

PANTRANCO NORTH EXPRESS, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND FELIXBERTO N. BOQUIREN, RESPONDENTS.

G.R. No. 59280, October 27, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Assailed in this petition for certiorari and mandamus are the Resolutions of the respondent Court of Appeals [now the Intermediate Appellate Court], dated September 9, 1981, October 19, 1981 and December 1, 1981, which dismissed the appeal of petitioner Pantranco North Express Inc. on the sole ground that the appeal docket fee was paid to the trial court, and not to the appellate court.

The antecedent facts are undisputed.

On May 15, 1980, the Court of First Instance of Rizal, after due trial, rendered a decision in Civil Case No. Q-22351, ordering petitioner Pantranco North Express, Inc. to pay respondent Felixberto Boquiren the following amounts: P23,291.00, as actual damages; P50,000.00 as moral and exemplary damages; P10,000.00 as attorney's fees, plus costs.[1]

On June 20, 1980, or within the reglementary period for perfecting the appeal, petitioner filed a notice of appeal, appeal bond and record on appeal. The trial court approved the record on appeal[2], and the records were accordingly elevated to the appellate court.

On August 31, 1981, the respondent appellate court issued a Resolution, dismissing the appeal as follows:

"The record shows that on June 29, 1981, this Court sent a letter of notice to the counsel for the appellant [petitioner herein] requiring him to pay and remit the docketing fee, within fifteen (15) days from receipt thereof. The notice was received by the said counsel, presumably on July 13, 1981, when the registry return card was stamped by the local post office. The period expired on July 13, 1981 [sic], but since then the fee was not remitted. In view thereof, it may justly be assumed that the appellant has abandoned the appeal. Hence, it must be dismissed.

"WHEREFORE, the instant appeal is hereby dismissed, with-out pronouncement as to costs." [Annex "A", Petition]

Petitioner filed a motion for reconsideration of the above order, pointing out that on July 16, 1981, or three (3) days after receipt of the notice requiring payment of the docket fee, petitioner did pay said fee to the trial court, as evidenced by official receipt No. 5399641. Petitioner further alleged that its appeal was based on meritorious grounds and that it had no intention of abandoning the same.

On October 19, 1981, respondent court issued the second questioned Resolution, stating that:

"Upon consideration of the Motion for Reconsideration of the Resolution dated August 31, 1981, filed by

counsel for the appellant, praying this Honorable Court to set aside its resolution dated August 31, 1981, and the opposition there-to; RESOLVED TO DENY its motion for reconsideration." [Annex "B", Petition]

On November 9, 1981, petitioner filed a "Motion to Reinstate Appeal"[3], alleging that the erroneous payment of the docket fee with the trial court instead of the appellate court was excusable, having been "due to honest mistake and misapprehension of an inexperienced messenger who thought that Court of Appeals is the same as Court of First Instance." It further argued that since the amount remitted through the messenger was really intended for payment of the appellate court's docket fee, the erroneous payment made with the lower court constituted substantial compliance with the Rules of Court, which must be interpreted liberally; and that should the appellate court not consider or recognize such payment, petitioner was willing to pay anew the docket fee to the appellate court as the latter may direct or order.

Such plea notwithstanding, the respondent Court issued on December 1, 1981 its third Resolution, as follows:

"Upon consideration of the Motion to Reinstate Appeal, filed by counsel for the defendant-appellant; RESOLVED TO DENY said motion to re-instate appeal." [Annex "C" Petition]

Hence, this petition.

We find the petition impressed with merit.

While the respondent appellate court has the power to dismiss an appeal for failure of the appellant to pay the docket fees[4], the circumstances obtaining in this case amply support petitioner's posture that it had substantially complied with the requirements of the rule. The erroneous payment to the trial court had been adequately explained as having been "due to honest mistake and misapprehension of an inexperienced messenger who thought that Court of Appeals is the same as Court of First Instance." Obviously, the amount sent through petitioner's "inexperienced messenger" was really intended to cover the appellate court's docket fee. Given these circumstances, the respondent Court should have ordered the trial court to remit the amount erroneously paid therewith, instead of insisting in its resolutions of dismissal. The timely payment made by petitioner should have merited the leniency of the respondent Court. In the spirit of liberality and fairness, the appeal may be given due course to afford petitioner every opportunity to establish the merits of its appeal without the constraints of technicality. Needless to add, the discretionary power to dismiss appeals must always be exercised prudently, never capriciously, in order to dispense substantial justice.

ACCORDINGLY, the writs prayed for are hereby granted and the questioned Resolutions are set aside. This case is remanded to the Intermediate Appellate Court for further proceedings and prompt disposition of petitioner's appeal on its merits. No costs.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, and Gutierrez, Jr., JJ., concur.
Makasiar, (Chairman), and Abad Santos, JJ., no part.
De Castro, J., on sick leave.

[1] p. 42, Rollo.

[2] p. 42, Rollo.

[3] Annex M, Petition.

[4] Section 1[d], Rule 50 of the Rules of Court; *Dorego vs. Perez*, 22 SCRA 8.

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