

JOSEPH Y. PUNAY, PETITIONER, VS. HONORABLE JOSE R. RAMOLETE OF THE COURT OF FIRST INSTANCE OF CEBU; THE MORNING TIMES, ET AL., DEFENDANTS IN CIVIL CASE NO. R-9790 CFI, CEBU, ETC...

G.R. No. 50298. November 02, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for mandamus seeking to compel respondent judge, Jose R. Ramolete of the Court of First Instance of Cebu, Branch III, to set aside his order dated October 16, 1975 dis-missing petitioner's appeal in Civil Case No. R-9790, entitled "Joseph Y. Punay, plaintiff, versus Morning Times, et al., defendants," and to resolve the motion to dismiss filed by private respondent Morning Times, et al.

The pertinent facts of the case are as follows:

On January 16, 1967, petitioner filed an action for damages (Civil Case No. R-9790) against private respondents with the Court of First Instance of Cebu, Branch III, presided by respondent judge. After trial, respondent judge rendered a decision on July 17, 1978 in favor of private respondents. Copy of the decision was received by petitioner's counsel on August 8, 1978. On September 4, 1978, before the expiration of the 30-day period within which to appeal, petitioner filed his Notice of Appeal, Motion to extend the period to file the record on appeal, and an Appeal Bond. The appeal bond was signed only by petitioner's counsel Jose Ch. Catungal and his wife Agapita Catungal as bondsmen.

On September 13, 1978, private respondents filed a Motion to Dismiss petitioner's appeal on the ground that no valid appeal was taken on time since the appeal bond was fatally defective for it lacks the signature of herein petitioner who therefore, failed to perfect his appeal on time. On September 25, 1978, petitioner filed a Motion for Leave to Amend Appeal Bond and for admission of the amended appeal bond. Thereafter, he filed an opposition to the Motion to Dismiss Appeal urging therein that the motion to dismiss has become moot and academic in view of the filing of an amended appeal bond. Private respondents filed an opposition to the Motion to Amend Appeal Bond and for admission of the amended appeal bond, on the ground that there was nothing to be amended since the first appeal bond was fatally defective.

On October 16, 1978, respondent judge issued the questioned Order, as follows:

"Acting on the motion of the plaintiff, thru counsel, to amend the appeal bond and the opposition thereto the grounds of which are well-founded.

"The motion to amend appeal bond is hereby DENIED. The amended appeal bond is hereby rejected and the appeal is hereby ordered DISMISSED."

A motion for reconsideration of said order was likewise denied on November 23, 1978. On January 3, 1979,

petitioner filed a "Motion to Set at Rest Plaintiff's Motion to Resolve Defendants' Motion to Dismiss." Respondent judge issued an order on January 5, 1979 stating that the motion to resolve defendants' motion to dismiss is already moot and academic as the appeal was already dismissed. Hence, the present recourse, petitioner raising the following issues: a) the propriety of resolving the motion to amend the appeal bond first before resolving the motion to dismiss appeal and b) the validity of the Order of dismissal of October 16, 1978.

Petitioner argued that respondent judge committed grave abuse of discretion and acted whimsically, capriciously and arbitrarily in not resolving first the motion to dismiss the appeal filed by herein private respondents; that before respondent judge should have acted on the petitioner's motion to amend the appeal bond, he should have resolved the motion to dismiss first. This argument cannot stand. The motion to dismiss appeal filed by private respondents was in effect resolved when respondent judge denied the motion to amend the appeal bond and rejected the amended appeal bond. It should be noted that the order of dismissal categorically states: "Acting on the motion of the plaintiff, thru counsel, to amend the appeal bond and the opposition thereto the grounds of which are well-founded x x x." Private respondents' opposition to the motion to amend appeal bond alleged substantially and referred to the same grounds as those mentioned in their motion to dismiss appeal. Respondent judge, therefore, must have considered and relied upon the grounds alleged in the motion to dismiss appeal when it denied the motion to amend appeal bond and rejected the amended appeal bond. At any rate, nowhere in the Revised Rules of Court does it provide that a motion to dismiss appeal must first be resolved before any other motion or pleading.

The second issue relates to the validity of the order of dismissal of petitioner's appeal. Private respondents' opposition to the motion to amend appeal bond, which respondent judge relied upon in denying said motion and dismissing petitioner's appeal was anchored on the fact that the original appeal bond lacks the signature of principal obligor, herein petitioner Punay, and that such defect is very fatal; that said motion to amend appeal bond was filed after the lapse of the 30-day period to appeal and therefore there is nothing to correct and to amend since the filing of the original bond did not interrupt the period to appeal.

The dismissal of petitioner's appeal on the ground that the appeal bond is defective for it is subscribed only by two sureties and lacks the signature of herein petitioner, is erroneous. It is now settled in this jurisdiction that an appeal bond duly subscribed by two persons as sureties, who bind themselves solidarily to pay the amount required, conditioned on the payment of costs which the appellate court may award against the appellant, is in substantial compliance with the provisions of law and is not defective.[1] The provision on appeal bond, Sec. 5, Rule 41 of the Rules of Court, reads:

"The appeal bond shall answer for the payment of costs. It shall be in the amount of one hundred and twenty pesos (P120) unless the court shall fix a different amount. If the appeal bond is not in cash it must be approved by the court before the transmittal of the record on appeal to the appellate court."

As may be noted the provision does not prescribe special form for the appeal bond. It only requires that the same be for the amount of one hundred twenty pesos (P120) to answer for the payment of costs. In the form it was originally submitted, it could be held to answer for costs.

Granting that the first bond was defective, justice demands that herein petitioner, as appellant, be given an opportunity to cure its defect by filing, as he did, another bond. The second bond was not in a real sense a new one but merely the original bond corrected of its alleged defect. It is in instances of this kind where we may apply the principle that rules of procedure should be liberally construed in order to promote their object and assist the parties in obtaining a just determination of their cases (Sec. 2, Rule a, Revised Rules of Court). Relevant is what former Chief Justice Moran said: "A defective appeal bond, which is not a nullity, given in good faith and not for the mere purpose of delay, is sufficient, at least, to confer jurisdiction upon the Court of First Instance to order its

amendment, and the appeal bond should not be dismissed with-out giving the appellant an opportunity, upon reasonable terms, to perfect the bond wherein it is defective, or to file a new bond, such as is required by the rules." [2]

Under the circumstances, We hold that respondent judge gravely abused of its discretion, amounting to excess of juris-diction, when he dismissed petitioner's appeal.

WHEREFORE, the Order of dismissal of October 16, 1975 is hereby set aside and respondent judge is hereby ordered to deny the Motion to Dismiss of respondent Morning Times, et al, and to give due course to petitioner's appeal upon approving the amended appeal bond. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

Makasiar, (Chairman), joins J., Aquino in his concurrence.

[1] Nator vs. Ramolete, 101 SCRA 717 citing Javier vs. Enriquez, 103 Phil. 62; Contreras vs. Dinglasan, 79 Phil. 42; Vivencio vs. Tumulad, G.R. No. L-13399, January 30, 1960.

[2] Moran, Comments on the Rules of Court, Vol. 1, 1957 ed; pp. 624-625, cited in Ramirez vs. Arrieta, 6 SCRA 722.

CONCURRING OPINION

AQUINO, J.:

I concur. The lower court does not have to deny respondents' motion to dismiss the appeal since we have already set aside the order dismissing it. The lower should give due course to the appeal if the record on appeal is complete. The petitioner could have avoided the long delay by simply depositing P120 cash as appeal bond. If the Morning Times is only a tradename, it cannot be a defendant in the case. Its proprietor should be the defendant.

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