

SANTOS CODILLA, PETITIONER, VS. FLORENCIA LOPEZ, TEODORO VILLANUEVA, AND THE HONORABLE COURT OF FIRST INSTANCE, BRANCH III, MASBATE, MASBATE, RESPONDENTS.

G.R. No. L-50081. May 31, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The basic issue in this Petition for Review on Certiorari is the correctness of the Order of respondent Judge of the Court of First Instance, Branch III, Masbate, dismissing petitioner's appeal from a Decision of the Municipal Court of Claveria, Masbate, primarily on the ground that since petitioner's appeal bond had not been approved by the Municipal Court it was defective and petitioner (as defendant below) had not perfected his appeal on time.

Shorn of unessential details, the facts may be stated as follows:

On September 27, 1973, the Municipal Court of Claveria, Masbate, in a suit primarily for Unlawful Detainer and Damages filed by Florencia Lopez as plaintiff (private respondent herein) against petitioner and one Rufino Duran, as defendants, rendered a Decision ordering petitioner to vacate the premises in question and restore possession to private respondent; to pay P1,000.00 as the value of the produce that private respondent-plaintiff had failed to receive; and P120.00 as the yearly rental from 1970 up to the time of restoration of possession of the property in question.

Within the reglementary period, petitioner filed his Notice of Appeal to the Court of First Instance of Masbate, a supersedeas bond of P1,000.00, and an appeal bond in the amount of P60.00, with one Juanito Llacona as surety.

The records of the case were thereafter transmitted to respondent Court of First Instance, Branch III, Masbate.

On March 17, 1976, respondent Judge granted execution pending appeal upon private respondent's instance on the ground that petitioner had failed to pay the yearly rental of P120.00. Petitioner moved for reconsideration followed by a Supplemental Motion but the same was denied. In her Opposition, private respondent alleged that petitioner's Motions were without proper basis inasmuch as the appeal bond had not been approved by the Municipal Court and was defective and that the appeal had not been perfected.

On August 19, 1976, respondent Judge upheld private respondent's arguments, dismissed petitioner's appeal for failure to perfect appeal in due time, relying on Section 5, Rule 41 of the Rules of Court. The reconsideration of said ruling prayed for by petitioner was denied by respondent Judge on September 14, 1976.

Petitioner resorted to a Petition for Relief from respondent Judge's Orders of August 19, 1976 and September 14, 1976. Respondent Judge denied relief in his Order of September 20, 1978 reproduced in full hereinbelow:

"This is a petition for relief filed by defendant thru counsel seeking reconsideration of the orders of this Court of August 19, and September 14, 1976, respectfully, dismissing the appeal.

"The Court denies the same for lack of jurisdiction.

"Where the appeal was dismissed because of the defect in the appeal bond, the Court of First Instance lost its jurisdiction to proceed with the case upon dismissal. The only step left to the Court was to remand the case to the justice of the peace court for the due execution of the judgment which was revived upon the dismissal of the appeal (Otibar, et al., vs. Vinson, et al., No. L-18023, May 30, 1962).

"WHEREFORE, finding the petition for relief to be unmeritorious, the same is hereby denied.

"SO ORDERED."[1]

Hence, this Petition for Review on Certiorari, to which we gave due course, having found the same to be meritorious.

Reliance by respondent Judge on Section 5, Rule 41, requiring Court approval of the appeal bond is clearly misplaced as the said Rule refers to appeals from Courts of First Instance to the Court of Appeals. Specifically, said Rule reads:

"Sec. 5. Appeal Bond - The appeal bond shall answer for the payment of costs. It shall be in the amount of one hundred and twenty pesos (P120) unless the court shall fix a different amount. If the appeal bond is not in cash it must be approved by the court before the transmittal of the record on appeal to the appellate court" (Rule 41)

And under section 9 of the same Rule, the appeal is deemed perfected after the approval by the trial Court of the appeal bond other than a cash bond.

"Sec. 9. When appeal deemed perfected; effect thereof. - If the notice of appeal, the appeal bond and the record on appeal have been filed in due time, the appeal is deemed perfected upon the approval of the record on appeal and of the appeal bond other than a cash bond, and thereafter the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court, and to permit the prosecution of pauper's appeal" (Rule 41)

The pertinent Rules governing appeals from Municipal Courts to Courts of First Instance are found instead in Rule 40, as follows:

"Sec. 2. Appeal, how perfected. - An appeal shall be perfected within fifteen (15) days after notification to the party of the judgment complained of, a) by filing with the justice of the peace or municipal judge a notice of appeal; b) by delivering a postal money order for the amount of the appellate court docket fee or a certificate of the municipal treasurer showing that the appellant has deposited such appellate court docket fee or in chartered cities, a certificate of the clerk of the municipal court showing receipt of the said fee; and c) by giving a bond" (Rule 40)

"Sec. 3. Appeal bond. - The bond to be given by the appellant shall be filed with the justice of the peace or municipal court and shall be in the sum of sixty pesos (P60), executed to the adverse party, with at least one sufficient surety conditioned that the appellant will pay all costs which the Court of First Instance may award against him. In lieu of such bond, the appellant may file with the court a postal money order for fifty pesos (P50) or a certificate of the proper official that the appellant had deposited fifty pesos (P50) with the municipal or city treasurer and that said sum is available for the satisfaction of any judgment for costs that may be rendered against appellant by the Court of First Instance. In case judgment is rendered in appellant's favor the sum deposited in lieu of appeal bond shall be returned to him by the official with whom it was deposited" (Rule 40)

"Sec. 5. Transmittal of record. - The justice of the peace or municipal judge from whose judgment an appeal is taken, shall, within five (5) days after the perfection of the appeal, transmit to the clerk of the Court of First Instance for the province or city a certified copy of the docket entries, together with all the original papers and

process in the case and the original appeal bond, or in lieu thereof, the postal money order, or certificate of deposit, and the appellate court docket fee." (Rule 40).

It should be noted that nowhere in the aforecited Rules is the approval of the appeal bond by the Municipal Court for the perfection of an appeal expressly required.

But even if Municipal Court approval were likewise a requirement, and applying by analogy the interpretative rulings on Section 5, Rule 41, the duty does not devolve upon the party appealing to secure from the Court the approval of the appeal bond. That responsibility belongs to the Court. Moreover, the failure of a Court to approve an appeal bond should not work to an appellant's prejudice.

"x x x But there is nothing in the rules which imposes upon the party appealing the duty of securing from the court the approval of the appeal bond. This is an act which the court should attend to once said bond is filed by the appealing party. This is a duty imposed upon the court by section 5 Rule 41. The only duty of the appealing party is to file it within the reglementary period. The failure of the court to approve the appeal bond as required by section 5 Rule 41 cannot work to appellant's prejudice. The case of *Prisco, et al vs. Oscar Castelo, et al* (48 Off. Gaz. 2193) is authority for the ruling that as long as the appeal bond remains unapproved, the trial court is not divested of its jurisdiction over the same and can approve the appeal bond as required by section 5 Rule 41".[2]

There is no question herein that petitioner had complied with the requisites of Sections 2 and 3 of Rule 40 within the prescribed period. He received a copy of the Municipal Court Decision on December 6, 1973. The Notice of Appeal, dated December 11, 1973, the appeal bond of P60.00 subscribed by one surety, as well as the supersedeas bond, the latter two both dated December 12, 1973, were filed by registered mail on December 16, 1973, or within fifteen (15) days from notice.

Besides, even assuming that petitioner's appeal bond filed on time were defective, the general rule is not to dismiss the appeal but to give the appellant an opportunity upon reasonable terms, to perfect the bond or file a new one.[3] It was reversible error for respondent Court, therefore, to have dismissed the appeal "for lack of jurisdiction."

"x x x Even if it be held that two sureties are needed to complete an appeal bond in an appeal from the court of first instance to the appellate court, we may say that the defect found in the instant appeal bond is not sufficient to deprive the court of its jurisdiction it appearing that the same has been filed within the reglementary period.
x x x "[4]

WHEREFORE, the challenged Orders of August 19, 1976 and September 14, 1976 are hereby set aside and respondent Court of First Instance hereby ordered to give due course to petitioner's or defendants' appeal and render judgment accordingly.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

[1] pp. 68-69, Record on Appeal.

[2] *Espartero vs. Ladaw*, 92 Phil. 704 (1953); see also *Bayot vs. Mendoza*, 94 SCRA 481 (1979).

[3] *Perla Compañia de Seguros, Inc. vs. Concepcion*, 104 SCRA 786 (1981); *Nator vs. Ramolete*, 101 SCRA 716 (1980).

[4] Ramirez vs. Arrieta, 6 SCRA 722, 724 (1962).

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