

CONSUELO B. SISON, PETITIONER, VS. MARINO GATCHALIAN, NATIVIDAD GATCHALIAN, AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-34709. June 15, 1973

Ponente: FERNANDO, J.

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FERNANDO, J.:

Respondent Court of Appeals, in this special civil action for certiorari and prohibition, is taken to task for its failure to dismiss an appeal notwithstanding the undeniable fact that the record on appeal does not show on its face that the required steps to elevate it to such court was perfected on time. This is hardly a new question, and it ought not to have added to the workload of this Tribunal. The petition would have been unnecessary for, on the face of the resolution complained of, the motion to dismiss the appeal on the part of petitioner Consuelo B. Sison was denied only because it did appear from the printed record on appeal that it was filed within the reglementary period of thirty days,[1] after its attention precisely had been called in such motion to the fact that on the face of the typewritten record on appeal, it was undisputed that the filing thereof was five days beyond the last day allowed by law. The challenged motion for reconsideration was denied on January 18, 1972. As far back as March 31, 1971, in *Reyes vs. Carrasco*,[2] Chief Justice Concepcion made clear: "Section 6, Rule 41 of the Rules of Court, obviously refers to the record on appeal filed with the trial court, not to the record on appeal printed in the appellate court. At any rate, the Court of Appeals is in a position to determine the date aforementioned, by examining the original record on appeal thereto, forwarded, and, hence, forming part of its own records." [3] Petitioner, therefore, must prevail.

As stated in the petition: "The record on appeal filed by the Gatchalians [private respondents] in said case does not show on its face that the appeal was perfected on time; on the contrary, the record on appeal shows that it was filed out of time, because whereas it is alleged therein that copy of the decision of the Court of First Instance was received on March 29, 1971 * * * the record on appeal was filed with the Court of First Instance on May 3, 1971 as shown by the stamped receipt on the cover page of the typewritten record on appeal, * * *. There is no showing in the record on appeal that extension was granted to file the same. It is therefore clear that the record on appeal shows that the appeal was perfected out of time because it appears therein that the record on appeal was not filed within the reglementary period; * * *." [4] The next paragraph reads: "In view of the said failure of the record on appeal to show on its face that the appeal was perfected on time, petitioner filed with the respondent Court a motion to dismiss the appeal, * * *. Notwithstanding the clear showing that the record on appeal was in fact deficient and that therefore the respondent Court did not acquire jurisdiction over the appeal, respondent Court nevertheless denied the motion to dismiss appeal * * *." [5] With the denial of the motion to dismiss appeal as well as the motion for reconsideration, petitioner had no choice but to bring the matter to us.

Her case thus stands on solid ground. The reason given by respondent Court for not granting the motion to dismiss appeal finds no support in law. The outcome, therefore, is certainly predictable. Petitioner is entitled to the remedy sought.

1. In *Marsman vs. Syquia*,^[6] a 1972 decision, this Court, in sustaining a motion to dismiss the appeal^[7] on the ground precisely that the record on appeal does not show on its face that such a step was perfected within the period required by law, and after noting that it was so indeed, referred to *Government vs. Antonio*,^[8] decided in 1965, as supplying the controlling doctrine, which requires literal adherence to Section 6 of Rule 41. The interpretation thus made has been uninterruptedly adhered to up to now. In *Marsman*, fifteen other decisions were cited applying the above principle.^[9] As pointed out by Justice Castro, who spoke for the Court: "These decisions, notable for their number and unanimity, affirm that the requirement of Section 6 of Rule 41 show that the record on appeal must contain 'such data as will show that the appeal was perfected on time,' is mandatory and jurisdictional, non-compliance with which justifies dismissal of the appeal. The principles underlying the rule have been extensively discussed in the decisions adverted to, so that it would be supererogation to restate them here."^[10] After *Marsman* came *Palanca vs. Philippine Commercial and Industrial Bank*.^[11] Here, in one of the latest opinions of Justice J.B.L. Reyes before his retirement, it was stressed: "Since the record on appeal does not show when the order denying the motion for reconsideration/clarification was received by appellant administrator bank, it cannot be determined, on the face of the record, if the appeal was timely perfected or not."^[12]

This case is particularly worth emphasizing because the only defense, if defense it can be called, of private respondents, as shown in their answer, is that "it is true that on the last day of the original period (April 28, 1971), the typewritten record on appeal was not yet filed. But one day before the deadline, in lieu thereof, were filed (1) the notice of appeal (2) the appeal bond and (3) the motion for extension of time to complete Record on Appeal. Which motion was granted on this same day (April 27, 1971) it was filed. So, the last day to perfect appeal was then, May 12, 1971. As the typewritten record on appeal (the only one remaining of the three requirements of an appeal) was filed on May 3, 1971, same was perfected nine (9) days earlier than the last day granted under the extension."^[13] As was emphasized, however, by petitioner in her memorandum in lieu of oral argument: "In their answer, private respondents have taken great pains to show that their appeal was perfected on time. But this Honorable Court has already held that the actual perfection of the appeal is not material to the question. (See: *Government vs. Antonio*, * * * *Araneta vs. Madrigal*, * * * *Luzon Stevedoring Corp. vs. Court of Appeals*, * * * *Marsman vs. Syquia*, * * *). This is obviously so because the purpose of the requirement is to avoid additional work and unnecessary waste of time in having to examine the evidence that may be submitted by the parties, which would contribute to delay and would consume time badly needed by the appellate courts for more meritorious cases."^[14]

Private respondents thus ignored what was said in *Palanca* that for such an allegation to merit any consideration, it should be so stated in the record on appeal. This was not done by private respondents. They cannot deny that their typewritten record on appeal lack such data. Thus is made clear beyond doubt how formidable is the case for petitioner and why she should prevail.

2. Nor should there be any misgivings that to view the matter thus in accordance with what has been constantly held by this Court is, as alleged by private respondents, to put a premium on technicality. What is readily apparent is that we are not justified in treating his appeal any differently. This is not to deny what was noted by Justice Teehankee in *Workmen's Insurance Co., Inc. vs. Augusto*:^[15] "For [a party] to seek exception for its failure to comply strictly with the statutory requirements for perfecting its appeal, strong compelling reasons such as serving the ends of justice and preventing a grave miscarriage thereof must be shown, in order to warrant the Court's suspension of the Rules."^[16] There are no such "strong compelling reasons" that would call for a relaxation of the iron-clad doctrine. The only issue on the merits as was made clear in the reply memorandum of petitioner "is whether or not the private respondents are purchasers in good faith as to a 36-square meter portion of a piece of land. [It is petitioner's submission that] the overwhelming evidence below is that private respondents knew beforehand about petitioner's interest in the 36-square meter portion of the property that private respondents

bought. All that private respondents lean on is a bare denial on their part of any knowledge of petitioner's interest." [17] Then from such reply memorandum came this portion: "Petitioner and private respondents own adjoining back-to-back lots in Kamuning, Quezon City. The private respondents, the Gatchalians, purchased their lot from the Bugayongs. When the Gatchalians inspected the property prior to their purchase, they already saw that petitioner's lot, as fenced, protruded into the lot that they were going to buy. In fact, the two back to back lots were partitioned by a formidable adobe wall constructed by the petitioner. The protrusion was very evident because the adobe wall was peculiarly not aligned with the other lots to the left and to the right, as it should have been, considering that they were PHHC lots which were identical in area. On the protruding area of 36 square meters, petitioner already had her septic tank, toilet and bath, and part of the kitchen of her residence at the time of the sale to the Gatchalians. The lot of the Bugayongs, consisting of 240 square meters, was originally owned by PHHC. The awardee thereof was Fortunata Bernabe way back in 1954. Subsequently, in 1958, title to the lot was issued in the name of her daughter, Adoracion Bugayong, married to Ricardo Bugayong. But, sometime in 1953, Fortunata Bernabe sold a portion of her rights to the petitioner, consisting of 36 square meters of the back portion of her lot. This sale was not registered, because the property at that time was still in the name of PHHC." [18] It turned out that the Bugayongs later sold their property to the private respondents, the Gatchalians "who had full knowledge of the petitioner's interest as to a 36-square meter portion thereof." [19] Petitioner now referred to the evidence on this point which for her was "more than clear and convincing." [20] As noted by her: "Adoracion Bugayong, now a school teacher in Mangatarem, Pangasinan, came all the way to Manila to testify for the petitioner. She declared in court that, before the sale to the Gatchalians, she called their attention to the fact that petitioner already owned 36 square meters of their original property, as separated and partitioned by the adobe wall, and that what the Gatchalians were buying was only 204 square meters in area; that the deed of sale in favor of the Gatchalians, covering 240 square meters, was prepared by the latter's lawyer; that she signed it, emphasizing to the Gatchalians that they should not overlook the interest of the petitioner; and that the Gatchalians agreed to respect petitioner's interest. Even the real estate agent, one Purificacion Mendoza, testified for the petitioner. She narrated at the trial that she was the one who sold the Bugayong property to the Gatchalians, and that she showed to them the adobe partition and the extent of the lot sold, as appearing in a sketch drawn by her * * *." [21]

Both petitioner and her mother did declare on the stand that upon such disputed part of the lot being acquired, the same was filled with sand and gravel and the adobe wall was erected. When private respondents acquired by sale the adjoining lot, she specifically inquired if the latter knew that such portion had previously been bought by petitioner, whose reply memorandum continues: "The adobe wall was even repaired later on with the supervisory assistance of the Gatchalians because the petitioner and her mother had to tend to their store. One time, the petitioner requested her mother to go to the Gatchalian residence to arrange for the transfer of the 36-square meter area. She talked with the Gatchalians, who were amenable. She even obtained from them on a piece of paper their complete names, residence certificate numbers, places and dates of issue, their places of birth, the title number of the property and the document number of the deed of sale. Thereafter, petitioner's brother, Atty. Reynaldo B. Sison, prepared a Ratification of the Deed of Sale * * *, which petitioner's mother brought back to the Gatchalians for their signatures. The latter, however, requested that the document be left with them first so that they can show it to their relatives. When petitioner's mother returned, the Gatchalians said that they were no longer going to sign. Thus, after petitioner's brother sent a letter of demand, which was not heeded, petitioner filed an adverse claim with the Register of Deeds and the suit below." [22] From private respondents, according to such pleading of petitioner, there was nothing but "merely and incredible bare denial of knowledge by respondent Marino Gatchalian, who, however, admitted that he had observed that the adobe wall was not along the same line as the other lots." [23]

Petitioner's reply memorandum was filed with this Court on October 6, 1972. It was the turn then of private respondents to come up with their reply memorandum. They did so on October 24, 1972. What is immediately noticeable, even after such lapse of 18 days, is that there was no rebuttal, much less a denial, of the above recital of facts as set forth by petitioner. There is no occasion then for the invocation of the exception mentioned in the Workmen's Insurance Company decision as to service to the ends of justice and prevention of a grave miscarriage thereof sufficing to take a case out of the operation of the general rule. No wonder, private respondents were not even minded to do so.

WHEREFORE, the writ of certiorari prayed for is granted and the resolution of respondent Court of Appeals of December 2, 1971, denying petitioner's motion to dismiss the appeal as well as its resolution of January 18, 1972, denying a motion for reconsideration are nullified, set aside and declared of no force and effect. The writ of prohibition is likewise granted, and respondent Court of Appeals is restrained from taking any further action on the appeal interposed in CA-G.R. No. 48883-R, entitled Consuelo B. Sizon vs. Marino Gatchalian and Natividad Gatchalian, which is hereby dismissed. With costs against private respondents.

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

Ruiz Castro, J., concurs in the opinions of Justices Fernando and Barredo.

Teehankee and Barredo, JJ., concur in separate opinion.

Antonio, J., the views expressed in the separate opinion of Justice Teehankee, merits my concurrence.

Esguerra, J., concurs in this opinion and in that of Justice Teehankee.

CONCURRING

TEEHANKEE, J.:

I concur with the main opinion of Mr. Justice Fernando and note with gratification that the same takes special pains to show, by a discussion of the lack of merit of respondents' appeal pending before the appellate court, that the dismissal of the appeal herein ordered for failure to comply with the rule that the record on appeal show on its face "such data as will show that the appeal was perfected on time"[24] is fully justified and thereby squarely disposes of the "premium on technicality" argument generally pleaded by the party-appellant in such cases.

The main opinion thus expressly reiterates the Court's pronouncement in *Workmen's Insurance Co. vs. Augusto*,[25] that a party may "seek exception for its failure to comply strictly with the statutory requirements for perfecting its appeal (by showing) strong compelling reasons such as serving the ends of justice and preventing a grave miscarriage thereof . . ." and stresses that "no such 'strong compelling reasons'" have been established by respondents.

This is merely to uphold the fundamental principles often expounded by the Court of not "sacrificing justice to technicality" and of not construing its rules in such manner as to "amount to a denial of justice and/or a bar to a vindication of a legitimate grievance" and that in meritorious cases "a liberal (not literal) interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the interest and purpose of the rules - the proper and just determination of a litigation. There is no vested right in technicalities." [26]

Where warranted, "it is always in the power of the Court to suspend its own rules, or to except a particular case from its operations, whenever the purposes of justice require it." [27] Or, as stated by Mr. Justice Fernando in *Carillo vs. Allied Workers' Ass'n.*, [28] "an element of rigidity (should not) be affixed to procedural precepts and made to cover the matter." Thus, in *Dequito vs. Lopez* [29] a late motion to dismiss the appeal on the ground of non-compliance with the rule filed on January 15, 1968 after the filing of appellant's brief on December 8, 1967,

was summarily brushed aside by the Court as "being much too late."

In the most recent case, *Sarmiento vs. Salud*,^[30] the Court likewise rejected a belated motion for dismissal of the appeal after the rendition of an adverse decision against the appellee who invoked the jurisdictional defect of the failure to comply with the rule, "(C)onsidering x x x that appellees' laches in allowing six (6) years after the filing of their brief to elapse without moving for dismissal is a case unprecedented in the annals of the Court; that no justification is offered nor explanation given for such neglect and procrastination that in effect nullify the purposes for which Rule 41, Section 6, was enacted, which is the speedy settlement of appeals; and that, upon the other hand, the case of appellants is meritorious, as shown by the decision."^[31]

The avowed objective of the rule (Rule 41, Section 6) requiring the statement in the record on appeal of "such data as will show that the appeal was perfected on time" is to enable the appellate courts to determine without protracted inquiry whether or not an appeal was timely made.

This was expressly made of record by the Court in *Araneta vs. Madrigal & Co. Inc.*^[32] wherein after noting that prior to the 1964 amendment of the rule, "issues were often raised in appellate courts on whether the appeal had been perfected on time or not, owing to the fact that the data pertinent thereto were not set forth in the record on appeal. Inasmuch as the records of trial courts, in cases appealed by record on appeal, are not forwarded to appellate courts, the latter had no means of checking or verifying the conflicting allegations of fact made, either in the briefs, or in the motion to dismiss the appeal and the opposition thereto, filed by the parties. As a consequence, appellate courts had to examine such evidence as the parties may have submitted thereto, in support of their respective contentions. This entailed additional work and unnecessary waste of time, that contributed to the delay in the final determination of appealed cases. To eliminate such obstacles to the speedy administration of justice, this Court deemed it best, not only to rephrase the first sentence of said Section 6 x x x but, also, to add, at the end thereof, the clause:

'together with such data as will show that the appeal was perfected on time.'"

The Court has time and again stressed since then "the injurious consequences of a failure to grasp (the rule's) import" and the need of strict compliance with the rule's requirements. In *de Guia vs. Court of Appeals*,^[33] the Court through Justice J.B.L. Reyes again stated that "(T)his Court notes with regret that although these requirements on the contents of a record on appeal have been in effect since 1964, there are still lawyers and litigants who do not comply with the same: either they have not perused the Revised Rules, or choose not to comply therewith. Liberality in this regard is by now unwarranted, and would be unjust to numerous litigants or counsel who exercise diligence in observing the Rules of Court."

Still the main objective of the rule to make of record that the appeal has in fact been timely perfected and to avoid protracted inquiry, additional work and unnecessary waste of time in the appellate courts, as stated in *Araneta*, *supra*, should not be lost sight of.

Otherwise, the effects of the rule would be pushed to the absurd extreme, as in *Ozaeta vs. Court of Appeals*^[34] wherein the trial court sustained the therein prevailing party's (*Ozaeta*) motion to dismiss the losing party's (respondents) proposed appeal for failure to state in the record on appeal a statement of the material date of receipt by the latter of the trial court's order of denial of their motion to set aside decision, notwithstanding the availability of the original record from which such date and timeliness of appeal could readily be verified. The trial court therein dismissed the proposed appeal stating in effect that failure per se to state the material dates in the original record on appeal was fatal and precluded amendment and correction, as contemplated in Section 7 of the same rule.^[35]

The Court therein disavowed of course the trial court's application of the rule by rote and sustained the Court of Appeals' decision that it was "precipitate and hasty on the part of the (trial) judge to have dismissed the appeal without giving the (appellants) an opportunity to amend the record on appeal by incorporating (the omitted) statement as to when the order (denying motion to set aside) was received by them"[36] within such period fixed by him or in the absence thereof, within the ten-day period from receipt of the order to amend, as provided in Section 7 of the rule.

The Court, through Mr. Justice Barredo, emphasized that it is the trial judge's duty precisely to determine whether or not the appeal has been actually perfected on time and to "allow the amendment of a record on appeal in order to include therein any relevant omitted data," thus: "x x x in the case at bar the motion to dismiss the appeal was filed with the trial court .when the records were still there and by an examination of the same, His Honor could have very well ascertained the said date for purposes of determining after his attention was called by petitioners to the alleged defect of respondents' record on appeal — whether or not said appeal had been actually perfected on time. As We see it, this is precisely what the trial judge should have done, relying therefor on Section 7 of Rule 41, which allows the amendment of a record on appeal in order to include therein any relevant omitted data." [37]

Thus, in *De Luna vs. Palacio*[38] the Court, speaking again thru Mr. Justice J.B.L. Reyes, pointed out that a would - be appellant who failed to timely perfect an appeal may properly seek relief under Rule 38, Section 2 for reasons of fraud, accident, mistake or excusable neglect, thus: "(I)t is indisputable and elementary that to perfect an appeal the notice and record of appeal, as well as the appeal bond, must be filed within the period prescribed by the Rules; and that the failure to do so renders the decision final and unappealable because the period for appeal is fatal (See, inter alia, *Alvero vs. De la Rosa*, 76 Phil. 433; *Salva vs. Palacio* [1952], 90 Phil. 731; *Reyes vs. Court of Appeals* [1943], 74 Phil. 235; *Mallare vs. Panahon* [1955], 98 Phil. 154). But the would - be appellant is not thereby precluded from seeking relief under Revised Rule 38, Section 2, whenever the entering of a judgment or order against said party was made through fraud, accident, mistake or excusable neglect. x x x

"Now, if a party may seek relief under Rule 38, and within the period prescribed therein, after an order for dismissal of the appeal has been entered, there is no reason for denying him that right before the order of dismissal is entered. Respondent Ferrer's objection to the motion to dismiss his appeal in this case was virtually a motion for relief under Rule 38; it was predicated on accident or excusable neglect, and was accompanied by an apposite affidavit of merit. Hence, it was proper for the trial court to grant him relief, provided of course the ground for doing so appeared indubitable."

It should be noted that since the enactment on September 9, 1968 of Republic Act 5440 limiting appeals to this Court to petitions for review by certiorari, the application of the rule in question (Rule 41, Section 6) is now invariably limited to the Court of Appeals wherein regular appeals thereto are still perfected by means of records on appeal.

Under Section 3 of the Act in relation to Rule 45, Section 2, it is required of the petitioner seeking review in this Court to make "a verified statement of the date when notice of judgment and denial of the motion for reconsideration, if any, were received." As the said rule's (Rule 45, Section 2) requirement has the same objective of assuring this Court that the petition has in fact been filed within, the reglementary period, the Court has "considered as not filed" a defective or incomplete petition that initially failed to state the material date(s) showing timeliness of the filing thereof but has invariably given such the would-be petitioner an opportunity to furnish such omitted dates through an amendment of the petition.

When the main objective of determining timeliness of the appeal by the inclusion of all relevant data in the record on appeal is thus placed in focus, I feel that an element of estoppel, if not bad faith that offends a sense of justice

and equity, must be taken strongly against a party-appellee, who instead of abiding by the letter and intent of the rule to determine timeliness of the proposed appeal in the proceedings before the trial court below, deliberately desists from objecting to appellant's failure to state a material date (e.g. the date of receipt of an extension order, date or fact of filing of an appeal bond) and presents no objection to the approval of such incomplete record on appeal which, he knows and the original record shows, has been in fact timely perfected - and practically springs from ambush "with a rapier's thrust" in the Court of Appeals upon the printing of the record on appeal to demand the prize of dismissal of the appeal by the appellate court for failure of appellant's record to state such material date.

Justice Moreland's observations for the Court in the early case of *Alonso vs. Villamor*,^[39] are still as relevant and applicable: "Defect in mere form can not possibly prejudice so long as the substantial is clearly evident. Form is a method of speech used to express substance and make it clearly appear. It is the means by which the substance reveals itself. If the form be faulty and still the substance shows plainly through, no harm can come by making the form accurately expressive of the substance.

"x x x x x x x x

"There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created, not to hinder and delay, but to facilitate and promote, the administration of justice. They do not constitute the thing itself, which courts are always striving to secure to litigants. They are designed as the means best adapted to obtain that thing. In other words, they are a means to an end. When they lose the character of the one and become the other, the administration of justice is at fault and courts are correspondingly remiss in the performance of their obvious duty.

"The error in this case is purely technical, To take advantage of it for other purposes than to cure it, does not appeal to a fair sense of justice. Its presentation as fatal to the plaintiff's case smacks of skill rather than right. x x x There should be no vested rights in technicalities. No litigant should be permitted to challenge a record of a court of these Islands for defect of form when his substantial rights have not been prejudiced thereby."

Hence, it should be stated that the blanket assertion of respondents "that the actual (timely) perfection of the appeal is not material to the question"^[40] cannot be taken at face value, but on the contrary is subject to various qualifications hereinabove discussed and to the paramount considerations of substantial justice. More specifically, the party seeking exception from the rule for valid reasons must show a strong *prima facie* case of merit in the appeal itself that would warrant giving it due course instead of dismissing it as a futile or forfeited appeal.

It should finally be stated that in most, if not all, cases wherein the Court applied the rule and sustained dismissal of the appeal for failure to show on the face of the record on appeal the timeliness of the appeal, the Court invariably did so after satisfying itself of the existence of "a rational basis for the result reached by the trial court"^[41] in the decision sought to be reviewed by the lost appeal. Applying the same paramount considerations of substantial justice, the Court proceeded on the balancing principle 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.'"^[42]

CONCURRING

BARREDO, J.:

I concur in the judgment granting the remedy prayed for by the petitioner, fully agreeing as I do that the Court of Appeals erred in not dismissing private respondents' appeal in question notwithstanding their failure to state in their record on appeal "such data as will show that the appeal was perfected on time," as required by Section 6 of Rule 41 since January 1, 1964, which omission ineluctably resulted in the appellate court losing jurisdiction to entertain said appeal, pursuant to Section 1 (a) of Rule 50, making said omission a ground for dismissal, which, by the construction given by this Court to said provision, in a long line of decisions, as stressed in the main opinion of Justice Fernando, is mandatory and jurisdictional.

While such is my vote, I consider unnecessary and uncalled for Justice Fernando's reference to the supposed lack of merit of private respondents' appeal. An appellate court is not supposed to make any finding regarding the merits of an appeal unless the corresponding and appropriate procedure guaranteeing full opportunity to all the parties to be duly heard is observed. I cannot but declare myself legally incompetent to render my judgment on a matter not properly before the Court.

This has been my consistent view whenever the Court has been called upon to decide whether or not an appeal should be dismissed on the ground herein involved. I feel it is highly improper for the Court to make any reference to the merits of an appeal when the same has not been made in the manner prescribed by the rules, particularly when, as in this case, the specific procedure laid down by the rules has been definitely characterized by this Court as mandatory and jurisdictional, inasmuch as for the Court to do so would necessarily imply that We can still inquire into the merits of a case even if We have no jurisdiction over the same, which to me is an absurd proposition.

It is too obvious for any extensive elucidation that the Supreme Court had good reasons, well grounded in experience and the principles of equity and justice and consistent with the objective of administering justice justly, speedily and inexpensively, (Section 2, Rule 1) to formulate and promulgate Section 6 of Rule 41 and Section 1 (a) of Rule 50 as they are. Otherwise, the said provisions should not have been enacted at all. I am certain that the members of the Court must have studied, discussed and taken into account the noble principles and sentiments articulated by Justice Moreland, in *Alonso vs. Villamor*, now being cited by Justice Teehankee, as well as similar views, albeit expressed differently, in many other opinions rendered by other eminent justices in the long history of this Court, but, as may be gathered from Our decisions applying these provisions, it was the objective of trying to avoid protracted discussions and debates not only between the parties but even among the members of the Court on whether or not an appeal has been made on time that won the day. To entertain now the view that consideration should be given to the merits of an appeal before the Court may dismiss it due to the defect referred to is beyond my comprehension, considering that deliberation on and resolution of such matter should properly require more time than the simple question of the timeliness of the appeal. In other words, what I can see is that to indulge in a fair and conscientious determination of the merits of the appeal before deciding on whether or not it should be dismissed would defeat the very purpose for which the rule has been conceived.

Withal, I cannot grasp the point of the contention that to dismiss an appeal which might probably be meritorious merely because the record on appeal is faulty in the sense under discussion is to give more importance to form than to substance, for the simple reason that, to my mind, such pose is an argument against the rule itself rather than its application to the situations contemplated thereby. It is to me beyond cavil that the Court knew when it made the rule that this rather undesirable result would arise, and we must perforce conclude that when it adopted the rule, it found more paramount ends to attain by disregarding such contingency, I perceive no ponderous reason to review such election.

What seems to me to be more compelling to consider, however, is that in apparently endeavoring to do justice to certain appellants, We are actually committing injustice or at least would be creating occasions that might result in unfairness. How are We going to restore the appeals of those parties whom We have told categorically, in dismissing their appeals, that it is immaterial whether their appeals had actually been made on time or not or whether they could be meritorious or not? I have lost track of the number of such parties. And are We not dealing unequal protection to the appellees who now have to be prepared to prove the correctness of the decisions of the respective trial courts in their favor, if they expect their motions to dismiss appeals therefrom to be acted on favorably, whereas former appellees had to merely point out the deficiency of the record on appeal of failing to appear on its face to have been made on time to win their cases, irrespective of their merits?

Again, I ask, how can We fairly pass upon the plausibility of an appeal before the briefs are filed? And if the arguments on the motion to dismiss the appeal are to be as comprehensive and extensive as those that would be presented in the brief, why don't We make the resolution of an appeal more expeditious by allowing motions to dismiss the same on the ground that it is without sufficient merit? In this regard, note that Section 1 of Rule 50 does not include as ground for the dismissal of an appeal that it is untenable. And the reason is simple - that is precisely the matter to be resolved in the appeal after due hearing.

I realize that by the operation of the rule under discussion, We are practically penalizing parties for the mistake of their lawyers. But is this not true in many other instances resulting from the actual working out of the rules? Truth to tell, however, in appropriate cases, the courts have not been entirely deaf to entreaties on behalf of clients misled or prejudiced by the error of their counsel but in said instances, it was hardly the merits of the client's cause that was the justification for the relieving measures allowed or adopted by the courts; rather it was, as it should be, the setting of circumstances in which the mistake or error of the lawyer came about. Indeed, it is always possible to avoid the fatal consequences of the application of any of the rules of procedure by properly invoking the formula of fraud, accident, mistake or excusable neglect. In other words, even the omission of the data required by Section 6 of Rule 41 in the record on appeal could be attributable to fraud, accident, mistake or excusable neglect, but surely, no one should expect relief when these circumstances do not obtain.

In the last analysis, the application of the rule here in question is not a technicality in the odious sense of being itself the hindrance to justice. Rather it is one of the expedient means by which the courts may be enabled to have the needed time and opportunity to do justice to everyone coming to them, by not tarrying in the consideration of details which, if the lawyers concerned only took ordinary care to attend to, should not give rise to any problem. The rule in question has been in the books for more than eight years already. There is absolutely no excuse for practicing lawyers to overlook it. And judges of trial courts can help immeasurably in the accomplishment of the sound objectives of said rule were they careful enough to see to it that it is complied with before they approve the record on appeal.

I, therefore, vote to reverse the impugned resolution of the Court of Appeals, without looking into the merits of private respondents' appeal, for, after all, are my brethren ready to give due course to their appeal, if it should really appear to be meritorious, in clear violation of Section 1 (a) of Rule 50 and the rosary of decisions of this Court construing the same as mandatory and jurisdictional? And not to forget a point I have always refused to agree to, if as repeatedly held by this Court the matter is jurisdictional, may appellate jurisdiction be conferred by estoppel or laches? Certainly not. Power or authority, that is supposed to emanate only from law cannot by any alchemy of reasoning be derived from the acts of any party litigant, not even from any act of the court. The want of authority being a matter of public policy, no party however situated may be barred from raising it.

[1] Petition, Annex D.

[2] L-28783, 38 SCRA 296.

[3] Ibid., 318.

[4] Petition, par. 5. Italics supplied by petitioner

[5] Ibid., par. 6.

[6] L-28027, March 29, 1972, 44 SCRA 113.

[7] The appeal here was taken at a time when such competence was lodged with this Tribunal when such a remedy was available to the losing party if a question of law were raised.

[8] L-23736, October 19, 1965, 15 SCRA 119.

[9] Cf. Development Bank of the Philippines vs. Santos, L-26387, Sept. 27, 1966, 18 SCRA 113; Araneta vs. Madrigal & Co., L-26227-28, Oct. 25, 1966, 18 SCRA 446; Atlas Consolidated Mining & Development Corp. vs. Progressive Labor Assn., L-27125, Sept. 15, 1967, 21 SCRA 110; Jocson vs. Robles, L-23433, Feb. 10, 1968, 22 SCRA 521; Anota vs. Bermudo, L-29417, Sept. 21, 1968, 25 SCRA 53; Cadiz vs. Secretary of National Defense, L-25150, Sept. 30, 1968, 25 SCRA 419; Luzon Stevedoring Corp. vs. Court of Appeals, L-27746, July 31, 1970, 34 SCRA 73; Industrial Co., Inc. vs. Court of Appeals, L-30083, Oct. 22, 1970, 35 SCRA 423; Valera vs. Court of Appeals, L-29416, Jan. 28, 1971, 37 SCRA 80; Reyes vs. Carrasco, L-28783, March 31, 1971, 38 SCRA 296; Workmen's Insurance Co. vs. Augusto, L-31060, July 29, 1971, 40 SCRA 123; De Guia vs. Court of Appeals, L-33101, July 30, 1971, 40 SCRA 332; Ozaeta vs. Court of Appeals, L-26938, Oct. 29, 1971, 42 SCRA 79; Imperial Insurance, Inc. vs. Court of Appeals, L-28722, Oct. 29, 1971, 42 SCRA 97.

[10] L-28027, March 29, 1972, 44 SCRA 113, 117.

[11] L-28713, May 31, 1972, 45 SCRA 331.

[12] Ibid., 335.

[13] Answer of Private Respondents, 4.

[14] Memorandum in Lieu of Oral Argument for the Petitioner, 8.

[15] L-31060, July 29, 1971, 40 SCRA 123.

[16] Ibid., 127.

[17] Reply Memorandum for the Petitioner, 4.

[18] Ibid, 4 and 5.

[19] Ibid, 6.

[20] Ibid.

[21] Ibid., 6 and 7.

[22] Ibid., 7 and 8.

[23] Ibid., 8.

[24] Rule 41, Section 6.

[25] 40 SCRA 123 (July 29, 1971); note in parentheses supplied.

[26] *Ronquillo vs. Marasigan*, 5 SCRA 304, 312 (May 31, 1962); note in parentheses and italics added.

[27] *Idem.*, at pp. 312-313, citing *Ordoveza vs. Raymundo*, 63 Phil. 275; italics added.

[28] 24 SCRA 566, 573 (July 31, 1968).

[29] 22 SCRA 1352, 1355 (March 28, 1968).

[30] 46 SCRA 365, (Aug. 18, 1972).

[31] *Idem.*, at p. 366.

[32] 18 SCRA 446, 449-450 (Oct. 25, 1966); italics added.

[33] 40 SCRA 332, 334-335.

[34] 42 SCRA 79 (Oct. 29, 1971). See also *Guerra Enterprises Co. vs. CFI of Lanao del Sur*, 32 SCRA 314 (April 17, 1970); *Torre vs. Erieta*, L-29753, 38 SCRA 296 (March 31, 1971).

[35] "SEC. 7. Hearing and approval of record. - Upon the submission for approval of the record on appeal, if no objection is filed within five (5) days, the trial judge may approve it as presented or, upon his own motion or at the instance of the appellee, may direct its amendment by the inclusion of any matters omitted which are deemed essential to the determination of the issue of law or fact involved in the appeal. x x x" (Rule 41, Rules of Court)

[36] *Idem.*, at pp. 82-83; notes in parentheses supplied.

[37] 42 SCRA at pp. 84-85; italics added.

[38] 30 SCRA 912, 914-915 (Dec. 27, 1969); italics added.

[39] 16 Phil. 315, 321-322 (July 26, 1910); italics added.

[40] Quoted on pp. 4-5 of main opinion.

[41] *Paz vs. Guzman*, 43 SCRA 384 (Feb. 29, 1972) citing *Corliss vs. Manila RR. Co.*, 27 SCRA 674, 678, (March 28, 1969).

[42] *Espiritu vs. CFI of Cavite*, 47 SCRA 354 (Oct. 31, 1972), italics added; citing *Razalan vs. Concepcion*, 31 SCRA 611, 615; *MRR Co. vs. Ballesteros*, 16 SCRA 641; and *Paner vs. Yatco*, 87 Phil. 271.

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