

**ABRAHAM GEGARE, PETITIONER, VS. HON. COURT OF APPEALS,
(FORMER SPECIAL TWELFTH DIVISION), HON. PRESIDING JUDGE,
RTC, BR. 217, QUEZON CITY, AND SPS. MELENCIO AND SOTERA C.
LAVARE...**

G.R. No. 132264. October 08, 1998

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for certiorari under Rule 65 assails the following resolutions issued by respondent Court of Appeals in CA-G.R. CV UDK No. 9819, to wit:

- 1) Resolution dated July 17, 1997 which declared that petitioner's appeal may be declared abandoned and dismissed for his failure to pay the required docket fee, pursuant to Section 1(d), Rule 50, of the Rules of Court;[1]
- 2) Resolution dated September 24, 1997, denying petitioner's motion for reconsideration with motion for extension of time to file brief;[2]
- 3) Resolution dated October 16, 1997 which noted petitioner's motion for clarification and/or final disposition of his appeal;[3]
- 4) Entry of Judgment dated November 6, 1997 declaring the Resolution of July 17, 1997 final and executory.[4]

The antecedents to this suit are as follows:

In November, 1990, plaintiffs (now private respondents) Melencio and Sotera C. Lavares filed a complaint for recovery of possession and damages against petitioner before the Regional Trial Court of Quezon City.[5] They alleged that petitioner failed to comply with the terms and conditions of his lease contract by refusing to pay the monthly rentals on private respondents' property. Demands to vacate the premises were unheeded by petitioner, prompting private respondents to file the suit.

After trial, judgment was rendered by the regional trial court in private respondent's favor ordering petitioner to turn over the possession of the leased premises and to pay reasonable compensation for the use thereof as well as attorney's fees.[6]

Dissatisfied with the decision, petitioner filed a notice of appeal on October 3, 1996,[7] stating that he was appealing to the Court of Appeals.

On April 25, 1997, petitioner's counsel received a notice from the Clerk of Court of the Court of Appeals informing him that docketing fees for petitioner's appeal must be paid within fifteen (15) days from receipt of the notice, with a warning that failure to do so will be deemed as abandonment of the appeal and result in its dismissal.[8] Petitioner failed to pay the docket fees within the reglementary period and as a consequence, private

respondents moved for the dismissal of petitioner's appeal for failure to pay docket fees.[9] On July 17, 1997, respondent Court of Appeals issued the first of the assailed resolutions, as follows:

"Considering the report of the Judicial Records Division, the appeal may be declared abandoned and dismissed for appellant's failure to pay the required docket fee, pursuant to Section 1(d), Rule 50, of the Rules of Court."

Petitioner's counsel moved for reconsideration on the ground of excusable negligence in failing to pay the docket fees. Allegedly, the lawyer originally handling the case resigned from the law firm and inadvertently failed to turn over the records of the case and to inform the remaining lawyer about the pendency of petitioner's appeal as well as the need to pay the docket fees. Additionally, counsel prayed for an extension of time to file appellant's brief. Petitioner's counsel paid the corresponding docket fees and thereafter filed the appellant's brief on September 8, 1997.

On September 24, 1997, respondent Court of Appeals issued another resolution denying petitioner's motion for reconsideration with accompanying motion for extension to file his brief.

On October 16, 1997, petitioner's counsel filed a motion seeking clarification and/or final disposition of the appeal but respondent Court of Appeals merely noted the same as it was in the nature of a second motion for reconsideration, which is a prohibited pleading.[10]

On November 6, 1997, the Resolution dated July 17, 1997 became final and executory and entry of judgment was accordingly made on December 16, 1997.[11] Hence, the instant petition.

It is petitioner's contention now that respondent Court of Appeals committed grave abuse of discretion amounting to lack or in excess of jurisdiction in dismissing his appeal for failing to pay docket fees and thus gave premium to the technical requirements, rather than resolving the case on substantial merits.

Petitioner also maintains that Entry of Judgment could not have been made by the Court of Appeals in the absence of any categorical declaration that his appeal has indeed been abandoned and dismissed. The contention is anchored on the apparent permissive tenor of respondent Court of Appeals' resolution dated July 17, 1997 which declared that "x x x, the appeal may be declared abandoned and dismissed for appellant's failure to pay the required docket fee x x x". [Italics supplied.]

After careful consideration of the petition, the comments of private respondents, and the manifestation in lieu of reply by petitioner, we find the foregoing contentions of petitioner bereft of merit. On the contrary, respondent Court of Appeals was very explicit when it denied petitioner's motion for reconsideration with motion for extension to file brief, in its Resolution dated September 24, 1997, in this wise:

"Considering the explanations submitted in appellant's motion for reconsideration with motion for extension of time to file his brief, and appellees' Opposition thereto, appellant's motion for reconsideration is hereby DENIED." [12]

No other conclusion could be deduced from the aforecited pronouncement, in our view, except that petitioner's prayer to be allowed to pay the docket fees, file his brief, and proceed with his appeal was being denied by respondent appellate court, categorically. The appeal had obviously been dismissed already as of July 17, 1997 and this dismissal was confirmed by the September 24, 1997 resolution. Thus, respondent court merely noted petitioner's subsequent motion for clarification and/or final disposition of his appeal considering that the same is a prohibited pleading under Sec. 3, Rule 9 of the Revised Internal Rules of the Court of Appeals. No doubt respondent Court of Appeals acted justifiably in merely noting said motion.

Also without merit, in our view, is petitioner's plea for a liberal treatment by the said court, rather than a strict

adherence to the technical rules, in order to promote substantial justice. For it has consistently been held that payment in full of docket fees within the prescribed period is mandatory. As this Court has firmly declared in *Rodillas vs. Commission on Elections*,^[13] such payment is an essential requirement before the court could acquire jurisdiction over a case:

"The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal (*Dorego v. Perez*, 22 SCRA 8 [1968]; *Bello v. Fernandez*, 4 SCRA 135 [1962]). In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees as held in *Acda v. Minister of Labor*, 119 SCRA 306 (1982). The requirement of an appeal fee is by no means a mere technicality of law or procedure. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal was filed at all. The right to appeal is merely a statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provision of the law."

Thus, Rule 50 of the Revised Rules of Court provides that:

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

x x x x x x x x

(c) Failure of the appellant to pay the docket and other lawful fees as provided in Section 5 of Rule 40 and Section 4 of Rule 41;

x x x x x x x x."

As previously discussed, we took notice of the fact that petitioner's appeal with respondent court was considered abandoned and dismissed per Resolution dated July 17, 1997, and the subsequent move to reconsider denied on September 24, 1997. These resolution have become final and executory on November 6, 1997 and Entry of Judgment was made on December 16, 1997. Thus, filing a special civil action for certiorari under Rule 65 of the Rules of Court cannot be used as a substitute for the lost remedy of appeal, the exception of which is not applicable in this particular case.^[14]

Given the circumstances in this case, and considering precedents as well as prevailing rules, we find petitioner's claim that respondent appellate court gravely abused its discretion in issuing the assailed resolutions, could not prosper. The resultant dismissal of his appeal is well justified.

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Panganiban, JJ., concur.

[1] Rollo, p. 29.

[2] Rollo, p. 31.

[3] Rollo, p. 33.

[4] Rollo, p. 26.

[5] Docketed as Civil Case No. Q-90-7336.

[6] Decision of the RTC dated September 16, 1996, Rollo, p. 34.

[7] Rollo, p. 105.

[8] Rollo, p. 106.

[9] Rollo, p. 136.

[10] Rollo, p. 33.

[11] Rollo, p. 26.

[12] Rollo, p. 31.

[13] 245 SCRA 702, 705-706 (1995).

[14] Peo. Vs. Court of Appeals, 199 SCRA 539, 547; Sy vs. Romero, 247 SCRA 187, 193.

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