

PHILIPPINE MERCHANT MARINE SCHOOL, INC., PETITIONER, VS. HON. COURT OF APPEALS AND ERNESTO OPPEN, INC., RESPONDENT.

G.R. No. 137771. June 06, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In this petition for review, petitioner assails the two resolutions of the Court of Appeals dated July 23, 1998[1] and February 26, 1999,[2] in CA-G.R. CV No. 56325, dismissing petitioner's appeal on the ground that the Appellant's Brief was (a) filed out of time and (b) without a motion for leave for its admission.

The following are the factual antecedents.

On May 22, 1995, the Regional Trial Court of Makati, Branch 61, rendered a decision[3] adverse to petitioner in Civil Cases Nos. 90-3490 and 91-685, upholding the validity of an auction sale over a piece of land and ordering the issuance of a new Certificate of Title in favor of herein respondent Oppen.[4]

On August 15, 1996, petitioner filed a Notice of Appeal from the adverse decision of the RTC.

On March 26, 1998, petitioner received a Notice[5] to File Appellant's Brief from the Court of Appeals. Petitioner had 45 days[6] or until May 10, 1998 to file its brief. Since May 10 was a Sunday and May 11 was a holiday, petitioner had until May 12, 1998 to file it.

On May 7, 1998, or five days before its deadline, petitioner allegedly filed by mail an "Urgent Ex-Parte Motion for Extension of Time to File Appellant's Brief," praying for an additional period of 60 days or from May 13, 1998 to July 13, 1998 within which to file the brief.

On July 13, 1998, the last day of the extension prayed for, petitioner filed its appellant's brief.

On July 23, 1998, the Court of Appeals (Special Sixth Division) dismissed the appeal in a resolution,[7] for failure to file the appellant's brief within the required period of 45 days from receipt of notice to file the same. It was further noted by the CA that the appellant's brief, received only on July 13, 1998, was without any accompanying motion for leave to admit the same.

The CA found that:

Record shows that a notice to file brief dated March 17, 1998 was received by appellant on March 26, 1998. Consequently, the 45-day period within which to file appellant's brief expired on May 10, 1998.

On July 2, 1998, the Judicial Records Division (Civil Cases Section) submitted a report stating that no appellant's brief has been filed in this case.

However, the appellant's brief was received by this court on July 13, 1998, without any accompanying motion for leave to admit the same.

The pertinent provisions of the 1997 Rules of Civil Procedure regarding the filing of appellant's brief read as

follows:

RULE 44

SECTION 7. Appellant's Brief. --- It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

RULE 50

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

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time prescribed by these Rules;

For failure of appellant to file its brief within the required period of forty five (45) days from receipt of the notice to file brief, the appeal is hereby DISMISSED.

SO ORDERED.[8]

On August 4, 1998, petitioner filed a Motion for Reconsideration[9] of the said Resolution. It was alleged therein that a prior Urgent Ex-Parte Motion for Extension of Time had been filed. A copy of the Urgent Ex-Parte Motion for Extension of Time to File Appellant's Brief was appended[10] to the Motion for Reconsideration. Also attached therein was Registry Receipt No. 13864[11] while Registry Receipt No. 13867[12] was noted on the Motion for Extension. Both registry receipts appeared to be dated May 7, 1998.

Petitioner explained that the reason the brief was not accompanied by a Motion for Leave to Admit, was because its counsel had assumed that the CA granted the Motion for Extension and thought that he had until July 13, 1998 to file the brief. It was only on the same day the Motion for Reconsideration was filed that petitioner found out that the CA did not receive a copy of the Urgent Ex-Parte Motion for Extension of Time to File Appellant's Brief.

Thus, on August 12, 1998, petitioner filed a Supplement,[13] attaching thereto the following documents:

- An Affidavit[14] of Hernando B. Dellomas, the person who mailed the Urgent Ex-Parte Motion for Extension of Time to File Appellant's Brief; and
- A Certification[15] issued by Ms. Matabai Garcia, the receiving clerk of the Ayala Post Office

On October 14, 1998, the CA issued a Resolution[16] directing the postmaster of the Manila Central Post Office to inform it within 10 days whether Registry Receipts Nos. 13864 and 13867 mailed at the Ayala Post Office on May 7, 1998, addressed to the CA and opposing counsel, were delivered to and received by the addressees and the dates thereof.

On February 26, 1999[17] the CA issued a Resolution denying the Motion for Reconsideration. It found that, per certification of the postmaster and contrary to what petitioner insists on, no motion for extension was sent to the CA and opposing counsel on May 7, 1998. Hence, the CA reiterated that appellant's brief was filed out of time and affirmed its denial of the appeal. It stated thus:

This is a motion for reconsideration of our Resolution dated July 23, 1998 dismissing the appeal for failure of appellant to file its brief within the period of forty five (45) days from receipt of the notice to file brief.

Appellant claims that it filed an urgent ex-parte motion for extension of time to file appellant's brief, which it sent by registered mail to this Court and to appellee's counsel, and that it filed its brief within the period requested.

Upon learning that its motion for extension of time to file brief has not been received by this Court, appellant submitted an Affidavit of Hernando B. Dellomas, Para-Legal of Batocabe and Associates, alleging that he was the one who deposited a copy of said motion addressed to the Court of Appeals at the Ayala Post Office in Makati City on May 7, 1998 and that he was issued Registry Receipt No. 13864, as well as the Certification of Matabai Garcia, receiving clerk at the Ayala Post Office, stating that Registered Letter No. 13864 posted at Ayala Post Office on May 7, 1998 addressed to the Court of Appeals, Manila was dispatched on May 7, 1998 under APO/DSMDC, Bill No. 117, Page No. 1, Line No. 60, Column 2.

An Opposition to the motion for reconsideration was filed by appellee Ernesto Oppen, Inc. alleging that it has not likewise received a copy of appellant's motion for extension of time to file appellant's brief, so that no such motion was probably filed by appellant.

In a Resolution dated October 14, 1998, We requested the Postmaster, Manila Central Post Office, to inform this Court, within ten (10) days from notice, whether Registered Letter Nos. 13864 and 13867, both mailed at the Ayala Post Office, Makati City on May 7, 1998, addressed to the Court of Appeals, Manila and to Atty. Jaime V. Padilla, Suite 10, Padilla-Delos Reyes Bldg., 232 Juan Luna St., Binondo, Manila, respectively, were delivered and received by the addressees and the date thereof.

In a letter dated November 5, 1998, Postmaster Renato N. Endaya, Central Post Office, Manila, informed this Court that per record of said Office and based on the letter-reply of Mr. Felizardo S. Leoncio, Acting Postmaster, Ayala Post Office, Makati City dated November 5, 1998, Registered Letter Nos. 13864 and 13867 were addressed to Prosecutor Dina P. Teves, City Prosecutor's Office, City Hall-Manila and to Atty. Aristotle Reyes of Public Attorney's Office, City-Hall, Manila, respectively and not to the Court of Appeals, Manila and to Atty. Jaime V. Padilla. Attached to said letter is the letter-reply of Felizardo S. Leoncio, Acting Postmaster, Ayala Post Office, Makati City, who further stated that registered letter nos. 13864 and 13867 addressed to prosecutor Dina P. Teves and Atty. Aristotle Reyes were dispatched on May 12, 1998 at DSMDC enclosed on Registry Bill No. 97, Page 1, Column 1, Lines 23 and 25.

Thus, on the basis of the official records of the Central Post Office, Manila and Ayala Post office, Makati City, no such motion for extension of time to file brief was sent by registered mail to this Court and to appellee's counsel.

WHEREFORE, the motion for reconsideration is denied for lack of merit.

xxx

SO ORDERED.[18]

Petitioner now comes to this Court via this petition for review,[19] alleging the following grounds:

(A) DISMISSAL OF APPEAL ON PURELY TECHNICAL GROUNDS IS USUALLY FROWNED UPON; THE COURT OF APPEALS SHOULD HAVE EXERCISED UTMOST LIBERALITY IN ADMITTING A BRIEF ALREADY FILED; and

(B) APPELLANT ACTUALLY FILED BY REGISTERED MAIL ON MAY 7, 1998 ITS "URGENT EX-PARTE MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF"; THE ATTENDANT FACTUAL CIRCUMSTANCES CLEARLY SHOW THAT SUCH MOTION HAD BEEN DULY FILED.[20]

The issue to be resolved is whether or not the CA's dismissal of the appeal due to the late filing of the appellant's

brief is proper, in view of the attendant factual circumstances and in the interest of substantial justice.

Petitioner asks for a relaxation of the rigid rules of technical procedure,[21] considering that the appellant's brief has in fact been received by the appellate court, and that, according to petitioner, the appeal is meritorious.

Confronted with issues of this nature, this Court is mindful of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits[22] and of dispensing with technicalities whenever compelling reasons so warrant or when the purpose of justice requires it.[23]

In the present case, we are faced with the fact that per official records of the Manila Central Post Office,[24] no timely motion for extension of time to file the appellant's brief was mailed on the date in question and addressed to the CA and opposing counsel. A careful trace made of the registry receipts presented by petitioner as the ones issued to it reveals that these receipts correspond to documents sent on a different date and addressed to different people. This is consistent with the fact that per official records of the Court of Appeals, and the manifestation of opposing counsel, no copy of such motion was received by them. Thus, the CA found the appellant's brief to have been filed out of time. It now devolves upon petitioner to refute the presumption of regularity and convince this Court that a reversal is warranted.

We agree with the CA that the evidence presented by the petitioner is not sufficient to overcome the presumption of regularity in the preparation of the records of the Post Office and that of the CA. First, as aforementioned, the registry receipts correspond to documents mailed on a different date and addressed to different people. Second, the certification made by one Matabai Garcia was rendered without probative value in view of the official response made by the Postmaster General, per records of the Ayala Post Office, that the same receipts were not for documents mailed on May 7, 1998, nor were the documents addressed to the CA and opposing counsel.

As consistently reiterated, the power conferred upon the Court of Appeals to dismiss an appeal is discretionary[25] and not merely ministerial. With that affirmation comes the caution that such discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[26]

In the case at bar, we find no reason to disturb the conclusions of the Court of Appeals. Petitioner failed to adduce sufficient proof that any inadvertence was caused by the Post Office. Moreover, no conclusive proof could be shown that a motion for extension was indeed filed at any time. All these create a doubt that petitioner's counsel has been candid in his dealings with the courts. Needless to stress, a lawyer is bound by ethical principles in the conduct of cases before the courts at all times.

As a last recourse, petitioner contends that the interest of substantial justice would be served by giving due course to the appeal. However, we must state that the liberality with which we exercise our equity jurisdiction is always anchored on the basic consideration that the same must be warranted by the circumstances obtaining in each case. Having found petitioner's explanation less than worthy of credence, and without evidentiary support, we are constrained to adhere strictly to the procedural rules on the timeliness of submission before the court.

WHEREFORE, the instant petition is DENIED for lack of merit. The Resolutions dated July 23, 1998 and February 26, 1999 of the Court of Appeals are hereby AFFIRMED. The denial of the appeal in CA-G.R. CV No. 56325 due to the late filing of the Appellant's Brief pursuant to Rule 50 (e) of the 1997 Rules of Civil Procedure, is hereby declared FINAL.

Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, De Leon, Jr., and Corona, JJ., concur.

[1] Rollo, pp.77-78.

[2] Id. at 95-97.

[3] CA Rollo, pp. 57-61.

[4] Id. at 61.

[5] Dated March 17, 1998. See CA Rollo, p. 25.

[6] Revised Rules of Court, Rule 44, Section 7.

[7] Rollo, pp. 77-78.

[8] Ibid.

[9] Rollo, pp. 79-84.

[10] Id. at 85-88.

[11] Id. at 85; A copy of Registry Receipt No. 13864, marked as Annex “A-1” appeared on the face of the same Urgent Ex-Parte Motion for Extension of Time to File Appellant’s Brief.

[12] Id. at 87.

[13] Id. at 89-91.

[14] CA Rollo, p. 82.

[15] Id. at 83.

[16] Rollo, pp. 93-94.

[17] Id. at 95-97.

[18] Id. at 95-96.

[19] Id. at 11-34.

[20] Id. at 18.

[21] Id. at 154.

[22] *Aguam vs. Court of Appeals*, G.R. No. 137672, 332 SCRA 784, 790 (2000).

[23] *Republic vs. Imperial, Jr.*, G.R. No. 130906, 303 SCRA 127, 138 (1999), citing *Republic vs. Court of Appeals*, G.R. No. L-31303-04, 83 SCRA 453, 483 (1978).

[24] CA Rollo, pp. 96-98.

[25] *Aguam vs. Court of Appeals*, G.R. No. 137672, 332 SCRA 784, 789 (2000); citing *Catindig vs. Court of Appeals*, G.R. Nos. 33063, 88 SCRA 675, 680 (1979).

[26] *Philippine National Bank vs. Philippine Milling Co., Inc.*, G.R. No. L-27005, 26 SCRA 712, 715 (1969).

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