Supreme Court E-Library

Under the facts of record, the petitioner was fully justified in refusing to reinstate Sergio Sinday after he had abandoned his work to look for a better job.

WHEREFORE, the petition for *certiorari* is hereby GRANTED and the decision of the public respondent, Hon. Jacobo C. Clave, and the order of the Regional Director dated March 16, 1977, ordering the reinstatement of Sergio Sinday, are set aside and the complaint of Sergio Sinday for reinstatement in TFU Case No. 786 against Sandoval Shipyards, Inc. is hereby DISMISSED.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera JJ.*, concur.

FIRST DIVISION

[G.R. No. 50542. November 21, 1979]

ANA BAYOT, *petitioner*, *vs.* **HON. IRENEO V. MENDOZA, as Presiding Judge, Branch III, COURT OF FIRST INSTANCE OF MASBATE, and ALFONSO LEGAL, JR.**, *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BONDS; RULES THEREON; CASE AT BAR.— In *Espartero and Espartero vs. Juan Ladaw, et al.*, 92 Phil. 704, the rule was laid that "there is nothing in the Rules which imposes upon the party appealing the duty of securing from the court the approval of the appeal bond. This is an act which the court should attend to once said bond is filed with the appealing party. This is a duty imposed upon the court by Section 5 of

Supreme Court E-Library

Rule 41. The only duty of the appealing party is to file it within the reglementary period. The failure of the court to approve the appeal bond as required by Section 5 of Rule 41 cannot work to appellant's prejudice." The above rule was reiterated in the case of *Gammad, et al. vs. Manuel Arranz, et al.,* 92 Phil. 1048, wherein it was held that it was not necessary for the appellant to secure the approval of his (cash) appeal bond within the period of 30 days; it was enough for him to have filed said appeal bond within said period and the court may subsequently approve the same. Where the appeal bond, the notice of appeal and the record of appeal were filed on time, court failure to approve the appeal bond within the legal period may not be laid at his door. Finally, in *Cumplido vs. Mendoza, et al.,* L-20265, June 30, 1964, 11 SCRA 477, the Supreme Court held that the non-service of a cash appeal bond does not affect the perfection of an appeal, provided such appeal is presented within the prescribed period. In line with this Court's liberal interpretation of the provisions of the Rules of Court on appeal in favor of the appellant in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding but without impairing the substantial rights of the appellee. We hold that the rulings in the recent cases of *Espartero, Gammad* and *Cumplido* constitute the present law in the case at bar.

APPEARANCES OF COUNSEL

Castillep Law Office for petitioner.
Reneo C. Sampaga for private respondent.

D E C I S I O N

GUERRERO, *J.*:

This is a petition for review on *certiorari* of the Order issued by the Court of First Instance of Masbate, Branch III dated January 18, 1979 in Civil Case No. 207-111 dismissing the appeal of petitioner on two grounds: first, that plaintiffs, represented by petitioner herein, served no notice of the deposit of the appeal bond, and second, for failure to submit the appeal bond to the

Supreme Court E-Library

trial court for approval, and the order of the respondent judge dated January 26, 1979 denying the motion for reconsideration of the Order dated January 18, 1979.

The antecedent facts are simple and are not in dispute. In Civil Case No. 207-III entitled "*Heirs of Antonio Bayot represented by Ana Bayot, plaintiff, versus Alfonso Legal, Jr., defendant*" for annulment of sale and recovery of real property, the defendant herein moved to dismiss the appeal on the grounds that: 1. The record on appeal failed to show on its face that the appeal was perfected within the period fixed by the Rules; 2. Plaintiffs failed to file, within the period prescribed by the Rules of Court, the appeal bond; and 3. That from October 16, 1978 when plaintiffs received the Order of this Honorable Court dismissing this case up to January 8, 1979 (deducting the period during which the Motion for Reconsideration has been pending) is exactly 64 days, hence, the appeal is filed out of time.

Opposed by plaintiffs and after a reply in opposition by defendant, the respondent court on January 9, 1979 dismissed the appeal on the two grounds above-stated, although it found that the appeal was interposed within the reglementary period.

Plaintiffs moved on January 26, 1979 for reconsideration of the Order of dismissal, the motion arguing that under the Rules of Court, the adverse party is not necessary to be informed much less furnished notice of the payment of the cash appeal bond with the court and that it is only when the appeal bond is not in cash that the approval by the court is mandatory as well as notice to the adverse party. In the instant case, petitioner paid the cash appeal bond of ₱120.00 on November 29, 1978 under Official Receipt No. 0119721-V to the Deputy Clerk of Court as shown in the certification of the latter. The adverse party was also duly informed and given notice of the payment of the cash appeal bond during the proceedings of January 8, 1979 and in plaintiffs' opposition to the motion to dismiss appeal, dated January 8, 1979, copy of which was served on the defendant on January 9, 1979. The Official Receipt issued for the deposit

Supreme Court E-Library

of ₱120.00 cash appeal bond was attached to the record on appeal.

Upon opposition by defendant, the respondent judge in his Order of January 30, 1979 denied the motion for reconsideration, citing the case of *Philippine Resources Development Corporation vs. Narvasa, et al.*, No. L-12803, February 27, 1962, 4 SCRA 414, wherein the Court held that under Section 3, Rule 41 of the Rules of Court, "clearly requires that not only shall the three documents be filed with the court within the period of 30 days but that copies thereof shall be served upon the adverse party. This requirement is made in order that the adverse party may not only be notified of the mention of the appellant to take the case to the appellate court but also to afford him an opportunity to register his opposition to any of them if he desires to do so."

Hence, the instant petition for review.

The Order appealed from is erroneous. Section 3, Rule 41 of the Rules of Court clearly provides:

"Sec. 3. How appeal is taken. — Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. The time during which a motion to set aside the judgment or order or for new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37."

The above section contemplates a case in which the appeal bond is in the form of property other than a cash deposit where it is necessary that the appeal bond be filed with the court and a copy furnished the adverse party in order that opportunity be given to oppose the same if the value of the property does not sufficiently cover the amount for which it was given as security. The rule is otherwise where the appeal bond is cash since the amount is patently evident. In the case at bar, the cash bond is in the amount fixed by Sec. 5, Rule 41 which states:

Supreme Court E-Library

"Sec. 5. Appeal Bond. — The appeal bond shall answer for the payment of costs. It shall be in the amount of one hundred and twenty pesos (₱120.00) unless the court shall fix a different amount. If the appeal bond is not in cash it must be approved by the Court before the transmittal of the record on appeal to the appellate court."

In *Olvido and Albaniel vs. Ferraris and Jose Teodoro, Sr.*, 90 Phil. 555, the Supreme Court held that "(t)he ruling that motions should be set by the appellant for hearing, refers to motions in general, and not to records on appeal. It should be the judge, and not the appellant, who has to notify the parties of the day on which the record on appeal will be heard (*Cuento vs. Paredes*, 40 Phil. 346). This is still the law relative to the hearing and approval of the record on appeal (Rule 41, Sec. 7). The only thing that the rule requires is that the appellant must serve the adverse party with a copy of the notice of appeal, appeal bond and record on appeal (Rule 41, Sec. 3). There is no need for appellant to set it for hearing. Upon its filing, the record on appeal is deemed submitted for approval, modification, or disapproval, as the case may be."

Section 3, Rule 41 of the Rules of Court says that the appellant must serve the adverse party with a copy of the notice of appeal, appeal bond and record on appeal. Upon submission of the record on appeal, the trial judge may then approve it as presented, or direct its amendment, upon his own motion or at the instance of the appellee. There is no need for appellant to set it for hearing. Upon its filing, the record on appeal is deemed submitted for approval, modification, or disapproval, as the case may be (*Olvido, et al. vs. Ferraris, et al., supra*, p. 558).

In *Espartero and Espartero vs. Juan Ladaw, et al.*, 92 Phil. 704, the rule was laid that "there is nothing in the Rules which imposes upon the party appealing the duty of securing from the court the approval of the appeal bond. This is an act which the court should attend to once said bond is filed with the appealing party. This is a duly imposed upon the court by Section 5 of Rule 41. The only duty of the appealing party is to file it within the reglementary period. The failure of the court

Supreme Court E-Library

to approve the appeal bond as required by Section 5 of Rule 41 cannot work to appellant's prejudice."

The above rule was reiterated in the case of *Gammad, et al. vs. Manuel Arranz, et al.*, 92 Phil. 1048, wherein it was held that it was not necessary for the appellant to secure the approval of his (cash) appeal bond within the period of 30 days; it was enough for him to have filed said appeal bond within said period and the court may subsequently approve the same. Where the appeal bond, the notice of appeal and the record of appeal were filed on time, court failure to approve the appeal bond within the legal period may not be laid at his door.

Finally, in *Cumplido vs. Mendoza, et al.*, L-20265, June 30, 1964, 11 SCRA 477, the Supreme Court held that the non-service of a cash appeal bond does not affect the perfection of an appeal, provided such appeal is presented within the prescribed period.

In line with this Court's liberal interpretation of the provisions of the Rules of Court on appeal in favor of the appellant in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding but without impairing the substantial rights of the appellee, We hold that the rulings in the recent cases of *Espartero*, *Gammad* and *Cumplido* constitute the present law in the case at bar.

WHEREFORE, IN VIEW OF THE FOREGOING, the Orders of the respondent judge appealed from are hereby set aside and respondent judge is hereby directed to approve the record on appeal of petitioner and to give due course to it in accordance with the Rules of Court, with costs against private respondent.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, De Castro, and *Melencio-Herrera, JJ.*, concur.