DONATO SUMAWAY, JOSEPH ALVERO, ASIA GOLD COAST CORPORATION, AKIGONZ CORPORATION, RAUL F. REYES, ERMELYN REYES, LEOME G. GATA, ANTONIO HICAP, DOLORES YANGA, IMELDA MAGAT, HONORIO...

G.R. NO. 142534. June 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

The sole issue in the present petition for review on certiorari under Rule 45 of the Rules of Court is whether the Court of Appeals (CA) erred in dismissing petitioners' appeal for having been filed out of time.

The essential facts of this case are as follows:

Petitioners filed an action for Reformation of Contract, Specific Performance, Damages, Consignation with Injunction, with Restraining Order, with the Regional Trial Court of Pasay City, Branch 109, docketed as Civil Case No. 95-0026.

Respondents Urban Bank, Isabela Sugar Co., Inc., and Atty. Magdaleno M. Peña, filed a Motion to Dismiss the complaint on the grounds that the complaint states no cause of action; the claim is unenforceable under the Statute of Frauds; the action has prescribed; and the pendency of another action.[1]

The trial court, in its Order dated September 12, 1995, granted the motion to dismiss, stating that: "it appearing that the contract of lease sought to be amended and/or reformed has expired as early as November 29, 1994 and in view of the motion to dismiss filed by several of the party-plaintiffs, this case is hereby ordered dismissed."[2]

Petitioners' counsel received the order on September 19, 1995, and filed a motion for reconsideration on October 2, 1995. On January 30, 1996, the trial court denied the motion for reconsideration, which order was received by petitioners' counsel on April 25, 1996.[3]

On May 3, 1996, petitioners' counsel filed a Notice of Appeal, which was given due course by the trial court in its Order dated May 17, 1996, and the appeal was docketed as CA-G.R. CV No. 53270.[4] Consequently, the trial court ordered the transmittal of the records of the case to the CA.[5]

Petitioners were required by the CA to pay the docket fees[6] and submit their appellants' brief.[7] Petitioners submitted their brief on May 2, 1997.[8]

On June 3, 1997, respondent Urban Bank filed a Motion to Dismiss Appeal on the ground that the appeal was not perfected within the reglementary period. Respondent contended that petitioners' notice of appeal was filed five days late, as it should have been filed on April 28, 1997, and not May 3, 1997.[9]

The CA[10] found merit in respondent's contention and granted the motion to dismiss in its assailed Resolution dated September 17, 1999.[11] The CA also denied petitioners' motion for reconsideration in its assailed

Resolution dated March 17, 2000.[12]

Hence, this petition based on the following assignments of error:

> A
>
> THE HONORABLE COURT OF APPEALS ERRED WHEN IT DISMISSED THE APPEAL AFTER IT WAS APPROVED BY THE TRIAL COURT AND ACCEPTED IT WITH THE CORRESPONDING PAYMENT OF DOCKET FEES AND FILING OF APPELLANTS' BRIEF.
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> B
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> THE HONORABLE COURT OF APPEALS DISMISSED THE APPEAL IN A WAY NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.
>
> C
>
> PETITIONERS HAVE STRONG AND MERITORIOUS CASE.[13]

Petitioners' notice of appeal was filed on May 3, 1996. At that time the applicable law was Section 39 of Batas Pambansa Blg. 129 (B.P. 129) or the Judiciary Reorganization Act of 1981, which provides:

> Sec. 39. Appeals. – The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award judgment, or decision appealed from: Provided, however, That in habeas corpus cases, the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from.
>
> x x x

Particularly, Section 20 of the Implementing Rules and Guidelines of B.P. 129 provides for the manner in which the appeal may be taken, to wit:

> - 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.

The 15-day period within which to appeal, counted from notice of the final order, resolution, award judgment, or decision appealed from, under B.P. 129 was reproduced in the 1997 Rules of Civil Procedure, as amended by A.M. No. 01-1-03-SC, which reads:

> SEC. 3. Period of ordinary appeal; appeal in habeas corpus cases. – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, an appeal in habeas corpus cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion of extension of time to file a motion for new trial or reconsideration shall be allowed.

Jurisprudence is consistent in ruling that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal has the effect of rendering the judgment final and executory,[14] although the Court, in exceptional circumstances,[15] allowed the filing of a belated notice of appeal. Thus, if the Court were to strictly apply the jurisprudence in petitioners' case, the inevitable conclusion is that the CA was correct in dismissing their appeal. It does not matter whether

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respondents' motion to dismiss was filed after the trial court already approved their notice of appeal, or that they have already paid the docket fees and filed their appellants' brief. It should be borne in mind that the legality of an appeal may be raised at any stage of the proceedings in the appellate court, and the latter is not precluded from dismissing the same on the ground of its being out of time.[16]

Fortunately, however, for petitioners, the Court recently modified the rule on the counting of the 15-day period within which to appeal. In the precedent-setting case of Neypes v. Court of Appeals,[17] the Court categorically set a fresh period of 15 days from a denial of a motion for reconsideration within which to appeal, thus:

> The Supreme Court may promulgate procedural rules in all courts. It has the sole prerogative to amend, repeal or even establish new rules for a more simplified and inexpensive process, and the speedy disposition of cases. In the rules governing appeals to it and to the Court of Appeals, particularly Rules 42, 43 and 45, the Court allows extensions of time, based on justifiable and compelling reasons, for parties to file their appeals. These extensions may consist of 15 days or more.
>
> To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.
>
> Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by certiorari to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.[18] (Emphasis supplied)

The Court also reiterated its ruling that it is the denial of the motion for reconsideration which constituted the final order which finally disposed of the issues involved in the case.

This fresh 15-day period within which to file notice of appeal counted from notice of the denial of the motion for reconsideration may be applied to petitioners' case inasmuch as rules of procedure may be given retroactive effect to actions pending and undetermined at the time of their passage.[19] Thus, in Republic of the Philippines v. Court of Appeals,[20] involving A.M. No. 00-2-03-SC, which provided for the rule that the 60-day period within which to file a petition for certiorari shall be reckoned from receipt of the order denying the motion for reconsideration, the Court stated that rules of procedure "may be given retroactive effect to actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, inasmuch as there is no vested rights in rules of procedure."

Therefore, the appeal before the CA should be deemed as timely filed and the case be remanded to the CA for further proceedings as was done in the Neypes case.

WHEREFORE, the petition is GRANTED. The assailed Resolutions dated September 17, 1999 and March 17, 2000 rendered by the Court of Appeals in CA-G.R. CV No. 53270 are REVERSED and SET ASIDE. Let the records of this case be remanded to the Court of Appeals for further proceedings.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 240-44.

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[2] Id. at 257.

[3] Id. at 265.

[4] Id. at 267.

[5] Ibid.

[6] Id. at 268.

[7] Id. at 270.

[8] Id. at 271-314.

[9] Id. at 315-316.

[10] Associate Justice Corona Ibay-Somera (retired), ponente, with Associate Justices Oswaldo D. Agcaoili (retired) and Andres B. Reyes, Jr., concurring.

[11] Rollo, at 48-49.

[12] Id. at 51.

[13] Id. at 30.

[14] Almeda v. Court of Appeals, 354 Phil. 601, 607 (1998); Fukuzumi v. Sanritsu Great International Corporation, G.R. No. 140630, August 12, 2004, 436 SCRA 228, 234; Apex Mining Co., Inc. v. Commissioner of Internal Revenue, G.R. No. 122472, October 20, 2005, 473 SCRA 490, 497.

[15] As cited in Manila Memorial Park Cemetery, Inc. v. Court of Appeals, 398 Phil. 720, 730 (2000), the following are some of the cases where the Court allowed a relaxation of the application of the 15-day appeal period, viz.:

> In Ramos v. Bagasao, the Court excused the delay of four days in the filing of the notice of appeal because the questioned decision of the trial court had been served upon appellant Ramos at a time when her counsel of record was already dead. The new counsel could only file the appeal four days after the prescribed reglementary period was over. In Republic vs. Court of Appeals, the Court 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 stood to lose hundreds of hectares of land already titled in its name and had since then been devoted for public purposes. In Olacao vs. National Labor Relations Commission, a tardy appeal was accepted considering that the subject matter in issue had theretofore been judicially settled with finality in another case, and a dismissal of the appeal would have had the effect of the appellant being ordered twice to make the same reparation to the appellee. x x x

[16] Id.

[17] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[18] Id. at 643-645.

[19] Santiago v. Bergensen D.Y. Philippines, G.R. No. 148333, November 17, 2004, 442 SCRA 486, 490.

[20] 447 Phil. 385, 393-394 (2003).

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