

GUILLERMO REFFOSA, PETITIONER, VS. HON. NICASIO YATCO, ET AL., RESPONDENTS.*G.R. No. 16226. September 30, 1960*

Ponente: BAUTISTA ANGELO, J.

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On September 8, 1958, J. M. Tuason & Co., Inc. filed an action for ejectment against Guillermo Renosa before the Court of First Instance of Quezon City where, after issues were joined, judgment was rendered ordering defendant to surrender the possession of the land to plaintiff, to remove the building he has erected thereon, and pay a rental of P12.00 a month from February 6, 1957 until the property is restored.

Defendant received a copy of the decision on May 11, 1959. On June 10, 1959, defendant filed a motion for reconsideration which was denied. Copy of the order denying the motion was received by defendant on September 7, 1959. On September 8, 1959, the last day for perfecting the appeal, defendant filed a motion asking for five days extension within which to file his record on appeal, at the same time filing his notice of appeal and tendering to the clerk of court the sum of P60.00 as appeal bond as required by the rules, but as the money so tendered was short of P0.30 representing the commission fee which according to the clerk of court should also be paid, said clerk of court declined to receive the money telling the messenger to come back the next day bringing with him the complete amount of P60.30. So the messenger returned the following day, September 9, 1959, bringing with him a check dated September 8, 1959, for the sum of P60.30, which was then received by the clerk of court for which an official receipt was issued. On September 10, 1959, the court granted the motion for extension filed by defendant, and on September 11, 1959 defendant filed his record on appeal. On September 21, 1959, plaintiff filed his opposition to the approval of the record on appeal on the ground that defendant failed to perfect his appeal within the reglementary period, which opposition the trial court entertained, it having found that the notice of appeal and the appeal bond had been filed on September 9, 1959, or one day late. Defendant filed a motion for reconsideration, which was denied. Hence the present petition for mandamus.

We find merit in the petition. The record shows that the last day within which defendant may perfect his appeal is September 8, 1959 and on this date he sent a messenger to the clerk of court bringing with him a notice of appeal, the amount of P60.00 as cash appeal bond, and an urgent motion for extension of time to file the record on appeal. The record also shows that after the clerk of court had affixed the seal of his office on the notice of appeal indicating that it was filed on September 8, 1959, he returned said notice with the sum of P60.00 tendered to him by the messenger for the reason that said amount was short of P0.30 telling him to return the next day bringing with him the same notice of appeal and the amount of P60.30. The messenger complied with the instruction by returning the next day, September 9, 1959, with a check bearing date of September 8, 1959 in the amount of P60.30. And because the appeal bond was apparently filed one day late, the trial court, sustaining the opposition of plaintiff, dismissed the appeal as having been perfected outside of the reglementary period.

We find the action of the trial court to be improper under the circumstances. In the first place, Section 5, Rule 41 prescribes that the appeal bond in appeals from a decision of the court of first instance is only P60.00 unless the

court fixes a different amount. The rule does not require any commission to be paid, and even if this be so, the fact is that defendant has actually tendered the appeal bond of P60.00 on time but that the clerk of court erroneously returned the money simply because it was short of P0.30. The proper step for the clerk of court to have taken was to retain the P60.00, issue an official receipt therefor, and ask the messenger to complete the same with an additional P0.30. This additional amount is not part of the bond, The mistake therefore, if any, was committed by the clerk of court and the same cannot be blamed on defendant. At any rate, it may be said that defendant has substantially complied with the requirement of the rule relative to the filing of an appeal bond, and so it was error to dismiss the appeal (*Contreras vs. Dinglasan*, 79 Phil., 42; 45 Off. Gaz., 257).

Wherefore, petition is granted. The trial court is ordered to give due course to the appeal. No pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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