

**CLEMENTE FONTANAR, DIOSDADO PELAYO, ANTONIO PELAYO, JR.,
AND NORMA S. PELAYO, PETITIONERS, VS. RUBEN BONSUBRE,
LEONARDO BONSUBRE, HON. BERNARDO LL. SALAS, PRESIDING
JUDGE, CFI O...**

G.R. No. 56315. November 25, 1986

Ponente: FERNAN, J.

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FERNAN, J.:

The sole issue to be resolved in this petition for review on certiorari is: Does the appellant's failure to pay the appellate court docket fee within the fifteen-day reglementary period result in the automatic dismissal of his appeal?

In Civil Case No. 173, an action for damages entitled "Ruben Bonsubre, et. al., versus Diosdado Pelayo, et. al.", the then Municipal Circuit Court of Bogó-San Remigio, Cebu, found herein petitioners jointly and severally liable to private respondents in the amounts of P6,829.10 as actual damages, P1,000.00 as moral damages, P600.00 as exemplary damages, P800.00 as attorney's fees, plus interest on said amounts from the time the complaint was filed until fully paid, and costs of the suit.[1] Following receipt of the decision dated September 1, 1978 and within the reglementary period, petitioners filed with the municipal circuit court by registered mail a notice of appeal[2] and appeal bond dated September 25, 1978[3]. Private respondents filed a motion to dismiss the appeal dated October 23, 1978 on the ground that petitioners failed to comply with the provisions of Section 2, Rule 40 of the Rules of Court on perfection of appeal as they have not delivered any postal money order for the amount of the appellate court docket fee nor presented a certificate from the municipal treasurer showing that they have deposited such appellate court docket fee within the 15-day reglementary period which lapsed on September 4, 1978.[4] Petitioners opposed the motion to dismiss appeal[5], attributing their failure to pay the appellate court docket fee to the fact that they were awaiting notice from the Clerk of Court of the Municipal Circuit Court of Bogó-San Remigio on the exact amount of said fee.

On November 13, 1978, the Municipal Circuit Court issued an order dismissing the appeal of petitioners for failure to perfect the same within the 15-day reglementary period pursuant to Section 2, Rule 40 of the Rules of Court.[6] Petitioners filed a motion for reconsideration, but the same was likewise denied in an order dated November 29, 1978.[7]

Assailing the aforesaid order of dismissal of appeal as having been issued with grave abuse of discretion amounting to lack of jurisdiction, petitioners filed on December 26, 1978 a petition for certiorari with preliminary injunction with the then CFI of Cebu docketed as Civil Case No. 17649, alleging among others, that unless restrained, respondent Judge Galicano C. Arriesgado of the Municipal Circuit Court of Bogó-San Remigio will order the execution of the decision in Civil Case No. 173 to the great prejudice and injustice to petitioners.

After private respondents' answer to the petition had been filed, the parties were required to submit their respective memorandum in an order dated March 30, 1979.[8] For failure of petitioners to file their memorandum,

the CFI of Cebu, Branch VIII dismissed the case on May 7, 1979,[9] but on a motion for reconsideration, the order of dismissal was lifted and set aside on June 14, 1979.[10]

On November 9, 1979, a decision[11] was rendered by the then CFI of Cebu, Branch VIII dismissing the petition for certiorari with preliminary injunction declaring, among others, that the payment of the appellate court docket fee is mandatory for the purpose of perfecting an appeal, thus:

"x x x This Court cannot draw a parallel situation in the matter of payment of the docket fee on an appeal from the inferior court to the CFI, on one hand, with that of payment of the docket fee by reason of an appeal from the CFI to the Court of Appeals. In the former, tender is jurisdictional. In the latter, an appeal is perfected by mere submission of the notice of appeal, the appeal bond and the record on appeal. Otherwise stated, payment of the docket fee on appeal from the CFI is not mandatory. x x x"

Hence, this petition, praying that the decision of the then CFI of Cebu, Branch VIII in Civil Case No. 17649 be set aside; that petitioners be allowed to pay the appellate court docket fee in Civil Case No. 173 and that the appeal be given due course.

The issue raised, as above stated has been squarely resolved under a similar set of circumstances in the case of *NAWASA vs. Secretary of Public Works and Communications*, 16 SCRA 536 (1966) wherein this Court, speaking thru Justice J. B. L. Reyes, laid down the rule that in appealed cases, the failure to pay the appellate court docket fee does not automatically result in the dismissal of the appeal, much less affect the court's jurisdiction, the dismissal being discretionary in the appellate court, and that this rule is applicable by analogy to Courts of First Instance in the exercise of the appellate jurisdiction conferred upon them. Thus:

"In its first assignment of error, the defendant Secretary contends that, admitting that the *NAWASA's* complaint in (sic) appeal was sent by registered mail on the last of the 30 days allowed by the Irrigation Act for appealing the administrative decision to the court of competent jurisdiction, still the complaint may not be deemed to have been filed on the same day, for the reason that there is no showing that the filing fees were simultaneously paid.

"The appellant's argument, however, fails to take into account that, in appealed cases, failure to pay the docketing fees does not automatically result in the dismissal of the appeal; the dismissal is discretionary in the appellate court. Rule 141, Section 3, speaking of the fees of the clerk of the Court of Appeals or the Supreme Court, provides that:

'If the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceeding.'

"The rule quoted is applicable by analogy to the Court of First Instance of Manila in the instant case, since the Court was exercising appellate jurisdiction conferred upon it by law to review administrative decisions under the Irrigation Act."

In the subsequent cases of *Favis vs. Municipality of Sabangan*, 27 SCRA 92 (1969), *Lopez vs. Court of Appeals*, 75 SCRA 401 (1977), *Panes vs. Court of Appeals*, 120 SCRA 509 (1983) and more recently in the case of *Del Rosario & Sons Logging Enterprises, Inc. vs. National Labor Relations Commission, et. al.*, 136 SCRA 669 (1985), this Court not only emphasized the rule that the failure to pay the appellate court docket fee within the 15-day reglementary period confers a directory, not mandatory power to dismiss the proposed appeal, but further stated that such power should be used in the exercise of the Court's sound discretion "in accordance with the tenets of justice and fair play"[12] and with a great deal of circumspection considering all attendant circumstances.[13]

In *Siquenza vs. Court of Appeals*, 137 SCRA 570 (1985), this Court restated the importance and real purpose of

the remedy of appeal as an essential part of our judicial system[14] and advised the courts to proceed with caution so as not to deprive a party of the right to appeal[15] with the instruction that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.[16] Rightly so, for the payment of the appellate court docket fee is not a requirement for the protection of the prevailing party, and non-compliance therewith within the time prescribed causes no substantial prejudice to anyone.[17]

In the instant case, petitioners as early as October 30, 1978 in their opposition to the motion to dismiss appeal, prayed that they be allowed to pay the appellate court docket fee. They recognized that the payment of appellate court docket fee is a requirement for the perfection of an appeal under the Rules of Court, but attributed their failure to pay said fee to the fact that they were awaiting notice from the Clerk of Court on the exact amount thereof. Taken in the light of the liberal stance adopted by this Court regarding the payment of appellate court docket fee, as enunciated in *Lopez vs. Court of Appeals*, supra, that:

"To apply to petitioners the legal requirements strictly, would not only tend to block the right of review to which a party is entitled under the law, but also would amount to a complete departure from what We said in the cases of *Philippine National Bank vs. Philippine Milling Co., Inc.*, et. al. (26 SCRA 712, 715) and reiterated in *Maqui & Maqui vs. Court of Appeals*, et. al. (L-41609, February 24, 1976, 69 SCRA 368) that the provisions of Section 1, Rule 50 of the Revised Rules of Court, which provides grounds for dismissal of appeal "manifestly confers a power and does not impose a duty. What is more, it is directory, not mandatory. Hence, it should be exercised with a great deal of circumspection, considering all the attendant circumstances."

the reason given by petitioners is satisfactory. The re-jection by the Municipal Circuit Court thereof and the consequent dismissal of petitioners' appeal resulted in a too rigid application of the Rules of Court which We cannot countenance.

Under Section 20 of the Interim Rules and Guide-lines[18] issued by this Court on January 11, 1983 relative to the implementation of the Judiciary Reorganization Act of 1981 (B.P. Blg. 129), the only requirement for taking an appeal from the judgment or order of the metropolitan trial courts, municipal trial courts or municipal circuit courts to the regional trial courts, in cases where no record on appeal is required, is the filing of a notice of appeal, Said appeal is deemed perfected upon the expiration of the last day to appeal by any party pursuant to Section 23 of the said Interim Rules.[19] In view of this, the proposed appeal of herein petitioners from the decision of the then Municipal Circuit Court of *Bogo-San Remegio*, Cebu in Civil Case No. 173 may be allowed. The Branch of the Regional Trial Court of Cebu to which this case will be assigned on appeal shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Court pursuant to Section 22, B.P. Blg. 129[20] and Section 21 of the Interim Rules and Guidelines.[21]

WHEREFORE, in view of the foregoing, the decision of the then Court of First instance of Cebu, Branch VIII dated November 9, 1979 in Civil Case No. 17649 and the order of the then Municipal Circuit Court of *Bogo-San Remegio* dated November 13, 1978 in Civil Case No. 173, are both SET ASIDE, and the then Municipal Circuit Court of *Bogo-San Remegio*, Cebu is hereby ordered to transmit the original record of Civil Case No. 173 to the appropriate Regional Trial Court of Cebu for disposition on the merits of the appeal. No costs.

SO ORDERED.

Feria, (Chairman), Alampay, Gutierrez, Jr., and Paras, JJ., concur.

[1] pp. 65-73, Records.

[2] Annex "A", Petition, p. 23, Rollo.

[3] Annex "B", Petition, p. 24, Rollo.

[4] Annex "C", Petition, p. 25, Rollo.

[5] Annex "D", Petition, p. 26, Rollo.

[6] p. 12, Records.

[7] p. 16, Ibid.

[8] p. 47, Records.

[9] p. 82, Ibid.

[10] p. 102, Ibid.

[11] p. 104, Ibid.

[12] PNB vs. Philippine Milling Co., 26 SCRA 712, 715 (1969); Gregorio vs. Court of Appeals, 72 SCRA 120 (1976); Maqui & Maqui vs. Court of Appeals, 69 SCRA 368 (1976),

[13] Lopez vs. Court of Appeals, 75 SCRA 401 (1977).

[14] Castro vs. Court of Appeals, 132 SCRA 782 (1984).

[15] NAWASA vs. Municipality of Libmanan, 97 SCRA 138 (1980).

[16] A-One Feeds, Inc. vs. Court of Appeals, 100 SCRA 590 (1980).

[17] Lopez vs. Court of Appeals, 75 SCRA 401 (1977).

[18] "20. Procedure for taking appeal. - An appeal from the metropolitan trial courts, municipal trial courts or municipal circuit trial courts to the regional trial courts, and from the regional trial courts to the Intermediate Appellate Court in actions or proceedings originally filed in the former shall be taken by filing a notice of appeal with the court that rendered the judgment or order appealed therefrom."

[19] "23. Perfection of appeal. - In cases where appeal is taken, the perfection of the appeal shall be upon the expiration of the last day to appeal by any party."

[20] "Section 22. Appellate Jurisdiction. - Regional Trial Courts shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions. Such cases shall be decided on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or re-quired by the Regional Trial Courts. The decision of the Regional Trial Courts in such cases shall be appealable by petition for review to the Intermediate Appellate Court which may give it due course only when the petition shows prima facie that the lower court has committed an error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed."

[21] "21. Appeal to the regional trial courts.

"(a) All cases decided by metropolitan trial courts and municipal circuit trial courts may be appealed to the regional trial court exercising jurisdiction over the area to which they pertain.

"(b) 'Within five (5) days from the perfection of the appeal, it shall be the duty of the clerk of court to transmit

the original record, or the record on appeal as the case may be to the appropriate regional trial court.

"(c) Upon receipt of the original record, or of the record on appeal, and of the transcripts and exhibits, the clerk of court of the regional trial court shall notify the parties of such fact.

"(d) Within fifteen (15) days from receipt by the parties of the notice referred to in the preceding paragraph, they may submit memoranda and/or briefs, or be required by the regional trial court to do so. After the submission of such memoranda and/or briefs, or upon the expiration of the period to file the same, the regional trial court shall decide the case on the basis of the entire record of the proceedings and in the court of origin and such memoranda and/or briefs, as may have been filed."

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