

INOCENCIA CENIZA, GOERING GEORGE C. PADERANGA, SYLVA PADERANGA, JEORGE PADERANGA, JR., BRENDA LEE C. PADERANGA AND CYNTHIA PADERANGA, PETITIONERS, VS. THE COURT OF APPEALS AND V...

G.R. No. 95296. February 03, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This petition was raised to this Court after public respondent the Honorable Court of Appeals in its Decision[*] promulgated on July 2, 1990 reversed the decision of the Regional Trial Court of Cebu, 7th Judicial District, Branch 17, in the case of Inocencia Ceniza, et al. vs. Visayan Electric Company, Inc., docketed as CEB-2366.

The decision being appealed from, stated in its penultimate paragraph:

"WHEREFORE, the appealed decision is reversed and set aside with respect to the award of moral and exemplary damages, and attorney's fees. The rest of the judgment is affirmed. Without pronouncement as to costs." [1]

The decision was reiterated by the respondent Court of Appeals in its Resolution dated August 20, 1990, denying the petitioners' Motion for Reconsideration dated July 19, 1990.

The appeal from the Regional Trial Court to the respondent Court of Appeals stemmed from a petition for injunction with damages and application for preliminary mandatory injunction for the reconnection of petitioners' electric service furnished by private respondent.

The petition in the lower court substantially alleged that petitioners suffered humiliation, moral shock and besmirched reputation caused by private respondent's disconnection of petitioners' electric service.

On July 2, 1984, after hearing the petitioners' application for a writ of preliminary mandatory injunction, where the private respondent company failed to appear despite due notice, the trial court ordered the issuance of a writ of preliminary mandatory injunction, directing private respondent to forthwith reconnect electric service to petitioners' residence and petitioners, to deposit in court a cash bond in the amount of P3,000.00. On the same day, private respondent complied with the writ.

On July 11, 1984, the petitioners filed an amended petition, amplifying on the cause of action against private respondent, praying that: (1) the preliminary mandatory injunction issued for reconnection be enforced during the entire pendency of the main action; (2) judgment be entered ordering private respondent to accept the payments of petitioners representing only the average amounts of consumption during the period before the abnormal use in the electric consumption; (3) judgment be entered ordering the private respondent to pay moral and exemplary damages, plus litigation expenses and costs.

On August 23, 1984, the private respondent filed its answer to the amended petition with compulsory

counterclaim. By way of affirmative defenses, it alleged that the amended petition failed to sufficiently state a cause of action; that except for Inocencia Ceniza, the rest of the petitioners have no legal capacity to sue private respondent; that private respondent's issuance of 48-hour disconnection notice on June 21, 1984 to petitioners and its subsequent disconnection a week after, constitute a valid exercise of its legitimate right.

As succinctly stated by the respondent Court of Appeals, the facts are as follows:

"x x x, it has been established that petitioner Inocencia Ceniza is the owner of the house situated at 298 D.F. Street, Cebu City. She has been a customer of respondent Visayan Electric Company since 1975 or 1976. For the past several years, that house has been regularly occupied by petitioners Ceniza's children, four (4) of whom are petitioners in this case, and grandchildren. Petitioner Inocencia Ceniza being a teacher usually stays with her husband in Ozamis City and comes to Cebu City, staying in her house only two or three times a month. Petitioners-spouses Atty. Goering George Paderanga were paying the electric bills. Because of the abrupt rise in the electric consumption rate for the period of November to December, 1983 (Exh. "B") compared to the period from June to November, 1983 (Exhs. "A", "A-1" to "A-3"), petitioner Inocencia Ceniza instructed her son Atty. Goering George Paderanga to make proper representation with respondent VECO.

Atty. Paderanga withheld payment of the later bill (Exh. "B") and asked his wife Atty. Sylva Paderanga to file a written complaint with respondent, which the latter did. Atty. Sylva Paderanga sent a letter dated January 3, 1984 to respondent's manager (Exhs. "C" & "1"), questioning the meter reading "considering that there has been no change in the number of the occupants in the house, in the electric appliances nor in the use of the present few ones", and informing respondent that payment of the account was being withheld until the matter could be cleared.

Upon instruction of Engr. De Guzman, Asst. Chief of Respondent's Administrative Department, Mr. Manuel Rogado, Supervisor of the Meter Reading Department, inspected the meter, read the meter card, and made some computation. After his investigation, Mr. Rogado concluded that there was nothing wrong with the meter reading, informing Atty. Goering George Paderanga and Atty. Sylva Paderanga and Inocencia Ceniza thereof. Atty. Sylva Paderanga told Mr. Rogado that they would observe the billing for one month. Mr. Rogado agreed.

The subsequent bills registered high consumption rate although from the nature of things the electric consumption should have been low. Thus, for the period of February 4 to March 5, 1984, the bill (Exh. "D") indicated a consumption of 228 KWH. According to Atty. Goering George Paderanga, he, his wife and children were in Manila during the last two weeks of January and the first three weeks of February, 1984 where his wife delivered a child on February 5 by Caesarean section as shown by the birth certificate of the child (Exh. "E"), and only petitioners Jeorge, Brenda Lee and Cynthia Paderanga were left in the house in Cebu City. In the bill for the period March 5 to April 4, 1984 (Exh. "F"), the KWH consumed was 273; in the bill for the period April 4, to May 6, 1984 (Exh. "G"), the consumption was 336 KWH; and in the bill for the period May 6 to June 4, 1984 (Exh. "H"), it was 277 KWH. It has also been established that Jeorge and Brenda Lee, Cynthia Paderanga who were then students, spent their school vacation in Ozamis City from the last week of March to the last week of April, and that petitioners-spouses and their children likewise took a long vacation in Ozamis City in the month of April and only one helper was left in the house.

On May 15, 1984, respondent's collector-cutter, Mr. Manuel Viajedor, served the first 48-hour notice of disconnection (Exhs. "1" and "12"). On May 16, Atty. Goering George Paderanga sent a letter to respondent (Exhs. "J" and "J-1") complaining (sic) of the continued increase in the consumption rates and of the sending of the 48-hour notice of disconnection "even before the irregularity can even be corrected or remedied which is even unfair" and requested an adjustment of the bills to reflect the average consumption during the months previous to November 3 to December 4, 1983 billing. The first 48-hour notice of disconnection was not implemented.

On June 4, 1984, having received from his supervisor a Meter Service Order dated May 23, 1984 (Exh. "2")

signed by another superior, Mr. Rodrigo Alcuizar, Meter Laboratory Technician proceeded to the house of petitioner Ceniza with some members of the respondent's High Consumption Complaint group. There, he asked permission to check the meter, for around 30 minutes. Mr. Alcuizar observed that the meter was moving forward normally. Then he caused all the loads to be put off for some 30 minutes. He found that the meter was creeping backward. He decided then and there to change, as he did change, the meter with another, because he was of the opinion that the meter was defective.

Mr. Alcuizar explained that a backward creeping of any electric meter means that the meter does not register correct kilowatts per hour consumed; the consumption registered is less than the actual consumption. If the meter's defect is not favorable to the customer, the connected load would be checked to determine the amount of credit to be given to the customer. In this case the meter's defect was favorable to the customer and unfavorable to the respondent because it was creeping backward. Hence, there was no need to check the connected load.

Although Mr. Alcuizar had brought with him an 1b-10 (sic) standard instrument which is used to check the accuracy of rate of movement of electric meter, i.e., the normal movement of the plate, either forward/backward, the 1b-10 (sic) standard instrument was no longer used because the meter was creeping backward. The possibility that the meter could also move faster than the usual rate was ruled out. Petitioner Ceniza's old meter was turned over to respondent's meter laboratory for check up, and it was the laboratory people who would compute whatever credit could be given to the customer.

Two weeks after June 4, 1984, after replacing the meter, Mr. Alcuizar went to see Atty. Goering George Paderanga in his office to inquire about the electric appliances being used in the house and to ask permission from him to check the connected load in order to determine the kilowatt consumption in the house.

In a company form-letter dated June 4, 1984 (Exhs. "6" to "8"), Engr. Baylon G. Tolentino, Asst. Head, Transmission and Distribution Department of respondent, informed petitioner Inocencia Ceniza that her meter had been changed and that respondent's finding showed that it was backward creeping so that the account would therefore be charged "as is".

Mr. Jose Lopez, Jr., Meter Tester, tested the old meter of petitioner Inocencia Ceniza on June 5, 1984. He found that when there was no connected load, the meter was backward creeping, but the loss was within the tolerable limits set by the Board of Energy, and that when there was a connected load, there would be loss to respondent of about 1.1%. He declared that petitioner Ceniza's old meter was of the 1950's vintage; that the older the meter is, the slower it registers; it never registers fast. It was the respondent's policy to junk meters found to be no longer suitable for use. Mr. Lopez executed a meter test report (Exh. "4").

The old meter was turned over to the Board of Energy, where it was further tested and finally junked.

Also on June 5, 1984, petitioner Atty. Goering George Paderanga sent a letter (Exhs. "K" and "K-1") to respondent's manager stating that the meter's backward creeping when all the switches were off would indicate that the meter was defective. He asked for adjusted billings based on a flat rate equivalent to the average monthly consumption for three months before November, 1983.

On June 18, 1984, Mr. Juan I. Coromina, Asst. Treasurer of respondent, sent a reply to the letter of Atty. Goering George Paderanga (Exhs. "L" and "6"), rejecting the latter's request on the ground that the meter's backward creeping indicated an under-registration of consumption.

Atty. Goering George Paderanga sent another letter to Mr. Coromina dated June 22, 1984 (Exhs. "M" and "S"), contending that since the meter was found to be defective as it was creeping backward, it could likewise move faster than the normal rate and tendering payment in cash for seven (7) months' consumption based on an average rate of 240 KWH per month.

On June 22, 1984, a second and last 48-hour notice of disconnection was served (Exhs. "N" and "7"). Mr. Jose

Martinez, Jr., Account Officer of respondent Treasury Finance Department instructed one of respondent's Tellers on the afternoon of June 21, to initiate the issuance of said notice. Mr. Martinez did not know and was not told by Mr. Coromina that he (the latter) had already received Atty. Goering George Paderanga's June 22 letter (Exhs. "M" and "S") wherein he tendered payment for seven (7) months usage at an average monthly consumption rate of 240 KWH although Mr. Coromina had told him (Mr. Martinez) that Atty. Paderanga had already received his (Coromina) letter on June 18 (Exhs. "L" and "6"). Mr. Martinez was not aware then of the tender of payment.

Mr. Viajedor served the second notice of disconnection (Exhs. "N" and "7") in the morning of June 22, 1984. He did not, however, implement that notice soon after 48-hours (sic). In the morning of June 27, Mr. Viajedor went back to the house of petitioner Ceniza where he talked to Atty. Goering George Paderanga, to whom he explained that his complaint had already been attended to and Atty. Paderanga told him he could cut the service. Mr. Viajedor told Atty. Paderanga that he was giving him until 5:00 o'clock of that day within which to pay, and if no payment was made, he would cut the service. As no payment had been made, Mr. Viajedor cut the service in the morning of June 28, 1984. The disconnection lasted for five (5) days and four (4) nights."^[2]

After a hearing on the merits, the trial court rendered its decision wherein, after citing several malicious acts, it found that private respondent was in evident bad faith. Since the trial court was of the opinion that only petitioner Inocencia Ceniza was entitled to damages, being the concessioner, and that the other petitioners have no cause of action against private respondent, and further, because the trial court failed to appreciate the petitioners' evidence that the private respondent committed not only breach of contract but tort as well, the petitioners also filed their own appeal separate from that of private respondent's.

The respondent Court dismissed petitioners' appeal on the ground of delayed filing of their appellants' brief. Then, on July 2, 1990, respondent Court reversed the trial court's extensive finding of bad faith. It also reversed the order for the award of moral and exemplary damages as well as attorneys' fees.

As culled from their petition, petitioners confront this Court with the following legal issues:

1. Whether or not the Resolution of dismissal was a final order such that it can serve as the basis for respondent Court's action of entertaining only the appeal of private respondent in arriving at its decision dated July 2, 1990;
2. Whether or not the decision of the respondent Court was legally and factually supported in view of petitioners' allegation that there were several badges of bad faith surrounding the disconnection of petitioners' electric service;
3. Whether or not the 48-hour written notice of disconnection rule applies when there is a bona fide and just dispute as to the amount due as petitioners' electric consumption rate.

Anent the first issue raised, We find it to be without merit. This Court has, time and again, held that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional, and failure to perfect an appeal as legally required has the effect of rendering final and executory the judgment of the court below and deprives the appellate court of jurisdiction to entertain the appeal.^[3] Hence, unless the appeal is perfected on time, the appellate court acquires no jurisdiction over the appealed case, and has power only to dismiss the appeal.^[4] This power to dismiss is expressly granted to respondent Court under the Revised Rules of Court as provided in Section 1 (f) of Rule 50.^[5]

Moreover, the Resolution being questioned herein is a final order, contrary to petitioners' contention. Courts have defined a final order or judgment which is appealable as one which either terminates the action itself or operates to vest some right in such manner as to put it out of the power of the court making the order to place the parties in

their original condition.[6] More specifically, it is that which disposes of the whole subject matter or terminates the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined.[7] In the instant petition, when the petitioners' brief was ordered expunged from the records by the respondent Court, the subject matter of the action pertaining to them was deemed resolved from the moment that the period to appeal lapsed. By then, the respondent Court was in a position to dismiss the appeal. Hence, petitioners' failure to seasonably file their brief caused the lower court's decision with respect to them to become final and executory.

Regarding the appreciation of facts, We are inclined to agree with the finding of the respondent Court. The court a quo decided the case based on competent evidence on record and jurisprudence.

We do not find any cogent reason to deviate from the respondent Court's finding of absence of bad faith. In a fairly recent case decided by this Court,[8] it was held that MERALCO's right to disconnect the electric service of a delinquent customer is an absolute one, subject only to the requirement that the customer be given a written notice of disconnection 48 hours in advance. This guideline is embodied in Section 97 of the Revised Order No. 1 of the Public Service Commission, providing as follows:

"Section 97. Payment of bills. -- A public service, may require that bills for service be paid within a specified time after rendition. When the billing period covers a month or more, the minimum time allowed will be ten days and upon expiration of the specified time, service may be discontinued for the non-payment of bills, provided that a 48 hours' written notice of such disconnection has been given the customer. Provided, however, that disconnections of service shall not be made on Sundays and official holidays and never after 2 p.m. of any working day: Provided, further, that if at the moment the disconnection is to be made the customer tenders payment of the unpaid bill to the agent or employee of the operator who is to effect the disconnection, the said agent or employee shall be obliged to accept tender of payment and issue a temporary receipt for the amount and shall desist from disconnecting the service."[9]

In sum, the right of a public utility to disconnect its service to a customer is recognized but is conditioned by a 48-hour notice before disconnection. In the present case, private respondent more than complied with this requirement. It sent notice to the petitioners twice and on the first time it even postponed the disconnection, when it very well had the right to have done otherwise. The second notice sent was not even immediately implemented. The petitioners were given ample time to settle their accounts in arrears, but still they opted not to even make a valid tender of payment. Instead, their intent to pay never materialized as it was reduced merely to Atty. Goering George Paderanga's letter proposing the amount they were willing to pay. Finding sufficient compliance by private respondent with the notice requirement, there is then no necessity to award damages that petitioners are praying for. Here then lies the difference of this case from MERALCO vs. Court of Appeals,[10] relied upon by petitioners. In this aspect, the aforecited case cannot be applied squarely. Damages were awarded in the MERALCO case because said public utility committed a tortious act -- disconnection without notice, a fact which does not obtain in the instant case. Furthermore, as discussed earlier, the case with respect to petitioners had already become final and executory, by their own neglect.

Lastly, petitioners argue that private respondent's serving of the 48-hour notice is of no moment since there was still a just dispute as to the amount due and as such, compliance with the notice requirement is not enough to constitute good faith. While the general rule in regard to the discontinuance of service for the non-payment of charges is subject to exception or qualification if there is a bona fide dispute over the correctness of the bill rendered, it has been held that if a customer concedes a certain amount to be due, and fails to tender such amount, his service or supply may be discontinued.[11] As discussed above, it cannot be definitely stated that there was actually a tender of payment as to the amount corresponding to the average consumption of petitioners. Rather, it was only found that there was a proposal to pay made by petitioners. Hence, the disconnection was proper, absent

such valid tender of payment. Moreover, to hold otherwise will open the floodgates to several disputants contesting their bills, only so as to avoid prompt payment while at the same time enjoying the benefits of the service.

WHEREFORE, premises considered, the Decision of the respondent Court of Appeals and its Resolution denying petitioners' Motion for Reconsideration are hereby AFFIRMED. With costs.

SO ORDERED.

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

[*] Penned by Associate Justice Celso L. Magsino and concurred in by Associate Justices Nathanael P. De Pano, Jr. and Cezar D. Francisco.

[1] Rollo, p. 68.

[2] Rollo, pp. 60-64.

[3] Lo Chi, et al. vs. De Leon, et al., 19 SCRA 152 (1967); Tan Ching vs. Geraldez, et al., 10 SCRA 748 (1964); Antique Sawmills, Inc. vs. Zayco, et al., 17 SCRA 316 (1960).

[4] Roque vs. Del Rosario, 18 SCRA 101 (1966); Government of the Philippines vs. Antonio, 15 SCRA 119 (1965).

[5] Rule 50, Sec. 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x

(f) Failure of the appellant or of his printer, to serve and file the required number of copies of his brief within the time provided by these rules;

x x x x x

[6] Salazar vs. Torres, et al., 108 Phil. 209 (1960).

[7] De Ocampo vs. Republic, 9 SCRA 440 (1963).

[8] Meralco vs. Court of Appeals, 157 SCRA 243 (1988).

[9] Ibid., p. 247.

[10] Supra, note 6.

[11] 64 Am Jur, Public Utilities, 596-597 (1972); and the cases cited.

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