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3. Sixty-one (₱61.00) Pesos to the Workmen's Compensation Fund.

Without costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. L-47342. July 25, 1978]

NICOLAS GALDO, *petitioner, vs.* **THE HONORABLE EULALIO D. ROSETE, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS ORIENTAL, BRANCH IX, and ROSARIO B. ROA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; RECORD ON APPEAL; ONE DAY LATE IN THE FILING THEREOF DOES NOT WARRANT DISAPPROVAL OF SUCH RECORD ON APPEAL AND CONSEQUENT DENIAL OF APPEAL; CASE AT BAR.— The failure of the petitioner's counsel to file with the court the original copy of the record on appeal on May 5, 1977, and his being able to do so only on the following morning of May 6, 1977, considering the attendant circumstances, do not warrant such a cavalier disapproval of such record on appeal, and the consequent denial of his appeal. For one, the delay — which was but less than one day — in the filing of the record on appeal with the lower court was patently not intended to delay nor prejudice the private respondent. The fact of the matter is that the petitioner through counsel exerted earnest efforts to finish by himself — as he had no clerk — the typewritten

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record on appeal for the purpose of serving a copy thereof upon the adverse party - which petitioner's counsel had done within the reglementary period as extended, as well as for the purpose of filing a copy thereof with the lower court — which his counsel did attempt to no avail inasmuch as the office of the clerk of the court already closed when he arrived at past five o'clock in the afternoon that May 5, 1977. The ends of substantial justice could have been better served had respondent Judge approved the record on appeal — thereby giving due course to petitioner's appeal, in the light of petitioner's substantial compliance with the rules. Strict interpretation of the pertinent role in the instant case would mean sacrificing justice to technicality.

2. ID.; RULES OF COURT; CONSTRUCTION; LIBERAL CONSTRUCTION OF THE RULES, REITERATED.— The foregoing oft-cited ruling has been heavily relied on by this Court in the landmark case of *Berkenkotter v. CA* (*supra*), which set the mood for a more liberal construction of the rules as mandated in Section 2, Rule 1 of the Revised Rules of Court, "in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding."

TEEHANKEE, *J.*: *concurring:*

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LEGAL JUSTIFICATION FOR ALLOWING APPEALS IN CASES OF SUBSTANTIAL COMPLIANCE.— The legal justification for allowing appeals in such cases of substantial compliance (a one-day delay in the filing of the record of appeal as in this case or other similar delays due to accident, mistake or excusable negligence) is that in such cases where an order of dismissal for late filing beyond the jurisdictional period (of the notice of appeal, appeal bond or record on appeal, as the case may be) would be called for, the party appellant may seek relief under Rule 38 (even before an order of dismissal is entered) and such relief should be granted by the trial court in meritorious cases in the interest of substantial justice and fair play and in consonance with the Court's repeated injunctions that the Rules of Court should not be applied in a rigid, technical sense, but to help secure, not override, substantial justice.

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2. ID.; ID.; ID.; THE COURT'S DISCRETIONARY POWER WHETHER TO DISMISS THE APPEAL OR NOT MUST ALWAYS BE EXERCISED PRUDENTLY WITH A VIEW TO SUBSTANTIAL JUSTICE.— It should be equally emphasized that litigants and specially the members of the bar should exert every effort to observe strictly the reglementary and jurisdictional periods which are essential for the effective and orderly administration of justice. As the undersigned wrote in *Lopez vs. Court of Appeals*, "it must be born in mind by would-be appellants that their failure to observe the reglementary periods and other requirements throws the burden on them to show not only that it would be in consonance with the exercise of sound discretion and the tenets of justice and fair play to excuse their lapses. More than this, where the appeal is manifestly frivolous or obviously for dilatory purposes — such as one presenting no justiciable question or one so readily recognizable as devoid of merit on the face of the record that there is little, if any, prospect it can ever succeed — it would be against sound discretion to excuse such lapses and dismissal of the appeal will be sustained in the interest of justice" and "(T)he 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.'"

D E C I S I O N

MAKASIAR, *J.*:

Petitioner seeks to nullify the orders of respondent Judge dated September 28, 1977 and October 18, 1977, with the prayer for a writ of preliminary injunction to enjoin private respondent from filing a motion for execution of judgment and from disturbing petitioner's possession of the disputed parcel of rice land, as well as for an order directing the respondent Judge to approve petitioner's record on appeal and to give due course to his appeal.

The records disclose that on March 23, 1977, petitioner received a copy of the decision dated March 19, 1977 of respondent Judge in Civil Case No. 5105 entitled "*Nicolas Galdo, Plaintiff, versus Rosario B. Roa, Defendant.*"

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On April 15, 1977, petitioner filed his notice of appeal and deposited the cash appeal bond.

On the same date, April 15, 1977, about one week before the expiration of the 30-day reglementary period within which to perfect the appeal (Sec 3, Rule 41, Revised Rules of Court), petitioner filed a motion for extension of time to file his typewritten record on appeal up to May 5, 1977.

Because counsel for petitioner had no clerk then, he himself had to type his record on appeal which he finished in the afternoon of May 5, 1977. Forthwith that same afternoon, he furnished counsel for herein private respondent a copy of his typewritten record on appeal and thereafter proceed to the court to file the typewritten record on appeal, but the same could not be filed because it was already past five o'clock in the afternoon, the office of the clerk of court was closed and nobody was present to properly receive the typewritten record on appeal, which at any rate he filed the following morning of May 6, 1977.

Petitioner set the bearing for the approval of his record on appeal on May 20, 1977, which was postponed by respondent Judge upon oral motion of counsel for private respondent on the ground that private respondent would file a motion to cite herein petitioner and other persons in contempt of court and which motion for contempt should be given preference.

Because not all respondents in the contempt citation were notified of the same, hearing of the contempt motion was deferred.

On August 3, 1977, the date set for the hearing of the contempt proceedings, respondent Judge, without benefit of hearing, ordered the arrest of one Mrs. Florecita G. Bahala, one of those persons listed in the contempt citation, who was immediately jailed.

On that same day, counsel for private respondent filed an opposition to the approval of the record on appeal on the ground that it was filed one day late.

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Despite objection of counsel for petitioner to the opposition, respondent Judge, in an order dated September 28, 1977. disapproved the record on appeal, which was reiterated in an order dated October 18, 1977 denying the motion for reconsideration filed by petitioner.

Hence, this petition.

This Court has time and again reiterated its adoption of a liberal posture in respect to procedural technicalities beginning with the case of *Berkenkotter v. Court of Appeals* (53 SCRA 228 [1973]). We see no compelling reason in the case at bar to deviate from the rule against the rigorous adherence to technical rules of procedure.

It is not disputed that the notice of appeal, the cash appeal bond, and the motion for extension of time to file typewritten Record on Appeal were all filed within the reglementary period. The records likewise disclose that the petitioner personally furnished a copy of the record on appeal to counsel for the private respondent, Rosario B. Roa, within the reglementary period as extended, more specifically in the afternoon of May 5, 1977. The failure of the petitioner's counsel to file with the court the original copy of the record on appeal on May 5, 1977, and his being able to do so only on the following morning of May 6, 1977, considering the attendant circumstances, do not warrant such a cavalier disapproval of such record on appeal, and the consequent denial of his appeal. For one, the delay — which was but less than one day — in the filing of the record on appeal with the lower court was patently not intended to delay nor prejudice the private respondent. The fact of the matter is that the petitioner through counsel exerted earnest efforts to finish by himself — as he had no clerk — the typewritten record on appeal for the purpose of serving a copy thereof upon the adverse party - which petitioner's counsel had done within the reglementary period as extended, as well as for the purpose of filing a copy thereof with the lower court — which his counsel did attempt to no avail inasmuch as the office of the clerk of the court already closed when he arrived at past five o'clock in the afternoon that May 5, 1977.

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Respondent Judge's contention that there were at least two court stenographers working overtime that day until late in the night, with whom the record on appeal could have been filed does not deserve consideration; because it is not just any employee in the lower court who can properly receive pleadings, but it is the receiving or docket clerk or deputy clerk of court particularly assigned to receive pleadings.

The ends of substantial justice could have been better served had respondent Judge approved the record on appeal — thereby giving due course to petitioner's appeal, in the light of petitioner's substantial compliance with the rules. Strict interpretation of the pertinent role in the instant case would mean sacrificing justice to technicality.

The Supreme Court as far back as *Alonso v. Villamor* (16 Phil. 315 [1910]) frowns upon such application of procedural rules with "pedantic rigor," thus:

"The error in this case is purely technical. To take advantage of it for other purposes than to cure it, does not appeal to a fair sense of justice . x x x Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities. x x x"

The foregoing oft-cited ruling has been heavily relied on by this Court in the landmark case of *Berkenkotter v. CA (supra)*, which set the mood for a more liberal construction of the rules as mandated in Section 2, Rule 1 of the Revised Rules of Court, "in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding." We ruled therein:

"x x x although there is no vested right in technicalities (*Alonso v. Villamor*, 16 Phil. 315), in meritorious cases like the present case, a liberal (not literal) interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the intent and purpose of the rules - the proper and just determination of a litigation" (see also *Lopez, et al. vs. CA. et al.* [75 SCRA 401. (1977)], *Maqui and Maqui vs. CA* [69 SCRA 368 (1976)], *Heirs of Ceferino*

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Morales vs. CA [67 SCRA 304 (1975)], and *Pimentel vs. CA* [64 SCRA 476 (1975)].

Subsequent decision of this Court in respect to the same question were mere reiterations of the liberal stance adopted by this Court. In Heirs of *Ceferino Morales vs. CA (supra)*, WE said:

"The intent is thus clear that every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. x x x"

And in the more recent case of *De las Alas vs. CA, et al.* (L-38006, May 16, 1978). We declared that "litigations should, as much as possible, be decided on their merits and not on technicality . . .", citing *Gregorio vs. CA* (72 SCRA 120, 126 1976]) wherein We stated:

"'x x x 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.'"

WHEREFORE, PREMISES CONSIDERED, THE CHALLENGED ORDERS OF SEPTEMBER 28, 1977 AND OCTOBER 18, 1977 ARE HEREBY SET ASIDE AS NULL AND VOID AND RESPONDENT JUDGE IS HEREBY DIRECTED TO TRANSMIT ALL RECORD ON APPEAL AND TRANSCRIPT OF RECORDS TO THE COURT OF APPEALS FOR A DECISION ON THE MERITS AND/OR ANY APPROPRIATE PROCEEDINGS. NO COSTS.

Fernandez and *Guerrero, JJ.*, concur.

Muñoz Palma, J., concurs in the result.

Teehankee, J., concurs in a separate opininon.

TEEHANKEE, *J.*, *concurring*:

I concur with the decision penned by Mr. Justice Makasiar on the ground that the one-day delay in the filing of the record

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on appeal with the lower court because counsel reached the court premises at past 5 o'clock in the afternoon (although he had duly served the same on opposing counsel earlier in the afternoon) constituted in effect substantial compliance with the requirement of timely perfection of appeals.

The liberal application of the material data rule in respect to procedural technicalities presaged by the leading case of Berkenkotter[1] does not quite meet respondents' contention that the reglementary period for perfection of appeals is not a mere technicality but a jurisdictional requirement, failure to meet which is fatal.

The legal justification for allowing appeals in such cases of substantial compliance (a one-day delay in the filing of the record of appeal as in this case or other similar delays due to accident, mistake or excusable negligence) is that in such cases where an order of dismissal for late filing beyond the jurisdictional period (of the notice of appeal, appeal bond or record on appeal, as the case may be) would be called for, the party appellant may seek relief under Rule 38 (even before an order of dismissal is entered) and such relief should be granted by the trial court in meritorious cases in the interest of substantial justice and fair play and in consonance with the Court's repeated injunctions that the Rules of Court should not be applied in a rigid, technical sense, but to help secure, not override, substantial justice.

The Court so stated in no uncertain terms in *De Luna vs. Palacio*[2] and its precedents, thus

"It is undisputable and elementary that to perfect an appeal the notice and record of appeal, as well as the appeal bond, must be filed within the period prescribed by the Rules; and that the failure to do so renders the decision final and unappealable because the period for appeal is fatal x x x. *But the would-be-appellant is not thereby precluded from seeking relief under Revised Rule 38 Section 2, whenever the entering of a judgment or order against*

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[1] 53 SCRA 228 (1973), per Esguerra, *J.*

[2] 30 SCRA 912, 914-915, per Reyes, J.B.L., *J.*, emphasis supplied.

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said party was made through fraud, accident, mistake or excusable neglect. This Court so indicated in *Salva vs. Palacio and Reyes vs. Court of Appeals, supra.* In *Medran vs. Court of Appeals* (1949), 83 Phil. 167, we said:

> "'The order of the Court of First Instance of February 19, 1946, dismissing the appeal was undoubtedly valid, because the defeated parties had failed to submit an appeal bond in due time. *The would-be appellants could obtain a revocation of that order, upon a motion for relief from accident, mistake or excusable negligence pursuant to Rule 38.* However, if their petition for relief is denied, they should appeal.' (Emphasis supplied)

"And, conformably to the foregoing ruling, *Salva vs. Palacio* (1952), 90 Phil. 732, this Court, after holding that a dismissal of the appeal was proper because the appeal bond had been filed two days after the expiry of the extension granted for the purpose, added however:

> "'What the herein petitioner or his counsel should have done in the Court below *was to file a motion for relief under Rule 38*, and not to appeal from the judgment of the Court below x x x.' (Case. cit., page 734; emphasis supplied)

"*Now, if a party may seek relief under Rule 38, and within the period prescribed therein, after an order for dismissal of the appeal has been entered there is no reason for denying him that right before the order of dismissal is entered.* Respondent Ferrer's objection to the motion to dismiss his appeal in this case was virtually a motion for relief under Rule 38; it was predicated on accident or excusable neglect, and was accompanied by an opposite affidavit of merit. Hence, it was proper for the trial court to grant him relief, provided of course the ground for doing so appeared indubitable."

The refusal of the trial court to grant such relief in *clearly meritorious* cases constitutes grave abuse of discretion that would be corrected on appeal or *certiorari*, and it behooves the lower courts to exercise their just discretion when confronted with such justifiable pleas for relief so as not to "place the administration of justice in a straightjacket"[3] and to unduly burden

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[3] *Obut vs. Court of Appeals*, 70 SCRA 546, (1976) per Muñoz Palma, *J.*

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the Court with the task of having to set aside such wrongful dismissals of appeal.[4]

On the other hand it should be equally emphasized that litigants and specially the members of the bar should exert every effort to observe strictly the reglementary and jurisdictional periods which are essential for the effective and orderly administration of justice. As the undersigned wrote in *Lopez vs. Court of Appeals*,[5] "it must be born in mind by would-be appellants that their failure to observe the reglementary periods and other requirements throws the burden on them to show not only that it would be in consonance with the exercise of sound discretion and the tenets of justice and fair play to excuse their lapses. More than this, where the appeal is manifestly frivolous or obviously for dilatory purposes — such as one presenting no justiciable question or one so readily recognizable as devoid of merit on the face of the record that there is little, if any, prospect it can ever succeed[6] — it would be against sound discretion to excuse such lapses and dismissal of the appeal will be sustained in the interest of justice" and "(T)he 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.'"[7]

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[4] See writer's concurring opinion in *Republic of the Philippines vs. Court of Appeals, et al.*, L-31303-04. May 31, 1978 and cases cited.

[5] Writer's concurring opinion in L-43767, prom. Feb. 28, 1977.

[6] *De la Cruz vs. Blanco*, 73 Phil. 596.

[7] See *Gregorio vs. Court of Appeals*, and cases cited.