

WILFREDO VERDEJO, PETITIONER, VS. THE HON. COURT OF APPEALS, HON. SOFRONIO G. SAYO, PRESIDING JUDGE, RTC, BR. III, PASAY CITY, AND HERMINIA PATINIO, ET AL., RESPONDENTS.

G.R. No. 77735. January 29, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

Petition for review on certiorari of the decision[*] rendered by the respondent appellate court, dated 28 November 1986, in CA-G.R. No. SP-10429 entitled: "Wilfredo Verdejo, petitioner, versus Hon. Sofronio Sayo, etc., et al., respondents", which dismissed the petition to annul and set aside the order, dated 8 October 1986, directing the issuance of a writ of execution in Civil Case No. 2546-P of the Regional Trial Court of Pasay City, as well as the Resolution, dated 5 March 1987, which denied the petitioner's motion for reconsideration of said decision of 28 November 1986.

The pertinent facts of the case are as follows:

On 20 December 1984, the herein petitioner filed a complaint against the private respondent Herminia Patinio and one John Doe before the Regional Trial Court of Pasay City, docketed therein as Civil Case No. 2546-P, for collection of a sum of money amounting to P60,500.00, which said Herminia Patinio had allegedly borrowed from him but failed to pay when it became due, notwithstanding demands[1].

Answering, Herminia Patinio admitted having obtained loans from the petitioner but claimed that the amount borrowed by her was very much less than the amount demanded in the complaint, which amount she had already paid or settled, and that the petitioner had exacted or charged interest on the loan ranging from 10% to 12% per month, which is exorbitant and in gross violation of the Usury Law. Wherefore she prayed that she be reimbursed the usurious interests charged and paid. She also asked for damages, attorney's fees and costs of suit[2].

After trial, or on 3 September 1986, the trial court rendered judgment, as follows:

"WHEREFORE, judgment is hereby rendered dismissing plaintiff's complaint for lack of merit.

"On defendants' counterclaim, plaintiff is hereby ordered to refund to defendants the amount of P13,890.00 and to further pay to defendants the amount of P5,000.00 as attorney's fees and the costs of this suit"[3].

Counsel for the petitioner received a copy of the trial court's decision on 5 September 1986, and on 19 September 1986, he sent a notice of appeal to the court by special delivery. The notice of appeal was received by the court on 26 September 1986. On that same day, the court also received the motion for execution filed by the private respondent, Herminia Patinio[4].

The petitioner opposed the motion claiming that he had already filed a notice of appeal through the mail so that the motion for execution was improper[5].

The private respondent, however, replied that the petitioner's notice of appeal was filed beyond the reglementary period and reiterated her prayer for the issuance of a writ of execution[6].

Resolving the matter, the trial court issued an Order on 8 October 1986, the dispositive part of which reads as follows:

"WHEREFORE, as plaintiff's Notice of Appeal was filed beyond the reglementary period, the same is hereby DENIED.

"As the judgment rendered herein has become final and executory, let the corresponding Writ of Execution issue to enforce the same"[7].

Thereafter, the petitioner filed a petition for certiorari before the Court of Appeals, docketed therein as CA-G.R. No. SP-10429, to annul said Order of 8 October 1986[8]. The appellate court, however, as aforesated, dismissed the petition in a Decision dated 28 November 1986[9]. The petitioner filed a motion for reconsideration of the decision, but his motion was denied in a Resolution dated 5 March 1987[10].

Hence, the petitioner's present recourse.

The only issue in this petition is whether or not the Court should allow an appeal where the notice of appeal was sent by special delivery mail within the period for perfection of appeals, but received in court after the expiration of said period.

For the proper exercise of the right to appeal, the petitioner should have complied with Section 1, Rule 13 of the Rules of Court which reads as follows:

"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 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".

In justifying his failure to comply strictly with the requirements for perfecting an appeal, as aforesated, the petitioner alleges that his counsel was sick at the time, and in order to beat the deadline for the filing of the appeal, he mailed the notice of appeal by special delivery mail, not knowing that it should be sent by registered mail[11].

We find merit in the petition. The Rules of Court expressly provide that the rules should be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding[12], and in the absence of a clear lack of merit or intention to delay, a case should not be allowed to go off on procedural points or technicality. As much as possible, failure of justice should be avoided[13].

In the instant case, the notice of appeal was sent by special delivery, instead of registered mail. Considering that said notice of appeal was sent within the period for perfection of appeals by the petitioner who, not being a lawyer, is not well versed in the finer points of the law, and, hence, committed an honest mistake; and that the petitioner appears to have a good and valid cause of action, we find that there was substantial compliance with the rules.

The case involves an alleged violation of the Usury Law, where the petitioner was found by the trial court to have charged and collected usurious interests from the private respondent on loans which were first obtained on 15

February 1982, later renewed, and finally culminated with the execution by private respondent of the Deed of Sale with Right of Repurchase on 17 November 1983. This Court has ruled in one case^[14] that with the promulgation of Central Bank Circular No. 905, series of 1982, usury has become "legally inexistent" as the lender and the borrower can agree on any interest that may be charged on the loan. This Circular was also given retroactive effect. But, whether or not this Circular should also be given retro-active effect and applied in this case is yet to be deter-mined by the appellate court at the proper time.

Moreover, it appears that the computation of the amount considered as usurious interest is incorrect. The trial court merely added the amounts paid by the private respondent to the petitioner and, thereafter, deducted therefrom the amounts given as loan to the private respon-dent and considered the excess amount usurious, without apparently considering the lawful interest that may be collected on said loans. Only usurious interests may be reimbursed.

To prevent a miscarriage of justice, the petitioner should be allowed to prosecute his appeal.

ACCORDINGLY, the petition is GRANTED. The questioned Decision and Resolution issued by the respondent Court of Appeals on 28 November 1986 and 5 March 1987, respectively, in CA-G.R. No. SP-10429, as well as the Order issued by the Regional Trial Court of Pasay City in Civil Case No. 2546-P on 8 October 1986, are hereby ANNULLED and SET ASIDE and another one entered approving the notice of appeal filed by the petitioner. Without costs.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, and Sarmiento, JJ., concur.

Paras, J., no part, for Justice G. Paras, my wife, penned the decision in the Court of Appeals.

[*] Penned by Justice Gloria C. Paras, with the concurrence of Justices Lorna S. Lombos-Dela Fuente and Celso S. Magsino.

[1] Rollo, p. 13

[2] Id., p. 32

[3] Id., p. 40

[4] Id., p. 72

[5] Id., p. 77

[6] Id., p. 78

[7] Id., p. 43

[8] Id., p. 45

[9] Id., p. 55

[10] Id., p. 57

[11] Id., p. 41

[12] Rule 1, section 2

[13] Co Tiamco vs. Diaz, 75 Phil. 672

[14] Liam Law vs. Olympic Sawmill Co., G.R. No. L-30771, May 28, 1984, 129 SCRA 439

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