

MONTE DE ORO LEAD CORPORATION, ET AL., APPELLEES, VS. EQUITABLE PCI BANK, INC., APPELLANT.

Ponente: REYES, JR., J., J.

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REYES, JR., J., J.:

This is an appeal from the May 28, 2004 Decision (Records, pp. 69-75) of the Regional Trial Court of Manila, Branch 30 in S.P. Civil Case No. 03107916 which set aside the June 30, 2003 Order of the Metropolitan Trial Court of Manila, Branch 11.

The case arose from a Complaint (Records, pp. 8-17) for “Recovery of Possession of Personal Property with Prayer for Issuance of a Writ of Replevin and/or Collection of a Sum of Money” filed by herein appellant Equitable PCI Bank, Inc. (EPCIBank) against herein appellees Monte De Oro Lead Corporation, et. al. The case was docketed as Civil Case No. 157036 and raffled to Metropolitan Trial Court of Manila (MTC of Manila), Branch 11.

Appellees in turn filed an Answer with Counterclaim (Records, pp. 30-36), refuting some of the material allegations of the complaint and praying for its dismissal and the payment of actual/consequential, moral and exemplary damages, attorney’s fees including appearance fees and costs of suit.

During the trial of the said case, appellant EPCIBank, on October 3, 2001 presented as its evidence the testimony of Ms. Ruela Ramos. Unfortunately, on January 23, 2002, the MTC of Manila had stricken off the testimony of Ms. Ramos for failure of the latter and appellant’s counsel to appear during the scheduled hearing for Ms. Ramos’ cross-examination. Further, the court likewise ordered that appellant is deemed to have waived its right to adduce evidence (See: Order dated January 23, 2002, Records, p. 41).

On October 9, 2002, the MTC of Manila allowed appellees to present its evidence in support of their counterclaim on December 4, 2002 (Records, p. 42). However, the December 4, 2002 hearing was re-set to February 5, 2003. Both the appellees and their counsel were duly notified of the aforementioned schedule of hearings. But on February 5, 2003, both appellees and their counsel failed to appear. Thus, upon motion of appellant’s counsel, the lower court dismissed appellees’ counterclaim (See: Order dated February 5, 2003, Records, p. 43).

On March 7, 2003, appellees’ counsel filed a Motion for Reconsideration (Records, pp. 44-45) claiming that he received the February 5, 2003 Order on February 24, 2003. Unfortunately, the record of the MTC of Manila showed that appellees’ counsel received the February 5, 2003 Order on February 14, 2003 and thus, appellees’ Motion for Reconsideration was filed out of time. Consequently, on June 30, 2003, the MTC of Manila denied appellees’ Motion for Reconsideration (Records, p. 7).

Thereafter, on September 16, 2003, appellees filed a petition for certiorari under Rule 65 of the 1997 Rules of Court before the Regional Trial Court (RTC) of Manila claiming that the MTC of Manila acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when it denied appellees’ Motion for Reconsideration. The said petition for certiorari was docketed as Civil Case No. 03-107916 and was raffled to Branch 30, RTC of Manila.

Unfortunately, the RTC, in its Decision dated May 28, 2004 disregarded the factual findings of the lower court and set aside the Order dated June 30, 2003 issued by the MTC of Manila denying appellees' Motion for Reconsideration. The dispositive portion of the appealed Decision reads as follows:

“WHEREFORE, the assailed order dated June 30, 2003 is hereby annulled and set aside. Public respondent is ordered to act on petitioners' motion for reconsideration based on its merit. No costs” (Records, p. 75).

On appeal to this Court, appellant EPCIBank set forth the following arguments:

- The Metropolitan Trial Court of Manila, Branch 11 did not commit grave abuse of discretion amounting to lack or in excess of jurisdiction when it denied appellees' Motion for Reconsideration (Rollo, p. 14).
- The Regional Trial Court of Manila should have respected the factual findings of the Metropolitan Trial Court of Manila (Rollo, p. 17).

Thus, the main issue in the instant case involves a determination of the propriety of appellees' choice of resorting to the remedy of certiorari in questioning the June 30, 2003 Order of the MTC of Manila which denied appellees' Motion for Reconsideration for being filed out of time.

Appellant EPCIBank insisted that since the MTC of Manila already disposed of the case by dismissing both the complaint and appellees' counterclaim, the appropriate, adequate and immediate remedy that the appellees should have resorted is not certiorari under Rule 65 but ordinary appeal.

We find appellant's argument to be meritorious.

It bears repeating that certiorari will lie only where a court has acted without or in excess of jurisdiction or with grave abuse of discretion, or an act too patent and gross as to amount to an evasion of a duty, or to a virtual refusal to perform the duty enjoined, or act in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility (*Philippine National Construction Corporation vs. Dy*, 472 SCRA 1, 7-8 [2005]). Mere errors of fact or law committed by the lower court are not correctible via a Rule 65 petition for certiorari (*China Banking Corporation vs. Mondragon International Philippines, Inc.*, 475 SCRA 332, 337 [2005]). Certiorari is often resorted to in order to correct errors of jurisdiction (*Southern Cross Cement Corporation vs. Philippine Cement Manufacturers Corporation*, 434 SCRA 65, 90 [2004]). Thus, if the court has jurisdiction over the subject matter and of the person, its rulings upon all questions involved are within its jurisdiction, however irregular or erroneous these may be, they cannot be corrected by certiorari (*Metropolitan Manila Development Authority vs. JANCOM Environmental Corporation*, 375 SCRA 320, 328 [2002]).

In the instant case, the main thrust of appellees' petition for certiorari with the RTC is the act of the MTC in issuing the June 30, 2003 Order which denied its Motion for Reconsideration for being filed out of time. It cannot be said that by ruling so, the MTC of Manila committed an error of jurisdiction and that it acted without or in excess of jurisdiction, or with grave abuse of discretion. On the contrary, the MTC only affirmed its earlier finding dismissing on the merits appellees' counterclaim and stressed that appellees' attempt to reconsider the same is futile especially if the motion was filed out of time and the order had already attained finality.

By resorting to the remedy of certiorari, the appellees wanted the RTC to inquire if there was grave abuse of discretion that can be ascribed to the MTC by stating that said Motion for Reconsideration is filed out of time. This cannot be done, as it would entail the RTC to re-evaluate all over again the pertinent documents extant on records.

A review of evidence cannot be secured in a petition for certiorari. Certiorari is not the proper remedy to correct mistakes in the judge's findings and conclusions or to cure erroneous conclusions of law and fact. For certiorari

to prosper, the burden is on petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent (*People vs. Chavez*, 358 SCRA 810 [2001]). The sole office of a writ of certiorari is the correction of errors of jurisdiction and does not include a review of public respondent's evaluation of the evidence and factual findings (*Oro vs. Diaz*, 361 SCRA 108 [2001]).

Erroneous it might be, the order of the MTC cannot be subject of certiorari. The judgment was not in any sense null and void ab initio, incapable of producing any legal effects whatsoever, which could be resisted at any time and in any court it was attempted (*Mercado vs. Court of Appeals*, 162 SCRA 75 [1988]). Where the error is one of law or of fact, which is a mistake of judgment, appeal is the remedy (*Southern Cross Cement Corporation vs. Philippine Cement Manufacturers Corporation*, 434 SCRA 65, 90 [2004]).

While we recognize the proscription against appealing from an order denying a motion for reconsideration pursuant to Sec 1(a), Rule 41 of the 1997 Rules of Court, the Supreme Court elaborated on the matter and specifically pronounced that said proscription refers merely to interlocutory orders. It held:

“From a considered re-examination of the immediately-quoted rules, this court finds that the proscription against appealing from an order denying a motion for reconsideration refers to an interlocutory order, and not to a final order or judgment. x x x

x x x The appropriate remedy is thus for the party to wait for the final judgment or order and assign such interlocutory order as an error of the court on appeal.

The denial of the motion for reconsideration of an order of dismissal of a complaint is not an interlocutory order, however, but a final order as it puts an end to the particular matter resolved, or settles definitely the matter therein disposed of, and nothing is left for the trial court to do other than to execute the order.

Not being an interlocutory order, an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself.” (*Quelnan vs. VHF Philippines, Inc.*, 433 SCRA 631, 638 [2004]) (underscoring supplied).

The foregoing pronouncement was reiterated by the Supreme court in the case of *Apuyan vs. Haldeman*, 438 SCRA 402, 418 [2004] and *Neypes vs. Court of Appeals*, 469 SCRA 633, 640 [2005]), where the Supreme Court ruled that the denial of the motion for reconsideration of an order of dismissal of a complaint constitutes not merely an interlocutory order but a final order which finally disposed of the issues involved in the case (See: *Del Rosario vs. Montana*, 430 SCRA 109, 114 [2004]); *RCBC vs. Magwin Marketing Corporation*, 402 SCRA 592 [2003]).

Clearly the remedy of appeal can be resorted to by the appellees in order for them to be relieved of the adverse final order of the MTC. Unfortunately for the appellees, they did not pursue this recourse. The existence and availability of the right of appeal proscribes a resort to certiorari. As repeatedly held, certiorari lies only when there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law (*Conejos vs. Court of Appeals*, 387 SCRA 142, 147 [2002]). Then again, the special civil action of certiorari cannot be used as a substitute for an appeal which appellees already lost especially if the latter remedy is available, as it was in this case.

WHEREFORE, in view of the foregoing, the instant appeal is hereby GRANTED and the appealed Decision dated May 28, 2004 of the Regional Trial Court of Manila, Branch 30 in S.P. Civil Case No. 03107916 is hereby SET ASIDE and the ORDER dated June 30, 2003 of the Metropolitan Trial Court of Manila, Branch 11 is hereby REINSTATED.

SO ORDERED.

Cruz, (Chairman) and Lanzas, JJ., concur.

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