

**MERVILLE DEVELOPMENT CORPORATION, PETITIONER, VS.
ROSARIO G. DIMAYUGA, JUDGE EMILIO SALAS OF THE COURT OF
FIRST INSTANCE OF RIZAL, PASIG BRANCH I, AND COURT OF
APPEALS, RESPONDE...***G.R. No. 54587. December 15, 1982*

Ponente: AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-54587/>**AQUINO, J.:**

This case is about the dismissal of an appeal allegedly because the record on appeal was not filed on time. Merville Development Corporation appealed from the trial court's decision, ordering it to accept the sum of P45,397.52 as the balance of the purchase price of a residential lot and to execute a deed of sale in favor of Asuncion G. Aviado, the principal of plaintiff Rosario G. Dimayuga, and to deliver the corresponding Torrens title to Dimayuga and pay her P55,000 as exemplary damages and attorney's fees (pp. 25-26, Rollo).

Merville's counsel received a copy of that decision on February 12, 1980. Nine days later, or on February 21, he filed a notice of appeal and posted a cash appeal bond. On March 12, or one day before the expiration of the thirty-day reglementary period for perfecting its appeal, Merville's counsel sent by registered mail a motion for an extension of fifteen days, or up to March 28, within which to file the record on appeal.

That motion was received in the court more than three weeks later, or only on April 7, 1980, but Dimayuga's counsel received his copy by registered mail on March 27. He opposed the motion. On March 28, Merville sent to the court by registered mail its record on appeal.

Because the opposing counsel and the lower court thought at first that no such motion for extension had been filed, Dimayuga on March 19 filed a motion to dismiss the appeal and for execution. It was granted on the following day, March 20. That motion was not set for hearing. Movant merely directed the clerk of court to submit it for resolution on March 19, the day it was filed. A writ of execution was issued on March 25.

On March 31, Merville filed a motion for the reconsideration of the order dismissing its appeal and granting execution. It alleged that it had filed the said motion for extension to file its record on appeal (the motion was still in the mails). Dimayuga opposed the motion.

The trial court denied it in its order of April 22, although at that time Merville's oft-mentioned motion for extension and its record on appeal had already been received by the court and were a part of the expediente. In fact, the record on appeal reached the court on April 14, 1980.

Merville then filed in the Court of Appeals a petition for certiorari and mandamus wherein it assailed the trial court's order dismissing its appeal and granting execution. The Appellate Court in its decision dated June 30, 1980 upheld the said order (Merville Development Corporation vs. Judge Salas, et al., CA-G. R. No. 10773-SP.). From that decision, Merville appealed to this Court.

We hold that the Court of Appeals and the trial court erred in not giving due course to Merville's appeal. Its motion for an extension of fifteen days within which to file the record on appeal was filed on time and the record on appeal was submitted within the fifteen-day period.

Not to allow the appeal under those circumstances would be a manifest injustice. The trial court acted precipitately in dismissing the appeal. It could have taken judicial notice of the well-known inefficiency of the mail service.

In dismissing Merville's appeal, the trial court relied on *Bello and Ferrer vs. Fernando*, 114 Phil. 101. That case, where the appellant filed a motion for extension of the period within which to file the record on appeal and appeal bond, is easily distinguishable from the instant case. Here, the appeal bond was filed within the thirty-day reglementary period. The period for filing the appeal bond is not extendible.

The record on appeal filed by Merville consists of forty pages. It was submitted by lawyer Evaristo P. Velicaria for Felix E. Padua, Merville's counsel of record in the trial court.

Velicaria stated under oath in his motion for the reconsideration of the decision of the Court of Appeals that Padua, who allegedly did not know how to type and who had no stenographer, asked Velicaria to assist him (Padua) in preparing the record on appeal, since Velicaria knows how to type, and that because the two lawyers could not afford to hire a stenographer, Velicaria typed the record on appeal whenever there was no other more urgent: legal work to perform (p. 16, Rollo).

WHEREFORE, the decision of the Court of Appeals and the trial court's order dismissing the appeal are reversed and set aside! The trial court is directed to give due course to the appeal of Merville Development Corporation and to act on its record on appeal. Rosario G. Dimayuga is given ten days from notice of the receipt of the record in the lower court to interpose her objections, if any, to the record on appeal. No costs.

SO ORDERED.

Makasiar (Chairman), Guerrero, Abad Santos and De Castro, JJ., concur.
Concepcion Jr. and Escolin, JJ., took no part.

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