

CIPRIANO ENRIQUEZ, RAYMUNDO ENRIQUEZ, CONCEPCION ENRIQUEZ, ASSISTED BY HER HUSBAND MATIAS QUITANES, TOMAS ENRIQUEZ, LUIS DIAZ, CESAR DIAZ, MANUEL DIAZ, DOMINGO ENRIQUEZ, ELPIDIO...

G.R. NO. 139303. August 25, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Assailed in the instant petition for review on certiorari are the Resolutions dated February 3, 1999 and July 7, 1999 issued by the Court of Appeals in CA-G.R. CV UDK-7011 dismissing the appeal of petitioners for their failure to pay the appellate court docket fee.

On November 17, 1988, Maximo Enriquez, later substituted by his heirs (now respondents), filed with the Regional Trial Court (RTC), Branch 71 of Iba, Zambales a complaint for partition against petitioners, docketed as Civil Case No. RTC-568-1. The complaint involves a parcel of land situated at Amungan, Iba, same province, covered by TCT No. T-28593, with an area of 44,984 square meters. He alleged that he owns 10/18 undivided portion of the property, 9/18 by purchase and 1/18 by inheritance; and that petitioners have been residing in the premises without his knowledge and consent, thereby depriving him of his undivided share of the property.

Petitioners, in their answer, averred that Cipriano Enriquez, one of the petitioners, owns ½ of the property, while the others are in possession of the other areas with his knowledge and consent.

On June 4, 1998, the RTC rendered a Decision ordering the petitioners to vacate the property and to surrender possession thereof to respondents.

A copy of the Decision was received by counsel for petitioners on June 22, 1998. On July 3, 1998, they filed a Notice of Appeal with the RTC. It was approved on July 7, 1998.

On February 3, 1999, the Court of Appeals dismissed the appeal of petitioners for their failure to pay the appellate court docket fee, thus:

"For failure to pay docket fee, the appeal is deemed ABANDONED and DISMISSED, pursuant to Section 1(c), Rule 50, Revised Rules of Court."

Petitioners filed a motion for reconsideration but it was denied by the Appellate Court in a Resolution dated July 7, 1999, thus:

"Per copy of the official receipt attached to appellants' motion for reconsideration, the docket fee was paid on November 4, 1998 or 4 months after the notice of appeal was filed on July 3, 1998.

Consequently, appellants' motion for reconsideration is hereby denied."

In the instant petition for review, petitioners raise the following errors allegedly committed by the Appellate

Court:

"I. The respondent Court of Appeals seriously erred in considering petitioners' appeal as deemed abandoned and dismissed for alleged failure of petitioners to pay docket fee.

II. the respondent Court of Appeals gravely erred in denying petitioners' motion for reconsideration of the resolution considering petitioners' appeal as deemed abandoned and dismissed on the ground that the docket fee was paid on November 4, 1998, or four (4) months after the notice of appeal was filed on July 3, 1998.

III. the respondent Court of Appeals in issuing the aforesaid resolutions gave premium on technicalities rather on substance and substantial justice and disregarded the merits of petitioners' case."

In sum, the issue is whether the Court of Appeals correctly dismissed the petition for failure of the petitioners to pay appellate court docket fee.

In dismissing petitioners' appeal, the Court of Appeals cited Section 1(c), Rule 50 of the Revised Rules of Court which provides:

"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

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

Petitioners admit that the governing Rule on their payment of appellate court docket fee is Section 4, Rule 41 of the 1997 Rules of Civil Procedure, as amended, which provides:

"Section 4. Appellate court docket and other lawful fees. - Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record of the record or the record on appeal."

Underscoring the sentence "Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal," petitioners maintain that the trial court must first send them a notice to pay the appellate court docket fee and other lawful fees within the period for taking an appeal. Hence, they waited for the notice for them to pay the appellate court docket fee. When they did not receive any, they paid the docket fee to the trial court. Consequently, they cannot be faulted if they paid the appellate court docket fee four (4) months after their Notice of Appeal was approved on July 7, 1998.

Prior to the effectivity of the 1997 Rules of Civil Procedure, as amended, payment of appellate court docket fee is not a prerequisite for the perfection of an appeal. In *Santos vs. Court of Appeals*,^[1] this Court held that although an appeal fee is required to be paid in case of an appeal taken from the Municipal Trial Court to the Regional Trial Court, it is not a prerequisite for the perfection of an appeal under Sections 20^[2] and 23^[3] of the Interim Rules and Guidelines issued by this Court on January 11, 1983 implementing the Judiciary Reorganization Act of 1981 (B.P. Blg. 129). Under these sections, there are only two requirements for the perfection of an appeal, to wit: (a) the filing with the trial court of a notice of appeal within the reglementary period; and (b) the expiration of the last day to appeal by any party.

However, the 1997 Rules of Civil Procedure, as amended, which took effect on July 1, 1997, now require that appellate docket and other lawful fees must be paid within the same period for taking an appeal. This is clear from the opening sentence of Section 4, Rule 41 of the same Rules that, "(W)ithin the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full

amount of the appellate court docket and other lawful fees."

The use of the word "shall" underscores the mandatory character of the Rule. The term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.[4] Petitioners cannot give a different interpretation to the Rule and insist that payment of docket fee shall be made only upon their receipt of a notice from the trial court to pay. For it is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be interpreted together with the other parts, and kept subservient to the general intent of the whole enactment.[5] Indeed, petitioners cannot deviate from the Rule.

Also under Rule 41 of the same Rules, an appeal to the Court of Appeals from a case decided by the RTC in the exercise of the latter's original jurisdiction, shall be taken within fifteen (15) days from the notice of judgment or final order appealed from. Such appeal is made by filing a notice thereof with the court that rendered the judgment or final order and by serving a copy of that notice upon the adverse party. Furthermore, within this same period, appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. The payment of docket fee within this period is mandatory for the perfection of appeal. Otherwise, the appellate court would not be able to act on the subject matter of the action, and the decision sought to be appealed from becomes final and executory.[6]

Time and again, this Court has consistently held that payment of docket fee within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.[7]

Petitioners argue that the Appellate Court, in issuing the assailed Resolutions, gave premium to technicalities rather than substance and disregarded the merits of the petition. They ask for a liberal construction of the Rules.

Appeal is not a right but a statutory privilege, thus, appeal must be made strictly in accordance with the provision set by law. The requirement of the law under Section 4, Rule 41 is clear. The payment of appellate docket fee is not a mere technicality of law or procedure but an essential requirement for the perfection of an appeal.[8]

The payment of the docket fee within the period is a condition sine qua non for the perfection of an appeal. Contrary to petitioners' submission, the payment of the appellate court docket and other lawful fees is not a mere technicality of law or procedure. It is an essential requirement, without which the decision or final order appealed from would become final and executory as if no appeal was filed at all.[9]

This Court has consistently ruled that litigation is not a game of technicalities and that every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. The rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply within the prescribed procedure. Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[10] Anyone seeking exemption from the application of the Rule has the burden of proving that exceptionally meritorious instances exist which warrant such departure.[11]

In the present case, petitioners failed to establish any sufficient and satisfactory reason to warrant a relaxation of the mandatory rule on the payment of appellate court docket fee. Actually, the payment of the required docket fee was late because of the erroneous interpretation of the Rule by petitioners' counsel. Verily, to grant their petition would be putting a premium on his ignorance or lack of knowledge of existing Rules. He should be reminded that it is his duty to keep abreast of legal developments and prevailing laws, rules and legal principles,[12] otherwise

his clients will be prejudiced, as in this case.

In fine, the Court of Appeals did not err in dismissing petitioners' appeal.

WHEREFORE, the instant petition for review on certiorari is DENIED. Costs against petitioners.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio Morales, and Garcia, JJ., concur.

[1] 253 SCRA 632 (1996), cited in *Martinez vs. Court of Appeals*, G.R. No. 123547, May 21, 2001, 358 SCRA 38.

[2] "Sec. 20. Procedure for taking appeal.-An appeal from the metropolitan trial courts, municipal trial courts or municipal circuit trial courts to the regional trial courts, and from the regional trial courts to the Intermediate Appellate Court in actions or proceedings originally filed in the former shall be taken by filing a notice of appeal with the court that rendered the judgment or order appealed from."

[3] "Sec. 23. Perfection of appeal.-In cases where appeal is taken, the perfection of the appeal shall be upon the expiration of the last day to appeal by any party."

[4] *Lacson vs. Lacson*, No. L-23482, August 30, 1968, 24 SCRA 848.

[5] *Paras vs. Commission on Elections*, G.R. No. 123169, November 4, 1996, 264 SCRA 49.

[6] *Spouses Manalili vs. Spouses de Leon*, G. R. No. 140858, November 27, 2001, 370 SCRA 625.

[7] *Alfonso, et al. vs. Henry Andres*, G.R. No. 139611, October 4, 2002, 390 SCRA 465; *Navarro, et al. vs. Metropolitan Bank and Trust Company, et al.*, G.R. No. 138031, May 27, 2004, 429 SCRA 439; *Spouses Manlili vs. Spouses de Leon*, *ibid.*

[8] *Spouses Manlili vs. Spouses de Leon*, *ibid.*; *Alfonso, et al. vs. Andres, et al.*, *ibid.*

[9] *Navarro, et al., vs. Metropolitan Bank & Trust Co., et al.*, *supra*.

[10] *Ibid.*

[11] *Republic vs. Court of Appeals*, *supra*; *Tamayo vs. Tamayo*, *ibid.*

[12] Canon 5, Code of Professional Responsibility; *Tamayo, et al. vs. Tamayo*, *ibid.*

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