

GOULDS PUMPS (PHILS.), INC., PETITIONER, VS. THE HON. COURT OF APPEALS AND THE FIRST NATIONAL CITY BANK OF NEW YORK, RESPONDENTS.

G.R. No. 102748. June 30, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review on certiorari seeking reversal of the resolution of public respondent Court of Appeals, in CA-G.R. CV No. 32522, dated November 4, 1991, which ordered the Clerk of Court of the Regional Trial Court of Manila to elevate to respondent court the complete records of Civil Case No. 80842 or explain in writing why no compliance has been made, both within five days from notice.[1]

The antecedent facts, briefly stated, are as follows:

On August 31, 1970, petitioner Goulds Pumps (Phils.), Inc. filed an action before the then Court of First Instance of Manila against private respondent First National City Bank of New York to compel the latter to comply with its obligations under four Forward Exchange Purchase Contracts to sell U.S. dollars to the former. The complaint was docketed as Civil Case No. 80842.

On November 9, 1988, judgment was rendered by the trial court in favor of petitioner, ordering private respondent: 1) to comply fully with its obligations under the contracts; 2) to return to petitioner the premiums which were debited from its account; and 3) to pay damages and attorney's fees to petitioner.

On November 28, 1988, private respondent filed a notice of appeal before the trial court.

On May 31, 1991, petitioner filed before respondent court a motion to dismiss the appeal allegedly because private respondent did not take any step to have the records elevated to said court for nearly three (3) years. The motion was docketed as CA-G.R. CV No. 32522.[2]

On June 11, 1991, private respondent filed an opposition to petitioner's motion contending that it has not been remiss in its duty in prosecuting its appeal as borne out by the following circumstances: 1) the trial court has not issued any order allowing or disallowing its appeal; and 2) the parties have been negotiating for an amicable settlement of the case.[3]

On June 18, 1991, private respondent filed before the trial court an urgent motion praying that its appeal be given due course and thereafter, to elevate the records to respondent court.[4]

On June 25, 1991, respondent court issued a resolution denying petitioner's motion to dismiss the appeal, for reasons stated in the comment and opposition of private respondent and in the interest of substantial justice. Respondent court resolved further to require the counsel for private respondent to inform said court within five days from notice what action he has taken for the elevation of the records, otherwise, the appeal may be dismissed.[5]

On July 12, 1991, private respondent submitted a manifestation and compliance alleging that it has filed before the trial court an urgent motion to give due course to the appeal; that the trial court's personnel informed the counsel of private respondent that said motion is under personal consideration by the judge; and that it was discovered that the trial court does not have a regular Branch Clerk of Court since 1988.[6]

On July 25, 1991, petitioner filed a comment to private respondent's manifestation and compliance.[7]

On August 1, 1991, respondent court issued a resolution ordering the Branch Clerk of Court of the trial court to elevate to it the complete records of this case, without further delay.[8]

On August 14, 1991, respondent court issued another resolution stating that petitioner's comment to private respondent's manifestation and compliance is merely noted.[9]

On September 2, 1991, petitioner filed a motion for clarification of respondent court's resolutions dated August 1 and August 14, 1991, as to whether or not they are in effect denial of its motion to dismiss the appeal.[10]

On November 4, 1991, respondent court issued the questioned resolution, the dispositive portion of which, reads:

"It appearing that no compliance has yet been made, the Clerk of Court of the RTC of Manila, Branch V, is hereby ordered to elevate to this Court the aforesaid complete records of Civil Case No. 80842 within five (5) days from notice hereof, or explain in writing within the same period of time why no compliance has been made.

"SO ORDERED." [11]

Hence, the present petition which raises the issue as to whether or not respondent court erred in not dismissing the appeal of private respondent considering the latter's failure to take any step to have the records elevated to said court for nearly three (3) years.

Petitioner asseverates that in at least two very recent cases (*Arcega v. Court of Appeals*, 166 SCRA 773 and *Estella v. Court of Appeals*, 185 SCRA 732), this Court sustained the outright dismissal of appeals due to the appellant's failure to cause the records of the case to be elevated to the appellate court. Private respondent never made any serious attempt to initiate negotiation for settlement, not until sometime in February, 1991, more than two (2) years after the filing of its notice of appeal. Private respondent filed its urgent motion to give due course to the appeal before the trial court only after receipt of petitioner's motion to dismiss the appeal and nearly three (3) years after the filing of its notice of appeal.

On the other hand, private respondent contends that even before the promulgation of the decision of the trial court, its officers have been giving hints and feelers from time to time to petitioner's counsel, who is one of its retained external counsel, how the case may be settled amicably. Upon initial receipt of petitioner's favorable reaction, private respondent pursued earnest efforts and mentioned the particulars of the proposed amicable settlement. The particulars were initially discussed by the handling counsel, culminating later to serious negotiations between petitioner's counsel and the officer of private respondent, assisted by its counsel. Regrettably, the amount demanded by petitioner was unreasonable, forcing the officer of private respondent to put an end to the negotiation for an out-of-court settlement. In view of the previous negotiations, which most of the time were entertained by petitioner, coupled with the fact that petitioner's counsel is one of the external retained counsel of private respondent, the latter had every reason to believe that the case will be settled amicably in due time. The facts obtaining in this case are not on all fours with the cases that were invoked by petitioner. Be that as it may, it must be remembered that appeal is an essential part of our judicial system. Thus, courts should proceed with caution so as not to deprive a party of the right to appeal, particularly if the appeal is meritorious, as in this case.

We do not find any convincing reason to overturn the questioned resolution of respondent court.

In *Arcega, et al. v. Court of Appeals, et al.*, we upheld the dismissal of petitioner's appeal because:

"x x x. It cannot be said that the respondent Court of Appeals abused its discretion or exceeded its jurisdiction in dismissing the appeal of the petitioners for failure to prosecute, since it appears that the petitioners did nothing to effect or facilitate the transmittal of the records of the case to the appellate court for almost two (2) years from the issuance of the order to elevate said records to the appellate court. The Court has held that, while it is the duty of the clerk of the lower court to transmit the records of an appealed case to the appellate court, it is also the duty of the appellant to make the clerk of court act, and the failure of the clerk to perform his legal duty is no justification for the appellant's failure to perform his, and he cannot justify his failure by saying that the fault was that of the clerk of the lower court.[12]

In the same manner, in *Estella, et al. v. Court of Appeals, et al.*, we sustained the dismissal of petitioner's appeal because:

"Conceding to the point that it is the clerk of court who is primarily responsible for seeing to it that the records of appealed cases are properly sent to the appellate court without delay (and having failed to do so subjects him to administrative liability), it behooves the litigants to be more vigilant of their rights. They should take it upon themselves to call the attention of the trial court as to any delay in action over their cases.

"The rule that it is the duty of the appellant to prosecute his appeal with reasonable diligence is still a sound rule. He cannot simply 'fold his hands' and say that it is the duty of the clerk of court to have his case promptly submitted to the appellate court for the disposition of his appeal."[13]

Petitioner faults respondent court for not dismissing the appeal of private respondent, thereby disregarding our pronouncement in these cases.

The *Arcega* and *Estella* cases are inapplicable *pro hac vice*. Technicality prevailed therein because in the *Arcega* case, petitioners merely contended that "the elevation of the records of the case to the appellate court by the lower court is beyond their means and control"[14] whereas, in the *Estella* case, petitioners gratuitously stated that " 'as the rule now exists, the appellant is justified if he merely 'folds his hands' after the trial judge has ordered that the records of the case be transmitted to the appellate court.' "[15] Compared to the present case, private respondent contends that even before the promulgation of the decision by the trial court, it has been negotiating with petitioner for an amicable settlement. Petitioner contradicts this contention by submitting that it was only in February, 1991, when private respondent attempted seriously to initiate negotiation for settlement. There is thus no argument that both parties endeavored to settle this case amicably. However, what appears contested is the period of time when the settlement was initiated. Obviously, this concerns a factual issue which is not proper to be resolved in a petition for review on certiorari.[16] The jurisdiction of this Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive.[17] Suffice it to state, as found by respondent court that, "a probable cause of said delay was also the pursuit of an amicable settlement initiated by defendant appellant and apparently not discouraged by plaintiff-appellee." [18]

Once more, we take exception to the stringent application of procedural rules. Under the circumstances obtaining in this case, dismissal of the appeal purely on technical ground is frowned upon. The policy of the courts is to encourage hearings of appeals on their merits.[19]

WHEREFORE, the petition is hereby DENIED. The resolution of the Court of Appeals dated November 4, 1991 is AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), and Regalado, J., concur.

Padilla, J., on official leave.

[1] Penned by Associate Justice Fermin A. Martin, Jr. and concurred in by Associate Justice Gloria C. Paras and Associate Justice Jesus M. Elbinias.

[2] Rollo, pp. 24-28.

[3] Ibid, pp. 31-34.

[4] Ibid, pp. 29-30.

[5] Ibid, p. 49.

[6] Ibid, pp. 50-51.

[7] Ibid, pp. 54-56.

[8] Ibid, p. 67.

[9] Ibid, p. 69.

[10] Ibid, p. 72.

[11] Ibid, p. 75.

[12] G.R. No. 79043, 166 SCRA 773 (1988).

[13] G.R. No. 76884, 185 SCRA 732 (1990).

[14] Id., at p. 776.

[15] Id., at p. 738.

[16] Morales v. Court of Appeals, et al., G.R. No. 91003, 197 SCRA 391 (1991).

[17] Chan v. Court of Appeals, G.R. No. L-27488, 33 SCRA 737 (1970).

[18] Rollo, p. 74.

[19] Visayan, et al. v. NLRC, et al., G.R. No. 69999, 196 SCRA 410 (1991).

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