

MAKATI INSURANCE CO., INC., PETITIONER, VS. HON. WILFREDO D. REYES, AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 36, RUBILLS INTERNATIONAL, INC., TONG WOON S...

G.R. No. 167403. August 06, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Assailed in this Petition for Review under Rule 45[1] of the Revised Rules of Court are (1) the Decision[2] dated 12 August 2004 of the Court of Appeals dismissing the petition filed in CA-G.R. SP No. 74220 by herein petitioner Makati Insurance Co., Inc., and affirming the Order[3] dated 2 October 2002 of the Regional Trial Court (RTC) of Manila, Branch 36, in Civil Case No. 97-84952, which dismissed petitioner's Notice of Appeal for having been filed three days beyond the reglementary period; and (2) the Resolution[4] dated 17 February 2005 of the Court of Appeals in the same case denying petitioner's Motion for Reconsideration of its earlier Decision.

The generative facts of the present Petition are as follows.

Petitioner filed before the RTC a Complaint[5] against private respondents Rubills International, Inc., Tong Woon Shipping PTE., LTD., and Asian Terminals, Inc. for damages arising from breach of contract of carriage. In its Complaint, petitioner alleged that:

3.1 [Herein private respondents] Rubills International, Inc. and Tong Woon Shipping Pte. Ltd. [Rubills for brevity], were and are the owners, operators, charterers, bailees, representatives, or agents of several ocean going vessels, engaged in ocean carriage to and from Philippine ports in foreign trade, one of which is the vessel M/V "Cherry" a common carrier, bound to observe extraordinary diligence in the care and custody of goods while in its protective custody.

3.2 [Herein private respondent] Asian Terminals, Inc. [ATI] was and is the arrastre operator at the port of Manila and as such was charged and obligated with the duty of receiving cargoes discharged from the vessels docking at the port of Manila, of safekeeping and taking good care of the same while in its protective custody, and thereafter delivering the same to the respective consignees and/or consignee's representatives.

4.0 On or about August 11, 1996, the [private respondents] Rubills and Tong Woon vessel M/V "CHERRY" arrived in Manila and docked at Pier 15 South Harbor, Manila, and therein completely unloaded on September 9, 1996 a shipment of 120MT Red Beans and 153.00MT Cattle Meat Colloid covered by Bill of Lading dated August 01, 1996, a photocopy of which is herewith attached as Annex "A" and made an integral part hereof;

5.0 It was found out after the inspection of the subject shipment that eighty four (84) ton bags of the shipment were in apparent damaged condition, partly to badly wet and loose/torn on sides and/or ends with spillages/wettages to contents apparent. x x x.

x x x x

6.0 The aforesaid losses and damages sustained by the subject shipment were directly caused and brought about by the wanton fault, gross negligence, malevolent mishandling and culpable disregard, recreance and/or breach of contractual obligations of all or either of the [private respondents] as common carrier and arrastre operator respectively, and as a result of which the owner/assured/consignee Silver Allies Trading International sustained damages and losses in the total sum of Four Hundred Twelve Thousand Two Hundred Fifty Three & 91/100 Pesos (P412,253.91) for which [herein petitioner]-insurer paid the consignee-assured. Thus, [petitioner] was subrogated into the rights and interests of the consignee-assured relative to the said losses and damages sustained by the subject shipment;

7.0 Demands were lodged against the [private respondents] for compensation of the amount paid by the [petitioner] to the consignee-assured, but the [private respondents] failed, ignored and refused to heed the same to the damage and prejudice of the [petitioner];

8.0 [Private respondents] are guilty of wanton fault, gross negligence, malevolent mishandling and culpable disregard of their contractual obligations in bringing about and contumaciously causing the losses and damages to the said shipment x x x.[6]

Petitioner prayed in its Complaint that:

[J]udgment be rendered ordering the [herein private respondents], jointly and severally or whichever may be found liable, to pay [herein petitioner]:

- Actual damages in the amount of P412,253.91 with legal interest from the date of the filing of the complaint until fully paid;
- Exemplary damages in the sum of at least P20,000.00 or as may be found proper by this Honorable Court;
- Attorney's fees in the sum equivalent to twenty five percent (25%) of the principal claim of P103,063.47; and
- Litigation expenses in the sum of at least P10,000.00 or as may be proven, plus costs of suit.[7]

After the issues were joined, the case was set for pre-trial conference. For the failure of petitioner's counsel to appear at the scheduled pre-trial conference on 19 November 2001, RTC Presiding Judge Wilfredo D. Reyes (Judge Reyes) dismissed the case without prejudice. His Order of even date reads:

On third call of this case at 10:40 o'clock this morning, only counsels for [herein private respondents] Rubills International, Inc. and Asian Terminals, Inc. appeared. There was no appearance for [herein petitioner] despite due notice.

Respective counsels of [private respondents] moved for the dismissal of the case on the following grounds:

- For failure of [petitioner] to properly appear for pre-trial conference on September 5, 2001 considering that its counsel and/or representative did not have the requisite authority.
- For failure of [petitioner] to appear at the pre-trial conference at the proper time set on October 16, 2001 although [petitioner]'s counsel came in after [private respondents]' counsel had left the court room and the case re-set for continuation of pre-trial on November 19, 2001, and
- For failure of [petitioner]'s counsel to appear at today's pre-trial.

It appearing that [petitioner]'s counsel has been given ample opportunity to appear in the pre-trial conference of this case with the requisite authority for its counsel and/or representative and that [petitioner]'s counsel has failed to so appear for pre-trial conference, and upon motion of [private respondents]' counsel, this case is dismissed without prejudice.

WHEREFORE, the case at bar is dismissed without prejudice. No costs.[8]

On 29 November 2001, petitioner received the Order dated 19 November 2001 dismissing its case. On 4 December 2001, petitioner filed its Verified Motion for Reconsideration[9] alleging that sickness prevented its counsel from attending the pre-trial conference. On 3 July 2002, petitioner received Judge Reyes's Order dated 17 June 2002 denying its Verified Motion for Reconsideration.[10]

According to the 17 June 2002 RTC Order:

After a careful review of the grounds relied upon by [herein petitioner]'s counsel in his verified motion for reconsideration dated December 1, 2001, the Court has no other recourse but to deny the same as the grounds of said motion for reconsideration are not impressive so as to convince the Court to reverse its Order of November 19, 2001,

WHEREFORE, [petitioner]'s motion for reconsideration is DENIED.[11]

Petitioner received notice of the afore-mentioned Order on 3 July 2002.

On 17 July 2002, petitioner filed a Notice of Appeal,[12] which was promptly opposed by private respondents for having been filed out of time.[13] Petitioner countered that its failure to file the Notice of Appeal on time was due to its counsel's inadvertence in computing the appeal period. The inadvertence was allegedly due to the fact that its Verified Motion for Reconsideration was filed by registered mail, and the messenger who mailed it failed to attach to the records of the case the postal receipt showing the date the said motion was mailed.[14] Petitioner's counsel, therefore, was unable to determine correctly when petitioner's period to appeal was interrupted by the filing of its Verified Motion for Reconsideration and how many more days were left in said period when its Motion was denied.

On 23 September 2002, petitioner filed a Motion to Admit Notice of Appeal,[15] alleging it had no intention to delay the resolution of the case; it had a meritorious case; and its Notice of Appeal should be granted pursuant to the dictum that "courts should not place undue importance on technicalities, when by so doing, substantial justice is sacrificed."

On 2 October 2002, Judge Reyes issued his Order[16] dismissing petitioner's Notice of Appeal for being filed three days beyond the 15-day reglementary period. In so ruling, Judge Reyes held that pursuant to Section 3, Rule 41 vis-à-vis Section 2, Rule 22 of the Revised Rules of Court, the period to appeal is interrupted by a timely motion for reconsideration. Petitioner filed its Verified Motion for Reconsideration five days after receiving the Order dismissing the case without prejudice. Excluding the day the said motion was filed, petitioner had only 11 days left to file a notice of appeal. Petitioner received the Order of 17 June 2002 denying its Verified Motion for Reconsideration on 3 July 2002. Accordingly, it had only until 14 July 2002 to file a Notice of Appeal. Petitioner, however, filed its Notice of Appeal on 17 July 2002.[17] Judge Reyes, therefore, held:

WHEREFORE, plaintiff's notice of appeal is ordered dismissed as it was filed three (3) days beyond the reglementary period.[18]

Petitioner then filed with the Court of Appeals a Petition for Certiorari under Rule 65 of the Revised Rules of Court questioning the 2 October 2002 RTC Order dismissing its Notice of Appeal. The Petition, however, was denied by the Court of Appeals based on the following reasons:

[F]rom an order dismissing an action without prejudice, the remedy of the aggrieved party is to file a petition for certiorari under Rule 65, or to re-file the case. On this score, therefore, petitioner's Notice of Appeal is clearly dismissible.

Even assuming arguendo that appeal is petitioner's proper remedy, it should still be denied for having been filed out of time. x x x.[19]

The Court of Appeals held:

WHEREFORE, the instant petition is hereby DISMISSED, and the assailed Order dated October 2, 2002 AFFIRMED.[20]

The Motion for Reconsideration filed by the petitioner was denied by the Court of Appeals in a Resolution dated 17 February 2005.

In the Petition at bar, petitioner insists that:

EXTRAORDINARY CIRCUMSTANCES ATTENDANT TO THE CASE AT BAR WARRANT THE LIBERAL APPLICATION OF THE RULES.[21]

We first hew our attention to the main issue for our resolution: whether the Notice of Appeal filed by petitioner was filed out of time.

Rule 41, Section 3 of the 1997 Rules of Civil Procedure states:

SEC. 3. Period of ordinary appeal. 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.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

Based on the foregoing, an appeal should be taken within 15 days from the notice of judgment or final order appealed from.[22] A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do with respect to it. It is an adjudication on the merits which, considering the evidence presented at the trial, declares categorically what the rights and obligations of the parties are; or it may be an order or judgment that dismisses an action.[23]

Propitious to petitioner is *Neypes v. Court of Appeals*,[24] promulgated on 14 September 2005 while the present Petition was already pending before us. In *Neypes*, we pronounced that:

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. (Emphasis ours.)

Rules of Procedure are 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.[25]

We justified in *Neypes* that:

In setting aside technical infirmities and thereby giving due course to tardy appeals, we have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules. In those situations where technicalities were dispensed with, our decisions were not meant to undermine the force and

effectivity of the periods set by law. But we hasten to add that in those rare cases where procedural rules were not stringently applied, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.

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.[26]

Hence, in the interest of substantial justice, procedural rules of the most mandatory character in terms of compliance may be relaxed.[27]

With the advent of the "fresh period rule," parties who availed themselves of the remedy of motion for reconsideration are now allowed to file a notice of appeal within fifteen days from the denial of that motion.[28]

The "fresh period rule" is not inconsistent with Rule 41, Section 3 of the Revised Rules of Court which states that the appeal shall be taken "within fifteen (15) days from notice of judgment "or" final order appealed from." The use of the disjunctive word "or" signifies disassociation and independence of one thing from another. It should, as a rule, be construed in the sense which it ordinarily implies.[29] Hence, the use of "or" in the above provision supposes that the notice of appeal may be filed within 15 days from the notice of judgment or within 15 days from notice of the "final order," which, in this case is the 17 July 2002 RTC Order denying petitioner's Verified Motion for Reconsideration, received by petitioner on 3 July 2002.

Neither does the new rule run counter to the spirit of Section 39 of Batas Pambansa Blg. 129 which shortened the appeal period from 30 days to 15 days to hasten the disposition of cases. The original period of appeal remains and the requirement for strict compliance still applies. The fresh period of 15 days becomes significant only when a party opts to file a motion for new trial or motion for reconsideration. In this manner, the trial court which rendered the assailed decision is given another opportunity to review the case and, in the process, minimize and/or rectify any error of judgment. While we aim to resolve cases with dispatch and to have judgments of courts become final at some definite time, we likewise aspire to deliver justice fairly.[30]

The "fresh period rule" finally eradicates the confusion as to when the 15-day appeal period should be counted - from receipt of notice of judgment or from receipt of notice of "final order" appealed from.[31]

Taking our bearings from *Neypes, in Sumaway v. Urban Bank, Inc.*, [32] we set aside the denial of a notice of appeal which was purportedly filed five days late. With the fresh period rule, the 15-day period within which to file the notice of appeal was counted from notice of the denial of the therein petitioner's motion for reconsideration.

We followed suit in *Elbiña v. Ceniza*, [33] wherein we applied the principle granting a fresh period of 15 days within which to file the notice of appeal, counted from receipt of the order dismissing a motion for new trial or motion for reconsideration or any final order or resolution.

Thereafter, in *First Aqua Sugar Traders, Inc. v. Bank of the Philippine Islands*, [34] we held that a party litigant may now file his notice of appeal either within fifteen days from receipt of the original decision or within fifteen days from the receipt of the order denying the motion for reconsideration.

In *De los Santos v. Vda de Mangubat*, [35] we applied the same principle of "fresh period rule," expostulating that

procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes. The "fresh period rule" is irrefragably procedural, prescribing the manner in which the appropriate period for appeal is to be computed or determined and, therefore, can be made applicable to actions pending upon its effectivity, such as the present case, without danger of violating anyone else's rights.

We thus hold that when herein petitioner filed its notice of appeal on 17 July 2002, the same was seasonably filed within the fresh period of 15 days, counted from 3 July 2002, the date it received the denial of its Verified Motion for Reconsideration.

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 petitioner's case inasmuch as rules of procedure may be given retroactive effect on actions pending and undetermined at the time of their passage. In *Republic v. Court of Appeals*,^[36] 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, we 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."

We also take note of an important declaration made by the Court of Appeals in its assailed Decision that even if petitioner's Notice of Appeal was considered filed on time, it was dismissible for being the wrong remedy.

It bears repeating that the RTC dismissed Civil Case No. 97-84952 without prejudice. The rules^[37] provide:

Rule 41 APPEAL FROM THE REGIONAL TRIAL COURTS

Section 1. x x x

No appeal may be taken from:

x x x x

(h) An order dismissing an action without prejudice.

Indeed, under the 1997 Rules of Civil Procedure, Rule 41, Section 1(h), thereof expressly provides that no appeal may be taken from an order dismissing an action without prejudice. It may be subject of a special civil action for certiorari under Rule 65 of the Rules of Court, as amended by the said 1997 Rules of Civil Procedure. The Court of Appeals, therefore, acted correctly in stating that the Notice of Appeal filed by the petitioner was dismissible.

Even if in the interest of substantial justice, we consider the Notice of Appeal as a Petition for Certiorari under Rule 65 of the Rules of Court, still no grave abuse of discretion may be attributed to the RTC in dismissing Civil Case No. 97-84952.

The Writ of Certiorari is an extraordinary remedy to correct errors of jurisdiction. An act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. Be that as it may, it must be emphasized that this practice is applied only under certain exceptional circumstances to prevent unnecessary delay in the administration of justice and so as not to unduly burden the courts.^[38]

In the present case, Civil Case No. 97-84952 was initially scheduled for pre-trial conference on 17 April 2000.[39] By agreement of the parties, the pre-trial conference was re-set to 8 June 2000.[40] Again, by agreement of the parties, the pre-trial conference was re-set to 6 July 2000,[41] only to be re-set once more to 3 August 2000.[42] On 3 August 2000, petitioner filed a motion to re-set pre-trial conference to 11 September 2000.[43] On 11 September 2000, petitioner's counsel was not present; thus, the pre-trial conference was cancelled and re-set to 17 October 2000.[44] On 17 October 2000, the parties manifested that they might settle the case amicably so the pre-trial conference on said date was cancelled.[45] The pre-trial conference was re-set to 28 November 2000[46] and again to 17 January 2001 upon motion of private respondent Asian Terminals, Inc.[47] Cancellation and re-setting of the pre-trial conference also occurred to 28 March 2001,[48] 19 April 2001,[49] 20 June 2001,[50] 31 July 2001.[51] Then again on 5 September 2001,[52] on the ground that petitioner's counsel/representative did not have the requisite authority, and on 15 October 2001 because petitioner's counsel failed to arrive at the proper time.[53] When petitioner's counsel again failed to attend the pre-trial conference on 19 November 2001, the RTC finally ordered the dismissal of the case without prejudice.

All these postponements truly manifest a lack of interest to prosecute on the part of the petitioner as found by the RTC. Section 3, Rule 17 of the Rules of Court states:

SEC. 3. Dismissal due to fault of plaintiff. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

We have always been steadfast in ruling that in every action, the plaintiff is duty-bound to prosecute the same with utmost diligence and with reasonable dispatch to enable him to obtain the relief prayed for and, at the same time, minimize the clogging of the court dockets. The expeditious disposition of cases is as much the duty of the plaintiff as the court. It must be remembered that a defendant in a case likewise has the right to the speedy disposition of the action filed against him, considering that any delay in the proceedings entails prolonged anxiety and valuable time wasted.[54]

In all, we find that while it is true that the petitioner's Notice of Appeal was timely filed based on our ruling in *Neypes*, said Notice of Appeal was the wrong remedy. Even if considered as a Petition for Certiorari under Rule 65 of the Rules of Court, the same has no merit as discussed above.

Wherefore, the petition is DENIED. The assailed Decision of the Court of Appeals dated 12 August 2004 and Resolution dated 17 February 2005 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Minita V. Chico-Nazario
Associate Justice

WE CONCUR:

Consuelo Ynares-Santiago Associate
Justice
Chairperson

Ma. Alicia Austria-Martinez

Associate Justice

Antonio Eduardo B. Nachura

Associate Justice

Ruben T. Reyes

Associate Justice

[1] Appeal by Certiorari to the Supreme Court.

[2] Penned by Associate Justice Noel G. Tijam with Associate Justices Jose L. Sabio, Jr. and Perlita J. Tria Tirona, concurring. Rollo, pp. 17-22.

[3] Records, p. 170.

[4] Rollo, p. 24.

[5] Records, p. 1.

[6] Id. at 2-4.

[7] Id. at 5.

[8] Id. at 114-115.

[9] Id. at 119.

[10] Id. at 149.

[11] Id.

[12] Id. at 150.

[13] Rollo, p. 154.

[14] Id. at 157.

[15] Records, p. 166.

[16] Rollo, p. 170.

[17] Id. at 17-18.

[18] Records, p. 174.

[19] Rollo, p. 19.

[20] Id. at 21.

[21] Rollo, p. 109.

[22] Nuñez v. GSIS Family Bank, G.R. No. 163988, 17 November 2005, 475 SCRA 305, 319.

[23] PAL Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc., G.R. No. 161110, 30 March 2006, 485 SCRA 632, 649.

[24] G.R. No. 141524, 14 September 2005, 469 SCRA 633, 644-645.

- [25] *San Miguel Corp. v. Aballa*, G.R. No. 149011, 28 June 2005, 461 SCRA 392, 414.
- [26] *Neypes v. Court of Appeals*, *supra* note 24 at 643-644.
- [27] *De los Santos v. Vda. de Mangubat*, G.R. No. 149508, 10 October 2007, 535 SCRA 411, 419.
- [28] *Active Realty and Development Corporation v. Fernandez*, G.R. No. 157186, 19 October 2007, 537 SCRA 116, 129.
- [29] *Neypes v. Court of Appeals*, *supra* note 24 at 645-646.
- [30] *Id.*
- [31] *Id.*
- [32] G.R. No. 142534, 27 June 2006, 493 SCRA 99.
- [33] G.R. No. 154019, 10 August 2006, 498 SCRA 438.
- [34] G.R. No. 154034, 5 February 2007, 514 SCRA 223, 226-227.
- [35] *De los Santos v. Vda. de Mangubat*, *supra* note 27 at 422.
- [36] 447 Phil. 385, 393-394 (2003).
- [37] 1997 Rules of Civil Procedure.
- [38] *Yee v. Bernabe*, G.R. No. 141393, 19 April 2006, 487 SCRA 385, 393.
- [39] *Records*, p. 83.
- [40] *Id.* at 84.
- [41] *Id.* at 85.
- [42] *Id.* at 86.
- [43] *Id.* at 90.
- [44] *Id.* at 92.
- [45] *Id.* at 94.
- [46] *Id.* at 95.
- [47] *Id.* at 98.
- [48] *Id.* at 101.
- [49] *Id.* at 103.
- [50] *Id.* at 105.
- [51] *Id.* at 107.
- [52] *Id.* at 110.
- [53] *Id.* at 114.
- [54] *Ko v. Philippine National Bank*, G.R. Nos. 169131-32, 20 January 2006, 479 SCRA 298, 305.

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