

ELIZABETH PEÑOSO, PETITIONERS, VS. MACROSMAN DONA, RESPONDENT.

G.R. NO. 154018. April 03, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Resolution[1] dated March 22, 2002 promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 69472, which dismissed the appeal before it because Martin Peñoso and his mother Elizabeth Peñoso (petitioners) failed to submit a written explanation why service of pleading was not done personally as required under Section 11 of Rule 13 of the Rules of Court and to pay the requisite docket fees; and, the CA Resolution[2] dated June 3, 2002 which denied petitioners' Motion for Reconsideration.

This case originated from a Complaint for Abatement of Nuisance filed with the Municipal Trial Court (MTC), Branch No. 001, San Jose, Occidental Mindoro, by Macrosman Dona (respondent) against the petitioners, which was tried and decided under the Rule on Summary Procedure. Respondent alleged that he is the owner of a house and lot located at San Jose, Occidental Mindoro; that in front of the house and lot is a barangay road where the petitioners constructed their house against the objections of the respondent; and that the house of the petitioners constituted a public nuisance.

The petitioners, in their defense, contended that their house was constructed by the late Praxido Peñoso, Martin's father and Elizabeth's husband, way ahead before the respondent arrived; that their house constitutes no public nuisance; that the respondent cannot demand a right of way; that the continued existence of their house brings no harm to the respondent; and that the respondent is not authorized to file the instant Complaint.

On October 1, 1997, the MTC rendered its Decision, in favor of the petitioners and against the respondent on the ground that respondent has no cause of action against the petitioners. It ordered the dismissal of the complaint on the ground that the house in question was constructed on a public property which "may be abated only by the Municipal Mayor, unless it is specially injurious to a private person;" and the respondent to pay petitioners P10,000.00 by way of attorney's fee.[3]

Respondent appealed the Decision of the MTC to the RTC, docketed as Civil Case No. R-1061.

On January 2, 2002, the RTC rendered its Decision reversing the MTC. The RTC declared the house erected by the petitioners on a portion of the road fronting the house of the respondent as a nuisance; ordered the petitioners to immediately remove the said house at their own expense; ordered the petitioners to jointly and severally pay plaintiff-appellant the amount of P20,000.00, as and for reasonable attorney's fees; and, ordered the petitioners to pay respondent P5,000.00 as litigation expenses and to pay the costs of this suit.[4]

On January 21, 2002, the RTC denied the petitioners' Motion for Reconsideration.

Petitioners filed a Petition for Review with the CA. On March 22, 2002, the CA issued a Resolution dismissing

the Petition, to wit:

For failure of the petitioners to include in their petition the required explanation on why personal service upon the respondent was not resorted to pursuant to Sec. 11, Rule 13 of the 1997 Rules of Civil Procedure, as amended, the herein petition is hereby DISMISSED OUTRIGHT. Strict compliance with this rule is mandated. (Solar Team Entertainment, Inc. v. Hon. Helen Bautista-Ricafort, et al., 293 SCRA 661).

Moreover, payment of the required docketing and other legal fees is short by P530.00.

SO ORDERED.[5] (emphasis in the original)

On May 16, 2002, a Motion for Reconsideration was filed by the petitioners attaching a Certification dated April 15, 2002 from the Postmaster that the pleading in question had been actually received by the respondent as well as a Letter dated February 12, 2002 to the CA Clerk of Court stating that if the docket fee is insufficient, counsel for the petitioners shall remit the balance immediately, if any. But on June 3, 2002, the CA issued another Resolution which states:

Petitioners' motion for reconsideration is hereby DENIED, for lack of merit. Petitioners' subsequent compliance with the RULES does not cleanse the petition of its infirmity.

Atty. Ma. Conchita Lucero-De Mesa is hereby ordered to RETURN the two (2) Postal Money Orders for P530.00 to the petitioners.

SO ORDERED.[6] (emphasis in the original)

Hence, the instant Petition averring that the CA erred in dismissing the petition on the following grounds:

A.

FAILURE OF THE PETITIONERS TO INCLUDE IN THEIR PETITION THE REQUIRED EXPLANATION ON WHY PERSONAL SERVICE UPON THE RESPONDENT WAS NOT RESORTED TO PURSUANT TO SECTION 11, RULE 13, OF THE 1997 RULES OF CIVIL PROCEDURE;

B.

PAYMENT OF THE REQUIRED DOCKETING AND OTHER LEGAL FEES IS SHORT BY P520.00.[7]

The petition has merit.

Section 11, Rule 13 of the Rules of Court provides:

Sec. 11. Priorities in modes of service and filing. — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

Jurisprudence holds that the rule that a pleading must be accompanied by a written explanation why the service or filing was not done personally is mandatory.[8]

However, in *Ello v. Court of Appeals*,[9] the Court defined the circumstances when the court may exercise its discretionary power under Section 11 of Rule 13, viz:

However, such discretionary power of the court must be exercised properly and reasonably, taking into account the following factors: (1) "the practicability of personal service;" (2) "the importance of the subject matter of the case or the issues involved therein;" and (3) "the prima facie merit of the pleading sought to be expunged for violation of Section 11. x x x"[10]

Considering the prima facie merit of the pleading involving the issues whether the petitioners' house is a public nuisance; whether the subject house is constructed on an abandoned road; and whether the alleged nuisance is specially injurious to respondent; and, considering further the fact that the MTC and the RTC decisions are conflicting, the CA had valid grounds to refrain from dismissing the appeal solely on technical grounds.[11]

As the Court has expounded in *Aguam vs. Court of Appeals*:[12]

The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "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." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[13] (Emphasis supplied)

In *Ginete v. Court of Appeals*,[14] the Court further held:

Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, as we are now constrained to do in the instant case.

x x x x

The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.[15] (Emphasis supplied)

Rules of procedure being designed to facilitate the attainment of justice, their rigid application resulting in technicalities that tend to delay or frustrate rather than promote substantial justice, must always be avoided.[16]

In *Philippine Amusement and Gaming Corporation v. Angara*,[17] this Court held:

While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and the swift unclogging of court dockets is a laudable objective, it nevertheless must not be met at the expense of substantial justice. Time and again, this Court has reiterated the doctrine that the rules of procedure are mere tools intended to facilitate the attainment of justice, rather than frustrate it. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Thus, the CA should have refrained from hastily dismissing the petition on procedural flaws.

In similar cases, the Court ordinarily remands the case to the CA for proper disposition on the merits. However, in the present case, considering the issues raised and the fact that the records of the case are before us, the Court deems it more appropriate and practical to resolve the present controversy in order to avoid further delay.[18]

Thus, in view of the foregoing jurisprudential trend to afford every party litigant the amplest opportunity for a just determination of his case, free from the severities of technicalities; the prima facie merit of the pleading; and, especially considering the conflicting rulings of the MTC and the RTC, the CA erred in dismissing the appeal on mere technical grounds.

Furthermore, considering the peculiar circumstances of the case, the shortage of the payment of the docketing fee cannot be used as a ground for dismissing petitioners' appeal before the CA. It is undisputed that they and their counsel are living in a remote town and are not aware of the exact amount of the lawful fees for petitions for review. Hence, it is understandable why they place sheer reliance on the Rules of Court, notably, Section 1 of Rule 42, which only specifies the amount of P500.00 for the appeal cost in question. Petitioners sent P500.00 with a request from the Clerk of Court for notification of any insufficiency which will be sent immediately if there is any. The deficiency in payment was not at all intentional. There was a willingness to comply should any deficiency occur, as stated in their Letter to the CA Clerk of Court: "Please acknowledge receipt of the amount and if the amount is insufficient pursuant to Sec. 1, Rule 42 of the Revised Rules of Court, kindly notify the undersigned and the balance if any will be immediately sent. Thank you very much." This clearly shows that the petitioners acted in good faith and substantially complied with the Rules.

In *Heirs of Bertuldo Hinog v. Melicor*,[19] the Court held:

Time and again, the Court has held that the Manchester rule has been modified in *Sun Insurance Office, Ltd. (SIOL) vs. Asuncion* which defined the following guidelines involving the payment of docket fees:

x x x x

Plainly, while the payment of the prescribed docket fee is a jurisdictional requirement, even its non-payment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period, more so when the party involved demonstrates a willingness to abide by the rules prescribing such payment. Thus, when insufficient filing fees were initially paid by the plaintiffs and there was no intention to defraud the government, the Manchester rule does not apply.[20]

In fine, the CA erred in dismissing the petition for review outright.

In light of *Philippine Amusement and Gaming Corporation v. Angara*,[21] since the records of the case are not before this Court, a remand of the case to the CA for proper disposition on the merits is necessary, bearing in mind the judicial policy to resolve the present controversy with all dispatch in order to avoid further delay.

WHEREFORE, the instant petition is GRANTED and the assailed Resolutions of the Court of Appeals are REVERSED and SET ASIDE. The Court of Appeals is directed to REINSTATE the petition for review, docketed as CA-G.R. SP No. 69472, for further proceedings.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Callejo, Sr., Chico-Nazario, and Nachura, JJ., concur.

- [1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Conchita Carpio-Morales (now a Member of this Court) and Sergio L. Pestaño, concurring; rollo, p. 66.
- [2] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Conchita Carpio-Morales (now a Member of this Court) and Mario L. Guariña III, concurring; id. at 73.
- [3] Id. at 43.
- [4] Id. at 46-47.
- [5] Id. at 66.
- [6] Id. at 73.
- [7] Id. at 23.
- [8] *Solar Team Entertainment, Inc. v. Judge Ricafort*, 355 Phil. 404, 413-414 (1998).
- [9] G.R. No. 141255, June 21, 2005, 460 SCRA 406.
- [10] Id. at 415.
- [11] Cf. *Coca Cola Bottlers Phils., Inc. v. Cabalo*, G.R. No. 144180, January 30, 2006, 480 SCRA 548.
- [12] 388 Phil. 587 (2000).
- [13] Id. at 593-594.
- [14] 357 Phil. 36 (1998).
- [15] Id. at 51-53.
- [16] *Public Estates Authority v. Caoibes, Jr.*, 371 Phil. 688, 692 (1999).
- [17] G.R. No. 142937, November 15, 2005, 475 SCRA 41.
- [18] Id. at 53-54.
- [19] G.R. No. 140954, April 12, 2005, 455 SCRA 460.
- [20] Id. at 474-475.
- [21] *Supra* note 17, at 54.

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