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FIRST DIVISION

[G.R. No. L-33063. February 28, 1979]

CATALINO CATINDIG and BARBARA CARTA, *petitioners*, *vs.* **THE COURT OF APPEALS, LORENZO DE LEON, ROMANA BARRAQUIO and GABRIEL BAYNOSA,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FAILURE TO FILE PRINTED RECORD ON APPEAL WITHIN THE PERIOD SET FORTH BY THE COURT OF APPEALS MAY BE EXCUSED.** — The failure to timely file the printed mimeographed copies of the record on appeal for the convenience of the members of the appellate court may be excused for justifiable reasons since the appellate court has the discretion to dismiss or not to dismiss the appeal but said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.

2. **ID.; ID.; ID.; REINSTATEMENT OF APPEAL; CIRCUMSTANCES WHICH SHOW THAT PETITIONERS DID NOT ABANDON APPEAL.** — Where petitioners' new counsel after finding out that the notice to submit and file a printed record on appeal was sent petitioners' former counsels, lost no time in causing the printing and filing of the same on the very day when the resolution dismissing the appeal was issued by the Court of Appeals, and it appears that petitioners had previously paid voluntarily the Appellate Court docket fee, these facts strongly reveal that petitioners never intended to abandon their appeal as to warrant its dismissal. An appeal may be reinstated, even after the remand of the record to the trial court, where it appears that the dismissal of the appeal was made under the erroneous impression that the appellants had abandoned their appeal.

3. **ID.; ID.; ID.; RECORD ON APPEAL; FILING OF PRINTED RECORD ON APPEAL, MERELY DIRECTORY.** — The filing of the printed record on appeal is not a requirement for the protection of the prevailing party, and non-compliance therewith within the time prescribed causes no substantial prejudice to anyone, especially where it is patent that the delay in filing thereof, was not due to a desire to delay or defeat the ends of

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justice. To apply the legal requirements strictly would not only tend to block the right to review to which a party is entitled under the law, but also would amount to a complete departure from the holding that the provision of Section 1, Rule 50 of the Revised Rules of Court, which provides specific grounds for dismissal of appeal manifestly confers a power and does not impose a duty. What is more, it is directory not mandatory. Hence, it should be exercised with great deal of circumspection considering all the attendant circumstances.

4. **ID.; ID.; ID.; DISMISSAL OF APPEAL ON PROCEDURAL TECHNICALITY ABHORRED.** — A rigid adherence to the technical rules and procedure disregards the fundamental aim of procedure to secure as our aid to justice, not as a means for its frustration, and the objective of the Rules of Court to afford litigants just, speedy and inexpensive determination of their controversy. Thus, excusable imperfection of form and technicalities of procedure or lapses in the literal or rigid observation of a procedural rule or non-jurisdictional deadline provided therein should be overlooked and brushed aside as trivial and indecisive in the interest of fair play and justice when public policy is not involved, no prejudice has been caused adverse party and the court has not been deprived of its authority or jurisdiction. Moreover, dismissal of appeals purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeals on their merits. The rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure not override substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated.

5. **ID.; ID.; COURTS; POWER OF COURT TO DISMISS APPEALS MUST BE EXERCISED WISELY.** — What should guide judicial is the principle that a party litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities. More significantly, the cardinal rule remains that the discretionary power to dismiss appeals or not must always be exercised wisely and prudently, never capriciously, with a view to substantial justice.

APPEARANCES OF COUNSEL

Teodoro C. San Juan & Alberto A. Reyes for petitioners.
Domingo T. Zaballa for private respondents.

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DECISION

DE CASTRO, *J.*:

This is a petition for review on *certiorari* of the resolution of the respondent Court of Appeals dated August 18, 1970, dismissing the appeal interposed by petitioners in CA-G. R. No. 45340-R, entitled "*Catalino Catindig, et al. vs. Lorenzo de Leon, et al.*" due to their failure to file the printed record on appeal within the reglementary period and the resolution of respondent Court of Appeals dated December 29, 1970 denying petitioners' supplemental motion for reconsideration of the resolution dated August 18, 1970.

The records show that the herein petitioners are plaintiffs, while private respondents are defendants in the Civil Case No. B-598, entitled "*Catalino Catindig and Barbara Carta vs. Lorenzo de Leon, Romana Barraquio and Gabriel Baynosa*" of the Court of First Instance of Laguna.

In that civil case, plaintiffs-petitioners sought to compel the defendants (herein private respondents) to surrender their Certificate of Title No. 13725 of the Register of Deeds of Laguna and to acknowledge the contract of sale executed by them in favor of the petitioners. Thereafter, the Court of First Instance of Laguna rendered a decision dated September 29, 1969 which, among others, dismissed the complaint and ordered the document titled "*Kasulatan ng Pagbibilihang Tuluyan ng Bahagi ng Lupaing Tubigan*" to be reformed to that of equitable mortgage, redeemable by defendants-private respondents within a period of 10 years from July 18, 1958 the same amount of the equitable mortgage.

A motion for reconsideration was filed by petitioners on November 11, 1969 which was, however, denied by the trial court for lack of merit.

Thereafter, a notice of appeal and an appeal bond were filed on December 18, 1969 by the herein petitioners which were approved by the trial court. The appeal having been perfected,

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the Clerk of Court of the trial court forwarded all the records to respondent Court of Appeals.

The counsels on record of the petitioners at the time the appeal was perfected were Attorneys E. Bonifacio and Gonzalo Padua. However, on May 20, 1970 said lawyers formally withdrew as counsels for petitioners. Atty. Arsenio G. Velasquez formally entered his appearance in writing as the new counsel for petitioners before respondent Court of Appeals on June 16, 1970.

In the meanwhile, a notice to file a printed record on appeal dated May 25, 1970 was sent by the Court of Appeals to petitioners' former counsels, Attys. Bonifacio and Padua who received such notice on June 3, 1970. Atty. Arsenio Velasquez failed to comply with the directive of the respondent Court of Appeals to file a printed record on appeal within the reglementary period stated in said notice because he never received copy of such notice. Neither did Attys. Bonifacio and Padua comply with the notice to file a printed record on appeal because of their honest belief that they were relieved of such responsibility, having previously withdrawn their appearance as counsels for petitioners. On May 20, 1970, petitioners paid the docket fee. The deadline for submitting the printed record on appeal was August 2, 1970.

Respondent Court of Appeals issued a resolution dated August 18, 1970 dismissing the appeal of petitioners for failure to file printed record on appeal within the period prescribed in the Notice of May 25, 1970. (p. 62, Annex M to petition, *Rollo*).

On August 11, 1970, Atty. Velasquez made inquiries at office of the Clerk of Court of respondent Court of Appeals, and he found out that a notice to file a printed record on appeal was sent to Attys. Bonifacio and Padua. Without losing time, Atty. Velasquez caused the hurried printing of the record on appeal and filed the same with respondent Court of Appeals on August 18, 1970 accompanied by a manifestation explaining the unfortunate circumstances that caused the failure of the petitioners to comply with the notice to file a printed record on appeal.

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Subsequently, a motion to reconsider the order of dismissal was filed by petitioners on September 23, 1970 which was denied by the respondent Court of Appeals in its resolution dated October 5, 1970. Again, petitioners filed a supplemental motion for reconsideration of resolution dated August 18, 1970 which was also denied in a resolution issued by respondent Court of Appeals on December 29, 1970.

This instant petition for review on *certiorari* of the resolutions dated August 18, 1970 and December 29, 1970 issued by respondent Court of Appeals was given due course by this court in its resolution on January 27, 1971.

The issue is whether respondent Court of Appeals acted correctly in dismissing the appeal of petitioners for failure to file the printed record on appeal within the reglementary period.

We hold that petitioners' appeal should be reinstated in consonance with the dictates of justice and fair play. In the case of *Lazarte vs. Court of Appeals*, 78 SCRA 544, this Court said that the failure to timely file the printed mimeographed copies of the record on appeal for the convenience of the members of the appellate courts may be excused for justifiable reasons. In the words of this Court:

"Hence, the petition at bar which the Court finds to be meritorious and therefore grants on the strength of controlling jurisprudence that such failure to timely file the printed mimeographed copies of the record on appeal for the convenience the members of the appellate courts (as the original record on appeal as filed with and approved by the trial court is duly attached to the original record on the case) may be excused for justifiable reasons since the appellate court has the *discretion* to dismiss or *not* to dismiss the appeal but said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." (see also *Philippine National Bank vs. Phil. Milling Co.*, 26 SCRA 712, *Gregorio vs. Court of Appeals*, 72 SCRA 120).

In the instant case, when Atty. Velasquez, counsel for petitioners, found out on August 11, 1970 that a notice submit and file a printed record on appeal was sent to the petitioners'

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former counsels, he lost no time in causing the printing and filing of the same on August 18, 1970, the very day when the questioned resolution dismissing the appeal was issued by the respondent Court of Appeals. On May 20, 1970, herein petitioners paid voluntarily the Appellate Court docket fee. These facts strongly reveal that petitioners never intended to abandon their appeal as to warrant its dismissal. An appeal may be reinstated, even after the remand of the record to the trial court, where it appears that the dismissal of the appeal was made under the erroneous impression that the appellants had abandoned their appeal (*Balajadia vs. Pineda*, L-45335, January 31, 1978, 81 SCRA 464; *Marquez vs. Court of Appeals*, L-45423, June 30, 1977, 77 SCRA 523; *Heirs of Celestino vs. Court of Appeals*, L-38690, September 12, 1975, 67 SCRA 22; *Krug vs. Meehan*, 239 Pac, 2nd 46; 4 C.J., 609).

Again, there is no dispute that the printed record on appeal was actually filed on August 18, 1970, though filed 16 days late. The filing of the printed record on appeal is not a requirement for the protection of the prevailing party, and non-compliance therewith within the time prescribed causes no substantial prejudice to anyone. It is patent that the delay in filing the printed record on appeal was not due to a desire to delay or defeat the ends of justice. In the case of *Lopez vs. Court of Appeals*, (75 SCRA 402), this Court held that: "To apply to petitioners the legal requirements strictly would not only tend to block the right to review to which a party is entitled under the law, but also would amount to a complete departure from what we said in the cases of *Philippine National Bank vs. Philippine Milling Co., Inc., et al.* (26 SCRA 712, 715) and restated in *Maqui and Maqui vs. Court of Appeals, et al.* (69 SCRA 368) that the provision of Section 1, Rule 50 of the Revised Rules of Court, which provides specific grounds for dismissal of appeal manifestly confers a power and does not impose a duty. What is more, it is *directory* not *mandatory*. Hence, it should be exercised with a great deal of circumspection considering all the attendant circumstances."

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The case of *Maqui vs. Court of Appeals*, *supra*, is applicable to this case. As aptly stated by this Court therein in ruling that the slight delay in the submittal of respondent court's copies of the record on appeal could not possibly prejudice any substantial rights:

"A rigid adherence to the technical rules and procedure disregards the fundamental aim of procedure to serve as our aid to justice, not as a means for its frustration, and the objective of the Rules of Court to afford litigants just, speedy and inexpensive determination of their controversy. Thus, excusable imperfections of form and technicalities of procedure or lapses in the literal or rigid observation of a procedural rule or non-jurisdictional deadline provided therein should be overlooked and brushed aside as trivial and indecisive in the interest of fair play and justice when public policy is not involved, no prejudice has been caused adverse party and the court has not been deprived of its authority or jurisdiction." (*Economic Insurance Co. vs. Uy Realty Co.*, 34 SCRA 744; Cf. *Alonso vs. Villamor*, 16 Phil. 315).

Moreover, dismissal of appeals purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeals on their merits. The rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure not override substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated. (*Gregorio vs. Court of Appeals*, 72 SCRA 121; *Mc Entee vs. Manotoc*, 3 SCRA 279; *Lim Tanhu vs. Ramolete*, 66 SCRA 441).

And as We said in *Obut vs. Court of Appeals*, 70 SCRA 547. "What should guide judicial action is the principle that a party litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities." (See also *Marquez vs. Court of Appeals*, 77 SCRA 524; *Pan American World Airways, Inc. vs. Espiritu*, 69 SCRA 36; *Aznar, et al. vs. Court of Appeals, et al.*, 70 SCRA 330; *Gregorio vs. Court of Appeals, et al.*, 72 SCRA 120; *Lopez vs. Court of Appeals*, 75 SCRA 401).

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More significantly, the cardinal rule remains that the discretionary power to dismiss appeals or not must always be exercised wisely and prudently, never capriciously, with a view to substantial justice. (*Marquez vs. Court of Appeals*, 77 SCRA 527; *Gregorio vs. Court of Appeals*, 72 SCRA 124; *Cucio vs. Court of Appeals*, 57 SCRA 68; *Piedad vs. Batuyong*, 55 SCRA 763; *Limon vs. Candido*, 27 SCRA 1166).

WHEREFORE, respondent appellate court's resolutions dismissing petitioners' appeal are set aside and the case is remanded to it for further proceedings and disposition of the appeal on its merits. No pronouncement as to costs.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *Melencio Herrera JJ.*, concur.

SECOND DIVISION

[G.R. Nos. L-39367-69. February 28, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REMIGIO CONCHADA *Y* ASTRERA**, *accused appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT, ENTITLED TO THE HIGHEST RESPECT. — The Court has long been committed to the principle that the determination be a trial judge who could weigh and appraise the testimony as to the facts duly proved is entitled to the highest respect. unless it could be shown that he ignored or disregarded circumstances of weight or influence sufficient to call for a different finding.