

TRANS INTERNATIONAL, PETITIONER, VS. THE COURT OF APPEALS; NATIONAL POWER CORPORATION; PERLA A. SEGOVIA AND GILBERTO PASTORAL, RESPONDENTS.

G.R. No. 128421. October 12, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

Petitioner has filed this motion for reconsideration of the decision dated January 26, 1998, denying the petition, on the ground that:

"SAID DECISION IS NOT SUPPORTED BY THE FACTS AND CIRCUMSTANCES ON RECORD AND/OR IS CONTRARY TO THE LAW AND JURISPRUDENCE APPLICABLE TO THE MATTER IN CONTROVERSY."

In essence, movant posits the view that while the mandatory and jurisdictional nature of the timely perfection of an appeal is subject to well-recognized exceptions, the circumstances reflected in this case do not come close to the exceptional circumstances that could justify a turn about from the otherwise strictly followed general rule.

Upon perusal of the motion for reconsideration and the comment thereto filed by the public respondent, through the Office of the Solicitor General, we have been persuaded to take a second look at the facts and circumstances obtaining herein.

For a better perspective of the case at bar, we go back to the petition for certiorari filed before the respondent court, which, as in petitions of this nature, the focus of the inquiry invariably is whether or not the trial court acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in denying due course to respondent National Power Corporation's appeal. The threshold issue posed for resolution, therefore, is whether or not, in view of the facts and circumstances obtaining as spread out on the record, private respondent's tardiness in the filing of the notice of appeal from the trial court's decision may be considered as an exception to the general rule that failure to appeal on time is fatal.

We upheld the respondent court when it ruled that the failure of the National Power Corporation to file the appeal on time falls under the exception to the general rule despite the fact that the perfection of an appeal within the period fixed by law is not only mandatory but also jurisdictional. Resultantly, the respondent court opined that, in denying due course to respondent's appeal and directing the issuance of a writ of execution, the respondent judge acted with grave abuse of discretion.

Thus, respondent court said:

"The Supreme Court has pointed out that a lower court should not be cited as having acted with grave abuse of discretion simply because it has correctly but strictly applied the rules (*Castro vs. CA*, *supra*). However, in this case, We hold that the denial of the notice of appeal, filed one day late despite the valid excuse presented before it, which excuse was not found to be incredible or concocted, was arbitrary and amounted to a grave

abuse of discretion on the part of the trial judge, being in clear disregard of established precedents enunciating a liberal policy towards invocation of the right to appeal as an essential part of our judicial system." [1]

Now, petitioner prays that we again review the facts and circumstances on record to determine whether the respondent court's application of the exception instead of the general rule measures up to the extraordinary circumstances held sufficient in the decisions of the Court.

After a meticulous re-examination of the background facts, We find that the respondent court was in error, thus, we reconsider our earlier decision and grant the motion for reconsideration.

We are constrained to agree with petitioner that the reasons relied upon by the respondent court for the relaxation of the rule of the timeliness in the perfection of an appeal in this case are not as compelling as was our previous assessment. The stringent rule can be relaxed only when the demands of substantial justice so warrant. As correctly argued by petitioner, thus:

"x x x that may be done only when, in the varying but consistent language of jurisprudence, 'to do so would serve the demands of substantial justice and in the exercise of (our) equity jurisdiction' (Pacific Asia Overseas Shipping Corporation vs. NLRC, et al., 161 SCRA 122, 130), or, when there are 'strong considerations of substantial justice' (Vda. de Crisologo, et al. vs. Court of Appeals, et al., 158 SCRA 236); or, 'on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave injustice' (Paramount Vinyl Products Corporation vs. NLRC, et al., 190 SCRA 525, 534); or, 'on grounds of substantial justice and equity, the delay must, however, be excusable and the appeal must be impressed with merit' (Acena vs. Court of Appeals, et al., 193 SCRA 623, 630). Some such strong and compelling reasons are exemplified in Republic vs. CA, 83 SCRA 453, where the six-day delay in the filing of a record on appeal was excused because, among others, there were involved serious issues of jurisdiction and the application of defenses like prescription, statute of limitations and laches against the Republic which would place technicality over substance if the dismissal of the appeal is upheld; in Ramos vs. Bagasao, 96 SCRA 395, where the four-day delay was justified because the plaintiff's lawyer died and the decision was served directly upon plaintiff who still had to engage the services of a new counsel to take the appeal on her behalf; in Siguenza vs. Court of Appeals, 137 SCRA 570, where the delay in the filing of the record on appeal was overlooked and this Honorable Court opted to already decide the case on the merits inasmuch as, on its face, the appeal appeared to be impressed with merit; in Cortes vs. Court of Appeals, 161 SCRA 444, where the seven-day delay in the filing of the notice of appeal was excused because the party's counsel, who was appointed RTC Judge, failed to file a withdrawal of appearance such that notice of the decision was still served upon him and it was only after he returned to his former law office from his station that he learned of said decision and also only after a new counsel was engaged that the notice of appeal was filed; and, in Orata vs. IAC, 185 SCRA 148, where the delay was likewise overlooked and this Honorable Court resolved the case on its merits because, in addition to the basic merits of the main case, the petition embodied circumstances that warranted heeding the petitioner's plea for justice." [2]

However, a re-examination of the reasons advanced by private respondent National Power Corporation to justify the tardiness of their filing the notice of appeal before the trial court, cannot be catalogued under the aforementioned exceptions to the general rule.

The respondent court said that "the notice of appeal was admittedly filed one (1) day late." However, it was convinced "that under the circumstances of the case, the delay of one (1) day in filing the appeal is justified and should be excused by the court a quo x x x." The reasons for this, the respondent court so holds, was due to the big amount involved in the case; and, that "the one (1) day delay arose from an honest mistake or unforeseen accident. x x x." [3]

In justifying the one (1) day delay, the respondent court took into account the affidavit of Ronald Lapuz, the

receiving clerk, pertinent portions of which is quoted as follows:

"x x x x x x x x

2. On August 23, 1996 at 4:54 p.m. Friday, I received a copy of the Order dated August 2, 1996 issued by the RTC-Branch 101, Quezon City, entitled *Trans International vs. NPC*, et al;

3. Since it was already almost 5:00 p.m., I placed the said order inside the drawer of my table together with some other documents;

4. On August 26, 1996, that was Monday I was unable to report to the office because of severe pain in my front jaw as a result of the extraction of my three front teeth, causing severe pain in my body;

5. I forgot to deliver immediately the copy of the Order to Atty. Collado nor to his secretary on August 23, 1996, despite his instruction to me to immediately deliver to his secretary any order in this case, *Trans International vs. NKPC*, et al, *RTC-Quezon City and Sps. Lim vs. NPC*, et al *RTC-Lingayen* as it was already almost 5:00 p.m. and believing that on the next succeeding working day, I could report to work, but incidentally, I got sick and was able only to report on August 28, 1996 as per hereto attached copy of my approved sick leave;

x x x x x x x x

7. My failure to deliver the said order to the secretary of Atty. Wilfredo Collado on the next working day, August 26, 1996 was due to my aforesaid illness which incapacitated me from reporting to work on August 26 & 27, 1996."[4]

Petitioner makes a rather strong case that the respondent court (and we add, this Court) erred in concluding that the one-day delay in the filing of the notice of appeal was sufficiently explained.

Upon perusal of the aforequoted affidavit, we overlooked or otherwise failed to consider the failure of Ronald Lapuz to comply with the strict instruction of Atty. Collado, respondent Napocor's counsel, for the immediate delivery to his secretary of any order in the case. It might be true that when he received the copy of the order, it was already 4:54 p.m., Friday. Yet, there is nothing on record or in the affidavit that Atty. Collado or the latter's secretary was no longer in the office. Lapuz states that he placed the order inside the drawer of his table believing that he could give the order the next succeeding working day (Monday). But then, Ronald Lapuz could have at least given the order to the secretary of Atty. Collado the following day, Saturday, since there is no showing that Saturday was a non-working day, and consequently said denial order could have been transmitted on said day to Atty. Collado or his secretary.

Furthermore, absent in the record is any independent proof of the alleged indisposition of Ronald Lapuz. To his affidavit, he attached an approved leave of absence form for two (2) days (Monday and Tuesday) to prove that he was absent on those days due to illness. However, there is no medical certificate to attest to the fact of illness, thus, there is no competent supporting proof of the alleged extraction of three front teeth.

Another capital sin of Ronald Lapuz is his admission that he "forgot to deliver immediately the copy of the order x x x," despite the instruction of Atty. Collado for him to "immediately deliver to his secretary any order" in this case. Forgetfulness is neither accident, mistake or excusable negligence which would warrant justification for the one (1) day delay in filing the notice of appeal. We quote with approval the citation made by movant in the case of *Philippine Air Lines, Inc. vs. Arca*, 19 SCRA 300, 302-303, viz.:

"x x x The excuse offered by respondent Santos as reason for his failure to perfect in due time his appeal from the judgment of the Municipal Court, that counsel's clerk forgot to hand him the court notice, is the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements

prescribed by the Rules of Court. The uncritical acceptance of this kind of common-place excuses, in the face of the Supreme Court's repeated rulings that they are neither credible nor constitutive of excusable negligence (Gaerlan vs. Bernal, L-4039, 29 January 1952; Mercado vs. Judge Domingo, L-19457, 17 December 1966) is certainly such whimsical exercise of judgment as is a grave abuse of discretion." [5]

Consequently, the liberality extended to respondent National Power Corporation in considering the tardiness of filing notice of an appeal as an exception to the mandatory and jurisdictional rule on the requirement for the timely perfection of an appeal cannot be given consideration. And, as petitioner again correctly contends, falling foursquare to the situation presented is our ruling in *Velasco vs. Ortiz, et al.* 184 SCRA 303, 310:

"Fourth. Neither a mistake of law x x x nor the fact that the delay in the filing of the appeal bond was only one day, nor both of these circumstances together, are legal justifications for non-compliance with the rule. If mistake of law were excusable, the law would be unenforceable. That is why it is expressly provided that 'ignorance of the law does not excuse anyone from compliance therewith (Art. 2, Civil Code). If, without justification, transgression of the deadline fixed by the rule for perfecting an appeal may be sanctioned, the public policy behind the rule would necessarily have to be abandoned, and the litigants would be at a loss to know exactly when they may obtain execution of judgments or consider the case terminated. On the other hand, when the law fixes thirty days, we cannot take it to mean also thirty-one days. If that deadline could be stretched to thirty-one days in one case, what would prevent its being further stretched to thirty-two days in another case, and so on, step by step, until the original line is forgotten or buried in the growing confusion resulting from the alterations? That is intolerable. We cannot fix a period with the solemnity of a statute and disregard it like a joke. If law is founded on reason, whim and fancy should play no part in its application.

We do not agree that 'the ends of justice would be better subserved' by allowing an appeal presented 'only one day late.' On the contrary, these considerations militate against it: (1) The orderly administration of justice would suffer a drawback if the period for perfecting appeals be rendered uncertain, as it would be, by sanctioning such transgression of the deadline. (2) The appealed decision is presumed by law to be just and correct, and therefore the denial of the appeal does not necessarily imply an injustice to the appellant. (3) The right to appeal is a purely statutory right, and he who wants to exercise it must comply with the statute." [6]

With the foregoing jurisprudence as our bench mark, we are compelled to conclude, as we did in *Bank of America, NT and SA vs. Gerochi, Jr., et al.*, 230 SCRA 9, 15-16, to wit:

"The case at bench, given its own settings, cannot come close to those extraordinary circumstances that have indeed justified a deviation from an otherwise stringent rule. Let it not be overlooked that the timeliness of an appeal is a jurisdictional caveat that not even this Court cannot(sic) trifle with." [7]

To hold otherwise, as we did, after a conscientious review of the factual milieu of this case, would disturb a well-entrenched ruling that could make uncertain when a judgment attains finality, leaving the same to depend upon the resourcefulness of a party in concocting implausible excuses to justify unwarranted departure from the time-honored policy of the law that the period for the perfection of an appeal is mandatory and jurisdictional.

One other thing. It is not enough that the delay be excusable, one added requisite is that the intended appeal be "impressed with merit." [8] We perused the record and find confirmation in the fact that respondent NAPOCOR never, at any time in the trial court or in the respondent court, alleged, much less demonstrate, that the intended appeal is meritorious. It was the respondent court which unilaterally considered that the supposedly anomalous amount awarded in the decision of the trial court as a factor that warranted such relaxation. On second look, obviously given the presumption of validity and correctness of the decision of the trial court, this would be indulging in speculation that should not be allowed. We note that in the decision of the trial court, it said:

"On plaintiff's claim for damages, while the Court is hesitant in granting the same because defendant Napocor is a government agency, however, it acts by and thru its defendants officer and is consequently bound by their

acts.

And unfortunately, the plaintiff's claim for damages are all substantiated by the testimonies as well as documentary evidence presented and identified by plaintiff's witness, namely: Mr. Syed Hasim Zaide, Miss Erlinda Cross and Myrna Magdaluyo in the hearing of this case."[9]

Apparently, there was basis for the award of damages. Hence, it is premature to speculate on the merits of the aborted appeal, since such a speculation would be wanting in factual basis.

WHEREFORE, the petitioner's motion for reconsideration of the decision dated January 26, 1998, is GRANTED, and the Court hereby SET ASIDE the decision dated October 21, 1996 and the resolution dated January 31, 1997 of the respondent court in CA-G.R. SP No. 41977. The decision of the Regional Trial Court of Quezon City in Civil Case No. Q-94-20960 is hereby declared as having attained finality in due course, in consequence of which the said court may issue such orders as it may deem proper and appropriate in the premises.

SO ORDERED.

Regalado, (Acting C.J.), Melo, Puno, and Mendoza JJ., concur.

[1] Decision in CA-G.R. SP No. 41977, p. 11; Rollo, p. 38.

[2] Rollo, pp. 212-213.

[3] Decision in CA-G.R. SP No. 41977, p. 6.

[4] Rollo, pp. 97-98.

[5] Rollo, p. 216.

[6] Rollo, pp. 219-220.

[7] Rollo, p. 220.

[8] *Acena vs. Court of Appeals, et al.*, 193 SCRA 623, 630.

[9] Rollo, pp. 69-70.

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