

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONER,
VS. SANDIGANBAYAN, SECOND DIVISION; KALAWAKAN RESORTS,
INC.; HABAGAT REALTY DEVELOPMENT, INC.; LABAYUG AIR
TERMINALS, IN...**

G.R. No. 100733. June 18, 1992

Ponente: NARVASA, J.

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NARVASA, J.:

On November 27, 1990, the Sandiganbayan rendered judgment in Civil Case No. 0059 entitled "Kalawakan Resorts, Inc., Habagat Realty Development, Inc.; Labayug Air Terminals, Inc.; Oceanside Maritime Enterprises; Punong-Bayan Housing Development Corporation; Pura Electric Co., Inc.; Space One Resort Corporation; Unexplored Land Developers, Inc.; and Wings Resort Corporation versus Presidential Commission on Good Government (PCGG) and United Coconut Planters Bank (UCPB),"[1] in which the following dispositions were made, to wit:

"WHEREFORE, let a Writ of Prohibition issue prohibiting respondents * * (PCGG and UCPB) from terminating or causing the termination of the Certificates of Time Deposit described in Annex A of the complaint, the proceeds thereof or other certificates of deposits into which said CTD's have been converted and/or re-deposited, including the interest earned thereon, from encashing or causing the encashment thereof, from transferring or causing the transfer of the proceeds to the National Treasury or, otherwise, and from performing any other act which in any manner interferes with PCGG's rights over said deposits. Respondents are further ordered to deliver to petitioners the above-described Certificates of Time Deposit or the proceeds and/or other certificates of deposit into which the same have been converted, including all the interest earned therefrom. No pronouncement as to costs.

" *** *** . "

Notice of this judgment was served on November 29, 1990 on the Solicitor General, the PCGG's counsel of record. Six days later, however, the Solicitor General filed a pleading described as "Withdrawal of Appearance with Reservation," withdrawing as counsel of the PCGG in Civil Case No. 0059 (and all other cases involving the PCGG) "with the reservation, however, conformably with Presidential Decree No. 478, the provisions of Executive Order No. 292 as well as the decisional law of 'Orbos vs. Civil Service Commission, et al.,' (G.R. No. 92561, September 12, 1990), to submit his comment/observation on incidents/matters pending with this Honorable court, if called for by circumstances in the interest of the government or if he is so required by the court." [2]

On December 3, 1990, the PCGG was given a copy of a "Motion for the Issuance of an Order Requiring PCGG to Submit a Report on the Status of the Certificates of Time Deposit Subject of the Instant Case" filed by the petitioners (Kalawakan, et al.) under date of November 29, 1990, which was set for hearing by the movants on December 7, 1990. However, on said date of hearing, there was no appearance for the PCGG, although apparently

someone from the Office of the Solicitor General happened to be present when the motion was called; but as was subsequently made clear, at that time and on that occasion that Office was no longer representing the PCGG.[3] Be this as it may, the Sandiganbayan thereupon "granted both the Solicitor General and the PCGG a period of five (5) days to file their comments and/or opposition" to the motion.[4] No comment or opposition was however filed.[5]

What was filed by the PCGG, on December 26, 1990, was its comment (required by the Sandiganbayan) on the Solicitor General's withdrawal of appearance, accompanied by a motion praying that all proceedings in all PCGG cases be suspended until January 31, 1991. The motion was granted on the same day, December 26, 1990.[6] On the following day, December 27, 1990, notice of appearance was filed by the PCGG in all its Sandiganbayan cases, in which it reiterated its prayer for suspension of all proceedings up to January 31, 1991 so that it might "adjust and file any responsive pleading." According to the PCGG, said notice of appearance (with reiteration of prayer for suspension of proceedings) was submitted "without knowing that on December 26, 1990 ** (the Sandiganbayan) had granted its motion for (such) suspension of proceedings in all PCGG cases up to January 31, 1991**." [7]

The PCGG thereupon formed its Litigation Division composed of government and private lawyers, engagement of the latter commencing on January 2, 1991. This Division was charged with the "task of handling all the PCGG's cases left without counsel by the sudden and unexpected withdrawal of (the) Solicitor General**." [8]

It appears however that by Order promulgated on January 2, 1991 the Sandiganbayan granted the petitioners' aforementioned "Motion for the Issuance of an Order Requiring PCGG to Submit a Report on the Status of the Certificates of Time Deposit Subject of the Instant Case" dated November 29, 1990.[9] It further appears that two days afterwards, on January 4, 1991, the Sandiganbayan issued an Order ex parte, declaring the judgment of November 27, 1990 to have become final and executory and authorizing execution thereof. Of these events, the PCGG claims to have remained ignorant until March 6, 1991, when one of the lawyers in its Litigation Division[10] went over the record of Civil Case No. 0059 and discovered that by Order dated January 4, 1991, the decision was declared final and executory (no motion for its reconsideration having been filed), and execution of judgment authorized; and that the corresponding writ had in fact issued pursuant thereto.[11]

The PCGG forthwith filed, on March 19, 1991, a verified petition for relief under Rule 38 of the Rules of Court, together with a motion that the Sandiganbayan reconsider the order, and quash the writ.[12] The PCGG alleged "accident" and "excusable negligence" as grounds for relief in light of the Solicitor General's abrupt withdrawal of his appearance as its counsel -- which left it "without counsel for a time" and forced it "to handle all its cases through its Legal Department and later its Litigation Division," both of which units were "pitifully undermanned," with "scarce financial resources," with the result that the PCGG was unable "to give full attention to all its cases" and failed to take the necessary procedural steps to contest and appeal the adverse judgment of November 27, 1990.[13] It also alleged that it had "good and substantial defense as to why the Decision should be set aside or reconsidered," the "seizure of the CTDs in question ** (being) valid and amounted to the sequestration thereof and the same was not lifted as the corresponding judicial action have (sic) been filed with the institution of Civil Case No. 0033;" and reliance by the Sandiganbayan on "the case of PCGG vs. International Copra Export Corporation, Interco Manufacturing Corporation and Sandiganbayan, G.R. No. 92755" was misplaced since judgment in said case was "not yet final" and "prudence dictates that the outcome of this case awaits the final ruling in the Interco case." [14] The respondents filed an opposition to the petition,[15] and the PCGG, a reply to the opposition.[16]

On April 3, 1991 the respondents filed a motion to declare PCGG in contempt for its failure to comply with the above mentioned Order of January 2, 1991 (directing "PCGG to Submit a Report on the Status of the Certificates

of Time Deposit Subject of the Instant Case"). This was opposed in due course. Other pleadings were thereafter filed in relation to the PCGG's petition for relief and the motion for contempt.

On May 22, 1991 the Sandiganbayan promulgated its Resolution, now challenged in the proceedings at bar. It denied the PCGG's petition for relief, and respondents' motion for contempt.[17] In that resolution, the Sandiganbayan pointed out that:

- a) the withdrawal of appearance by the Solicitor General could not in law be deemed an "accident;"
- b) the claim of excusable negligence had not been sufficiently established, and there was no showing of proper diligence;
- c) the petition for relief had been filed out of time: from November 29, 1990, when the Solicitor General was served with notice of the decision of November 27, 1990, up to March 18, 1991, when the petition was filed, more than 60 days (actually 109 days) had elapsed; and
- d) the good and valid defense postulated by the PCGG was "off-tangent" and failed to traverse factual and legal conclusions of the decision of November 27, 1990.

Then by Resolution dated June 19, 1991, the Sandiganbayan granted the respondents' "Ex Parte Motion for Issuance of Alias Writ of Execution."

Hence, the petition for certiorari at bar, filed on July 23, 1991 in accordance with Rule 65 of the Rules of Court.

In the comment required of them by this Court, the respondents' pray for dismissal of the PCGG's petition, contending that:

1. PCGG had breached this Court's Circular No. 1-88 because it had failed to include in its petition a verified statement of material dates and proof of service of the petition on the Sandiganbayan and the adverse party;
2. PCGG had chosen the wrong recourse to this Court, the appropriate remedy being appeal under Rule 45 of the Rules of Court, and not the special civil action of certiorari under Rule 65; that even if the petition be construed as an appeal under Rule 45, it was filed out of time;
3. Also out of time was the filing by the PCGG in the Sandiganbayan of its petition for relief under Rule 38, the petition having been submitted 109 days after November 29, 1990, when notice of the judgment of November 27, 1990 was served on its counsel of record, the Solicitor General, or 49 days beyond the 60-day period fixed therefor by Rule 38; and
4. The affidavit of merit appended to the petition was not adequate, not having been executed by an individual with personal knowledge of the facts, and not setting forth a substantial or valid defense, the affidavit merely being anchored on the fact that the supreme Court decision in the Interco case, on which the Sandiganbayan relies, was not yet final and executory because a motion for reconsideration thereof was still pending.

A reply to the comment having thereafter been filed by PCGG, the Court considers that all the relevant facts have been satisfactorily identified and established and the issues sufficiently ventilated and debated, and now proceeds to resolve the case on the merits.

Basically, what the PCGG was seeking through its petition for relief filed with the Sandiganbayan was the restoration of its right to have the judgment rendered adversely to it,[18] reversed or modified through a motion for reconsideration and ultimately, through an appeal. Its thesis was that that right, clearly a substantial one, had been lost to it on account of accident or excusable negligence against which ordinary prudence could not have guarded, and thus should be restored to it, and that the indicated remedy is Rule 38 of the Rules of Court. In other

words, what the PCGG desired was to be placed in the same juridical situation as if notice of the adverse judgment had just been served on it, i.e., a situation where it would be regarded as having a period of fifteen (15) days within which either (a) to move for reconsideration or new trial under Rule 37 prior to taking an appeal in due course, or (b) to immediately take an appeal.

Rule 38 provides inter alia a remedy in cases where judgments of the Court of First Instance (now Regional Trial Court) have become final and executory. The rule applies to cases in the Sandiganbayan.[19] The recourse that Rule 38 makes available has been described as an equitable remedy of last resort, when a party against whom a judgment has been rendered has, without fault or inexcusable neglect on his part, lost the ordinary remedy of a motion for new trial or reconsideration under Rule 37, and of appeal.[20] Section 2 thereof provides as follows:

SEC. 2. Petition to Court of First Instance for relief from judgment or other proceeding thereof.--When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside."

As will be noted, the law makes no distinction as to the party who may resort to the remedy or as to the precise predicament against which the remedy is directed. It makes plain that the remedy is available to any party, whether plaintiff or defendant on the original complaint, or on a counterclaim, cross-claim or third-party (or fourth-party, etc.) complaint; and that it may be resorted to as regards a final judgment against a plaintiff (as where the complaint is dismissed) or a defendant (whether the judgment be by default or otherwise),[21] or as regards an order refusing due course to an appeal,[22] or an order granting execution in an ejectment case,[23] etc.

The sufficiency of the petition and the time for its filing are governed by Section 3 of Rule 38, viz.:

"SEC. 3. Time for filing petition; contents and verification.-A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

Now, it is not disputed that the Sandiganbayan granted on December 26, 1990, the PCGG's motion praying that all proceedings in the Sandiganbayan in all PCGG cases be suspended until January 31, 1991,[24] a motion which the PCGG reiterated on the following day, December 27, 1990.[25]

However, during that period of suspension of proceedings, the Sandiganbayan issued two (2) orders against the PCGG, to wit:

a) one dated January 2, 1991, granting the "Motion for the Issuance of an Order Requiring PCGG to Submit a Report on the Status of the Certificates of Time Deposit Subject of the Instance Case" which had been filed by the petitioners (Kalawakan, et al.) under date of November 29, 1990;[26] and

b) another, issued ex parte on January 4, 1991, declaring the judgment of November 27, 1990 to have become final and executory, and authorizing execution thereof.

Obviously, these two orders cannot be allowed to operate adversely to the PCGG as to whom, as above stated, all proceedings had been suspended by the Sandiganbayan itself until January 31, 1991. It seems clear that in issuing said orders of January 2, and January 4, 1991, the Sandiganbayan quite overlooked its earlier Order of December 26, 1990 granting such suspension. On the other hand, it appears that the PCGG also overlooked the fact that that

suspension of proceedings ended on January 31, 1991, such oversight being ascribed by it to the unfortunate situation it was in at the time -- having just been abandoned by the Solicitor General, its legal office being undermanned, having but meager resources, and suddenly having to cope with numerous cases; for the PCGG failed to take any action after January 31, 1991 until its discovery, claimed to have been made only sometime on March 6, 1991, that the Sandiganbayan had, by Order dated January 4, 1991, declared the judgment of November 27, 1990 to have become final and executory.[27]

Considering these circumstances, the PCGG's petition for relief filed with the Sandiganbayan on March 18, 1991 must be deemed to have been filed within the sixty-day and six-month periods prescribed by Rule 38. Target of the petition was, of course, the aforesaid Order of January 4, 1991 pronouncing the November 27, 1990 decision as executory. That order was ineffectual, as already observed, because rendered at a time when by direction of the Sandiganbayan itself, all proceedings involving the PCGG were under suspension. In any event, there is no refutation in the record of PCGG's claim that its lawyers did not learn of said Order of January 4, 1991 until March 6, 1991.[28] Hence, the sixty-day period should be reckoned from March 6, 1991, as Section 3 of Rule 38 provides, i.e.: "sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside." Even assuming that said sixty-day period should be counted from the expiration of the period of suspension of proceedings on January 31, 1991, the petition for relief must also be regarded to have been seasonably filed, i.e., within 60 days from January 31, 1991.

The sixty-day period cannot be computed from November 29, 1990, the date of service on the Solicitor General of the judgment of November 27, 1990. Precisely, the abandonment by the Solicitor General of the PCGG had been brought to the Sandiganbayan's attention; and in all likelihood this was one of the factors that prompted the Sandiganbayan to grant the PCGG's motion for the suspension of all proceedings against it until January 31, 1991, to the end precisely that the PCGG might engage substitute counsel and take such other steps as might be appropriate to seek reversal of the judgment by motion for reconsideration and/or appeal.

The petition must also be deemed filed within the other period prescribed by Rule 38, "six (6) months after such judgment or order was entered, or such proceeding was taken." There is in the first place no indication in the record when entry of the verdict of November 26, 1990, or of the Order of January 4, 1991 declaring said verdict final and executory, was entered, or whether or not it was ever entered. Entry of judgments and orders is, of course, governed by Section 2, Rule 36 of the Rules of Court.

"SEC. 2, Entry of judgments and orders.--If no appeal or motion for new trial is filed within the time provided in these rules, the judgment or order shall be entered by the clerk. The recording of the judgment or order in the book of entries of judgments shall constitute its entry. The record shall contain the dispositive part of the judgment or order and shall be signed by the clerk, with a certificate that such judgment or order has become final and executory."

In the absence of proof of such entry, it is not possible to start reckoning the six-month period specified in Rule 38.

Assuming that it is proper to reckon the prescribed 6-month period from the time of the expiration of the fifteen-day period for filing a motion for reconsideration or new trial, or for taking an appeal, the interval from the day that the Solicitor General's Office filed its withdrawal of appearance, December 6, 1990, up to January 31, 1991, the day of expiration of the suspension of proceedings granted by the Sandiganbayan to the PCGG to remedy its resulting predicament, cannot be counted against the latter, upon the considerations already set out. Assuming that the 15-day period for taking an appeal began to run as regards the PCGG after January 31, 1991, it would have lapsed on February 15, 1991, without any appeal or motion for new trial having been filed by the PCGG. Since the PCGG's petition for relief was filed on March 6, 1991, its filing was consequently well within

the 6-month period.

Another factor overlooked by the Sandiganbayan is that the answer filed by the Solicitor General's Office in behalf of the PCGG as defendant in Civil Case No. 0059 did raise or tender issues -- for otherwise a judgment on the pleadings would have been rendered;^[29] and that the issues so raised were not sham or fictitious, but real and genuine -- for otherwise a summary judgment would have been handed down.^[30] Consequently, there was no imperative obligation on the part of the PCGG, in relation to its petition for relief, to demonstrate the existence of a meritorious defense. I had in fact set up genuine negative and affirmative defenses to the action. It is true that those defenses were overruled by the Sandiganbayan, but such a rejection did not, of course, have the effect of foreclosing review of the Sandiganbayan's assessment thereof by way of an appeal, or modification thereof by the Sandiganbayan itself upon a motion for reconsideration.

It is true that, as the respondents point out, the normal remedy against a "judgment denying relief under Rule 38 is * * appeal" -- in the course of which the appellant "may also assail the judgment on the merits, upon the ground that it is not supported by the evidence or it is contrary to law."^[31] It has been held however that where, for instance, an appeal would not be a remedy adequate under the circumstances, since it would not "promptly relieve the petitioner from the injurious effects of ** acts of the inferior court or tribunal," e.g., the court has authorized execution of the judgment, as in the case at bar, a resort to the special civil action of certiorari may exceptionally be allowed.^[32]

It is not too difficult to visualize the plight of the PCGG --- represented one day by the "largest law firm in the country," the Office of the Solicitor General to whom, theoretically at least, are available the vast resources of the State, but suddenly and unceremoniously abandoned by it the next day and, therefore, having to retain and rely on whatever lawyers were available at the moment, lawyers who would have to find out for the first time what cases were these that were being handled by the Solicitor General's Office, retrieve the records of all said cases from the Solicitor General's Office, study them, particularly the basic pleadings and the evidence, and then take such steps as were necessary to prosecute or defend the cases. Considering this, considering the not inconsiderable value of the assets involved in this particular case and the special mission entrusted to the PCGG of "bailing the country out of the financial bankruptcy and morass of the previous regime and returning to the people what is rightfully theirs,"^[33] considering that the Sandiganbayan itself does not itself appear to have been entirely free from procedural errors -- it issued, for instance, adverse orders during the period of suspension of proceedings decreed by it -- it seems best to the Court that the case be resolved on the merits instead of on the basis of the flaws and imperfections of which the PCGG appears to be guilty as a result of its abrupt abandonment by the Solicitor General's Office. These considerations, by the way, also argue for a disregard of the flaws indicated by the respondents in the compliance with the formal requisites laid down for petitions for certiorari.

WHEREFORE, the contested Resolution of the Sandiganbayan of May 22, 1991 is SET ASIDE. The petitioner's petition for relief is GRANTED, and it is given a period of fifteen (15) days from finality of this judgment within which to perfect an appeal from the Sandiganbayan's judgment of November 27, 1990, or otherwise take such steps as it deems appropriate to attempt to bring about reversal or modification thereof.

SO ORDERED:

Gutierrez, Jr., Cruz, Paras, Feleciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., and Romero, JJ., concur.

Nocon, J., on leave.

[1] Rollo, pp. 31-57

[2] Id., p. 91

[3] Id., pp. 58-59

[4] Id., p. 16

[5] Id.

[6] Id., pp. 3, 28

[7] Id., p. 19 (p. 8 of Sandiganbayan Resolution of May 22, 1991, being Annex A of the petition)

[8] Id., p. 3

[9] Id., p. 21

[10] Atty. Noel M. Malaya

[11] Rollo., pp. 3, 14, 19-20

[12] Id., pp. 58-62

[13] Id., pp. 60-61

[14] Id., p. 61

[15] Id., pp. 65-77

[16] Id., pp. 78-84

[17] Id., pp. 12-29

[18] SEE footnote 1, at page 1, supra

[19] Rule XXI of the Revised Rules of the Sandiganbayan provides that "(e)xcept as otherwise herein provided or as may hereafter be modified from time to time by the Sandiganbayan and insofar as practicable, the Rules of Court shall govern proceedings in the Sandiganbayan."

[20] Vide, Santos v. Manila Electric Co., et al., L-7735, Dec. 29, 1955; Smith, Bell & Co., Ltd. v. Philippine Milling Co., 107 Phil. 160; Javellana v. Lutero, L-23956, July 21, 1967, cited in Feria, Civil Procedure, 1969 ed., p. 523

[21] SEE Mendoza v. Castillo, 76 Phil. 326

[22] Bracamonte v. Court of Appeals, 92 Phil. 186; Rafanan v. Rafanan, 98 Phil. 162

[23] SEE Bantug v. Roxas, 73 Phil. 13

[24] SEE footnote 6, supra

[25] SEE footnote 7, supra

[26] SEE footnote 9, supra

[27] SEE footnotes 10 and 11, supra

[28] Footnote 10

[29] "Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's

pleading, the court may, on motion of that party, direct judgment on such pleading. * * " (Sec. 1, Rule 19, Rules of Court).

[30] "A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits for a summary judgment in his favor upon all or any part thereof" (Sec. 1, Rule 34).

[31] Sec. 2 (second paragraph), Rule 38 of the Rules of Court (taken from Sec. 8 of Rule 38 of the Rules of 1940 [Moran, Comments on the Rules, 1979 ed., Vol. 2, p. 386]).

[32] *Saludes v. Pajarillo*, 78 Phil. 754; *Liwanag v. Castillo*, Oct. 20, 1959; *Occeña v. Jabson*, Oct. 29, 1986, *Silvestre v. Torres*, 57 Phil. 885; *Pachoco v. Tumungday*, May 25, 1960, *Lopez v. Alvendia*, Dec. 24, 1964, cited in *Moran*, op. cit., Vol. 3, p. 177

[33] *PCGG v. Peña*, 159 SCRA 556, 565

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