Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-39439. February 28, 1977]

RAFAEL LIBONGCO AND BELEN LIBONGCO, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS and RAUL CASUMPANG *Y* ISLAO,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR EXTENSION OF TIME; THE MERE ABSENCE OF A FORMAL ORDER GRANTING THE MOTION FOR EXTENSION OF TIME TO FILE THE RECORD ON APPEAL SHOULD NOT BE FATAL TO THE PETITIONER IF THE RECORD ON APPEAL FILED WITHIN THE REQUESTED EXTENSION PERIOD WAS APPROVED BY THE COURT *A QUO*.— Indeed, the action taken by the trial court on the defendant's urgent motion for extension of time to file his record on appeal and the date when the defendant received a copy of the resolution on the said motion are not included in the record on appeal. This fact, according to the petitioners, is a violation of the "material data rule" so that the appeal of the defendant should be dismissed. In the case of *Berkenkotter vs. Court of Appeals et al,* the Court ruled, however, that "The mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the petitioner if the record on appeal filed within the requested extension period was approved by the Court *a quo*. As previously stated, the approval thereof carries with it the approval of the motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal. No trial judge in his right mind and who is aware of the serious responsibilities of his office, would approve a record on appeal that was not timely failed." This rule was reiterated in *Pimentel vs. Court of Appeals et al*, wherein were omitted from the record on appeal the motion for a 30-day extension within which to perfect the record on appeal, the order of the court granting the 30-day extension, and the order giving petitioners therein five days to finalize the amended record on appeal, as well as in the cases of *Republic vs. Court*

Supreme Court E-Library

of Appeals, Luna vs. Court of Appeals, Tambunting vs. Court of Appeals, and *Diola vs. Court of Appeals,* where similar motions and resolutions have not been included in the record on appeal.

APPEARANCES OF COUNSEL

Dominguez & Marin for petitioners.
Manuel E. Yuson for private respondent.

D E C I S I O N

CONCEPCION, JR., *J.*:

Petition for *certiorari* to annul and set aside an order of the respondent Court of Appeals denying petitioners' motion to dismiss the appeal in Civil Case CA-G.R. No. 51647-R.

The petitioners are the plaintiffs in Civil Case No. Q-12821 of the Court of First Instance of Rizal, an action for the recovery of damages arising out of a quasi-delict, of which the private respondent Raul Casumpang *y* Islao is the defendant. After trial, the lower court rendered judgment on July 6, 1972 in favor of the plaintiffs and against the defendant. Counsel for the defendant was furnished a copy of the decision on July 14, 1972. On August 9, 1972, the defendant filed his notice of appeal, appeal bond, and an urgent motion for extension of time to file record on appeal, wherein he prayed for an extension of thirty (30) days from August 14, 1972 within which to file his record on appeal.[1]

On August 25, 1972, the defendant filed his record on appeal which the court approved on October 14, 1972.[2] In due time, the records were elevated to the Court of Appeals where the case was docketed as Civil Case CA-G.R. No. 51647-R.

---

[1] pp. 36-38, Record on Appeal.

[2] p. 40, *Ibid.*

Supreme Court E-Library

On July 30, 1974, the plaintiffs, as appellees, filed a motion to dismiss the appeal on the ground that the defendant's record on appeal fails to show on its face that the appeal was perfected within the period fixed by the Rules. The material data allegedly omitted in the record on appeal are the resolution of the trial court on the defendant's urgent motion for extension of time to file record on appeal, and the date when the defendant received a copy of the said resolution.[3]

The respondent Court of Appeals denied the plaintiffs' motion to dismiss the appeal on August 30, 1974.[4] A reconsideration of this order having been denied on September 20, 1974,[5] the plaintiffs filed the instant petition to set aside the order denying the motion to dismiss the appeal, as well as the order denying the reconsideration of the said order.

Indeed, the action taken by the trial court on the defendant's urgent motion for extension of time to file his record on appeal and the date when the defendant received a copy of the resolution on the said motion are not included in the record on appeal. This fact, according to the petitioners, is a violation of the "material data rule" so that the appeal of the defendant should be dismissed.

In the case of *Berkenkotter vs. Court of Appeals et al.*,[6] the Court ruled, however, that "The mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the petitioner if the record on appeal filed within the requested extension period was approved by the Court *a quo*. As previously stated, the approval thereof carries with it the approval of the motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal. No trial judge in his right mind and who is aware of the serious responsibilities of his office, would approve a record on appeal that was not timely

---

[3] p. 11, *Rollo*.

[4] p. 18, *Ibid*.

[5] p. 23, *Ibid*.

[6] L-36629, Sept. 28, 1973; 53 SCRA 228.

Supreme Court E-Library

failed." This rule was reiterated in *Pimentel vs. Court of Appeals et al.*,[7] wherein were omitted from the record on appeal the motion for a 30-day extension within which to perfect the record on appeal, the order of the court granting the 30-day extension, and the order giving petitioners therein five days to finalize the amended record on appeal, as well as in the cases of *Republic vs. Court of Appeals*,[8] *Luna vs. Court of Appeals*,[9] *Tambunting vs. Court of Appeals*,[10] and *Diola vs. Court of* Appeals,[11] where similar motions and resolutions have not been included in the record on appeal.

In view thereof, the respondent Court of Appeals did not commit an error, much less abuse its discretion, in denying the petitioners' motion to dismiss the appeal of the defendant Raul Casumpang.

WHEREFORE, the instant petition is hereby dismissed for lack of merit.

Fernando (Chairman), Barredo, Antonio, and *Aquino, JJ.*, concur.

---

[7] L-39423 & 39684, June 27, 1975; 64 SCRA 475.

[8] L-40995-96, Oct. 30, 1975; 67 SCRA 322.

[9] L-37123, Oct. 30, 1975; 67 SCRA 503.

[10] L-40768, Feb. 27, 1976; 69 SCRA 551.

[11] L-36455, April 30, 1976; 70 SCRA 511