

LORENZO VELASCO AND SOCORRO J. VELASCO, PETITIONERS, VS. HONORABLE COURT OF APPEALS AND MAGDALENA ESTATE, INC., RESPONDENTS.

G.R. No. L-31018. June 29, 1973

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This is a petition for certiorari and mandamus filed by Lorenzo Velasco and Socorro J. Velasco (hereinafter referred to as the petitioners) against the resolution of the Court of Appeals dated June 28, 1969 in CA-G.R. 42376, which ordered the dismissal of the appeal interposed by the petitioners from a decision of the Court of First Instance of Quezon City on the ground that they had failed seasonably to file their printed record on appeal.

Under date of November 3, 1968, the Court of First Instance of Quezon City, after hearing on the merits, rendered a decision in Civil Case 7761, dismissing the complaint filed by the petitioners against the Magdalena Estate, Inc. (hereinafter referred to as the respondent) for the purpose of compelling specific performance by the respondent of an alleged deed of sale of a parcel of residential land in favor of the petitioners. The basis for the dismissal of the complaint was that the alleged purchase and sale agreement "was not perfected."

On November 18, 1968, after the perfection of their appeal to the Court of Appeals, the petitioners received a notice from the said court requiring them to file their printed record on appeal within sixty (60) days from receipt of said notice. This 60-day term was to expire on January 17, 1969.

Allegedly under date of January 15, 1969, the petitioners allegedly sent to the Court of Appeals and to counsel for the respondent, by registered mail allegedly deposited personally by its mailing clerk, one Juanito D. Quiachon, at the Makati Post Office, a "Motion For Extension of Time To File Printed Record on Appeal." The extension of time was sought on the ground "of mechanical failures of the printing machines, and the voluminous printing jobs now pending with the Vera Printing Press"

On February 10, 1969, the petitioners filed their printed record on appeal in the Court of Appeals. Thereafter, the petitioners received from the respondent a motion filed on February 8, 1969 praying for the dismissal of the appeal on the ground that the petitioners had failed to file their printed record on appeal on time. Acting on the said motion to dismiss the appeal, the Court of Appeals, on February 25, 1969, issued the following resolution:

"Upon consideration of the motion of counsel for defendant-appellee praying on the grounds therein stated that the appeal be dismissed in accordance with Rule 50, Rules of Court, and of the opposition thereto filed by counsel for plaintiffs-appellants, the Court RESOLVED to DENY the said motion to dismiss.

"Upon consideration of the registry-mailed motion of counsel for plaintiffs-appellants praying on the grounds therein stated for an extension of 30 days from January 15, 1969 within which to file the printed record on appeal, the Court RESOLVED to GRANT the said motion and the printed record on appeal which has already been filed is ADMITTED."

On March 11, 1969, the respondent prayed for a reconsideration of the above-mentioned resolution, averring that the Court of Appeals had been misled by the petitioners' "deceitful allegation that they filed the printed record on appeal within the reglementary period," because according to a certification issued by the postmaster of Makati, Rizal, the records of the said post office failed to reveal that on January 15, 1969 - the date when their motion for extension of time to file the printed record on appeal was supposedly mailed by the petitioners - there was any letter deposited there by the petitioners' counsel. The petitioners opposed the motion for reconsideration. They submitted to the appellate court the registry receipts (numbered 0215 and 0216), both stamped January 15, 1969, which were issued by the receiving clerk of the registry section of the Makati Post Office covering the mails for the disputed motion for extension of time to file their printed record on appeal and the affidavit of its mailing clerk Juanito D. Quiachon, to prove that their motion for extension was timely filed and served on the Court of Appeals and the respondent, respectively. After several other pleadings and manifestations were filed by the parties relative to the issue raised by the respondent's above-mentioned motion for reconsideration, the Court of Appeals promulgated on June 28, 1969, its questioned resolution, the dispositive portion of which reads as follows:

"WHEREFORE, the motion for reconsideration filed on March 11, 1969 is granted and the appeal interposed by plaintiffs-appellants from the judgment of the court below is hereby dismissed for their failure to file their printed Record on Appeal within the period authorized by this Court. Atty. Patrocino R. Corpuz [counsel of the petitioners] is required to show cause within ten (10) days from notice why he should not be suspended from the practice of his profession for deceit, falsehood and violation of his sworn duty to the Court. The Provincial Fiscal of Rizal is directed to conduct the necessary investigation against Juanito D. Quiachon of the Salonga, Ordoñez, Yap, Sicat & Associates Law Office, Suite 319-337 Rufino Building, Ayala Avenue, Makati, Rizal, and Flaviano O. Malindog, a letter carrier at the Makati Post Office, to file the appropriate criminal action against them as may be warranted in the premises, and to report to this Court within thirty (30) days the action he has taken hereon."

The foregoing disposition was based on the following findings of the Court of Appeals:

"An examination of the Rollo of this case, particularly the letter envelope on page 26 thereof, reveals that on January 15, 1969, plaintiffs supposedly mailed via registered mail from the Post Office of Makati, Rizal their motion for extension of 30 days from that date to file their printed Record on Appeal, under registered letter No. 0216. However, in an official certification, the Postmaster of Makati states that the records of his office disclose: (a) that there were no registered letters Nos. 0215 and 0216 from the Salonga, Ordoñez, Yap, Sicat & Associates addressed to Atty. Abraham F. Sarmiento, 202 Magdalena Building, España Ext., Quezon City, and to the Court of Appeals, Manila, respectively, that were posted in the Post Office of Makati, Rizal, on January 15, 1969; (b) that there is a registered letter numbered 215 but that the same was posted on January 3, 1969 by Enriqueta Amada of 7 Angel, Pasillo F-2, Cartimar, Pasay City, as sender, and Giral Amasan of Barrio Cabuniga-an, Sto. Niño, Samar, as addressee; and that there is also a registered letter numbered 216; but that the same was likewise posted on January 3, 1969 with E.B.A. Construction of 1049 Belbar Building, Metropolitan, Pasong Tamo, Makati, as sender, and Pres. R. Nakaya of the United Pacific Trading Co., Ltd., 79, 6 Chamo, Nakatu, Yokohari, Japan, as addressee; (c) that on January 15, 1969, the registered letters posted at the Makati Post Office were numbered consecutively from 1001-2225, inclusive, and none of these letters was addressed to Atty. Abraham F. Sarmiento or to the Court of Appeals; (d) that in Registry Bill Book No. 30 for Quezon City as well as that for Manila, corresponding to February 7, 1969, there are entries covering registered letters Nos. 0215 and 0216 for dispatch to Quezon City and Manila, respectively; however, such registry book for February 7, 1969 shows no registered letters with such numbers posted on the said date.

"The Acting Postmaster of the Commercial Center Post Office of Makati, Rizal, further certifies that 'Registry Receipts Nos. 0215 and 0216 addressed to Atty. Abraham F. Sarmiento of the Magdalena Estate, Quezon City and the Honorable Court of Appeals, respectively, does not appear in our Registry Record Book which was

allegedly posted at this office on January 15, 1969.'

"From the foregoing, it is immediately apparent that the motion for extension of time to file their printed Record on Appeal supposedly mailed by the plaintiffs on January 15, 1969 was not really mailed on that date but evidently on a date much later than January 15, 1969. This is further confirmed by the affidavit of Flaviano Malindog, a letter carrier of the Makati Post Office, which defendant attached as Annex 1 to its supplemental reply to plaintiffs' opposition to the motion for reconsideration. In his said affidavit, Malindog swore among others:

"That on February 7, 1969, between 12:00 o'clock noon and 1:00 o'clock in the afternoon, JUANITO D. QUIACHON approached me at the Makati Post Office and talked to me about certain letters which his employer had asked him to mail and that I should help him do something about the matter; but I asked him what they were all about, and he told me that they were letters for the Court of Appeals and for Atty. Abraham Sarmiento and that his purpose was to show that they were posted on January 15, 1969; that I inquired further, and he said that the letters were not so important and that his only concern was to have them postmarked January 15, 1969;

"That believing the word of JUANITO D. QUIACHON that the letters were not really important I agreed to his request; whereupon, I got two (2) registry receipts from an old registry receipt booklet which is no longer being used and I numbered them 0215 for the letter addressed to Atty. Abraham Sarmiento in Quezon City and 0216 for the letter addressed to the Court of Appeals, Manila; that I placed the same numbering on the respective envelopes containing the letters; and that I also postmarked them January 15, 1969;

"That to the best of my recollection I wrote the correct date of posting, February 7, 1969, on the back of one or both of the registry receipts above mentioned;

"That the correct date of posting, February 7, 1969 also appears in the Registry Bill Books for Quezon City and Manila where I entered the subject registered letters';

"Of course, plaintiffs' counsel denies the sworn statement of Malindog and even presented the counter-affidavit of one of his clerks by the name of Juanito D. Quiachon. But between Malindog, whose sworn statement is manifestly a declaration against interest since he can be criminally prosecuted for falsification on the basis thereof, and that of Quiachon, whose statement is self-serving, we are very much inclined to give greater weight and credit to the former. Besides, plaintiffs have not refuted the facts disclosed in the two (2) official certifications above mentioned by the Postmasters of Makati, Rizal. These two (2) certifications alone, even without the affidavit of Malindog already carries more than enough weight to move this Court to reconsider its resolution of February 25, 1969 and order the dismissal of this appeal."

On September 5, 1969, after the rendition of the foregoing resolution, the Court of Appeals promulgated another, denying the motion for reconsideration of the petitioners, but, at the same time, accepting as satisfactory the explanation of Atty. Patrocinio R. Corpuz why he should not be suspended from the practice of the legal profession.

On September 20, 1969, the First Assistant Fiscal of Rizal notified the Court of Appeals that he had found a prima facie case against Flaviano C. Malindog and would file the corresponding information for falsification of public documents against him. The said fiscal, however, dismissed the complaint against Quiachon for lack of sufficient evidence. The information subsequently filed against Malindog by the first Assistant Fiscal of Rizal reads as follows:

"That on or about the 7th day of February 1969, in the municipality of Makati, province of Rizal, and a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding with John Doe, whose true identity and present whereabouts is still

unknown, did then and there wilfully, unlawfully and feloniously falsify two registry receipts which are public documents by reason of the fact that said registry receipts are printed in accordance with the standard forms prescribed by the Bureau of Posts, committed as follows: the above-named accused John Doe, on the date above-mentioned approached and induced the accused Malindog, a letter-carrier at the Makati Post Office, to postmark on January 15, 1969 two sealed envelopes, one addressed to Atty. Abraham Sarmiento in Quezon City, and the other to the Court of Appeals, Manila, and the accused Malindog, acceding to the inducement of, and in conspiracy with, his co-accused John Doe, did then and there wilfully, unlawfully and feloniously falsify said registry receipts of the Makati Post Office by writing on the first registry receipts number 0215 corresponding to the envelope addressed to Atty. Abraham Sarmiento in Quezon City, and number 0216 addressed to the Court of Appeals, Manila, after which the accused postmarked both registry receipts and the two corresponding envelopes with the date January 15, 1969, thereby making it appear that the said sealed envelopes addressed to Atty. Sarmiento and the Court of Appeals were actually posted at the Makati Post Office on January 15, 1969, when in truth and in fact the same were posted only on February 7, 1969, thus the accused altered the true date when the said mail matters were actually posted, and causing it to appear that the Postmaster of Makati participated therein by posting said mail matters on January 15, 1969, when in truth and in fact he did not so participate."

The petitioners contend that in promulgating its questioned resolution, the Court of Appeals acted without or in excess of jurisdiction, or with such whimsical and grave abuse of discretion as to amount to lack of jurisdiction, because (a) it declared that the motion for extension of time to file the printed record on appeal was not mailed on January 15, 1969, when, in fact, it was mailed on the said date as evidenced by the registry receipts and the post office stamp of the Makati Post Office; (b) it declared that the record on appeal was filed only on February 10, 1969, beyond the time authorized by the appellate court, when the truth is that the said date of filing was within the 30-day extension granted by it; (c) the adverse conclusions of the appellate court are not supported by the records of the case, because the said court ignored the affidavit of the mailing clerk of the petitioners' counsel, the registry receipts and postmarked envelopes (citing *Henning vs. Western Equipment*, 62 Phil. 579, and *Caltex Phil., Inc. vs. Katipunan Labor Union*, 52 O.G. 6209), and, instead, chose to rely upon the affidavit of the mail carrier Malindog, which affidavit was prepared by counsel for the respondent as the affiant himself so declared at the preliminary investigation at the Fiscal's office which absolved the petitioners' counsels mailing clerk Quiachon from any criminal liability; (d) Section 1, Rule 50 of the Rules of Court, which enumerates the grounds upon which the Court of Appeals may dismiss an appeal, does not include as a ground the failure to file a printed record on appeal, (e) the said section does not state either that the mismailing of a motion to extend the time to file the printed record on appeal, assuming this to be the case, may be a basis for the dismissal of the appeal; (f) the Court of Appeals has no jurisdiction to revoke the extension of time to file the printed record on appeal it had granted to the petitioners based on a ground not specified in Section 1, Rule 50 of the Rules of Court; and (g) the objection to an appeal may be waived as when the appellee has allowed the record on appeal to be printed and approved (citing *Moran*, Vol. II, p. 519).

Some of the objections raised by the petitioners to the questioned resolution of the Court of Appeals are obviously matters involving the correct construction of our rules of procedure and, consequently, are proper subjects of an appeal by way of certiorari under Rule 45 of the Rules of Court, rather than a special civil action for certiorari under Rule 65. The petitioners, however, have correctly appreciated the nature of its objections and have asked this Court to treat the instant petition as an appeal by way of certiorari under Rule 45 "in the event . . . that this Honorable Supreme Court should deem that an appeal is an adequate remedy . . ." The nature of the case at bar permits, in our view, a disquisition of both types of assignments.

We do not share the view of the petitioners that the Court of Appeals acted without or in excess of jurisdiction or gravely abused its discretion in promulgating the questioned resolution.

While it is true that stamped on the registry receipts 0215 and 0216 as well as on the envelopes covering the mails in question is the date "January 15, 1969," this, by itself, does not establish an un rebuttable presumption of the fact or date of mailing. Henning and Caltex, cited by the petitioners, are not in point because the specific adjective issue resolved in those cases was whether or not the date of mailing a pleading is to be considered as the date of its filing. The issue in the case at bar is whether or not the motion of the petitioners for extension of time to file the printed record on appeal was, in point of fact, mailed (and, therefore, filed) on January 15, 1969.

In resolving this issue in favor of the respondent, this Court finds, after a careful study and appraisal of the pleadings, admissions and denials respectively adduced and made by the parties, that the Court of Appeals did not gravely abuse its discretion and did not act without or in excess of its jurisdiction. We share the view of the appellate court that the certifications issued by the two postmasters of Makati, Rizal and the sworn declaration of the mail carrier Malindog describing how the said registry receipts came to be issued, are worthy of belief. It will be observed that the said certifications explain clearly and in detail how it was improbable that the registry receipts in question could have been issued to the petitioners' counsel in the ordinary course of official business, while Malindog's sworn statement, which constitutes a very grave admission against his own interest, provides ample basis for a finding that where official duty was not performed it was at the behest of a person interested in the petitioners' side of the action below. That at the preliminary investigation at the Fiscal's office, Malindog failed to identify Quiachon as the person who induced him to issue falsified receipts, contrary to what he declared in his affidavit, is of no moment since the findings of the inquest fiscal as reflected in the information for falsification filed against Malindog indicate that someone did induce Malindog to make and issue false registry receipts to the counsel for the petitioners.

This Court held in *Bello vs. Fernando*[1] that the right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner provided by law. In this connection, the Rules of Court expressly makes it the duty of an appellant to file a printed record on appeal with the Court of Appeals within sixty (60) days from receipt of notice from the clerk of that court that the record on appeal approved by the trial court has already been received by the said court. Thus, Section 5 of Rule 46 states:

"Sec. 5. Duty of appellant upon receipt of notice. - It shall be the duty of the appellant within fifteen (15) days from the date of the notice referred to in the preceding section, to pay the clerk of the Court of Appeals the fee for the docketing of the appeal, and within sixty (60) days from such notice to submit to the court forty (40) printed copies of the record on appeal, together with proof of service of fifteen (15) printed copies thereof upon the appellee."

As the petitioners failed to comply with the above-mentioned duty which the Rules of Court enjoins, and considering that, as found by the Court of Appeals, there was a deliberate effort on their part to mislead the said Court in granting them an extension of time within which to file their printed record on appeal, it stands to reason that the appellate court cannot be said to have abused its discretion or to have acted without or in excess of its jurisdiction in ordering the dismissal of their appeal.

Our jurisprudence is replete with cases in which this Court dismissed an appeal on grounds not mentioned specifically in Section 1, Rule 50 of the Rules of Court. (See, for example, *De la Cruz vs. Blanco*, 73 Phil. 596 (1942); *Government of the Philippines vs. Court of Appeals*, 108 Phil. 86 (1960); *Ferinion vs. Sta. Romana*, L-25521, February 28, 1966, 16 SCRA 370, 375).

It will likewise be noted that inasmuch as the petitioners' motion for extension of the period to file the printed record on appeal was belatedly filed, then, it is as though the same were non-existent, since as this Court has already stated in *Baquiran vs. Court of Appeals*,[2] "The motion for extension of the period for filing pleadings and papers in court must be made before the expiration of the period to be extended." The soundness of this

dictum in matters of procedure is self-evident. For, were the doctrine otherwise, the uncertainties that would follow when litigants are left to determine and redetermine for themselves whether to seek further redress in court forthwith or take their own sweet time will result in litigations becoming more unbearable than the very grievances they are intended to redress.

The argument raised by the petitioner - that the objection to an appeal maybe waived, as when the appellee allows the record on appeal to be printed and approved - is likewise not meritorious considering that the respondent did file a motion in the Court of Appeals on February 8, 1969 praying for the dismissal of the appeal below of the petitioners on the ground that up to the said date the petitioners had not yet filed their record on appeal and, therefore, must be considered to have abandoned their appeal.

In further assailing the questioned resolution of the Court of Appeals, the petitioners also point out that on the merits the equities of the instant case are in their favor. A reading of the record, however, persuades us that the judgment a quo is substantially correct and morally just.

The appealed decision of the court a quo narrates both the alleged and proven facts of the dispute between the petitioners and the respondent, as follows:

"This is a suit for specific performance filed by Lorenzo Velasco against the Magdalena Estate, Inc. on the allegation that on November 29, 1962 the plaintiff and the defendant had entered into a contract of sale (Annex A of the complaint) by virtue of which the defendant offered to sell the plaintiff and the plaintiff in turn agreed to buy a parcel of land with an area of 2,059 square meters more particularly described as Lot 15, Block 7, Psd-6129, located at No. 39 corner 6th Street and Pacific Avenue, New Manila, this City, for the total purchase price of P100,000.00.

"It is alleged by the plaintiff that the agreement was that the plaintiff was to give a down payment of P10,000.00 to be followed by P20,000.00 and the balance of P70,000.00 would be paid in installments, the equal monthly amortization of which was to be determined as soon as the P30,000.00 down payment had been completed. It is further alleged that the plaintiff paid the down payment of P10,000.00 on November 29, 1962 as per receipt No. 207848 (Exh. 'A') and that when on January 8, 1964 he tendered to the defendant the payment of the additional P20,000.00 to complete the P30,000.00 the defendant refused to accept and that eventually it likewise refused to execute a formal deed of sale obviously agreed upon. The plaintiff demands P25,000.00 exemplary damages, P2,000.00 actual damages and P7,000.00 attorney's fees.

"The defendant, in its Answer, denies that it has had any direct dealings, much less, contractual relations with the plaintiff regarding the property in question, and contends that the alleged contract described in the document attached to the complaint as Annex A is entirely unenforceable under the Statute of Frauds; that the truth of the matter is that a portion of the property in question was being leased by a certain Socorro Velasco who, on November 29, 1962, went to the office of the defendant indicating her desire to purchase the lot; that the defendant indicated its willingness to sell the property to her at the price of P100,000.00 under the condition that a down payment of P30,000.00 be made, P20,000.00 of which was to be paid on November 31, 1962, and that the balance of P70,000.00 including interest at 9% per annum was to be paid on installments for a period of ten years at the rate of P5,381.32 on June 30 and December of every year until the same shall have been fully paid; that on November 29, 1962 Socorro Velasco offered to pay P10,000.00 as initial payment instead of the agreed P20,000.00 but because the amount was short of the alleged P20,000.00 the same was accepted merely as deposit and upon request of Socorro Velasco the receipt was made in the name of her brother-in-law the plaintiff herein; that Socorro Velasco failed to complete the down payment of P30,000.00 and neither has she paid any installments on the balance of P70,000.00 up to the present time; that it was only on January 8, 1964 that Socorro Velasco tendered payment of P20,000.00, which offer the defendant refused to accept because it had considered the offer to sell rescinded on account of her failure to complete the down payment on or before December 31, 1962.

"The lone witness for the plaintiff is Lorenzo Velasco, who exhibits the receipt, Exhibit A, issued in his favor by the Magdalena Estate, Inc., in the sum of P10,000.00 dated November 29, 1962. He also identifies a letter (Exh. B) of the Magdalena Estate, Inc. addressed to him and his reply thereto. He testifies that Socorro Velasco is his sister-in-law and that he had requested her to make the necessary contacts with the defendant referring to the purchase of the property in question. Because he does not understand English well, he had authorized her to negotiate with the defendant in her own name. But even so, he had always accompanied her whenever she went to the office of the defendant, and as a matter of fact, the receipt for the P10,000.00 down payment was issued in his favor. The plaintiff also depends on Exhibit A to prove that there was a perfected contract to sell calling attention to the annotations therein as follows: 'Earnest money for the purchase of Lot 15, Block 7, Psd-6129, Area 2,059 square meters including improvements thereon - P10,000.00.' At the bottom of Exhibit A the following appears: 'Agreed price: P100,000.00, P30,000.00 down payment, bal. in 10 years.'

"To prove that the Magdalena Estate, Inc. had been dealing all along with him and not with his sister-in-law and that the Magdalena Estate, Inc. knew very well that he was the person interested in the lot in question and not his sister-in-law, the plaintiff offers in evidence five checks all drawn by him in favor of Magdalena Estate, Inc. for payment of the lease of the property. . . .

"There does not seem to be any dispute regarding the fact that the Velasco family was leasing this property from the Magdalena Estate, Inc. since December 29, 1961; that the Velasco family sometime in 1962 offered to purchase the lot as a result of which Lorenzo Velasco thru Socorro Velasco made the P10,000.00 deposit or, in the language of the defendant 'earnest money or down payment' as evidenced by Exhibit A. The only matter that remains to be decided is whether the talks between the Magdalena Estate, Inc. and Lorenzo Velasco either directly or thru his sister-in-law Socorro Velasco ever ripened into a consummated sale. It is the position of the defendant (1) that the sale was never consummated and (2) that the contract is unenforceable under the Statute of Frauds."

The court a quo agreed with the respondent's (defendant therein) contention that no contract of sale was perfected because the minds of the parties did not meet "in regard to the manner of payment." The court a quo's appraisal of this aspect of the action below is correct. The material averments contained in the petitioners' complaint themselves disclose a lack of complete "agreement in regard to the manner of payment" of the lot in question. The complaint states pertinently:

"4. That plaintiff and defendant further agreed that the total down payment shall be P30,000.00, including the P10,000.00 partial payment mentioned in paragraph 3 hereof, and that upon completion of the said down payment of P30,000.00, the balance of P70,000.00 shall be paid by the plaintiff to the defendant in 10 years from November 29, 1962;

"5. That the time within which the full down payment of the P30,000.00 was to be completed was not specified by the parties but the defendant was duly compensated during the said time prior to completion of the down payment of P30,000.00 by way of lease rentals on the house existing thereon which was earlier leased by defendant to the plaintiff's sister-in-law, Socorro J. Velasco, and which were duly paid to the defendant by checks drawn by plaintiff."

It is not difficult to glean from the aforequoted averments that the petitioners themselves admit that they and the respondent still had to meet and agree on how and when the downpayment and the installment payments were to be paid. Such being the situation, it cannot, therefore, be said that a definite and firm sales agreement between the parties had been perfected over the lot in question. Indeed, this Court has already ruled before that a definite agreement on the manner of payment of the purchase price is an essential element in the formation of a binding and enforceable contract of sale.[3] The fact, therefore, that the petitioners delivered to the respondent the sum of P10,000 as part of the downpayment that they had to pay cannot be considered as sufficient proof of the perfection of any purchase and sale agreement between the parties herein under Article 1482 of the new Civil

Code, as the petitioners themselves admit that some essential matter — the terms of payment — still had to be mutually covenanted.

ACCORDINGLY, the instant petition is hereby denied. No pronouncement as to costs.

Makalintal, Acting C.J., Makasiar, and Esguerra, JJ., concur.

Zaldivar, J., concurs in the dissenting opinion of Mr. Justice Teehankee.

Teehankee, J., dissents in separate opinion.

Fernando, J., took no part.

Barredo, J.: The petitioners having clearly and without sufficient justification failed to prosecute their appeal within the period allowed by the rules, I vote to deny the petition, and consistently with my view already expressed on previous occasions, any discussion of the merits of the appeal is unwarranted, particularly, in instances like the present, wherein the same does not appear to me, upon cursory examination to be beyond doubt.

Antonio, J., I concur on the basis of the first ground but reserved my opinion on the merits of the appeal.

DISSENTING OPINION

TEEHANKEE, J.:

I dissent from the main opinion penned by Mr. Justice Castro affirming the appellate court's dismissal of petitioners' pending appeal before it because of late submittal of the printed record on appeal (by 24 days), on the ground that such late submittal of the printed record on appeal — when the appeal was indisputably timely perfected — does not call for the imposition of the capital penalty of dismissal of the appeal.

As in my separate opinion in *Sison vs. Gatchalian*[4] promulgated just a few weeks earlier, I must note with gratification the special pains taken in the main opinion to discuss nevertheless the substance and merit of the aborted appeal and to record the Court's conclusion that the judgment sought to be appealed is substantially correct — in line with the Court's policy in such cases (of dismissal of appeals timely perfected for failure to comply with certain requirements of the Rules) of invariably satisfying itself that justice is not sacrificed to technicality and that there is "a rational basis for the result reached by the trial court"[5] in the judgment sought to be reviewed by the lost appeal.

In the case at bar, however, I believe that the merits and equities invoked by petitioners-appellants in support of their action for specific performance of their agreement with respondent for the purchase of the parcel of land described in the complaint for the "agreed price (of): P100,000.00, P30,000.00 down payment, bal. in 10 years" (which is a matter of mathematical computation), with petitioners having admittedly made a down payment of P10,000.00 as "earnest money" which was accepted by respondent and continuing to pay respondent lease rentals for the property occupied by them under lease to compensate for the time taken to complete the full down payment pending formalization of their contract, deserve a full-dress consideration of the appeal and of the respective contentions of the parties in their briefs and legal principles involved with a decision on the merits of the case itself.

Since two other members of the Court, viz, Justices Barredo and Antonio, have reserved their opinions on the merits of the appeal, as stated in their respective concurrences, I further consider this to be a case where the paramount considerations of substantial justice must take precedence over the lateness (by 24 days) in the submittal of the printed record on appeal — which in no way can be claimed to have prejudiced the substantial rights of respondent or delayed the cause of the administration of justice — and that accordingly, such a technical

transgression on counsel's part should not result in the drastic forfeiture of petitioners' right of appeal and of securing a possible reversal of the adverse verdict of the lower court.

As stated by Chief Justice Concepcion for the Court in *Concepcion vs. Payatas Estate Improvement Co., Inc.*,^[6] "After all, pleadings, as well as remedial laws, should be construed liberally, in order that litigants may have ample opportunity to prove their respective claims, and that a possible denial of substantial justice, due to legal technicalities, may be avoided." This is but the very mandate of the Rules of Court: that they be "liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding"^[7] and that "All pleadings shall be liberally construed so as to do substantial justice."^[8]

Here, the 60-day period for petitioners-appellants "to submit . . . forty (40) printed copies of the record on appeal" from notice on November 18, 1968 of receipt of the original typewritten record on appeal in the appellate court^[9] was to expire on January 17, 1969. Petitioners submitted their printed record on appeal on the 24th day after such expiry date, viz, on February 10, 1969.

The appellate court admitted the printed record on appeal as per its original resolution of February 25, 1969 denying respondent's motion to dismiss the appeal, wherein it granted the registry-mailed motion of petitioners' counsel for a 30-day extension from January 15, 1969 within which to submit the same. Counsel's ground for such extension was mechanical failures of the printing machines and voluminous printing jobs of the Vera Printing Press, which they had contracted to do the printing job.

Upon complaint of respondent, however, that petitioners' counsel, through its mailing clerk Juanito D. Quiachon, had deceived the appellate court into believing that their motion for extension had been registry-mailed January 15, 1969 when actually it was so mailed late only on February 7, 1969, as borne out by the affidavit of Flaviano Malindog, a Makati post office letter-carrier as supported by the records of said post office — which the appellate court believed as against Quiachon's counter-affidavit to the contrary — the said court as per its resolution of June 28, 1969 granted respondent's motion for reconsideration and ordered the dismissal of petitioners' appeal "for their failure to file their printed record on appeal within the period authorized by this court."

In the same resolution, Atty. Patrocinio R. Corpus, as petitioners' counsel, was required to show cause "why he should not be suspended from the practice of his profession for deceit, falsehood and violation of his sworn duty to the Court," but subsequently, the appellate court as per its resolution of September 5, 1969 accepted as satisfactory said counsel's explanation and disclaimer of any wrongdoing.

Acting upon the appellate court's directive to investigate the incident for the filing of appropriate criminal action against Quiachon and Malindog, the Rizal provincial fiscal found a *prima facie* case against Malindog (the letter-carrier) and charged him in the corresponding information for falsification of public documents but dismissed the complaint against Quiachon (the mailing clerk of petitioners' counsel) for lack of sufficient evidence since Malindog could not identify Quiachon as the person who induced him to issue falsified registry receipts.

I concur with the main opinion in its ruling upholding the appellate court's factual findings, which I don't consider to be reviewable by this Court, grounded as they are on substantial evidence. Hence, for purposes of this review, such factual findings must be postulated, to wit, that the printed record on appeal was submitted 24 days late on February 10, 1969, that there was a deliberate effort on the part of an unknown person (John Doe in the information) - not petitioners nor their counsel nor Quiachon, the mailing clerk - to induce Malindog to make and issue false registry receipts that showed that petitioners' counsel's motion for a 30-day extension to submit the printed record on appeal was filed timely on January 15, 1969 rather than late (by 21 days) on February 7, 1969.

The general issue of law that confronts us then is this: Is the 60-day period for submitting the printed record on appeal mandatory and jurisdictional or is this merely a procedural period such that a late submittal (by 24 days) of the printed record on appeal (owing to a valid reason of mechanical failures and pressure of work of the printer) regardless of whether a motion for extension of time to submit the printed record on appeal was in fact filed or filed out of time after expiration of the original 60-day period, may in the appellate court's sound discretion in the interest of justice and equity be nevertheless allowed and the appeal heard and decided on its merits?

The 60-day period for submitting the printed record on appeal is obviously imposed as a procedural rule, under Rule 46, Section 5, like many other time limitations imposed by the Rules of Court as indispensable to the prevention of needless delays and necessary to the orderly and speedy discharge of judicial business.[10]

But this 60-day period for submitting the printed record on appeal is to be distinguished from say, the mandatory 30-day period for perfecting an appeal from a Court of First Instance judgment under Rule 41, Section 3, where failure to file the necessary notice, bond and record on appeal within the said 30-day period, if not duly extended, is fatal and calls for dismissal of the unperfected appeal under Rule 41, Section 13.

Here, the appeal had long been and timely duly perfected by petitioners. What is merely involved here is a late filing (by 24 days) of the printed copies of the record on appeal, which this Court has held in *Ever Ice Drop Factory vs. Court of Appeals*[11] as "not indispensable to the jurisdiction of the appellate courts, the sole purpose of such printing being convenience in the handling, keeping and reading of the record on appeal."

In the cited case of *Ever*, the Court applied the salutary rule of overlooking procedural deficiencies in the interest of substantial justice and set aside the appellate court's dismissal of the appeal (for non-inclusion in the joint record on appeal of the appellants' notice of appeal and date of receipt of the appealed decision although such data as well as the official receipt of payment of the appeal bond could be found "sewed to the original record on appeal"), ruling that "Inasmuch as Rule 41 is in that portion of the rules pertaining to the stage of the appeal process taking place in the trial court, it is but logical that the frame of reference, when the completeness of a record on appeal, as therein provided, is in question, must be the contents of said record as filed with said court, and not necessarily those of the printed one filed with the appellate court."

As applied to the case at bar, therefore, I vote for the granting of the petition and to remand the appeal to the appellate court for disposition and decision on the merits, for the following considerations, in addition to those stated above and in my separate opinion in *Sison*, supra: -

- Since the use of the false registry receipts appears in no way to be of the making of petitioners' counsel, much less of petitioners themselves, who as clients may be presumed to be entirely unaware of the procedural requirements and of their counsel's action or inaction in complying therewith, the imposition of the capital penalty of dismissal of petitioners' appeal is unduly severe;
- Such a harsh penalty appears to be in derogation of the interest and purpose of the Rules of Court - the proper and just determination of a litigation. No substantial right of respondent has been prejudiced by the late submittal of the printed record, whereas petitioners' appeal would be forfeited through no fault or negligence on their part;
- While clients are generally bound by the actions or mistakes of their counsels, here no fault or wrongdoing has been attributed to either petitioners or their counsel. Their counsel's late submittal of the brief and of the corresponding motions for extension (by less than a month's time) is not rank failure to comply with the rule's requirements;
- The specific rule (Rule 46, Section 5) does not provide for dismissal of the appeal for failure to submit the printed record on appeal, whereas Section 7 of the rule prohibits "alterations, omissions or additions to the printed

record" and does provide that "a violation of this prohibition shall be a ground for dismissal of the appeal."

- Even Rule 50, Section 1 which provides that the appellate court may dismiss a pending appeal for certain specific infractions of the rules, e.g. failure to pay the docketing fee or to file appellant's brief on time or "unauthorized alterations, omissions or additions in the printed record on appeal" (paragraph [e]) or want of specific assignment of errors or of page references to the record in appellant's brief, merely confers a power, not a duty, upon the appellate court to dismiss the appeal. It is merely directory, not mandatory, upon the said court to exercise its power to dismiss an appeal and dismissal has been ordered sparingly and only in extreme cases warranting dismissal;

- Withal, this Court may dismiss an appeal even on grounds not specifically mentioned in Rule 50, Section 1, as where the wanton or inexcusable conduct of appellant in not complying with the rules warrants such dismissal.[12] But the Rules certainly do not authorize dismissal of a duly perfected appeal for mere failure to file the printed record on appeal within the original 60-day period, such failure not being wanton or inexcusable. Yet such failure to file the printed record on appeal within the 60-day period (which was filed late by 24 days and had already been admitted) was the only ground stated by the appellate court for its peremptory dismissal of the appeal;

- Thus, the appellate court did not sustain respondent's contention that petitioners through counsel had deceived it through knowing use of the false registry receipts, since it exonerated counsel of any complicity. One gets the impression that the unnamed person had perhaps induced Malindog to issue the false receipts to cover up some neglect or fault on Quiachon's part in not having timely mailed counsel's extension motion, but neither the appellate court nor the fiscal made any such finding against Quiachon. Assuming for the nonce that Quiachon was responsible for the deception, it does not seem fair to penalize petitioners with dismissal of their appeal;

- The appellate court thus disregarded the harmless error rule as provided in Rule 51, Section 5 that "no error or defect in any ruling or order . . . [such as its first order admitting the printed record on appeal in the belief that petitioners' motion for extension had been timely filed] . . . is ground . . . for setting aside, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court, at every stage of the proceeding must disregard any error or defect which does not affect the substantial rights of the parties";[13]

- Since the enactment as of September 9, 1968 of Republic Act 5440 providing that in most cases as specified therein,[14] review by this Court of final judgments and decrees of inferior courts shall be by petition for writ of certiorari - and no longer by record on appeal - some parties-appellants aggrieved by adverse Court of First Instance judgments have to the present continued to submit their appeals to this Court by means of records on appeal as approved by the lower court, contrary to the Act's mandate that they should be presented by means of "petitions . . . filed and served in the form required for petitions for review by certiorari of decisions of the Court of Appeals." [15] Strictly speaking, such an error although abetted by the trial court's act of approving a record on appeal that is not required by the Act, could be considered fatal to the appeal. But following paramount considerations of substantial justice in preference to transgressions of form, as stressed in *Sonora vs. Tongoy*, [16] "the Court has been liberal in the implementation of Republic Act 5440 and instead of dismissing appeals coming up to Us by record on appeal, We have allowed the appellants to file the corresponding petition (for review by certiorari) provided the appeal by record on appeal has been duly perfected within the reglementary period.[17]

- This is but to stress that even though the provision of Republic Act 5440 that such appeals shall be only on petitions for review by certiorari and no longer as a matter of right by record on appeal is of a mandatory character, this Court has nevertheless adopted a liberal construction and chosen to apply the principle of

substantial justice in favor of one whose appeal was actually perfected on time rather than to sacrifice substance to form. In the language of Sonora, vis-a-vis the case at bar, "it is less than fair for respondents to attempt to cut off (petitioners') right to appeal by invoking the literal meaning of the language of the rules, disregarding their wise and practical construction already laid down by the Supreme Court." [18]

- In *sensu contrario*, applying the same principles of substantial justice the Court has in many cases seeking mandamus or reinstatement of disallowed appeals (although timely made) looked at the "substantive merits" of the proposed appeal and where "there is hardly any prospect of its being ultimately successful," denied mandamus, ruling as in *Espiritu vs. CFI of Cavite* [19] that "this Court has already ruled on several occasions, since as early as *De la Cruz vs. Blanco*, 73 Phil. 596 that mandamus to compel approval and certification of an appeal, even if otherwise well grounded, procedurally speaking, has to be denied where it is evident that there is no merit in the appeal itself, and 'it would serve no useful purpose to reinstate' the same." *Lucas vs. Mariano* [20] was to the same effect, with the Court sustaining therein petitioner's submittal "that from the point of view of the time of the taking of the appeal, petitioners are right in contending that the same was well within the reglementary period" but that "after a review of the whole record and giving the consideration to all the points and issues raised by the petitioners, We are sufficiently convinced that their claim of title has no chance of being sustained even if other and further proceedings were to be held in the court below"; and

- Finally, adherence to a liberal construction of the procedural rules in order to attain their objective of substantial justice and of avoiding possible denials of substantial justice due to procedural technicalities does not mean non-enforcement of the Rules of Court which are universally recognized to be necessary to the orderly and speedy discharge of judicial business with the least delay. Compliance with the rules, which are not mandatory character (such as the period of perfecting appeals, failure to observe which results in the automatic penalty of loss of the right to appeal) but of directory character to provide timetables and prevent needless delay in readying a duly perfected appeal for consideration and decision (such as the 60-day period for submittal of the printed record on appeal involved here, periods for filing of briefs and transcripts, etc.) has invariably been rigorously enforced by the Court through the imposition of appropriate disciplinary measures upon offending counsel, ranging from an admonition or reprimand, a fine or declaring him in contempt to even more drastic measures of administrative proceedings for disbarment against him, depending upon the gravity of the offense.

Zaldivar, J., concur.

[1] L-16970, January 30, 1962, 4 SCRA 135, 138.

[2] L-14551, July 31, 1961, 2 SCRA 873, 878.

[3] *Navarro vs. Sugar Producers Corp. Marketing Association, Inc.*, L-12888, April 29, 1961, 1 SCRA 1180, 1187.

[4] L-34709, prom. June 15, 1973.

[5] *Paz vs. Guzman*, 43 SCRA 384 (Feb. 29, 1972), citing *Corliss vs. MRRCo.*, 27 SCRA 674, 678 (1969).

[6] 103 Phil. 1016, 1022 (1958); italics supplied.

[7] Rule 1, Section 2.

[8] Rule 6, Section 15.

[9] As required in Rule 46, Sections 4 and 5.

[10] Cf. *Shioji vs. Harvey*, 43 Phil. 333; *Alvero vs. de la Rosa*, 76 Phil. 428; *Altavas vs. CA*, 106 Phil. 940 (1960).

[11] 47 SCRA 305 (1972), per Barredo, J., italics supplied.

[12] See *Kiener Co. Ltd. vs. Republic of the Phil.*, 21 SCRA 605 (1967) where this Court considered the Solicitor General's almost 4 months' delay in filing the printed record on appeal as inexcusable. The Court rejected the proffered explanation of the notice to file printed record on appeal having been misplaced by a receiving clerk as "a habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed in the Rules of Court" and ordered dismissal of the State's appeal.

[13] Notes in bracket and italics supplied.

[14] Excepting only criminal cases where the penalty imposed is death or life imprisonment, naturalization and denaturalization petitions and decisions of the Auditor-General if appellant is a private person or entity, which continue to be reviewable on appeal. (Sec. 17 of the Judiciary Act, as amended by R.A. 5440).

[15] R.A. 5440, Section 3.

[16] 44 SCRA 411, 415-416 (April 19, 1972) per Barredo, J.; notes in parentheses supplied.

[17] The Court added that "in the interest of uniformity of procedure, considering that We have been liberal in the cases that have come to Us so far, all concerned, particularly the trial judges, are informed that in the near future the Court is going to set a deadline after which all appeals not made in conformity with the statute must have to be dismissed"; *idem*, at page 416.

[18] *Idem.*, at page 417.

[19] 47 SCRA 355, 356 (Oct. 31, 1972) per Barredo, J., italics supplied, citing *Razalan vs. Concepcion*, 31 SCRA 611, 615; *Manila Railroad vs. Ballesteros*, 16 SCRA 641; *Paner vs. Yatco*, 87 Phil. 271.

[20] 44 SCRA 501, 514, 517 (April 27, 1972), per Barredo, J.

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