

REYNALDO LOMERIO, PETITIONER, VS. TAGAYTAY PROPERTIES AND HOLDINGS CORPORATION, THE HON. PRESIDING JUDGE OF THE MUNICIPAL TRIAL COURT IN CITIES, BR. 1 OF TAGAYTAY CITY, AND TEOD...

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

A close scrutiny of the instant petition for prohibition discloses the following infirmities which render the same fatally defective:

- a. The assailed Order dated April 10, 2014[1] of the Municipal Trial Court in Cities (MTCC), Tagaytay City, as well as other pertinent pleadings and documents, was not appended to the petition, in violation of Section 2, Rule 65 and Section 3, Rule 46 of the Revised Rules of Court;
- b. The petition is not accompanied by a Verification, as required under Section 2, Rule 65;
- c. The petition is likewise bereft of a Certification of Non-Forum Shopping, in violation of Section 3, Rule 46 and Section 2, Rule 65;
- d. The Affidavit of Service does not have any appended registry return receipts. Neither is there a written Explanation why copies of the petition had to be furnished to the respondents by registered mail instead of personal service.

The pertinent provisions of the Revised Rules of Court, particularly Rule 65, Section 2, and Rule 46, Section 3, plainly state that:

“SEC. 2. Petition for prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.” (Emphasis supplied)

xxx xxx xxx

SEC. 3. Contents and filing of petition; effect of noncompliance with requirements. — xxx xxx xxx

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

xxx xxx xxx

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.” (Emphasis and underscoring supplied)

Therefore, considering the above-mentioned defects, the dismissal of the petition is already warranted.

To reiterate, the assailed Order dated April 10, 2014 of the MTCC, Tagaytay City was not attached to the petition. Parenthetically, there is no showing that the petitioner filed a Motion for Reconsideration with the MTCC before resorting to the instant petition for prohibition. Aside from these defects, petitioner's legal maneuver of directly filing the instant petition with this Court instead of the Regional Trial Court (RTC) violates the principle of hierarchy of courts.

It bears emphasis that the concurrence of original jurisdiction among the Regional Trial Court, the Court of Appeals, and the Supreme Court does not mean that the party seeking any of the extraordinary writs, such as a petition for prohibition, has the absolute freedom to file his petition in the court of his choice. The hierarchy of courts in our judicial system determines the appropriate forum for these petitions. Thus, petitions for the issuance of the said writs against the first level courts must be filed with the Regional Trial Court and those against the latter, with the Court of Appeals.[2]

More importantly, an essential requirement for the remedy of prohibition under Section 2, Rule 65 of the Revised Rules of Court is that there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. It has been held that the "plain" and "adequate remedy" referred to in Rule 65 is a motion for reconsideration of the assailed Order or Resolution. A motion for reconsideration, therefore, is a condition sine qua non before filing the petition.[3] In this case, there is no showing that petitioner Lomerio filed a Motion for Reconsideration before the MTCC seeking to reconsider its April 10, 2014 Order. Secondly, it should be stressed that petitioner Lomerio has already sought to enjoin the execution proceedings by filing a petition for relief[4] with the RTC. Thus, it is clear that petitioner Lomerio still has a remedy in law, as he in fact availed of it. In view of the essential requisites of a petition for prohibition under Rule 65, it cannot coexist with an appeal or any other adequate remedy, such as the petition for relief. As petitioner's Motion for Reconsideration[5] is pending before the RTC, the instant petition for prohibition is still premature.

At any rate, in view of the infirmities earlier mentioned, the dismissal of the petition is in order. Indeed, procedural rules are not to be disdained as mere technicalities. They serve a noble purpose in the orderly and

speedy administration of justice. The rules are there to be followed, otherwise, they are useless.

WHEREFORE, premises considered, the instant Petition for Prohibition with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction is hereby DENIED DUE COURSE and ordered DISMISSED.

SO ORDERED.

Bruselas, Jr., and Barrios,[*] JJ., concur.

[*] Vice J. Gaerlan as per Office Order No. 270-14-RSF dated June 6, 2014

[1] Rollo, p. 3

[2] Commissioner of Internal Revenue v. Josefina Leal, G.R. No. 113459. November 18, 2002; People v. Rosie Cuaresma, et al., G.R. No. 67787. April 18, 1989; Constancio Mendoza, et al. v. Enrilo Villas, et al., G.R. No. 187256. February 23, 2011.

[3] Republic of the Philippines v. Sandiganbayan et. al. G.R. Nos. 141796 & 141804. June 15, 2005 citing Metro Transit Organization, Inc. vs. Court of Appeals, G.R. No. 142133, November 19, 2002, 392 SCRA 229, Edgardo Flores v. Sangguniang Panlalawigan of Pampanga, et al. v. G.R. No. 159022. February 23, 2005

[4] Rollo, pp. 23-31

[5] Rollo, pp. 37-42

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