

OFELIA DE GREARTE AND RAFAEL GREARTE, PETITIONERS, VS. THE LONDON ASSURANCE, RESPONDENT.

G. R. No. 18742. January 31, 1963

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by certiorari from a decision of the Court of Appeals, setting' aside that of the Court of First Instance of Sorsogon in the above entitled cases and ordering that the records thereof be remanded to said court "with instructions to receive the evidence that defendants may offer, and plaintiff's rebuttal evidence, if any, and thereafter, to render a new decision based upon the evidence as a whole".

On December 2, 1955 , petitioners herein, the spouses Ofelia de Grearte and Rafael Grearte, instituted Civil Cases Nos. 1006, 1007 and 1008 of said court of first instance against respondents herein, the London Assurance, the Tabacalera Insurance Co. and the Northern Assurance Co. Ltd., for the recovery of the sums of P5,000, P10,000 and P5,000, respectively, allegedly due from said respondents in consequence of the alleged loss or destruction by fire of the stock of goods of said petitioners in their store, located in the barrio of San Antonio, municipality of Tumauni, province of Isabela, and covered by fire, insurance policies issued by the aforementioned respondents. Upon amendment of the original complaints, respondents filed their respective answers thereto, alleging, inter alia, by way of defenses: (1) that they had agreed to pay only the value of the property actually destroyed by fire; (2) that when the fire took place on November 28, 1954, the insured property was, not only worth less than the amount alleged by petitioners, but, also, non-existent, for the building in which said property was required to be contained during the currency of the policies above referred to had fallen and was displaced or completely destroyed by typhoon "Nancy" that hit the province of Isabela on October 8, 1954; (3) that Mrs. Grearte had not furnished the respondents all the particulars, documents and information required of the loss in question, and the incomplete data, documents or information furnished by her were submitted outside the time stipulated in said policies; (4) that Mrs. Grearte had forfeited all benefits under said policies she having filed a fraudulent claim and made or used in support thereof false declarations, as well as furnished a wrong description of the building in which the insured property was required to be contained; and (5) that the complaints were filed after the expiration of the period stipulated in the policies.

By agreement of the parties, the three (3) cases were ordered consolidated and jointly heard. Thereafter, petitioners introduced their evidence, but owing to respondents' objection to the submission of some exhibits for the petitioners, which were photostat copies of the alleged originals thereof, petitioners reserved the right to present said exhibits, duly certified, at the next hearing-. Counsel for the respondents thereupon stated that they intended to take the deposition of some witnesses in Isabela and of others in Manila and later to submit the depositions to the court, in view of which the same suspended' the hearing of the three (3) cases until further notice. Subsequently, the continuation of the hearing of said cases was set for September 24 and 25, 1956. However, on motion of petitioners counsel, dated August 27, 1956 , the continuation of the hearing of these cases was later reset for October 12, 1956. A joint motion for postponement having been filed by both parties on

October 2, 1956, the continuation of the hearing was postponed to November 23, 1956. Under date of November 20, 1956, respondents' counsel moved to cancel this hearing for November 23, 1956 and to further postpone the same to January 23 and 24, 1957, on account of a "prior judicial engagement". Copy of this motion was received in the Manila office of plaintiffs' counsel—who allegedly was then in the Province of Quezon, attending to some cases there—on November 21, 1956, but the original was sent to the lower court by mail and reached the post office of Sorsogon on November 24, 1956, and said court did not receive it until November 27, 1956.

When the cases were called for continuation of the hearing on November 23, 1956, at 9:00 a.m., only petitioners' counsel appeared. Owing to the absence of the respondents and their counsel, the court suspended the hearing and called it once again at 10:00 a.m., with the same result. Thereupon, petitioners' counsel introduced their documentary evidence and the cases were deemed submitted for decision. On November 24, 1956, petitioners filed an opposition to respondents' aforementioned motion for continuance of November 20, 1956, which was denied in an order of the lower court dated November 29, 1956. A reconsideration of this order was sought by respondents in a motion dated December 12, 1956, in which respondents prayed, also, that the cases be set for hearing, either on January 23 and 24, 1957, or on February 19 and 20, 1957. Petitioners objected to this motion on December 14, 1956, and the next day the lower court rendered judgment for the petitioners and against respondents. Two (2) subsequent motions for new trial of the latter having been thereafter denied, respondents appealed to the Court of Appeals, which set aside the decision of the lower court—for the reason that, upon receipt on November 27, 1956, of respondents' motion for postponement of November 20, 1956, His Honor, the trial Judge should have reconsidered its order of November 23, 1956, declaring the cases submitted for decision, and fixed a date for the reception of respondents' evidence. The Court of Appeals ordered, therefore, "that the records of these cases be remanded to the court of origin" for the purpose indicated at the beginning of this decision. Hence, this appeal by certiorari by petitioners herein, who maintain that the Court of Appeals had erred: (1) in not dismissing respondents' appeal from the decision of the lower court; and (2) in rendering the decision appealed from.

The first contention is based upon the theory that respondents' appeal from the decision of the court of first instance had not been seasonably perfected. In this connection it appears that the latter's decision was rendered on December 15, 1956; that upon denial of two (2) subsequent motions for new trial of respondents herein, or on April 1, 1957, the latter filed a notice of appeal, an appeal bond and a record on appeal, the approval of which was objected to by petitioners herein; that on July 10, 1957, respondents received copy of an order of the lower court of July 6, 1957, directing that paragraph 40 of said record on appeal be deleted therefrom and that an order dated November 29, 1956 be included therein, and granting respondents ten (10) days from notice within which to comply with said order; that under date of July 12, 1957, respondents submitted a pleading entitled "compliance", stating that they annexed thereto, in compliance with said order of July 6, 1957, "Pages 63 and 63-A of the redrafted Record on Appeal to be included in the record on appeal originally submitted, in lieu of the original page 63", in which new pages 63 and 63—A said order of November 29, 1956 was included, and that "the Clerk of Court may strike from their Record on Appeal the pleadings contained in paragraph 40 of the same", and praying that the Record on Appeal as thus amended be approved and forwarded to the Court of Appeals; that on July 10, 1957, respondents submitted a "manifestation" to the effect that said pleading of respondents was not a sufficient compliance with said order of July 6, 1957; that on August 17, 1957—after expiration of the 10-day period fixed in said order—petitioners moved to dismiss the appeal upon the ground of failure of the respondents to seasonably perfect their appeal, the amendment thereof not having been made in the manner provided in the Rules of Court; that on September 20, 1957, the lower court issued an order stating, inter alia, that although its order of July 6, 1957 had not been complied with as provided in Section 7, Rule 41, of the Rules of Court, the respondents had acted in good faith in the interpretation thereof, in view of which they were given ten (10) days to comply with

said provision of the Rules of Court without prejudice to the reiteration, in the Court of Appeals of the aforementioned motion of petitioners herein to dismiss the appeal; that on October 5, 1957, respondents complied with the order last mentioned; and that on October 28, 1957, the lower court approved the amended record on appeal.

Petitioners herein maintain that respondents' appeal has not been perfected in due time because, upon receipt of the order of the lower court of July 6, 1957, respondents introduced two (2) pages (pages 63 and 63-A) in the lieu of page 63 of the original record on appeal, instead of filing an entirely new, although amended, record on appeal; that not having filed said entirely new, hut amended record on appeal, within the period of time stated in said order, the decision of the court of first instance had already become final and executory; that the order of the lower court of September 20, 1957 granting respondents another ten (10) days from notice within which to make the aforementioned amendment in strict conformity with the provision of the Rules of Court was, therefore, erroneous; that the amended record on appeal filed by respondents herein within the period last mentioned did not affect the final and executory nature already acquired by said decision; and that, accordingly, the Court of Appeals erred in not dismissing respondents' appeal from the decision of the court of first instance.

We find no merit in petitioners' pretense. It has been held repeatedly by this Court that the provisions of the Rules of Court should, as therein provided, be liberally construed to the end that the object thereof be .promoted.

In the cases at bar, the order of July 6, 1957 was substantially complied with, upon the filing, within the period set forth in said order, of the aforementioned "compliance" of respondents herein. The flaws of said "compliance" referred purely to matters of form and were due to respondents' erroneous, but honest, belief on the proper interpretation of the pertinent provision of the Rules of Court. The lower court had discretion to grant respondents a reasonable time within which to comply strictly with the letter of said provision, and did not abuse its discretion in issuing its order of September 20, 1957 and subsequently approving the amended record on appeal filed within the period therein stated. Hence, the Court of Appeals did not err in not dismissing the appeal.

Neither did it err in finding that respondents should be given an opportunity to present their evidence, for their answers allege defenses that are prima facie meritorious and the surrounding circumstances sufficiently indicate that their failure to appear at the hearing held on November 23, 1956, may be excused in the interest of justice and fair play.

Wherefore, the decision appealed from is hereby affirmed, without special pronouncement as to costs. It is so ordered.

Padilla, Bautista Angelo, Labrador , Reyes, J. B. L., Barrera, Paredes, Dizon and Regala, JJ., concur.

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