

**EULOGIO O. YUTINGCO AND WONG BEE KUAN, PETITIONERS, VS.
HON. COURT OF APPEALS, HON. SALVADOR S. TENSUAN, IN HIS
CAPACITY AS PRESIDING JUDGE OF THE RTC, MAKATI, BRANCH 146
AND DE...**

G.R. No. 137264. August 01, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review seeks the reversal of the resolutions[1] dated November 9, 1998 and January 13, 1999 of the Court of Appeals in CA-G.R. SP No. 49404, denying the petition for certiorari for having been filed beyond the reglementary period, as well as the subsequent motion for reconsideration.

The facts of this case are as follows:

Private respondent Development Bank of the Philippines (DBP) filed a complaint dated November 10, 1997, docketed as Civil Case No. 97-2653,[2] against petitioners for the collection of a sum of money with prayer for issuance of a writ of preliminary attachment, with the Regional Trial Court of Makati, Branch 146. DBP alleged that it granted a credit accommodation for One Hundred Fifty Million Pesos (P150,000,000) to Nikon Industrial Corporation (Nikon) under the terms and conditions of the Credit Line Agreement dated December 11, 1996.[3] Pertinent portion of said agreement reads:

5. The following shall constitute Events of Default under this Agreement:

a. failure to pay an installment on principal or interest on the due date hereof.

x x x

c. Death (in case of natural person), dissolution, bankruptcy, reorganization, winding-up or liquidation or any other proceedings analogous to the foregoing or proceedings for the collection of borrowed money.[4]

x x x

In consideration of the credit accommodation, petitioners, as the controlling stockholders of Nikon, bound themselves as primary obligors on any availment thereon. Nikon executed promissory notes as guarantees.[5]

The complaint alleged that Nikon defaulted on the payment of the interest.[6] It likewise alleged that on September 16, 1997, Nikon with other corporations, filed a petition for suspension of payments with the Securities and Exchange Commission.[7] Among the controlling stockholders were petitioners, known together as the EYCO Group of Companies (EYCO). Also, DBP claims that the filing of the petition for suspension of payments with the SEC constituted another default as stipulated in paragraph (c) of Section 5 of the agreement. Thus, private respondent sought petitioners' payment of the obligation by virtue of the Continuing Suretyship Agreement by filing the collection suit docketed as Civil Case No. 97-2653 before the Regional Trial Court.

On January 14, 1998, respondent Judge Salvador Tensuan granted private respondent's motion and issued a writ of attachment.[8]

On March 11, 1998, petitioners filed a Motion to Dismiss[9] on the ground that (1) the complaint failed to state a cause of action; (2) a condition precedent for the filing of the claim was not complied with; and (3) the Court had no jurisdiction over the subject matter. Petitioners contended that they could not be held liable under the promissory notes and credit line agreement since EYCO had not yet defaulted on their obligations. They averred that the mere filing of the petition for suspension of payments before the SEC did not constitute default and that even assuming that Nikon was in default, there was yet no extra-judicial demand, a condition precedent to the filing of the suit before the RTC against petitioners.

On May 7, 1998, respondent Judge issued an order denying the motion to dismiss, holding thus:

This resolves defendant's motion to dismiss vis-à-vis plaintiff's opposition, reply, and rejoinder in point.

After going over the exhaustive arguments of both parties, the Court on a clear perception that the issue of default raised by the defendants is a factual one which must await trial, hereby denies said motion to dismiss and orders defendants to file its Answer in accordance with the rules.

SO ORDERED.[10]

To this, petitioners filed a Motion for Reconsideration[11] which was denied by the respondent Judge in an order dated June 29, 1998, as follows:

For resolution is the defendant's Motion to Reconsider the Order dated 07 May 1998 contending that the same failed to resolve the issues raised in their Motion to Dismiss. Plaintiff opposed the instant motion to which opposition defendants filed a reply and to the latter plaintiff filed a rejoinder.

After a careful reading of the arguments in support of the instant motion, the Court finds no sufficient warrant to disturb the questioned Order. Anent the issue of jurisdiction, the Court must as it hereby declares that it has jurisdiction over the subject matter of this case inasmuch as the properties attached are in the name of the defendants who are being sued here in their personal capacity as sureties.

WHEREFORE, premises considered, defendant's motion for reconsideration is hereby denied for lack of merit.

SO ORDERED.[12]

On July 7, 1998, petitioners received a copy of the aforementioned Order dated 7 May 1998. On September 7, 1998, petitioners filed before the Court of Appeals a Motion for Extension of Time to File Petition for Certiorari[13] under Rule 65 of the Rules of Court, for an additional period of fifteen (15) days, or until 22 September 1998.

On September 22, 1998, petitioners filed their Petition for Certiorari with Urgent Prayer for Issuance of a Writ of Temporary Restraining Order and Preliminary Injunction dated September 21, 1998.[14]

On November 18, 1998, petitioners received a copy of the Resolution dated November 9, 1998, denying petitioners' motion for extension of time to file petition for certiorari. It held that:

CONSIDERING that Sec. 4, Rule 65 of the 1997 Rules of Civil Procedure fixed the period for filing a petition for certiorari at sixty (60) days from notice of the judgment, order or resolution sought to be assailed, petitioners' motion for extension of time of fifteen (15) days within which to file the petition is hereby DENIED.

Consequently, it appearing that the period for filing petition for certiorari expired on September 7, 1998 and the petition at bar was filed on September 22, 1998, the petition is hereby DENIED due course and DISMISSED.

SO ORDERED.[15]

Petitioners' motion for reconsideration was also denied by the Court of Appeals in a Resolution dated January 13, 1999,[16] which held that:

x x x

In their motion for reconsideration petitioners invoked substantial justice over technical rules of procedure. Nonetheless, while it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.[17]

ACCORDINGLY, the motion for reconsideration is DENIED for lack of merit.

Now, petitioners aver before this Court that:

I. SUBSTANTIAL JUSTICE SHOULD PREVAIL OVER TECHNICAL RULES OF PROCEDURE.

II. THE PETITION FOR CERTIORARI DATED 21 SEPTEMBER 1999 (sic) IS MERITORIOUS AND RAISES THE ISSUE OF LACK OF JURISDICTION ON THE PART OF THE REGIONAL TRIAL COURT A QUO IN DENYING PETITIONERS' MOTION TO DISMISS.[18]

The issues before us are: (1) Should the Court of Appeals have admitted, as a matter of substantial justice, the Petition for Certiorari? (2) If so, is there merit in the petition filed with the Court of Appeals?

Prefatorily, note should be taken that while petitioners filed a special civil action of certiorari before the Court of Appeals, the proceedings before the Regional Trial Court continued. Petitioners filed, before the RTC, a Motion to Take Judicial Notice of the Order dated 18 December 1998 of the SEC in SEC Case No. 09-97-5764 with Motion to Cancel Pre-Trial dated 02 February 1999. Private respondent opposed it. On account of petitioners' Motion to Cancel Pre-trial, respondent judge issued an Order dated 5 February 1999 re-setting the pre-trial to 12 March 1999. Thereafter, a Reply dated 19 February 1999, a Rejoinder dated 26 February 1999 and a Sur-Rejoinder dated March 8, 1999, were filed. The incident is still pending before the RTC.

Now, on the first issue before us. The general rule is that rules of procedure must be faithfully complied with and should not be discarded with the mere expediency of claiming substantial merit. The rule, however, is not absolute. Under exceptional circumstances, on the ground of justice and equity, a delay in the filing of an appeal may be excused.[19] The inquiry on this score therefore basically boils down to whether there are ample circumstances surrounding the present case to merit the disregard of the delay in the filing of the petition? If there are none, such delay is fatal to petitioners' plea.

The New Rules on Civil Procedure, Section 4, Rule 65,[20] prescribes a period of 60 days within which to file a petition for certiorari. The 60-day period is deemed reasonable and sufficient time for a party to mull over and to prepare a petition asserting grave abuse of discretion by a lower court. The period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case. For these reasons, the 60-day-period ought to be considered inextendible. Furthermore, it is a familiar and fundamental rule that a motion for extension of time to file a pleading is best left to the sound discretion of the court and an extension will not be allowed except for good and sufficient reason and only if the motion is filed before the expiration of the time sought to be extended. Petitioners' previous counsel filed the Petition for

Certiorari on September 22, 1998,[21] thinking that the Court of Appeals would grant their motion for extension for 15 days. They gave as reason for this assumption of leniency the heavy workload of the law firm.[22] Patently, however, this circumstance alone does not provide the court sufficient reason to merit allowance of an extension of the 60-day period to file the petition for certiorari. Heavy workload, which is relative and often self-serving, ought to be coupled with more compelling reasons such as illness of counsel or other emergencies that could be substantiated by affidavits of merit. Standing alone, heavy workload is not sufficient reason to deviate from the 60-day rule. Thus, we are constrained to state that the Court of Appeals did not err in dismissing the petition for having been filed late.

Petitioners also assert that their petition should not have been dismissed on a technicality, considering that what was being questioned in their petition for certiorari before the Court of Appeals, was the propriety of the lower court's denying their motion to dismiss. But again, we have to stress here and now that as a general rule, an order denying a motion to dismiss is interlocutory and cannot be the subject of the extraordinary petition for certiorari or mandamus. Petitioners' recourse is to file an answer and to interpose as defenses the objections raised in their motion to dismiss, proceed to trial, and in case of an adverse decision, elevate the entire case by appeal in due course.[23]

Of course, there are exceptions to the aforecited rule. Among them are: (a) when the trial court issued the order without or in excess of jurisdiction, (b) when there is patent grave abuse of discretion by the trial court, or (c) when appeal would not prove to be a speedy and adequate remedy as when an appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff's baseless action and compelling the defendants to needlessly go through a protracted trial and clogging the court dockets with another futile case.[24] In the present case, however, the trial court denied the motion to dismiss since it perceived the issue therein was one of default, a factual issue which must await trial.[25] Clearly, petitioners' cause is not covered by any of the recognized exceptions. They should proceed to trial and if the result is unfavorable to them, then their recourse is to elevate the entire case on appeal in accordance with the rules. For indeed, while technicalities should not unduly hamper our quest for justice, orderly procedure is essential to the success of that quest to which all courts are devoted.

Having resolved the first issue in the negative, we need not tarry further on the second issue.

WHEREFORE, the petition is DENIED. The Resolutions of the Court of Appeals dated November 9, 1998 and January 13, 1999 are AFFIRMED. The Regional Trial Court of Makati, Branch 146, is ordered to proceed and resolve Civil Case No. 97-2653 with dispatch.

Costs on petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Corona, JJ., concur.

[1] Rollo, pp. 36-39.

[2] Id. at 48-57.

[3] Id. at 237-46.

[4] Id. at 238.

[5] Id. at 15.

[6] Id. at 49.

[7] Id. at 58-69.

[8] Id. at 72.

[9] Id. at 74-84.

[10] Id. at 102.

[11] Id. at 103-07.

[12] Id. at 102.

[13] Id. at 123-26.

[14] Id. at 143-161.

[15] Id. at 36-37.

[16] Id. at 38-39.

[17] Id. at 39; *Garbo vs. Court of Appeals*, G.R. No. 107698, 258 SCRA 159, 163 (1996).

[18] Id. at 24.

[19] *Director of Lands vs. Romamban*, G.R. No. L-36948, 131 SCRA 431, 437 (1984) as cited in *Dela Rosa vs. Court of Appeals*, G.R. No. 103028, 280 SCRA 444, 451 (1997).

[20] Sec. 4. Where petition filed. – The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, . . . it may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction.

[21] *Rollo*, p. 160.

[22] Id. at 159.

[23] *Far East Bank and Trust Company vs. Court of Appeals and SM, Inc.*, G.R. No. 135548, September 29, 2000.

[24] *Ibid.*

[25] *Supra*, note 10.

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