

SPOUSES GIL AND ELMA DEL ROSARIO, PETITIONERS, VS. COURT OF APPEALS AND SPOUSES LAIN AND LILY DUQUE, RESPONDENTS.

G.R. No. 113890. February 22, 1995

Ponente: BIDIN, J.

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BIDIN, J.:

This case concerns the dismissal of an appeal for failure of petitioners in their Appellants' Brief to make page references to the record to support its Statement of Facts and Case, and to state the material data.

Private respondents filed Civil Case No. D-9209 against petitioners before the Regional Trial Court of Dagupan City, Pangasinan to recover payment of usurious interest and for damages. [1] Petitioners contested the complaint. The case was then tried on its merits and on September 7, 1992, the trial court ruled in favor of private respondents. It ordered petitioners to reimburse jointly and severally private respondents the amount of ONE HUNDRED THIRTY-EIGHT THOUSAND FIVE HUNDRED FIFTY PESOS (P138,550.00) plus attorney's fees of NINE THOUSAND FIVE HUNDRED PESOS (P9,500.00). [2]

Petitioners appealed to respondent Court of Appeals. [3] Private respondents moved to dismiss the appeal for want of material data and page references to the record of Appellants' Brief. Petitioner's opposed but respondent court dismissed their appeal on October 29, 1993, viz:

"Before the Court plaintiffs-appellees' Motion to Dismiss Appeal dated September 20, 1993 for defendants-appellants' violation of Section 16 (c) and (d) of Rule 46 of the Revised Rules of Court, and Section 1 (a) and (g) of Rule 50 of the same Revised Rules. Defendants-appellants filed their opposition thereon dated September 28, 1993.

Indeed, a perusal of appellants' brief reveals that it does not have page references to the Record under its Statement of Facts and of the Case, nor does said brief comply with the Material Data Rule for appealed cases, in clear violation of the above provisions of the Revised Rules of Court, thereby, warranting the dismissal of the appeal.

WHEREFORE, the instant motion to dismiss is hereby granted, and the appeal is DISMISSED by the Court.

SO ORDERED." [4]

On February 11, 1994, petitioners' motion for reconsideration was denied for lack of merit, thus:

"Instead of amending their defective appellants' brief which resulted to the dismissal of their appeal for failure to comply with Sec. 16 (c) and (d) of Rule 46 in relation to Sec. 1 (a) and (g) of Rule 50 of the Revised Rules of Court, appellants still insist on the same arguments that their brief is alright.

WHEREFORE, defendants-appellants' motion for reconsideration for Our resolution in this case of October 29, 1993, dismissing the appeal, is hereby DENIED by the Court for lack of merit.

SO ORDERED." [5]

In this petition for certiorari, petitioners submit that: (1) the Material Data Rule does not apply to the case at bar since a record on appeal is no longer required by the rules; and (2) they have substantially complied with sections 16 (c) and (d) of Rule 46 of the Revised Rules of Court.

We find no merit in the petition.

A careful examination of Appellants' Brief with respondent court shows that it does not comply with paragraphs (a), (c), (d), and (f) of section 16, Rule 46 of the Revised Rules of Court which provides:

"Rule 46, Section 16. - Contents of appellant's brief. - The appellant's brief shall contain in the order herein indicated the following:

(a) A subject index of the matter in the brief with a digest of the argument and page references and a table of cases alphabetically arranged, textbooks and statutes cited with reference to the pages where they are cited;

x x x x x x x x

(c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy, with page references to the records;

(d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the records;

x x x x x x x x

(f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;"

x x x x x x x x

It is plain to the eye that the Statement of Facts and Case of Appellants' Brief has no page reference to the record. Similarly, its Table of Contents and Arguments cite cases [6] without any page reference. It has been held that a fly leaf list of authorities cited in a brief which do not refer to the pages in the brief where they were cited, which list is merely a copy of the authorities which are in bulk under the propositions does not comply with the rules. [7]

These lapses justified the respondent court in dismissing petitioners' appeal. Section 1 (g) of Rule 50 provides:

"Section 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or that of the appellee, on the following grounds:

x x x x x x x x

(g) Want x x x of page references to the record as required in section 16 (d) of Rule 46;"

x x x x x x x x

In Bucad vs. court of Appeals, et al., [8] we dismissed the appeal for violation of the appellant of the various subsections of section 1 of Rule 50, among them, subsection (g). [9]

Petitioners' plea for liberality in applying these rules in preparing Appellants' Brief does not deserve any sympathy. Long ingrained in our jurisprudence is the rule that the right to appeal is a statutory right and a party

who seeks to avail of the right must faithfully comply with the rules. [10] In *People vs. Marong*, [11] we held that deviations from the rules cannot be tolerated. The rationale for this strict attitude is not difficult to appreciate. These rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, these rules need to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants. In the case at bar, counsel for petitioners had all the opportunity to comply with the above rules. He remained obstinate in his non-observance even when he sought reconsideration of the ruling of the respondent court dismissing his clients' appeal. Such obstinacy is incongruous with his late plea for liberality in construing the rules on appeal.

The respondent court also relied on the Material Data Rule in dismissing petitioners' appeal. This is an error but it will not carry the day for petitioners in light of their violation of paragraphs (a), (c), (d), and (f) of section 16 of Rule 46.

IN VIEW WHEREOF, the petition is DENIED. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), and Regalado, J., concur.
Puno, and Mendoza, JJ., no part.

[1] Branch 42, First Judicial Region, presided by Judge Luis M. Fontanilla.

[2] Order of September 7, 1992, pp. 62-76, Rollo.

[3] Docketed as CA G.R. CV No. 41025.

[4] Second Division, Jaguros, Lourdes K., J. ponente, Mendoza, Vicente V., and Elbinias, Jesus M., JJ., concurring. Court of Appeals Resolution, p. 17-A, Rollo.

[5] *Id.*, p. 16.

[6] The Brief's Table of Contents cites *People vs. Bernabe*, L-20153, July 29, 1967; *People vs. Barreto*, L-50631, July 26, 1991; and *Castanazares vs. CA*, L-41269-70, August 6, 1979. The first two cases appear to be non-existent.

[7] 4 C.J.S. 1943 citing *Hansaker vs. Abbot Tax Civ*, App. 286 S.W. 610; see *Heirs of Abelardo V. Palomique vs. Court of Appeals*, Nos. L-39288-89, January 31, 1985, 134 SCRA 331.

[8] G.R. No. 93783, December 11, 1992, 216 SCRA 423.

[9] See also *Genobiagon vs. CA*, No. L-44323, March 2, 1977, 76 SCRA 39 cited in *Moran's Comments on the Rules of Court*, Vol. II, 1979 ed., p. 509.

[10] *Tan vs. Court of Appeals*, G.R. No. 80812, September 2, 1992, 213 SCRA 316.

[11] No. L-56858, December 27, 1982, 119 SCRA 430.

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