

SOFRONIO GAMMAD, ET AL., PETITIONERS VS. MANUEL ARRANZ, JUDGE OF THE COURT OF FIRST INSTANCE OF ISABELA, GERARDA TOTTO AND EPIFANIO DAUS, RESPONDENTS.*G. R. No. L-6079. April 29, 1953*

Ponente: MONTEMAYOR, J.

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This is a petition for mandamus with preliminary injunction. The facts involved as may be gathered from the pleadings and their annexes are the following: In civil case No. 294, Gerarda Totto, et al., vs. Sofronio Gammad, et al., of the Court of First Instance of Isabela, judgment was rendered against defendants, now petitioners Sofronio, Crisanta, and Catalina, all surnamed Gammad in favor of plaintiffs, now respondents Gerarda Totto and Epifanio Daus by respondent Judge Manuel Arranz of that court. A copy of the decision was received by defendants-petitioners on June 12, 1952. On June 14, 1952, they filed a notice of appeal and a record on appeal, furnishing the appellees with copies thereof. As to the appeal bond, they merely deposited a cash bond of P60 with the clerk of court with no notice of said deposit either to the appellees or to the court. Due to the opposition to the approval of the record on appeal, the same was amended and corrected at least twice. On July 28, 1952, the amended Record on Appeal as corrected, was filed by petitioners. It does not appear that it was ever approved by the Court. On July 18, 1952, a motion for execution of the judgment was filed by plaintiffs-respondents and on August 1, 1952, a motion to dismiss the appeal was filed on the ground that the petitioners failed to serve upon the plaintiffs-respondents notice of the deposit of the appeal bond with the clerk of court within the thirty (30) days from notice of the decision, and to submit said appeal bond for court approval within the same period of time. Acting upon the said motion and on the answer to the same, the respondent Judge on August 21, 1952, issued an order dismissing the appeal on the grounds alleged in the motion, citing the case of Price Stabilization Corporation, et al. vs. Castelo,[1] et al., G. R. No. L-4327, 48 Off. Gaz., No. 6, p. 2193. The present petition was filed to compel the respondent Judge to approve the appeal to enjoin him not to issue the order of execution.

We have carefully examined the case of Price Stabilization Corporation, et al., vs. Castelo, et al., supra, cited in the order of dismissal of the appeal and we find that case not to be directly in point, much less decisive in the determination of the present petition. While in that case cited the majority opinion had occasion to say that in case of a cash appeal bond, mere deposit of the amount of P60 with the clerk of court was not sufficient, and that notice of such deposit must be served upon the adverse party and also upon the court, what was really decided in said case was that even a cash appeal bond must be approved by the court, and that until such approval, the court retains jurisdiction over the case; in other words, the appeal is not perfected. The bearing of the point decided in that case to the present petition is that inasmuch as a cash appeal bond needs court approval and the cash appeal bond filed in the present case was never approved by the court, one reason being that said court was not notified of its deposit, then the appeal was not perfected. It does not however mean that the appellant has lost his right to appeal, and that the decision had become final and executory, because in the case of Espartero, et al. vs. Ladaw,[2] et al., G. R. No. L-5181, promulgated February 24, 1953, we held that it was not necessary for the

appellant to secure the approval of his appeal bond within the period of thirty (30) days; that it was enough for him to have filed said appeal bond within said period and the court may subsequently approve the same. In the present case the cash appeal bond was filed on time. So was his notice of appeal and the record on appeal. He had done all that was required of him to perfect his appeal. Court failure to approve the appeal bond within the legal period may not be laid at his door. As far as he was concerned, his appeal had been, perfected; consequently his appeal may not be dismissed.

In view of the foregoing, the order dismissing the appeal is hereby set aside, and the respondent Judge is hereby directed to approve the appeal and forward the case to the appellate court after he has approved the cash appeal bond either in its present amount or in an increased amount according to his sound discretion. Respondents Totto and Daus will pay the costs.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] 87 Phil., 714.

[2] Supra, p. 704.

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