

**ANTONIO NITURA, PETITIONER, VS. HON. JOSE C. COLAYCO, COURT OF FIRST INSTANCE OF MANILA, BRANCH XXI, HON. JOSE B. HERRERA, CITY COURT OF MANILA, BRANCH II AND LOURDES EVANGELIST...**

*G.R. No. 53465. November 02, 1982*

Ponente: DE CASTRO, J.

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**DE CASTRO, J.:**

Petition for certiorari and prohibition to annul the Order dated March 19, 1980 of respondent Judge Jose C. Colayco Court of First Instance of Manila, Branch XXI, in Civil Case No. 026490-CV, entitled "Lourdes Evangelista Rivera, plaintiff, versus Antonio Nitura, defendant," which reads as follows:

"The Clerk of Court of this Court is directed to return to the City Court of Manila the record of Civil Case No. 026490-CV, for non-payment of the appellate court docket fee and non-filing of the appeal bond, because the money orders covering the docket fee and the appeal bond are already stale and no longer encashable under the rules and regulations of the Bureau of Posts."

and to enjoin respondent Judge Jose B. Herrera of the City Court of Manila, Branch II from issuing any order that would render the judgment of this Court ineffectual.

It appears that the decision of the City Court of Manila, Branch II, in Civil Case No. 026490-CV, which was decided in favor of private respondent, was received by petitioner on September 9, 1978. On September 12, 1978 petitioner filed his notice of appeal by registered mail and together remitted by Postal Money Order Nos. E2879683 and E2879684, the appeal bond and appellate court docket fee in the amount of P50.00 and P20.00, respectively. On September 23, 1978 or one day before the expiration of the period to appeal, petitioner, finding out that the appellate docket fee should be P25.00 and not P20.00, transmitted by registered mail Postal Money Order No. E2887668 to cover the deficiency of P5.00.

The court a quo finding the appeal interposed by petitioner to have been seasonably perfected, issued an order dated June 14, 1979 directing the clerk of court to immediately elevate the records of the case to the Court of First Instance. Despite said order, private respondent filed a motion to dismiss appeal and a motion for writ of execution. On February 1, 1980 the City Court in resolving said motions, issued another order stating that it had lost jurisdiction over the case because petitioner's appeal had been perfected. The said court again directed the clerk of court to elevate the records of the case to the Court of First Instance to protect the rights of the parties.

On March 24, 1980 petitioner received the questioned order, hence this petition.

The issue now is whether or not it is proper for the re-spondent CFI judge to return the records of this case on the ground that the postal money orders in payment of the appeal bond and docket fee have become stale which according to said respondent judge amounts to non-payment of the legal fees.

In order to perfect an appeal from the judgment of the municipal or city court, the appellant must within fifteen

(15) days from notice of judgment, (a) file with the municipal or city judge a notice of appeal, (b) deliver a postal money order for the amount of the appellate court docket fee, or a certificate of the municipal treasurer or of the clerk of the municipal court in chartered cities, showing that he has deposited the appellate court docket fee, and (c) give a bond.[1]

There can be no doubt that the appeal was filed within the reglementary and that petitioner has substantially complied with the requirements of the law for perfecting an appeal from the inferior court to the Court of First Instance. Even the judge of the court a quo in his three orders dated September 28, 1978,[2] June 14, 1979,[3] and February 1, 1980[4] has ruled that the appeal interposed by petitioner was seasonably perfected and directed his clerk of court to immediately elevate the records of the case to the Court of First Instance. Respondent CFI judge however, ordered the remand of the case to the lower court on the ground that the postal money orders in payment of the appeal bond and appellate court docket fee have become stale. We are of the opinion that respondent CFI judge, instead of returning the records of the case, should have ordered the replacement of the stale money orders. The failure of the clerk of court to transmit the records of the case within five (5) days after perfection of appeal as required by Section 5, Rule 40 of the Rules of Court, and as a consequence of which the postal money orders became stale, should not work to the prejudice of petitioner. To hold otherwise would be unfair and unjust; it would amount to a miscarriage of justice. This is so because the elevation of the records of an appealed case is a plain and ministerial duty on the part of the aforesaid court official over which petitioner has no intervention whatsoever.[5]

And lastly, the delay in the transmittal of the records was partly due to private respondent for having filed numerous motions[6] in the trial court seeking the dismissal of the appeal and the issuance of a writ of execution despite the perfection of the appeal.

WHEREFORE, the questioned order is hereby modified. Respondent City Judge of the City Court of Manila, Branch II, is ordered to transmit to the Court of First Instance of Manila, Branch XXI the records of Civil Case No. 026490-CV and respondent judge of the aforesaid Court of First Instance is hereby ordered to give due course to petitioner's appeal, provided petitioner pays in cash the amount of P50.00 and P25.00 for appeal bond and appellate court docket fee, respectively within ten (10) days from notice of the order requiring him to pay the aforesaid amounts which respondent CFI judge is hereby ordered to issue upon receipt hereof. No costs.

### **SO ORDERED.**

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

Aquino, J., concurred. Petitioner should pay immediately the sum of P75 upon receipt of this decision. The CFI should decide this case as soon as possible.

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[1] Section 2, Rule 40, Rules of Court.

[2] p. 48, Rollo.

[3] p. 12, Rollo.

[4] p. 13, Rollo.

[5] Gregorio vs. Mencias, 6 SCRA 121.

[6] pp. 41, 52, 58, 60, 62, Rollo.

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