shows that petitioner Cabalza in opposing respondent's motion to dismiss appeal as filed with the lower court, set forth therein the specific dates of receipt of the appealed ex-parte decision and orders.[5] Thus, in denying respondent's said motion to dismiss appeal and for issuance of a writ of execution, the lower court expressly overruled respondent's contention as follows:

"The defendant, in opposing the motion of the plaintiff, had presented the following facts which appear to be supported by the record of the case:

"That it had filed the Notice of Appeal on June 2, 1972 with a deposit of P120.60 as appeal bond, as per Official Receipt No. 1488293, dated June 2, 1972; that on June 22, 1972, the record on appeal was filed before the Court and on the same day, a copy of the same was personally delivered to and properly receipted by the plaintiff on June 22, 1972; that the defendant had filed an Urgent Motion to Set Aside the Order of Default and for New Trial but later denied by the Court in its Order dated May 16, 1972, a copy of which was received by the defendant on May 30, 1972.

"The appeal bond and the record on appeal having been filed within the reglementary period of 30 days from receipt of the order denying the Motion for Reconsideration and for New Trial on May 30, 1972, the decision of this Court, dated April 12, 1972 is not yet final and executory, so is the claim of defendant Jesus Cabalza." [6]

Respondent's objections in respondent appellate court as to the lack of material data in petitioner's record on appeal were manifestly without basis - since the said dates had been threshed out in the lower court and more importantly, the substantive question of whether petitioner's appeal had been filed within the reglementary 30-day period had been squarely raised by respondent and expressly found by the lower court to be without factual and legal basis.[7] This finding is not disputed by respondent.

In the second case, the lower court in approving petitioner Zuzuarregui Vda. de Reyes' record on appeal as filed on May 7, 1973, expressly determined that "the Notice of Appeal, Appeal Bond and Record on Appeal having been filed by Beatriz Zuzuarregui Vda. de Reyes in due time and in order, the same are hereby APPROVED".[8] Respondent does not dispute or impugn the lower court's finding of timeliness of the appeal nor petitioner's assertion that she had timely perfected her appeal on the thirtieth day on May 7, 1973, having been served on

April 7, 1973 with copy of the appealed adverse order.

Petitioners' appeals, not being frivolous or manifestly dilatory, should therefore take their due course and be resolved on the merits.

As reaffirmed by the Court in *Gregori vs. Court of Appeals*[9] and in *San Pedro vs. Court of Appeals*[10], in the leading case of *Pimentel vs. Court of Appeals*[11] as presaged by *Berkenkotter vs. Court of Appeals*[12], the Court has consistently ruled that where the lower court finds and declares in its order of approval of the record on appeal that it was filed "on time" or "in order" and the correctness and veracity of such finding are not impugned or disputed by the adverse party, the omissions of certain data in the record on appeal would not warrant dismissal of the appeal - "since the appellate court may properly rely on the trial court's order of approval and determination of timeliness of the appeal."

This is wholly consistent with the reason for the material data rule which is to obviate and eliminate waste of time that would be incurred by the appellate tribunal in requiring the lower court to forward the original record and in examining such record to determine the timeliness of the appeal; and where the trial court in its order approving the record on appeal finds and declares that the same was timely perfected or in order and the correctness and veracity of such finding and declaration are not disputed by the adverse party, the reason for the rule ceases because thereby the appellate court can rely thereon without the need of sending for, and of any further examination of, the original records of the case.

A final procedural note is in order in the second case. Petitioner's brief as filed with this Court dealt not with the subject of her petition with this Court for review and setting aside of respondent appellate court's Resolution of August 15, 1974 dismissing her appeal for alleged failure to comply with the material data rule but on the merits of her appeal itself against the adverse order of the lower court. Hence, respondents filed a motion to dismiss the present petition for failure to file an appropriate brief. Required to comment, petitioner contended that she had already fully covered in her main petition the question of due and timely perfection of her appeal and prayed that this Court review the merits of her appeal.

As already indicated above, notwithstanding the deficiency of petitioner's brief, (due obviously to her counsel's being carried away and not realizing that this Court, not being a reviewer of facts, will not review and determine at this stage the merits of her appeal) the merit of her petition is borne out by the petition itself and by the cited doctrinal jurisprudence.

The merits of her appeal are not yet ready for determination, however, and the case will be remanded to respondent appellate court for prompt determination thereof, after respondents and petitioner shall have been afforded the opportunity to file their appellees' brief and appellant's reply brief, respectively, in accordance with the Rules of Court.

ACCORDINGLY, respondent appellate court's dismissals of the petitioners' appeals are set aside and the two cases at bar are remanded to said respondent court for proper proceedings and prompt determination of the appeals on the merits. Without costs.

Makasiar, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

[*] Sixth Division composed of JJ. A. Reyes, chairman and R. Gaviola, Jr. and Mariano Serrano, members.

[**] Seventh Division composed of JJ. J. Leuterio, chairman and R. Lim and F. Tantuico, Jr., members.

- [1] Record on Appeal in CA-GR 52082-R, pp. 126-127.
- [2] *Idem*, pp. 155-162.
- [3] *Idem*, p. 191.
- [4] *Idem*, pp. 137-144.
- [5] See fn. 4.
- [6] Record on Appeal in CA-GR 52082-R, pp. 158-159
- [7] *Idem*, pp. 155-162.
- [8] Record on Appeal in CA-GR 53197-R, pp. 35-36.
- [9] L-39393, promulgated with this decision, October, 1976.
- [10] Joint decision in L-38270, *San Pedro vs. Court of Appeals* and L-38351, *Villa-Abrille vs. Court of Appeals*, prom. August 31, 1976, citing *Andaya vs. Court of Appeals*, L-37124, May 5, 1976, and cases cited.
- [11] 64 SCRA 475 (June 27, 1975), per Makasiar, J.
- [12] 53 SCRA 228 (Sept. 28, 1973).

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