

MAXIMIANO TUASON, PETITIONER, VS. HON. SANTIAGO RANADA, JR., AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XIX, THE PROVINCIAL SHERIFF OF RIZAL AND NATIONAL INVESTMEN...

G.R. No. 58006. January 17, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This petition for certiorari, prohibition and mandamus with prayer for Temporary Restraining Order presents for review the Order dated August 3, 1981 of respondent judge Santiago Ranada, Jr. of the Court of First Instance of Rizal, Branch XIX, which denied petitioner's motion for reconsideration of a prior Order dismissing his appeal.

It appears that on June 19, 1979, private respondent National Investment and Development Corporation (NIDC for short) filed before the CFI of Rizal, Branch XIX, presided by respondent judge, a complaint for sum of money against herein petitioner and ten (10) other defendants, which case was docketed as Civil Case No. 33580. On August 27, 1980, a partial decision was rendered against petitioner ordering him "to pay to private respondent NIDC the sum of P206,380.47, representing the unpaid balance of the loan and to pay the amount equivalent to 10% of the total amount due, as attorney's fees and costs of the suit."

Petitioner received copy of the adverse decision on September 15, 1980. On October 15, 1980, he filed a motion for reconsideration of decision, which was denied by respondent judge in an Order dated February 5, 1981. Petitioner received copy of such Order on February 18, 1981. On February 19, 1981, or on the last day for filing an appeal, petitioner appealed from respondent judge's decision of August 27, 1980.

On May 7, 1981, respondent judge issued an Order^[1] dismissing the appeal on the ground that the appeal was not perfected within the reglementary period, since only the notice of appeal and record on appeal were filed on February 19, 1981, the appeal bond having been posted only on March 6, 1981.

On June 11, 1981, petitioner filed a Motion for Reconsideration of the May 7, 1981 Order pointing out that his cash appeal bond, together with his Notice of Appeal and Record on Appeal, were all filed by registered mail on time, that is, on February 19, 1981.

On July 1, 1981, respondent judge issued, on motion of respondent NIDC, another Order directing the issuance of a Writ of Execution.

On August 3, 1981, respondent judge issued the questioned Order,^[2] as follows:

"Plaintiff Maximiano Tuason filed a Motion for Reconsideration dated 9 June 1981 alleging that he has filed a cash bond together with the record on appeal by mail on 19 February 1981 well within the time for perfecting an appeal and hence the date to consider was the time of mailing and not the receipt of the Court.

"Upon verification by the Court, it appears that although indeed defendant Tuason mailed his cash bond on 19

February 1981, the same was not paid and turned over to the Cashier of this Court as the same was insufficient.

"WHEREFORE, in view of the above, the appeal bond was not deposited or paid within the reglementary period and hence filed out of time. The motion for reconsideration is hereby denied for lack of merit.

"Consequently, the motion to lift order dated 1 July 1981 is hereby denied."

On September 7, 1981, the Clerk of Court issued a writ of execution for the enforcement of the partial decision in Civil Case No. 33580. Hence, the present petition seeking to review, set aside and declare null and void the Order of August 3, 1981 and the writ of execution issued on September 7, 1981; to prohibit respondent judge and respondent Provincial Sheriff of Rizal from enforcing the partial decision dated May 26, 1981 and the writ of execution; to command respondent judge to approve and certify or otherwise act on petitioner's Record on Appeal; and pending these proceedings, to issue a Temporary Restraining Order enjoining Provincial Sheriff of Rizal from enforcing the writ of execution.

Per Resolution of January 27, 1982, this Court issued a Temporary Restraining Order restraining respondent judge and respondent Provincial Sheriff from enforcing and/or carrying out the partial decision dated August 27, 1980.

Petitioner submits that respondent judge committed grave abuse of discretion when it dismissed petitioner's appeal for failure to perfect the same within the reglementary period on the ground that petitioner's cash appeal bond of P120.00, which was filed by registered mail on the last day of the reglementary period was not considered posted on time because it was short of sixty centavos (60¢) which amount was not even a part of the bond but was supposed to be the commission of the Provincial Treasurer for acting as cashier of the court.

Private respondent NIDC, on the other hand, maintains that respondent judge did not act with grave abuse of discretion in dismissing petitioner's appeal since only the notice of appeal and record on appeal were filed on February 19, 1981, the cash appeal bond and the amount of 60¢ having been deposited only on March 6, 1981.

The petition is impressed with merit.

Although the records before Us does not show that indeed petitioner Tuason filed his appeal bond on February 19, 1981, We take note that in the Order of August 3, 1981, respondent judge made the following finding of fact as follows:

"Upon verification by the Court, it appears that although indeed defendant Tuason mailed his cash bond on 19 February 1981, the same was not paid and turned over to the cashier of this Court as the same was insufficient."

It is thus manifest that petitioner Tuason has mailed his appeal bond on February 19, 1981, well within the reglementary period. If, indeed, petitioner has mailed his appeal bond on February 19, 1981, then said date of mailing shall be considered as the date of its filing, and consequently the date of its payment and deposit in court, pursuant to Section 1, Rule 13 of the Revised Rules of Court, which provides:

"Section 1. Filing with the court, defined.— The filing of pleadings, appearances, motions, notices, orders and other papers with the court as required by these rules shall be made by filing them personally with the clerk of the court or by sending them by registered mail. In the first case, the clerk shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment or deposit in court. The envelope shall be attached to the record of the case." (Italics supplied)

Respondent judge, therefore, was in error when it ruled that petitioner's cash appeal bond was filed out of time

just because the same was not deposited or paid within the reglementary period.

What does respondent judge mean, then, when he said that petitioner's cash appeal bond was not paid and turned over to the cashier of the court as the same was "insufficient"? The official receipts^[3] issued by the cashier of the court show that the cash appeal bond of P120.00 and the amount of sixty centavos (60¢), corresponding to the alleged "commissioner's fee" were both paid on March 6, 1981. Respondent judge, however, found that the appeal bond was mailed on February 19, 1981. As correctly submitted by petitioner, it would seem that no official receipt for the appeal bond was issued because it was short of 60¢. The receipt was issued only on March 6, 1981 when petitioner deposited the amount of 60¢ which, he was so informed, represents the alleged "commissioner's fee." Respondent judge obviously considered the appeal bond as having been filed and paid only on that date (March 6, 1981) when petitioner was issued the official receipts for the appeal bond and the amount of 60¢, not on the day of the mailing.

Under the circumstances, in dismissing petitioner's appeal, respondent judge acted with grave abuse of discretion. In the first place, Section 5, Rule 41 of the Revised Rules of Court prescribes that the appeal bond in an appeal from a decision of the Court of First Instance is only P120.00 unless the court shall fix a different amount. The rule does not require any commission to be paid. At any rate, it may not be seriously disputed that petitioner has substantially complied with the requirement of the rule relative to the filing of an appeal bond, and so it was error for the court to have dismissed the appeal.^[4]

It would be most unfair if the appeal be defeated on a mere technicality considering that the decision appealed from condemns the petitioner to pay an amount of P206,380.47 just for unintentionally and innocently not paying the measly sum of sixty centavos (60¢), which is not even a part of the appeal bond.

WHEREFORE, the writs prayed for are hereby granted; the Order of respondent judge dated August 3, 1981 is declared null and void and set aside; and respondent judge is hereby ordered to give due course to the appeal. The Temporary Restraining Order issued per Resolution of January 27, 1982 is hereby made permanent. No costs.

SO ORDERED.

Makasiar, Aquino, Concepcion Jr., Guerrero and Escolin, JJ., concur.
Abad Santos, J., took no part.

[1] page 74, Rollo.

[2] Annex A to the Petition, p. 14, Rollo.

[3] Annex E and Annex E1 to the Petition, p. 53, Rollo.

[4] See *Reñosa vs. Yatco, et al.*, 109 Phil. 740, and *Contreras vs. Dinglasan*, 79 Phil. 42.

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