

**TURIANO M. SAN ANDRES, DOING BUSINESS UNDER THE
TRADENA??? AND STYLE TRANSWORLD ENTERPRISE, PETITIONER,
VS. THE HON. COURT OF APPEALS, PADMAR ENGINEERING WORKS
AND ORLANDO ALCAN...**

G.R. No. 78341. August 03, 1992

Ponente: NOCON, J.

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NOCON, J.:

Petitioner seeks in his petition for certiorari, prohibition and mandamus to annul and set aside the resolution of the respondent Intermediate Appellate Court dated May 26, 1986[1], in AC-G.R. No. CV 5312 dismissing the appeal "for failure of the defendant-appellant to pay docket fee" and the resolution of the same court dated September 18, 1986[2] issuing the "corresponding entry of judgment" and remanding the records to the court of origin "for execution of judgment", for having been issued with grave abuse of discretion on the part of the appellate court and that petitioner has no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.

The facts as summarized in petitioner's memorandum are not disputed except the allegation that private respondent received a notice of change of address of petitioner's counsel, which are as follows:

"1. In a complaint dated 14 October 1978 and filed on 16 October 1978, respondent Padmar Engineering Works (private respondent) sued petitioner for recovery of the principal sum of P18,464.10, representing cost of repair and machining work done on petitioner's machineries. The complaint was docketed as Civil Case No. 118961 and raffled to Branch VI of the then Court of First Instance, now Regional Trial Court of Manila (Annex 'A', Petition).

"2. On 14 November 1978, petitioner filed his answer to the complaint. The answer was filed by petitioner's counsel, Ledesma, Saludo & Associates, with offices at 3rd Floor, LTR Building, 5548 South Superhighway, Makati, Metro Manila. The answer admitted the obligation sued upon in the complaint, but interposed the defense of 'set-off', petitioner alleging that private respondent was obligated to him in the total amount of P24,000.00, representing the value of 'rollers' that petitioner sold to private respondent.

"3. Issues having been joined, proceedings were held in the trial court. In the course of the trial, on or 23 April 1980, undersigned counsel filed his appearance as counsel for the petitioner 'in collaboration with Ledesma, Saludo & Associates'. Counsel's office address then was at '63 Timog Avenue, Quezon City.'

"4. On 02 September 1981, the lower court rendered judgement, the dispositive portion of which reads:

'IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court is of the opinion and so holds that the offsetting of the obligation of the defendant with the plaintiff cannot be given any weight, as the plaintiff had not known nor had knowledge of the acts of the two job solicitors Cruz and Ortiz, and considering further that the defendant admitted their total obligation with the plaintiff in the total amount of P18,464.10, which cannot be offset by the value of the rollers, defendant is hereby ordered to pay plaintiff the sum of P18,464.10 plus 14% per annum from the date of the corresponding invoices covering the defendant's account, and the further sum of 25%

of the total obligation due plaintiff as for and by way of attorney's fees and to pay the cost of suit. (Annex 'D', Petition)'

"5. From this decision, petitioner interposed his appeal within the period and under the requirements then prescribed by the Rules of Court.

"6. On 02 March 1982, the lower court issued an order approving the record on appeal and directing that all testimonial and documentary evidence be forwarded to the Court of Appeals for purposes of appeal.

"7. Sometime in March, 1983, undersigned counsel moved his law offices from '63 Timog Avenue, Quezon City, to No. 4 Pangilinan Drive, Project 8, Quezon City'. On 13 March 1983, counsel filed with the Court of Appeals and served on counsel for private respondent the corresponding notice of change of address. (Annex 'F', Petition)

"8. On 11 February 1985, the lower court issued an order dismissing the appeal on the ground that 'upon a judicious scrutiny of the record. . . (the Court). . . found out that the defendant failed to prosecute his appeal within the period provided by Section 3 of Rule 46 of the Rules of Court' (Annex 'G', Petition).

9. On 06 March 1985, petitioner filed a motion for reconsideration of the order of 11 February 1985 principally on the ground that the delay in the prosecution of the appeal was caused by the failure of the personnel of the lower court to transmit the records of the case to the appellate court (Annex 'H', Petition).

"10. On 07 March 1985, respondent Court of Appeals issued the following resolution in AC-G.R. No. CV 5312 UDK:

'Acting on the Manifestation and Motion to Dismiss Defendant's Appeal filed on January 3, 1985 by counsel for the plaintiff and considering that copy of the Resolution of January 10, 1985, requiring the appellant to comment within 10 days from notice addressed to appellant's counsel was returned to sender with notation 'no longer connected' and considering further that notice to appellant himself cannot be effected for lack of available records, the Court RESOLVED to deny the same.

'The Court RESOLVED FURTHER, to order the Clerk of Court a quo and the Branch Clerk of Court to elevate the entire records of this case if an appeal had been interposed, within ten days from notice hereof, on pain of being held in contempt. (Annex 'I', Petition)

"11. Copy of the aforesaid resolution was sent to counsel at his former address (63 Timog Avenue, Quezon City). Counsel, therefore, did not receive and could not have received the notice. However, on 19 April 1985, while going over the expediente of the case in the court below in the course of the hearing of petitioner's motion for reconsideration of 5 March 1985, counsel took note and got hold of the copy of the resolution of respondent Court of Appeals. This prompted counsel to file on 23 April 1985 a manifestation with respondent Court of Appeals that clearly indicated counsel's new address: 4 PANGILINAN DRIVE PROJECT 8, QUEZON CITY (Annex 'J').

"12. Respondent Court of Appeals took note of counsel's new address, and caused to be sent to him at the new address a copy of the resolution of 11 April 1985 under which it 'RESOLVED to remand the, records of this case to the court a quo for retaking of the proceedings' after the Branch Clerk of Court filed a Manifestation to the effect that the 'transcript' of stenographic notes of Stenographers Araceli Alcantara and Ester de Mandanas are still lacking and cannot be transcribed anymore' (Annex 'K', Petition).

"13. Meanwhile, on 19 April 1985, the lower court issued an order that reads:

'Acting on the motion for reconsideration filed by Atty. Oscar Diokno Perez, counsel for the defendant, and for the reasons therein contained having been well taken, the order of this court dated 11 February 1985 is hereby set

aside and the appeal interposed by the defendant is given due course.' (Annex 'L', Petition)

"14. On 30 May 1985, petitioner submitted to the lower court four (4) sets of the complete transcript of stenographic notes taken during the trial of the case. Petitioner did this with a view to expediting the appeal and doing away with the 'retaking of the proceedings' (Annex 'M', Petition).

"15. On 08 November 1985, respondent Court of Appeals issued the corresponding notice that the original records in the case had been received by that Court and that petitioner was required to pay within fifteen (15) days from receipt the docketing fee of P96.00 and an additional amount of P20.00 under Republic Act 3870. However, the notice was sent again to counsel's old address at 63 Timog Avenue, Quezon City, notwithstanding counsel's notice of change of address, a fact that respondent Court of Appeals had already taken note of (par. 12, above). Counsel did not receive and could not have received the notice for obvious reasons.

"16. On 26 May 1986, respondent Court of Appeals issued one of the questioned resolutions: it dismissed petitioner's appeal 'for failure of the defendant?appellant to pay docket fee and considering that the last day to pay the same was on April 11, 1986' (Annex 'O'). Notice of this resolution was again sent to counsel's old address.

"17. On 18 September 1986, respondent Court of Appeals issued the second questioned resolution making a final entry of judgment and remanding the records to the court of origin for execution of judgment, copy of which it insisted on sending to counsel's old address. (Annex 'P', Petition).

"18. On 23 March 1987, the lower court issued a writ of execution of the decision of 02 September 1981 (Annex 'Q', Petition).

"19. On 08 May 1987, respondent Deputy Sheriff attached several properties inside petitioner's compound at 155 Kamias Road, Quezon City and posted a notice that the levied items would be sold at auction on 19 May 1987 (Annex 'R', Petition).

"20. In a resolution issued on 25 May 1987, the Honorable Court temporarily restrained the respondents from implementing the writ of execution dated 23 March 1987, specifically from proceeding with the auction sale scheduled on 19 May 1987." [3]

We find the petition meritorious.

Obviously, the appellate court acted with grave abuse of discretion when it dismissed petitioner's appeal and thereafter issued an entry of judgment and remanded the records of the case to the lower court for execution of judgment.

The basis for the dismissal is the alleged failure of petitioners to pay the docket fee, but the failure to pay said fee is not petitioner's own doing but that of the appellate court.

It sent the notice to pay docket fee to counsel's wrong address at 63 Timog Avenue, Quezon City [4] instead of to No. 4, Pangilinan Drive, Project 8, Quezon City, per Notice of Change of Address dated March 15, 1983 [5] filed with the appellate court.

Respondent court could not say that it did not receive said Notice of Change of Address for its Resolution of April 11, 1985, was sent to counsel's new and correct address at No. 4 Pangilinan Drive, Project 8, Quezon City.

While the records show that a copy of the Resolution of May 26, 1986 [6] dismissing the appeal was also sent to petitioner himself at 3969 R. Magsaysay, Blvd., Sta. Mesa, Manila, the service was ineffective, as petitioner has long ceased to hold office at said address.

There was, therefore, a total lack of notice to counsel or to petitioner himself, an omission brought about not by the latter but solely by the error and/or negligence of the responsible officials of respondent court.

Notice is an indispensable requisite of due process.[7] Notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and together with the tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirement of due process of law.[8]

Nor could private respondent invoke the doctrine of "estoppel by laches" against petitioner to justify the validity of the questioned resolutions.

Estoppel by laches is a rule of equity that bars claimant from presenting his claim when, by reason of abandonment and negligence, he allowed a long time to elapse without presenting it.[9]

The environmental facts of this case do not show its applicability. Petitioner never thought of abandoning his appeal. On the contrary, he filed his notice of appeal, appeal bond and record on appeal within the reglementary period of the then existing rules. Petitioner even caused the reproduction of copies of the complete set of stenographic notes for transmission to the appellate court when it became evident that the original notes are no longer available.

While there was indeed delay in the disposition of the case on appeal, the delay was not of petitioner's own making but primarily, due to the failure of the lower court to transmit the records to the appellate court and the failure of the court stenographers to transcribe their notes.

Be that as it may, failure to pay the docketing fee does not automatically result in the dismissal of the appeal. Dismissal is discretionary with the appellate court[10] and discretion must be exercised wisely and prudently, never capriciously, with a view to substantial justice.[11]

At any rate as held in *Reyes v. Subido*,[12] due process in the end, is the embodiment of the sporting idea of fair play.

WHEREFORE, there being grave abuse of discretion on the part of the respondent court, the Resolution of May 26, 1986[13] dismissing defendant-appellant's appeal and the Resolution of September 18, 1986[14] issuing an entry of judgment and remanding the records to the court of origin for execution of judgment are hereby declared null and void and of no effect.

Respondent Intermediate Appellate Court and now the Court of Appeals is hereby directed to reinstate petitioner's appeal in AC-G.R. CV No.5312-UDK after proper notice to petitioner to pay the docketing fee.

The writ of preliminary injunction enjoining the respondents from implementing the writ of execution dated March 23, 1987, specifically from proceeding with the auction sale in Civil Case No. 118961, issued by the Regional Trial Court of Manila, Branch 6, is hereby made permanent. Costs de officio.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Annex "O", Petition, p. 30, Rollo, Resolution of the Second Civil Cases Division, composed of Justices Crisolito Pascual, Serafin E. Camilon and Desiderio Jurado.

[2] Annex "P", Petition, p. 31, Id.

[3] Petitioner's Memorandum, pp. 2-7.

- [4] Annex "N", Petition, p. 29, Id.
- [5] Annex "F", Petition, p. 21, Id.
- [6] Annex "O", Petition, Id.
- [7] Perkins v. Dizon, 69 Phil. 186.
- [8] Banco Español v. Palanca, 37 Phil. 927.
- [9] Pamplona v. Mareto, L-33187, March 31, 1980.
- [10] NAWASA v. Sec. of Public Works and Communications, 16 SCRA 536, 539 (1966).
- [11] Cucio v. Court of Appeals, 57 SCRA 401 (1974).
- [12] L-27916, Aug. 21, 1975.
- [13] Annex "O", Petition, Id.
- [14] Annex "P", Petition, Id.

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