

NARCISO KHO, PETITIONER, VS. MANUEL CAMACHO, SHERIFF OF QUEZON CITY, AND HONOR-ABLE OSCAR LEVISTE, RE-GIONAL TRIAL COURT OF QUEZON CITY, BRANCH 97, RESPONDENTS.

G.R. No. 82789, November 21, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The issue in this petition for certiorari is whether respondent Judge Oscar L. Leviste of the Regional Trial Court of Quezon City, Branch 97, grossly abused his discretion when he issued the questioned order of March 29, 1988 which cancelled his previous order approving a notice of appeal.

The facts are as follows:

In payment of attorney's fees resolved against him, petitioner Narciso Kho, a businessman, issued in favor of private respondent Atty. Manuel Camacho six (6) postdated Manila Bank checks in the total sum of P57,349.00. One of the checks, in the amount of P10,000.00, was lost by Atty. Camacho who promptly notified petitioner. When the other five (5) checks were negotiated by Camacho with the Philippine Amanah Bank, the same were returned uncleared because Manila Bank had been ordered closed by the Central Bank.

Because of petitioner's refusal to replace the Manila Bank checks or pay his obligation, Camacho instituted an action for a sum of money against petitioner before respondent trial court.[1]

In his answer, petitioner alleged that he was under no obligation to replace the lost check for P10,000.00, arguing that Camacho should have executed a sworn statement that he lost the check issued to him and furnished both the drawer and the bank with said statement so that the bank could place on the check "under alarmed", instead of merely informing petitioner.

Petitioner also refused to issue new checks maintaining that the closure of Manila Bank (in which he had an outstanding deposit of P581,571.84 which was more than enough to cover the cost of the five checks) was beyond his control and therefore he was in no financial position to pay Camacho unless and until his money in that beleaguered bank was released.

Contending that petitioner's answer failed to tender a genuine issue, Camacho moved for a judgment on the pleadings which respondent Judge Leviste granted in his order of February 12, 1988. In said order, respondent Judge directed petitioner to pay Camacho P57,349.00 "minus the P10,000.00 pertaining to the lost check, or a total of P47,349.00 with interest at the legal rate of 6% from June 2, 1987, until fully paid, with costs or attorney's fees." [2]

On February 25, 1988, petitioner seasonably filed a notice of appeal stating that he was appealing the February 12, 1988 order to the Court of Appeals. Respondent Judge duly approved said notice in his order of February 29, 1988.

On the other hand, despite the reduced money judgment, Camacho made no move to contest the award. Instead, he filed a motion/manifestation praying that petitioner's notice of appeal be stricken off the record as a mere scrap of paper.

Acting on the aforesaid motion, respondent Judge issued the assailed order of March 29, 1988 setting aside the previously approved notice of appeal and adopting Camacho's view that the proper remedy from a judgment on the pleadings was a petition for certiorari to the Supreme Court. Said order reads:

"In view of the Motion/Manifestation dated March 1, 1988, which this Court finds with merit, x x x, this Court believing that only questions of law are involved, hence the proper remedy should be a petition for certiorari, there being on question of fact presented by the pleadings and the order in Summary Judgment, the order of this Court approving the notice of appeal is hereby cancelled and a new order is hereby made that said notice of appeal is disapproved." [3]

Hence this petition for certiorari.

The Court has readily observed two very glaring errors committed by respondent Judge Leviste. First, he listened to Camacho who could not even distinguish between a petition for certiorari and a petition for review on certiorari. Secondly, he pre-empted a prerogative that legally pertains to the Court of Appeals when he disapproved petitioner's notice of appeal "believing that only questions of law are involved."

In *E. Razon, Inc. vs. Judge Moya*, No. L-31693, February 24, 1981, 103 SCRA 41, the Court, through Justice Melencio-Herrera, held:

"Concededly, issues that involve pure questions of law are within the exclusive jurisdiction of this Court. However, Rule 41 of the Rules of Court does not authorize the Trial Court to disallow an appeal on the ground that there is no question of fact, but only a question of law, involved." [4]

The Court was no less explicit and emphatic when it declared in the subsequent case of *PNB vs. Romillo, Jr., G. R. No. 70681*, October 16, 1985, 139 SCRA 320, 325-326, that:

"We hold the view that whether an appeal involves only question of law or both questions of fact and law, this question should be left for the determination of an appellate court and not by the court which rendered the subject decision appealed from. x x x. Respondent Judge erred in dismissing said appeal on his misconception that the same involves only a question of law and based on this reasoning, disallowed petitioner's appeal because it was not made to the Supreme Court. x x x.

"By dismissing the appeal on the ground that it was misdirected because the case was resolved by it on a pure question of law, the trial court committed a grave error. Respondent Judge should have allowed the Intermediate Appellate Court to decide whether or not the petitioner's appeal involves only a question of law and not arrogate unto himself the determination of this question. His error in dismissing petitioner bank's appeal becomes even more obvious considering the provisions of Section 3 of Rule 50 of the Rules of Court, wherein it is specifically provided that 'where the appealed case has been erroneously brought to the Court of Appeals, it shall not dismiss the appeal but shall certify the case to the proper court, with a specific and clear statement of the grounds therefor.'"

Thus, following the above pronouncements, what respondent Judge should have done under the circumstances was to sustain his approval of the notice of appeal and leave it to the Court of Appeals to certify the case to the proper tribunal if warranted. Indeed, Judge Leviste had absolutely no authority to disapprove the notice of appeal. Under the present rules, his role is to approve or disapprove the record on appeal (when required) and the appeal bond, but not a notice of appeal. A notice of appeal does not require the approval of the trial court. [5]

Nonetheless, although a procedural error was committed by respondent Judge in disapproving petitioner's notice

of appeal, to require him to give due course to the appeal and then elevate the records of Civil Case No. Q-52014 to the Appellate Court will serve no useful purpose and will only delay the resolution of an otherwise open-and-shut case. The records before us are sufficient to enable us to rule on the propriety of the judgment on the pleadings and to terminate this case once and for all.

The obligation to pay P57,349.00 in attorney's fees is admitted. The appropriate checks in payment therefor have been issued. However, one check was misplaced through the creditor's fault while the other five were dishonored because the drawee bank has ceased to operate.

A perusal of petitioner's answer convinces us that the judgment on the pleadings was proper. In that pleading, petitioner disavowed any obligation to replace the useless checks and gratuitously advanced the reason that the bank where he had deposited his lifetime savings had been closed through no fault of his. In effect, what petitioner was saying was that Camacho should wait until he (petitioner) was in a position to pay. This is not a sufficient controversion of the material allegations in the complaint.

Finding no reversible error in the judgment on the pleadings rendered by respondent Judge Leviste, the Court considers the same as the final adjudication on the respective rights of the parties.

WHEREFORE, in view of the foregoing, certiorari is hereby DENIED. No costs.

SO ORDERED.

Gutierrez, Jr., Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Civil Case No. Q-52014.

[2] Annex E, Rollo, p. 23.

[3] Annex J, Rollo, p. 33; Emphasis supplied.

[4] Emphasis supplied.

[5] Aquino vs. Judge Santiago, G.R. No. 56362, May 28, 1988, 161 SCRA 570.

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