TENSOREX INDUSTRIAL CORPORATION, PETITIONER VS. COURT OF APPEALS AND MERCANTILE INSURANCE CO., INC., RESPONDENTS.

G.R. No. 117925. October 12, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special civil action for certiorari and prohibition seeks to declare the proceedings in CA G.R. SP No. 32025 as well as CA Notice dated August 30, 1994, and CA Resolution dated November 7, 1994, null and void for being tainted with grave abuse of discretion. Petitioner also prays that the above-mentioned proceedings be enjoined for lack of jurisdiction.

The present controversy arose as a consequence of the execution of judgment in the case of "Tensorex Industrial Corporation vs. Alicia Gala and Heirs of Manuel Gala", for ejectment with damages, docketed as Civil Case No. 34381 of the Metropolitan Trial Court (MTC) of Makati, Branch 65. In said case the MTC rendered judgment against defendants and in favor of plaintiff. From that judgment, defendants filed with the Court of Appeals a petition for certiorari with prayer for the issuance of a writ of preliminary injunction. To preserve the status quo, the Court of Appeals, in a Resolution dated January 31, 1990, granted the application for preliminary injunction and required the defendants to post an injunction bond in the amount of P200,000.00. Said bond was posted by private respondent, Mercantile Insurance Co., Inc.

On June 16, 1990, the Court of Appeals rendered a decision dismissing the petition for certiorari and recalling the writ of preliminary injunction it earlier issued. There being no impediment to the execution of judgment, defendants were ejected from the leased premises. However, despite said execution, there remained arrears in the amount of P710,000.00. Herein petitioner then filed, in the ejectment case before the MTC, a motion for the issuance of an alias writ of execution against the injunction bond posted in the certiorari case. Private respondent filed its opposition claiming that the bond is not a supersedeas bond but an injunction bond filed in a separate case. Despite said opposition, the MTC issued an Order dated July 2, 1991, treating the injunction bond posted by private respondent as a supersedeas bond. Accordingly, the MTC issued an alias writ of execution against said bond.

Private respondent then appealed the judgment of the MTC in the ejectment case to the Regional Trial Court of Makati. In the meantime, even before said appeal could be raffled, the Branch Sheriff of MTC-Makati served the alias writ of execution and levied upon the personal properties of the private respondent, threatening to sell said properties. Confronted with this dilemma, private respondent filed a petition for certiorari with prayer for the issuance of writ of preliminary injunction with the RTC of Makati, docketed as Civil Case No. 91-2148, to enjoin the sheriff from carrying out the threatened sale of its properties. The RTC, after preliminary hearing, issued a writ of preliminary injunction conditioned upon the posting of an injunction bond in the amount of P200,000.00.

After hearing, the RTC, in a Decision dated January 21, 1993, dismissed the petition for certiorari and lifted the writ of preliminary injunction it earlier issued. From this dismissal, private respondent filed its notice of intention

to appeal Civil Case No. 91-2148 to the Court of Appeals. Petitioner moved to expunge said notice of intention to appeal, and to declare said RTC decision final on the ground that the appeal to the Court of Appeals was not the proper remedy but a petition for review in accordance with Supreme Court Circular No. 2-92.

The RTC, in its Order dated May 24, 1993, granted the motion to expunge and declared its decision final.[1] On Motion for Reconsideration by the private respondent, however, the RTC, in an Order dated June 21, 1993, reconsidered its previous order and gave due course to the appeal to the CA, ruling that "this case is not an appeal to this [trial court] in the exercise of its appellate jurisdiction".[2] It was, as already adverted to, a petition for certiorari.

On April 20, 1994, the Court of Appeals dismissed private respondent's appeal for its failure to file Memorandum,[3] and copy of said order of dismissal was received by private respondent's counsel on May 5, 1994.

On May 10, 1994, private respondent filed a Motion for Reconsideration premised on the ground that it did not receive any notice to file memorandum and as such its period within which to file the required memorandum had not yet lapsed. On May 26, 1994, the Court of Appeals denied the Motion for Reconsideration,[4] copy of said order was received by private respondent on June 13, 1994. In the meantime, even before private respondent could receive said order of denial of the motion for reconsideration, it filed a Supplemental Motion for Reconsideration with prayer that its Comment filed on January 7, 1994, be considered as its Memorandum.

On June 22, 1994, herein private respondent filed a Motion for Leave to File Second Motion for Reconsideration, the resolution of which along with other pending incidents of the case was deferred by the Court of Appeals.

On August 30, 1994, the Court of Appeals promulgated a Resolution accepting private respondent's explanation and proceeded to treat the Comment filed by private respondent as its Memorandum. It also ordered the petitioner to file its Memorandum within 10 days from receipt of the Resolution after which the appeal shall be deemed submitted for decision. According to the Court of Appeals:

> "It appears that the appellant's counsel did not receive the aforesaid notice to file Memorandum, we promulgated a Minute Resolution on January 31, 1994 ordering, among other things, that the Division Clerk re-send the notice of September 13, 1993 to appellant's counsel; the record does not show however, that a copy of said notice was actually mailed along with the resolution.
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> "Since the required Memorandum from the appellant had not been filed, on April 20, 1994, we promulgated another Resolution dismissing the appeal, a copy of which was received by the appellant's counsel on May 6, 1994; and on May 10, 1994 the appellant filed a Motion for Reconsideration to set aside the dismissal on the ground that the period within which the required Memorandum was supposed to be filed had not yet lapsed; we denied the motion in a Resolution on May 26, 1994 on the mistaken premise that the appellant had received the notice to file memorandum, which was previously ordered to be re-sent to the appellant."[5] [emphasis ours]

On September 16, 1994, petitioner filed its own motion for reconsideration. Said motion was, however, denied by the Court of Appeals in a Resolution dated November 7, 1994. Hence, this petition.

Petitioner submits that said Resolution of November 7th is null and void for being tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner, in the present petition before us, raises the following questions:

> 1) DID THE RESPONDENT CA ACT WITH GRAVE ABUSE OF DISCRETION OR IN EXCESS OF ITS JURISDICTION WHEN IT TOOK COGNIZANCE OF THE APPEAL IN CA GR SP NO. 32025 DESPITE THE FACT THAT THE REMEDY UNDER SC CIRCULAR NO 2-90, WAS A PETITION FOR REVIEW?

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2) DID THE RESPONDENT CA ACT WITH GRAVE ABUSE OF DISCRETION OR IN EXCESS OF JURISDICTION WHEN, AFTER DISMISSING THE APPEAL AND DENYING THE MOTION FOR RECONSIDERATION, IT REINSTATED SAID APPEAL ALTHOUGH THE DISMISSAL OF THE SAME HAD ALREADY BECOME FINAL?

The sole issue now for consideration in this case, in our view, is whether or not the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in reinstating the appeal of the private respondent.

It is petitioner's contention that the remedy of private respondent in regard to the decision of the RTC is a petition for review pursuant to Supreme Court Circular 2-90. This is because the RTC decision sought to be reviewed was rendered by the RTC in the exercise of its appellate jurisdiction. Consequently, the filing of a notice of appeal with the RTC was the wrong mode of appeal and as such the appeal should have been dismissed.

We find, however, that petitioner's argument is without merit. It is worth noting that what private respondent filed with the RTC was a special civil action for certiorari under Rule 65 of the Rules of Court. One of the basic distinctions between certiorari as a mode of appeal and an original special civil action for certiorari is that in appeal by certiorari, the appellate court acts in the exercise of its appellate jurisdiction and power of review, while on certiorari as an original action, the higher court exercises original jurisdiction under its power of control and supervision over the orders of lower court.[6] Moreover, the period for filing appeal is much shorter than for filing an original action for certiorari. Consequently, where the appealed judgment was rendered by the RTC in the exercise of its original jurisdiction, the appeal to the Court of Appeals may be taken by writ of error or ordinary appeal.[7] Hence, the Court of Appeals committed no grave abuse of discretion in taking cognizance of the appeal.

Furthermore, the mere fact that private respondent earlier appealed the decision of the MTC to the RTC does not preclude the filing of a special civil action for certiorari with the RTC concerning an entirely different incident. Settled is the rule that availability of an appeal does not foreclose resort to the extraordinary remedies, such as certiorari and prohibition, where appeal is not adequate or equally beneficial, speedy and sufficient.[8] In the case at hand, private respondent had no choice. The appeal proved to be inadequate as its properties were being attached, with the possibility of their sale imminent. Private respondent was left with no choice but to avail of the extraordinary remedy of certiorari to protect its interest.

With respect to the second assignment of error, it is petitioner's contention that the questioned Resolution of the Court of Appeals is null and void for it unduly set aside its earlier resolution dismissing the appeal, as well as private respondent's motion for reconsideration. It is also argued that the filing of the second motion for reconsideration did not suspend the period for perfecting an appeal and therefore, the order of denial of the first motion for reconsideration, along with the earlier resolution dismissing the appeal had already become final and executory.

The argument fails to persuade us. The Court of Appeals in the questioned resolution ruled that it denied private respondent's motion for reconsideration "on the mistaken premise" that private respondent received the notice to file memorandum which was previously ordered to be re-sent. Considering that private respondent did not receive a copy of the notice, the period within which to file said memorandum could not be said to have already expired.

While it is true that a second motion for reconsideration is not allowed, courts in the exercise of their functions, and in rendering decisions, must not be too dogmatic as to restrict itself to literal interpretations of words, phrases and sentences; a complete and holistic view must be taken in order to render a just and equitable judgment.[9] In addition, it has often been stressed that procedural laws should be liberally construed in order to promote their

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objective and assist the parties in obtaining just, speedy and inexpensive determination of every action or proceeding.[10]

In the case at hand, the Court of Appeals merely corrected itself when it issued the questioned resolution of November 7, 1994. Every court has the power and indeed the duty to review and amend or reverse its findings and conclusions when its attention is timely called to any error or defect therein.[11] To do otherwise would be tantamount to an abrogation of its solemn duty to do justice to every man.

Here we find that the Court of Appeals, in issuing its questioned resolution, committed no grave abuse of discretion amounting to lack of jurisdiction. There are factual bases and legal justification for the assailed order. The burden is upon the petitioner to demonstrate that the questioned resolution constitutes a whimsical and capricious exercise of judgment. This, petitioner has not done. To reiterate our established rule, certiorari will not be issued to cure errors in proceedings or correct erroneous conclusions of law or fact. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by certiorari.[12] Moreover, there being no grave abuse of discretion committed by the respondent court, in the exercise of its jurisdiction, the relief of prohibition is also unavailable.

WHEREFORE, the instant petition is DENIED. The assailed resolution of the Court of Appeals is AFFIRMED. Costs against petitioner.

SO ORDERED.

Mendoza, and Buena, JJ., concur.

Bellosillo, J. (Chairman), on official leave.

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[1] Rollo, p. 48.

[2] Id. at 49.

[3] Id. at 77.

[4] Id. at 78.

[5] Id. at. 86.

[6] 1 Regalado, Remedial Law Compendium, 355 (5th Rev. Ed, 1988).

[7] SC Circular 2-90.

[8] Provident International Resources Corporation vs. Court of Appeals, 259 SCRA 510, 521 (1996).

[9] Philippine Today, Inc. vs. NLRC, 267 SCRA 202, 215 (1997).

[10] Nerves vs. Civil Service Commission, 276 SCRA 610, 617 (1997).

[11] Mosquerra vs. Panganiban, 258 SCRA 473, 481 (1996).

[12] Commissioner of Internal Revenue vs. Court of Appeals, 257 SCRA 200, 219 (1996).

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