

JOSE V. PANES, PETITIONER, VS. COURT OF APPEALS, JUDGE FILOMENO GAPULTOS, IN HIS CAPACITY AS PRESIDING JUDGE OF THE CFI OF SOUTH COTABATO, BRANCH II, AND PABLO ABANDONIO, RESPON...

G.R. No. 58321. January 31, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Appeal by Certiorari from a Resolution of the Court of Appeals,[1] promulgated on January 30, 1981, dismissing the Petition for Review of the Decision of the Court of First Instance of South Cotabato, Branch II, in CA-G.R. No. SP-11966, for having been filed out of time, as well as the Resolution dated May 22, 1981, denying the Motion for Reconsideration.

The case traces its origin from the Municipal Court of Banga, South Cotabato, in Civil Case No. 130, entitled "Jose V. Panes vs. Pablo Abandonio" for "Forcible Entry and Damages with Writ of Preliminary Injunction", wherein decision was rendered in favor of petitioner. Said Decision was appealed to respondent Court of First Instance of South Cotabato, Branch II, in Civil Case No. 311, which reversed the judgment of the Municipal Court of Banga.[2]

Petitioner received a copy of the CFI Decision on September 19, 1980. The reconsideration prayed for by petitioner was denied by that Court.

On December 4, 1980, petitioner filed with the Court of Appeals (by registered mail) a Motion for Extension of thirty days within which to file a Petition for Review, manifesting that he had up to December 9, 1980 within which to do so. The Motion was received in the Appellate Court on December 18, 1980. The thirty-day-period petitioner requested would have extended up to January 8, 1981.

On January 5, 1981, the Acting Clerk of Court of respondent Appellate Court sent to petitioner's counsel, by registered mail, a letter advising him that the Motion for Extension was received by said Tribunal without the necessary docketing fees and required petitioner to remit said fees and the legal research fund fee, pending which, his Petition was to be held in abeyance.

Prior to the receipt of the Appellate Court's registered letter on January 20, 1981, or on January 8, 1981, which was the 30th day of the extended period requested, petitioner filed with the Appellate Court, by registered mail, the Petition for Review together with the sum of P53.00 in postal money order representing docket and legal research fund fees.

On January 30, 1981, respondent Appellate Court issued the Resolution assailed herein dismissing the Petition for Review, stating:

"Since the Petition for Extension of Time and the Petition For Review were deemed to have been filed with the

Court on January 8, 1981 when the filing fees have been remitted to this Court and deemed paid, the petition for extension of time was, therefore, filed beyond the period sought to be extended, and consequently, too, the Petition for Review had been filed out of time. As a result, the judgment of the respondent court has long become final."^[3]

Petitioner's Motion for Reconsideration met with denial from respondent Appellate Court on May 22, 1981, premised on the ground that dismissal of the Petition was not on a technicality, as assumed by petitioner, but on a substantial one. In the language of the Appellate Court:

"... Once the period of appeal or period within which a petition for review has expired, then, by force of law, the decision becomes final and executory and the Court loses jurisdiction to disturb, alter or change the decision. This is what petitioner wants to do in his petition for review.

..."^[4]

Hence, this Petition, praying for reversal of the aforementioned Resolutions of respondent Appellate Court on the ground of grave abuse of discretion, to which we gave due course.

Respondent Appellate Court relied on the ruling in *Ago Timber Corporation vs. Ruiz, et al.*, 21 SCRA 1381 (1967), which held:

"... the date that should be reckoned as the filing of the Petition in Special Civil Case No. 182 of the Agusan Court is when the filing fee was paid, that is Nov. 6, 1964, and not when the petition was received on October 24, 1964 (See Sec. 1, Rule 13 and Sec. 1, Rule 141, Rules of Court)."

The circumstances to which that ruling was applied are different, however, from those obtaining herein. There were discrepancies and irregularities in the cited case between the date of receipt of the original action in the form of a petition and the date of the official receipt evidencing payment of the filing fee, thus the ruling therein that it was the latter date that was controlling. Not so in the instant case where the basic issue is whether the Petition for Review has been timely filed.

Rule 141, section 3, of the Rules of Court provides:

"Section 3. Fees to be paid by the advancing party.— The fees of the clerk of the Court of Appeals or the Supreme Court shall be paid to him at the time of the entry of the action or proceeding in the court by the party who enters the same by appeal, or otherwise, and the clerk shall in all cases give a receipt for the same and shall enter the amount received upon his book, specifying the date when received, person from whom received, name of action in which received, and amount received. 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." (Italics supplied)

Clearly, failure to pay the docketing fees does not automatically result in the dismissal of the appeal. Dismissal is discretionary with the Appellate Court,^[5] and discretion must be exercised wisely and prudently, never capriciously, with a view to substantial justice."^[6] Failure to pay the appeal docketing fee confers a directory and not a mandatory power to dismiss an appeal and such power must be exercised with sound discretion and with a great deal of circumspection, considering all attendant circumstances.^[7]

The records show that petitioner had filed a Motion for Extension to file the Petition for Review well within the thirty-day reglementary period, except that counsel had failed to remit the docket fees at the time he moved for extension, and only paid the same simultaneously with the Petition for Review, which he filed on the thirtieth day of the extended period requested. Counsel had literally relied on section 2 of the Rules on Appeal by Petition for Review under RA 6031, adopted by the Court of Appeals en banc on August 12, 1971, requiring that "upon filing

of the petition, the petitioner shall pay to the Clerk of Court of Appeals the docketing fee", and had overlooked the requirements that the petition should be filed within the period for appealing (Sec. 1, *ibid.*), and that the docket fee should be paid "at the time of the entry of the action or proceeding in the court by the party who enters the same by appeal, or otherwise" (Section 3, Rule 141, *supra*). In this case, the period for appealing is thirty days under the old Rules, and the "time of entry" of the "appeal" by petition for review was when the Motion for extension of time to file the petition for review was filed.

Noteworthy also is the fact that even before receipt of the notice from respondent Court's Acting Clerk of Court to remit the fees, pending which, the Petition would be held in abeyance, counsel had already filed the Petition for Review and had paid the fees, thereby showing that late payment was not due to laches, nor to a deliberate refusal to pay those fees, nor any intention to delay the proceedings. Under the circumstances obtaining in the case at bar, the Petition for Review having been filed within the extended period requested, and the fees, although delayed, having been eventually paid the ends of justice would be better served if the rules be not applied with the rigidity of respondent Appellate Court's resolutions.

"There is no dispute that the appeal docket fee was eventually paid. The payment of the appeal 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. It is patent that the delay in the payment was not due to laches or to a desire to delay or defeat the ends of justice. To apply to petitioners the legal requirements strictly would not only tend to block the right to 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.* (26 SCRA 712) and reiterated in *Maqui vs. Court of Appeals* (L-41609, Feb. 24, 1976) that the provision of Section 1, Rule 50 of the Revised Rules of Court, which provides specific 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." [8]

Notwithstanding the conclusion arrived at, and as Mr. Justice Claudio Teehankee had stressed in his Concurring Opinion in *Lopez vs. Court of Appeals*, *supra*, "it cannot be overemphasized that the members of the bar should exert every effort to observe strictly such reglementary periods fixed in the Rules of Court," to ensure the efficient and orderly disposition of cases.

WHEREFORE, the Resolutions of the Court of Appeals dated January 30, 1981 and May 22, 1981, respectively, are SET ASIDE, and the Petition for Review in CA-G.R. No. SP-11966 is ordered reinstated.

No costs.

SO ORDERED.

Teehankee (Chairman), Relova and Gutierrez, Jr., JJ., concur.

Vasquez, J., pls. see concurring opinion.

Plana, J., on official leave.

[1] Per Elias B. Asuncion, J., concurred in by Porfirio V. Sison and Mariano A. Zosa, JJ.

[2] pp. 8-9, Rollo.

[3] p. 2, Resolution, p. 21, *ibid.*

[4] Annex "D", p. 26, *ibid.*

[5] NAWASA vs. Secretary of Public Works and Communications, 16 SCRA 536, 539 (1966).

[6] Cucio vs. Court of Appeals, 57 SCRA 64, 68 (1974).

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

[8] Lopez vs. Court of Appeals, supra.

CONCURRING OPINION

VASQUEZ, J.:

While I concur in the result arrived at in the main opinion, I would like to express my views as to certain aspects of this case which, to My mind, need some elucidation:

- I believe that the Court of Appeals erred in relying on Ago Timber Corporation vs. Ruiz, et al., 21 SCRA 1381, because the ruling therein has no reference to the payment of the docket fee in connection with an appeal, but rather on the filing of an original action in the form of a petition. The said case involves the determination of which of two cases had been filed earlier for the purpose of resolving a motion to dismiss based on the pendency of another action between the same parties for the same cause. It does not involve the determination of whether an appeal had been taken on time by the payment of the appellate docket fee within the proper period, which is the question raised in the case at bar.

- It is also my opinion that the instant case is not governed squarely by Section 3 of Rule 141 of the Rules of Court. There is nothing in said Rule which requires that the docket fee on appeal should be paid at the same time that a motion for extension to file a petition for review is filed. Indeed, there is no provision in the entire Rules of Court that so requires.

Section 3 of Rule 141 obligates the appealing party to pay the docket fee "at the time of the entry of the action of the proceeding in the court by the party who enters the same by appeal or otherwise." To say that an appeal is entered when a motion for extension of time to appeal is filed is not entirely free from doubt. Moving for extension of the period to file a petition for review is not necessarily "entering" the appeal which may not even be filed at all. Whatever may be the existing practice in this regard, it may not prevail over the express provision governing the same. With respect to the petition for review involved in the case at bar, it is explicitly prescribed in Section 2 of the Resolution of the Court of Appeals dated August 12, 1971 which governs the procedure for such kind of appeals, that the docketing fee shall be paid "upon the filing of the petition." This is exactly what the petitioner herein had done.

- It is accordingly My opinion that the petitioner had not been guilty of any delay or transgression of any provision of the Rules which may be overlooked or excused under a liberal interpretation of the Rules. He simply complied with what is required under the circumstance obtaining and in accordance with the rule laid down in respect thereto. The Court of Appeals was the one that committed error in not seeing to it in that light.

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