

SAURA IMPORT & EXPORT CO., INC., PETITIONERS, VS. THE COURT OF APPEALS AND PRUDENTIAL BANK & TRUST COMPANY, INC., RESPONDENTS.

G.R. No. L-34770. May 18, 1978

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Petition for review of the decision of the respondent Court of Appeals dismissing the petitioner's appeal upon the ground that the record on appeal does not show on its face that the appeal was perfected on time.

The record shows that on July 2, 1953, the petitioner opened an irrevocable letter of credit with the respondent Prudential Bank & Trust Co., in the amount of US \$157,514.00. The letter of credit authorized the Bank of East Asia, Ltd. of Hongkong, through the Chemical Bank & Trust Co. of New York, to purchase for petitioner's account, drafts drawn by Reiss, Bradley & Co., Ltd. of Hongkong, to cover the importation of jute mill machineries from Hongkong to Davao City. In due time, the machineries were shipped to Davao City and the shipping documents were endorsed by the respondent Bank to the petitioner. Reiss, Bradley & Co., Ltd., pursuant to the terms of the letter of credit, drew a draft for US \$157,244.00 against the Bank of East Asia which endorsed the same to the order of the Chemical Bank & Trust Co. of New York. The latter bank, in turn, endorsed the draft to the respondent Bank and charged the amount to its account. The draft was later presented to the petitioner who accepted the same, payable on October 5, 1953. In order to have the machineries released to it, the petitioner executed a trust receipt in the amount of P317,165.51, wherein it was agreed, among others, that the petitioner would hold the machineries in trust for the respondent Bank as the latter's property, but with liberty to sell the same for the account of the respondent Bank.[1]

On May 13, 1955, the respondent Bank sued the petitioner claiming that the latter had not paid the full amount of the draft and there was a remaining balance of P275,624.62, which the petitioner failed and refused to pay notwithstanding repeated demands. The petitioner countered that a novation had taken place with the execution of the trust receipt - that from a debtor, petitioner had become merely an agent of the respondent Bank whose duty was to sell the machineries subject of the trust receipt and the proceeds thereof to be paid to the respondent Bank. During the trial, it was shown that the parties had entered into negotiations affecting the machineries, foremost of which was the authority given to the petitioner by the respondent Bank to find a buyer for the machineries and an extension of the period of the buyer to pay until 1961. Since the period then had not yet expired, the trial court dismissed the complaint as premature. Upon appeal,[2] this Court affirmed the decision "reserving upon the plaintiff-appellant, the right to file the action justified by the facts and circumstances now obtaining in, and the law of the case." [3]

Subsequent thereto, on December 8, 1964, the respondent Bank filed another action before the Court of First Instance of Manila[4] for the collection of the sum of P575,136.31, with interest thereon at the rate of 12% per annum from November 19, 1964 until full payment, plus 10% of the total amount due as attorney's fees, in

addition to costs of suit; and for the foreclosure of a real estate mortgage, dated August 6, 1954, constituted on a parcel of land belonging to the petitioner to secure the payment of the unpaid balance of the trust receipt amounting to P253,528.00.[5] Controverting the respondent Bank's claim, the petitioner contends that the obligation, which is the basis of the first cause of action, has been extinguished by novation in that the term of the obligation of the petitioner, under the letter of credit and draft was modified by the execution of the trust receipt which made such term indefinite; hence, the complaint is premature; and that the mortgage sought to be foreclosed is illegal.[6]

After trial thereof, on February 27, 1970, judgment was rendered in favor of the respondent Bank.[7] Whereupon, the petitioner appealed to the respondent Court of Appeals.[8] While the case was pending in said appellate court, the respondent Bank filed a motion to dismiss the appeal upon the ground that the record on appeal fails to show the date of the filing of the original record on appeal and the date of receipt by the petitioner of the order of the trial court allowing the petitioner to amend its record on appeal.[9] In a resolution dated July 6, 1971, the Special Seventh Division of the Court of Appeals denied the said motion to dismiss.[10] A subsequent motion for reconsideration was similarly denied by the respondent appellate court.[11] Soon after, the respondent Bank filed a second motion for reconsideration and, after a re-evaluation of the issues raised therein, the respondent appellate court ordered the dismissal of the appeal.[12] Hence, the present recourse.

The petitioner has raised two main issues in this case. The first is factual and involves the question of how much is due from the petitioner to the respondent Bank. The petitioner contends that the decision of the trial court was so patently and grossly erroneous that to carry it out would amount to a grave miscarriage of justice.

This issue is within the competence of the Court of Appeals and should be resolved therein.

The second issue is legal and refers to the dismissal of the appeal upon the ground that the amended record on appeal does not contain material data which would show that the appeal was perfected on time, more particularly, the date when the original record on appeal was filed, and the date when the petitioner received copy of the order of May 21, 1970, directing that the record on appeal be amended.

The petitioner claims that the dismissal of the appeal by the respondent appellate court is improper since there was substantial compliance with Section 6, Rule 41 of the Revised Rules of Court in view of the presentation of the xerox copies of the cover and first page of the original record on appeal showing on the right upper margin thereof the date when the original record on appeal was filed in the trial court. The petitioner further claims that the respondent Bank never objected in the trial court that the original record on appeal was not filed on time and, therefore, estopped from questioning the same in the respondent appellate court.

Indeed, the record shows that the trial court approved the record on appeal without opposition on the part of the respondent Bank.[13] With the existence of said order, there is every reason to assume that the appeal was perfected on time. Thus, in *Pimentel vs. Court of Appeals*,[14] We ruled:

"x x x where the trial court finds and declares in its Order approving the Record on Appeal that it was filed on time or within the reglementary period and the correctness and veracity of such finding are not questioned, impugned or disputed by the adverse party, then even though the Record on Appeal may not have included the motion for extension of time to file the same in the trial court's order granting the extension, the dismissal of the appeal is not warranted and constitutes a grave abuse of discretion, for there has been a substantial compliance with the material data requirement of Rule 41, Section 6, and the appellate court may properly rely on the trial court's order of approval and could determine therefrom without sending for or examining any other records that the appeal was perfected on time as expressly found by the trial court." (Italics supplied)

Likewise, We previously said "No trial Judge in his right mind and who is aware of the serious responsibilities of

his office, would approve a record on appeal that was not timely filed." [15]

WHEREFORE, the decision of the Court of Appeals dated October 25, 1971, dismissing petitioner's appeal and the subsequent resolution dated February 15, 1972, denying the motion for reconsideration, are hereby reversed and set aside. Case remanded to the Court of Appeals for decision on the merits.

SO ORDERED.

Fernando, (Chairman), Barredo, Aquino, and Santos, JJ., concur.

Antonio, J., took no part.

[1] pp. 147-148, Record on Appeal.

[2] Prudential Bank & Trust Co. vs. Saura Import & Export Co., Inc., G.R. No. L-19001, April 30, 1964, 10 SCRA 779.

[3] p. 147, Record on Appeal.

[4] Civil Case No. 59246, entitled, Prudential Bank & Trust Co., plaintiff vs. Saura Import & Export Co., Inc., defendant.

[5] p. 1, Record on Appeal.

[6] p. 104, Record on Appeal.

[7] p. 171, Record on Appeal.

[8] pp. 189, 268, Record on Appeal.

[9] p. 100, rollo.

[10] p. 102, rollo.

[11] p. 124, rollo.

[12] p. 100, rollo.

[13] p. 327, Record on Appeal.

[14] L-39423 & L-39684, June 27, 1975; reiterated in the cases of Morales vs. Court of Appeals, L-37229, Oct. 21, 1975; Luna vs. Court of Appeals, L-37123, Oct. 30, 1975; Republic vs. Court of Appeals, L-40495-96, October 21, 1975; and Rodriguez vs. Court of Appeals, L-37522, November 28, 1975.

[15] Berkenkotter vs. Court of Appeals, G.R. No. L-36629, Sept. 28, 1973, 53 SCRA 236.

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