

ROLANDO A. DATUIN, ASSIGNOR TO JALWINDOR MANUFACTURERS, INC., PETITIONER, VS. THE COURT OF APPEALS AND FLORENTINO C. OZAETA, RESPONDENTS.

G.R. No. L-44039. November 02, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Appeal by certiorari from the resolution of the Court of Appeals dated March 22, 1976 in CA-G.R. NO. 05150-R, which dismissed the appeal of petitioner for not having been perfected within the prescribed period. This Court, however, resolved to consider this proceeding as a special civil action in the resolution of December 17, 1976.[1]

It appears that Philippine Letters Patent No. 5496 for a process for the manufacture of triplex glass was issued to Jalwindor Manufacturers Inc. In a petition dated October 31, 1974 filed before the Philippines Patent Office, private respondent Florentino Ozaeta, doing business under the name and style of Ohio Safety Industries, prays for the cancellation of the said letters patent on ground, among others, that the alleged invention is not new or patentable and the alleged invention has been patented and described in publication, manual textbooks, brochures, encyclopedia, in the Federal Republic of Germany and elsewhere including the Philippines, more than one year before the application was filed by the alleged inventor. The petition for cancellation was amended on November 15, 1974 incorporating the allegation that he (private respondent) "has been, is or will be injured by the grant of the aforesaid letters patent."

In an answer dated December 16, 1974, petitioner-patentee prayed that the petition for cancellation be denied because Letters Patent No. 5496 covers a new invention and therefore patentable in accordance with Republic Act No. 165.

A motion to dismiss with prejudice dated May 7, 1975 was filed by petitioner on the ground that during the pre-trial conference held on April 14, 1975 counsel for private respondent manifested that the invention subject of the letters patent is absolutely unsuitable and unworkable, hence private respondent has no personality to sue, because, as petitioners argued, the latter could suffer no damage at all, since private respondent manifested that the invention was unworkable.

An opposition to the motion to dismiss was filed by private respondent on the ground that the said motion was filed more than six months beyond the reglementary period to file answer. Moreover, an answer has already been filed, but the herein mentioned ground of the motion to dismiss is not those alleged as one of the defenses.

On August 20, 1975, the Director of Patents issued an order denying the motion to dismiss and setting the case for hearing on September 26, 1975. Said order was received by petitioner on August 30, 1975, and on September 9, 1975 he filed a motion for extension of fifteen (15) days to file motion for reconsideration. The Director did not issue a written order granting or denying the motion for extension. On September 24, 1975 petitioner filed the motion for reconsideration which was opposed by private respondent in an opposition dated October 24, 1975. The motion for reconsideration was denied for lack of merit in an order dated February 23, 1976.

On March 4, 1976 petitioner filed his notice of appeal before the Court of Appeals, to wit:

"NOTICE OF APPEAL

"Respondent-patentee in the above-entitled Philippines Patent Office case, through counsel, respectfully gives notice that he is appealing the Order dated August 20, 1975 (notice received August 30, 1975) denying his motion to dismiss and the Order dated February 23, 1976 (notice received February 27, 1976) which denied his motion for reconsideration filed September 24, 1975 within the extended period-the same being contrary to law and evidence.

"Simultaneously with the filing of this notice of appeal, respondent-patentee also paid the necessary docketing fee and deposit for costs."

As earlier mentioned, the Court of Appeals issued a resolution dated March 22, 1976, to wit:

"CONSIDERING THE NOTICE OF APPEAL filed March 4, 1976 from the Order dated August 20, 1975 of the Phil. Patent Office, filed for patentee, with the following dates alleged:

August 30, 1975 — received Order appealed from

September 24, 1975 — filed Motion for Reconsideration

February 27, 1976 — received Order denying Motion for Reconsideration

March 4, 1976 — filed above notice of Appeal and it APPEARING, from notice of appeal itself, that petitioner perfected his appeal late as 25 days elapsed from date of receipt of order appealed from to date of filing of Motion for Reconsideration, the Court RESOLVED that above appeal be DISMISSED."

Petitioner's motion for reconsideration having been denied, the present case was instituted raising the following arguments:

"(a) Mere technicality should not defeat the petitioner's right to appeal, even as the notice of appeal itself states that the motion for reconsideration was filed within the extended period;

"(b) The Philippines Patent Office had favorably acted on the petitioner's motion for extension to file motion for reconsideration as shown by subsequent events; and

"(c) The petitioner has meritorious appeal."

Petitioner claims that the notice of appeal filed with the Court of Appeals states that the motion for reconsideration was filed within the extended period. His right to appeal must not be defeated by mere procedural technicality as it is not his fault if the Philippines Patent Office did not issue a specific order granting his motion asking for extension to file motion for reconsideration. Petitioner further argues that the motion for extension was deemed granted when the motion for reconsideration filed on September 24, 1975 was accepted, considered and denied for lack of merit.

Lastly, petitioner contends that his appeal is meritorious because as manifested by private respondent in the pre-trial conference, the invention subject of Letters Patent No. 5496 is absolutely unsuitable and unworkable. Such being the case how could private respondent suffer injury if the invention is unworkable?

The petition should be dismissed. The questioned orders denying petitioner's motion to dismiss the petition for cancellation of letters patent and his subsequent motion for reconsideration are merely interlocutory in nature and, hence, not appealable.[2] Petitioner's intended appeal before the Court of Appeals contravenes the explicit provisions of Rule 41, Section 2, of the Rules of Court, to the effect that:

"Only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgment or orders shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered

for one party or the other.

... .."

This alone furnishes sufficient ground for the Court of Appeals to dismiss the case without the necessity of determining whether or not the appeal was perfected on time. The proper procedure to be followed in such a case is to continue with the trial of the case on the merits and, if the decision is adverse, to reiterate the issue on appeal. It would be a breach of orderly procedure to allow a party to come before the appellate court every time an order is issue with which he does not agree.

WHEREFORE, the petition should be, as it is hereby DISMISSED, for lack of merit. No costs.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos and Escolin, JJ., concur.
Aquino, J., took no part.

[1] p. 114, Rollo.

[2] Harrison Foundry & Machinery vs. Harrison Foundry Workers' Association, 8 SCRA 430.

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