REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS AND TRADERS ROYAL BANK, RESPONDENTS.

G.R. No. 129846. January 18, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari seeking to set aside the resolution,[1] dated March 17, 1997, of the Court of Appeals dismissing petitioner's appeal from an order of the Regional Trial Court, Branch 19, Manila, which dismissed petitioner's complaint. The appellate court threw out petitioner's appeal on the ground that its notice of appeal had been filed out of time. Petitioner urges a relaxation of the rules in applying the period for filing appeals. But even its appeal to this Court from the resolution of the appellate court is late. Hence, the dismissal of the present petition is called for.

The procedural antecedents are as follows:

On two occasions in January 1986, the Office of the President issued four type "B" Treasury Warrants drawn against the Bureau of Treasury in the aggregate amount of P151,645,000.00. The treasury warrants were deposited in private respondent Traders Royal Bank for collection.

On January 7, 1986, private respondent presented the warrants to the Bureau of Treasury for clearing. The warrants were cleared and private respondent credited the amounts to the designated payees' accounts.[2] Petitioner subsequently discovered on April 3, 1986 that the payees' indorsements on the warrants had been forged. It demanded reimbursement from private respondent of the amounts paid on the warrants but the latter refused to pay.

On October 13, 1987, petitioner, through the Bureau of Treasury, filed Civil Case No. 87-42752 for collection against private respondent before the Regional Trial Court, Branch 19, Manila. Trial then ensued. After petitioner had rested its case, private respondent, with prior leave of court, filed a Demurrer to Evidence on January 12, 1994. Among others, it was contended:

> . . . The plaintiff does not claim nor alleged that because of the alleged forgery of the indorsements of the payees, it (the plaintiff) had to replace the treasury warrants in question and thus pay the payees all over again. Does not the cause of action or right to relief, then, if any, properly pertain to the payees whose endorsements were allegedly forged? And is not such a cause of action or right to relief properly against the forger/s or perpetrator of the forgery?

In an order dated September 30, 1994, the trial court denied the demurrer to evidence. However, on motion of private respondent, the trial court, on January 30, 1995, reconsidered its order and dismissed petitioner's complaint. Petitioner received the order of dismissal on February 7, 1995. Hence, it had up to February 22, 1995 within which to appeal.

On February 20, 1995, two days before the last day to file an appeal, petitioner filed a motion for reconsideration

of the order of dismissal which interrupted the running of the period of appeal.

On May 23, 1995, the trial court denied petitioner's motion for reconsideration. The order was received by petitioner on June 2, 1995, so that it had until June 4, 1995 within which to file the notice of appeal. However, petitioner filed its notice of appeal only on June 16, 1995, 12 days beyond the 15-day reglementary period. As a consequence, the dismissal became final. For some reason, this fact was not immediately noticed, so that the records of the case were elevated to the Court of Appeals and petitioner was required to file its appellant's brief. When it came to its turn to file its brief as an appellee, private respondent asked for an extension of time. Its motion was granted, but instead of filing its brief, private respondent asked the appellate court to dismiss petitioner's appeal on the ground that it was filed out of time. Its motion was granted and petitioner's appeal was dismissed. Petitioner filed a motion for reconsideration, but its motion was denied. Petitioner received the appellate court's resolution denying its motion on June 5, 1997, so that it had until June 20, 1997 within which to appeal to this Court by filing a petition for review on certiorari under Rule 45. Instead, petitioner filed on August 4, 1997, 45 days after the last day to file an appeal, the present petition for certiorari under Rule 65, contending that the Court of Appeals gravely abused its discretion in dismissing its appeal from the order of the RTC which dismissed its complaint against private respondent.

As earlier stated, this petition should be dismissed.

First. Petitioner's remedy was to appeal to this Court from the resolutions, dated March 17, 1997 and May 20, 1997, of the appellate court by filing a petition for review on certiorari under Rule 45. Instead, it filed this petition for certiorari under Rule 65 only on August 4, 1997. Apparently, petitioner resorted to this special civil action because it had failed to take an appeal within the 15-day reglementary period which expired on June 20, 1997. This, of course, cannot be done. The special civil action of certiorari cannot be used as a substitute for an appeal which petitioner has lost. Nor can it be contended that the only question raised in this case is a jurisdictional question. Certiorari lies only where there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. There is no reason why the question being raised by petitioner, i.e., whether the appellate court committed a grave abuse of discretion in dismissing petitions, could not have been raised by it on appeal.

In Bernardo vs. Court of Appeals,[3] we dismissed a Rule 65 petition on the ground that the proper remedy for petitioner therein should have been an appeal under Rule 45 of the Rules of Court, viz.:

> At the outset, this Court notes that the proper remedy of Petitioner Bernardo should have been an appeal under Rule 45 of the Rules of Court. We have time and again reminded members of the bench and bar that a special civil action for certiorari under Rule 65 lies only when "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law." Certiorari can not be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, certiorari not being a substitute for lost appeal. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive. . . .[4]

Admittedly, this Court, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, has the discretion to treat a petition for certiorari as having been filed under Rule 45, especially if filed within the reglementary period for filing a petition for review.[5] In this case, however, we find no reason to justify a liberal application of the rules. The petition was filed well beyond the reglementary period for filing a petition for review without any reason therefor.

Second. Even on the grounds invoked by petitioner, we think the present petition should be dismissed. Time and again, we have emphasized that the perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional, and that the failure to perfect an appeal renders the decision of the trial court final and executory.[6] This rule is founded upon the principle that the right to appeal is not part of due

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process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law.[7] In this case, we find no reason to depart from this rule.

Petitioner invokes the judicial policy of allowing appeals, although filed late, when the interest of justice so requires. Citing Bank of America, NT & SA v. Gerochi, Jr.,[8] it contends that this Court, in meritorious instances, has allowed the rules on the periods for perfecting appeals to be relaxed.[9] Unfortunately for petitioner, even a cursory reading of the very case upon which it relies for support shows that the policy invoked is qualified by the requirement that there must be exceptional circumstances to justify the relaxation of the rules. The case cited, which involved an appeal made five days late, illustrates how questions of this nature have been resolved by this Court:

> True, in few highly exceptional instances, we have allowed the relaxing of the rules on the application of the reglementary periods of appeal. We cite a few typical examples: In Ramos vs. Bagasao, 96 SCRA 395, we excused the delay of four days in the filing of a notice of appeal because the questioned decision of the trial court was served upon appellant Ramos at a time when her counsel of record was already dead. Her new counsel could only file the appeal four days after the prescribed reglementary period was over. In Republic vs. Court of Appeals, 83 SCRA 453, we allowed the perfection of an appeal by the Republic despite the delay of six days to prevent a gross miscarriage of justice since the Republic stands to lose hundreds of hectares of land already titled in its name and had since then been devoted for educational purposes. In Olacao vs. National Labor Relations Commission, 177 SCRA 38, 41, we accepted a tardy appeal considering that the subject matter in issue had theretofore been judicially settled, with finality, in another case. The dismissal of the appeal would have had the effect of the appellant being ordered twice to make the same reparation to the appellee.
>
> The case at bench, given its own settings, can not 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 can trifle with.[10]

As in Bank of America, there is no showing in this case of a factual setting which approximates any of the extraordinary circumstances which may justify a deviation from the rule on timely filing of appeals. Anyone seeking exemption from the application of this rule has the burden of proving that exceptionally meritorious instances exist which warrant such departure. In this case, petitioner failed to discharge this burden. It offered no explanation at all for the 12-day delay in filing its notice of appeal. What was said in Videogram Regulatory Board v. Court of Appeals[11] applies with equal force to this case, as petitioner is likewise represented by the Office of the Solicitor General, viz.:

> And, while we understand the OSG's predicament, its oft-repeated excuse of being saddled with a huge caseload, which is resorted to almost everytime it applies for extension of time for appeal and filing of comments/replies/briefs, has already lost its flavor, if not gone stale entirely. Certainly, by this time the OSG must have already developed a system for keeping track of all its deadlines and monitoring the progress of work being done on the cases it is handling. After all, government service really entails hard work and perennial unceasing pressure to meet deadlines. Most assuredly, this is not a ground for the liberal interpretation of the rules. Only in exceptionally meritorious cases should the rules be relaxed. Such has not been shown to be the situation in this case.

After its case was dismissed by the trial court, all that the OSG had to do was to file a notice of appeal, which is just a brief statement of petitioner's intention to appeal from the court's decision. There is no reason why the OSG could not have done this in two days. Unlike a record on appeal, a notice of appeal does not require the extractions of pleadings and documents from the records pertinent to the subject of the appeal. In the absence of any satisfactory explanation, the OSG's failure to file a timely notice of appeal simply cannot be excused without defeating private respondent's right, as a party-litigant, to benefit from a decision that has become final and

executory.

Nor can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice.[12] While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities,[13] the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal.[14] The failure to file the notice of appeal within the reglementary period is akin to the failure to pay the appeal fee within the prescribed period. In both cases, the appeal is not perfected in due time. As we held in Pedrosa v. Hill,[15] the requirement of an appeal fee is by no means a mere technicality of law or procedure, but an essential requirement without which the decision appealed from would become final and executory.[16] The same can be said about the late filing of a notice of appeal.

The fact is that petitioner did not only fail to appeal from the main order of the trial court dismissing its complaint. It did not only fail to appeal on time from the order denying reconsideration. Petitioner likewise failed to make a timely appeal to this Court from the resolution of the appellate court dismissing its appeal.

Nonetheless, it is contended that petitioner has a meritorious claim against private respondent and that it stands to lose P151,645,000.00 if it cannot appeal from the trial court's order dismissing its complaint against private respondent. The finality of the trial court's order as a consequence of petitioner's failure to appeal on time, first to the Court of Appeals and, later to this Court, unfortunately, bars further consideration of its case. There is simply no explanation offered for such lapses.

Third. There is another reason why review of the trial court's order cannot be made. Petitioner does not dispute the fact that, as observed by the Court of Appeals, its notice of appeal referred only to the order of the trial court denying its Motion for Reconsideration and not the order of dismissal of its complaint as well.[17] Such failure is fatal. Rule 37, §9 of the Rules of Civil Procedure provides that an order denying a motion for reconsideration is not appealable, the remedy being an appeal from the judgment or final order. On the other hand, Rule 41, §1(a) of the same rules also provides that no appeal may be taken from an order denying a motion for reconsideration. It is true the present Rules of Civil Procedure took effect only on July 1, 1997 whereas this case involves an appeal taken in February 1995. But Rule 37, §9 and Rule 41, §1(a) simply codified the rulings in several cases to the effect that an order denying a motion for reconsideration is interlocutory in nature[18] and, therefore, is not appealable.[19] These rules, therefore, are not really new.

The outcome of this petition maybe a bitter lesson for petitioner, but one mainly of its own doing. Not only did it file its notice of appeal well beyond the reglementary period, it actually failed to appeal from the order dismissing its case against private respondent. The inevitable consequence of such grave inadvertence is to render the trial court's decision dismissing its case final and executory. The Court of Appeals thus acted properly in dismissing petitioner's appeal.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Justice Romeo A. Brawner and concurred in by Justices Emeterio C. Cui and Lourdes K. Tayao-Jaguros.

[2] The particulars of the warrants are as follows:

TW No. Payee Date Amount

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B05529511 Leonila Sioson 1-6-86 P33,044,000.00

B05529512 Leonila Sioson 1-6-86 P17,800,250.00

B05529515 Nancy Concepcion 1-11-86 P39,900,250.00

B05529526 Nancy Concepcion 1-11-86 P40,900,500.00

[3] 275 SCRA 423 (1997)

[4] Id., at p. 426.

[5] Delsan Transport Lines, Inc. v. Court of Appeals, 268 SCRA 597 (1997)

[6] Bank of America, NT & SA v. Gerochi, Jr., 230 SCRA 9 (1994) citing Alto Sales Corp. v. IAC, 197 SCRA 618 (1991), Falcon Mfg. v. NLRC, 199 SCRA 814 (1991), Kabushi Kaisha Isetan v. IAC, 203 SCRA 583 (1991)

[7] Bello v. Fernando, 4 SCRA 135 (1962); Borre v. Court of Appeals, 158 SCRA 660 (1988); Pedrosa v. Hill, 257 SCRA 373 (1996); People v. Esparas, 260 SCRA 539 (1996)

[8] 230 SCRA 9 (1994)

[9] Petition, p. 10; Rollo, p. 11.

[10] 230 SCRA at 15-16 (Emphasis added)

[11] 265 SCRA 50, 60 (1996)

[12] Petition, p. 12; Rollo, p. 13.

[13] De la Rosa v. Court of Appeals, 280 SCRA 444 (1997), citing Rodriguez v. Court of Appeals, 68 SCRA 262 (1975)

[14] Bank of America, NT & SA v. Gerochi, 230 SCRA 9 (1994)

[15] 257 SCRA 373 (1996)

[16] Id., at 379.

[17] Rollo, p. 29.

[18] Artuyo v. Gonzalves, 137 Phil. 803 (1969)

[19] Pagtakhan v. Court of Industrial Relations, 39 SCRA 455 (1971), citing the former Section 2, Rule 41, Rules of Court; People v. Doriques, 24 SCRA 167 (1968); Ramos v. Ardant Trading Corporation, 23 SCRA 947 (1968); Sy v. Dalman, 22 SCRA 834 (1968); Chuatoco v. Aragon, 22 SCRA 346 (1968); People v. Macandog, 7 SCRA 195 (1963); Bautista v. De la Cruz, 9 SCRA 725 (1963); Harrison Foundry & Machinery v. Harrison Foundry Workers Association, 8 SCRA 430 (1963); Phil. Refining Co., Inc. v. Ponce, 99 Phil. 269 (1956); PLDT Employees Union v. PLDT Co. Free Tel. Workers Union, 97 Phil. 424 (1955); Sitchon v. Sheriff of Occidental Negros, 80 Phil. 397 (1948)

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