

SECOND DIVISION

[G.R. No. 128421, October 12, 1998]

TRANS INTERNATIONAL, PETITIONER, VS. THE COURT OF APPEALS; NATIONAL POWER CORPORATION; PERLA A. SEGOVIA AND GILBERTO PASTORAL, RESPONDENTS.

R E S O L U T I O N

MARTINEZ, J.:

Petitioner has filed this motion for reconsideration of the decision dated January 26, 1998, denying the petition, on the ground that:

"SAID DECISION IS NOT SUPPORTED BY THE FACTS AND CIRCUMSTANCES ON RECORD AND/OR IS CONTRARY TO THE LAW AND JURISPRUDENCE APPLICABLE TO THE MATTER IN CONTROVERSY."

In essence, movant posits the view that while the mandatory and jurisdictional nature of the timely perfection of an appeal is subject to well-recognized exceptions, the circumstances reflected in this case do not come close to the exceptional circumstances that could justify a turn about from the otherwise strictly followed general rule.

Upon perusal of the motion for reconsideration and the comment thereto filed by the public respondent, through the Office of the Solicitor General, we have been persuaded to take a second look at the facts and circumstances obtaining herein.

For a better perspective of the case at bar, we go back to the petition for certiorari filed before the respondent court, which, as in petitions of this nature, the focus of the inquiry invariably is whether or not the trial court acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in denying due course to respondent National Power Corporation's appeal. The threshold issue posed for resolution, therefore, is whether or not, in view of the facts and circumstances obtaining as spread out on the record, private respondent's tardiness in the filing of the notice of appeal from the trial court's decision may be considered as an exception to the general rule that failure to appeal on time is fatal.

We upheld the respondent court when it ruled that the failure of the National Power Corporation to file the appeal on time falls under the exception to the general rule despite the fact that the perfection of an appeal within the period fixed by law is not only mandatory but also jurisdictional. Resultantly, the respondent court opined that, in denying due course to respondent's appeal and directing the issuance of a writ of execution, the respondent judge acted with grave abuse of discretion.

Thus, respondent court said:

"The Supreme Court has pointed out that a lower court should not be

cited as having acted with grave abuse of discretion simply because it has correctly but strictly applied the rules (*Castro vs. CA*, *supra*). However, in this case, We hold that the denial of the notice of appeal, filed one day late despite the valid excuse presented before it, which excuse was not found to be incredible or concocted, was arbitrary and amounted to a grave abuse of discretion on the part of the trial judge, being in clear disregard of established precedents enunciating a liberal policy towards invocation of the right to appeal as an essential part of our judicial system."^[1]

Now, petitioner prays that we again review the facts and circumstances on record to determine whether the respondent court's application of the exception instead of the general rule measures up to the extraordinary circumstances held sufficient in the decisions of the Court.

After a meticulous re-examination of the background facts, We find that the respondent court was in error, thus, we reconsider our earlier decision and grant the motion for reconsideration.

We are constrained to agree with petitioner that the reasons relied upon by the respondent court for the relaxation of the rule of the timeliness in the perfection of an appeal in this case are not as compelling as was our previous assessment. The stringent rule can be relaxed only when the demands of substantial justice so warrant. As correctly argued by petitioner, thus:

"x x x that may be done only when, in the varying but consistent language of jurisprudence, 'to do so would serve the demands of substantial justice and in the exercise of (our) equity jurisdiction' (*Pacific Asia Overseas Shipping Corporation vs. NLRC*, et al., 161 SCRA 122, 130), or, when there are 'strong considerations of substantial justice' (*Vda. de Crisologo*, et al. vs. *Court of Appeals*, et al., 158 SCRA 236); or, 'on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave injustice' (*Paramount Vinyl Products Corporation vs. NLRC*, et al., 190 SCRA 525, 534); or, 'on grounds of substantial justice and equity, the delay must, however, be excusable and the appeal must be impressed with merit' (*Acena vs. Court of Appeals*, et al., 193 SCRA 623, 630). Some such strong and compelling reasons are exemplified in *Republic vs. CA*, 83 SCRA 453, where the six-day delay in the filing of a record on appeal was excused because, among others, there were involved serious issues of jurisdiction and the application of defenses like prescription, statute of limitations and laches against the Republic which would place technicality over substance if the dismissal of the appeal is upheld; in *Ramos vs. Bagasao*, 96 SCRA 395, where the four-day delay was justified because the plaintiff's lawyer died and the decision was served directly upon plaintiff who still had to engage the services of a new counsel to take the appeal on her behalf; in *Siguenza vs. Court of Appeals*, 137 SCRA 570, where the delay in the filing of the record on appeal was overlooked and this Honorable Court opted to already decide the case on the merits inasmuch as, on its face, the appeal appeared to be impressed with merit; in *Cortes vs. Court of Appeals*, 161 SCRA 444, where the seven-day delay in the filing of the notice of appeal was excused because the party's counsel, who was

appointed RTC Judge, failed to file a withdrawal of appearance such that notice of the decision was still served upon him and it was only after he returned to his former law office from his station that he learned of said decision and also only after a new counsel was engaged that the notice of appeal was filed; and, in *Orata vs. IAC*, 185 SCRA 148, where the delay was likewise overlooked and this Honorable Court resolved the case on its merits because, in addition to the basic merits of the main case, the petition embodied circumstances that warranted heeding the petitioner's plea for justice."^[2]

However, a re-examination of the reasons advanced by private respondent National Power Corporation to justify the tardiness of their filing the notice of appeal before the trial court, cannot be catalogued under the aforecited exceptions to the general rule.

The respondent court said that "the notice of appeal was admittedly filed one (1) day late." However, it was convinced "that under the circumstances of the case, the delay of one (1) day in filing the appeal is justified and should be excused by the court a quo x x x." The reasons for this, the respondent court so holds, was due to the big amount involved in the case; and, that "the one (1) day delay arose from an honest mistake or unforeseen accident. x x x."^[3]

In justifying the one (1) day delay, the respondent court took into account the affidavit of Ronald Lapuz, the receiving clerk, pertinent portions of which is quoted as follows:

"x x x x x x x x x

2. On August 23, 1996 at 4:54 p.m. Friday, I received a copy of the Order dated August 2, 1996 issued by the RTC-Branch 101, Quezon City, entitled *Trans International vs. NPC, et al*;

3. Since it was already almost 5:00 p.m., I placed the said order inside the drawer of my table together with some other documents;

4. On August 26, 1996, that was Monday I was unable to report to the office because of severe pain in my front jaw as a result of the extraction of my three front teeth, causing severe pain in my body;

5. I forgot to deliver immediately the copy of the Order to Atty. Collado nor to his secretary on August 23, 1996, despite his instruction to me to immediately deliver to his secretary any order in this case, *Trans International vs. NKPC, et al*, *RTC-Quezon City and Sps. Lim vs. NPC, et al RTC-Lingayen* as it was already almost 5:00 p.m. and believing that on the next succeeding working day, I could report to work, but incidentally, I got sick and was able only to report on August 28, 1996 as per hereto attached copy of my approved sick leave;

x x x x x x x x x

7. My failure to deliver the said order to the secretary of Atty. Wilfredo Collado on the next working day, August 26, 1996 was due to my