

LAMBERTO CASALLA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, AND MILAGROS S. ESTEVANES, RESPONDENTS.

G.R. No. 138855. October 29, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari assails the decision[1] dated November 17, 1998, and the resolution[2] dated May 25, 1999 of the Court of Appeals in CA-G.R. SP No. 37031, denying petitioner's appeal as well as motion for reconsideration for lack of merit.

The facts, as summarized by the Court of Appeals from the records, are as follows:

The facts, as disclosed by the record, show that petitioner Lamberto Casalla issued two (2) Bank of Commerce checks in payment of the obligation of his wife, TERESITA CASALLA, to private respondent MILAGROS SANTOS-ESTEVANES, in order to avert a court litigation. The two (2) checks, however, were dishonored by the drawee bank for reason of insufficiency of funds.

Subsequently, private respondent filed two (2) criminal complaints against petitioner for violation of the Bouncing Checks Law (BP 22). The cases were docketed as Criminal Case Nos. 11844 and 11845 and raffled to Branch 68 of the Metropolitan Trial Court (MTC) of Pasig City.

On September 22, 1994, the MTC of Pasig City rendered a decision convicting the accused (petitioner herein) of the crime charged on two (2) counts.

Aggrieved by the decision of the trial court, petitioner interposed an appeal to the Regional Trial Court (RTC) of Pasig City, which was raffled to Branch 261 thereof presided upon by public respondent judge.

On January 18, 1995, the court a quo rendered its decision affirming the judgment of the lower court with the modification that appropriate subsidiary imprisonment be imposed on the accused in case of insolvency (Annex "H", Petition; pp. 24-28, *ibid.*).

Dissatisfied with the decision of the court a quo, petitioner filed a motion for reconsideration on February 8, 1995 (Annex "I", Petition; pp. 29-30, *ibid.*).

In an Order dated February 9, 1995, the lower court denied the motion for reconsideration on account of the absence of a notice of hearing and because the issues raised therein have already been passed upon in its decision (Annex "J", Petition; p. 31, *ibid.*).

On February 22, 1995, petitioner filed a second motion for reconsideration (Annex "K", Petition; pp. 32-33, *ibid.*).

On February 24, 1995, private respondent filed with the RTC a motion for the issuance of a writ of execution (Annex "L", Petition; pp. 34-36, *ibid.*).

Opposition to the motion for the issuance of a writ of execution was filed by petitioner on March 3, 1995

(Annex “M”, Petition; pp. 37-38, *ibid.*).

In an Order dated March 13, 1995, the court a quo denied petitioner’s second motion for reconsideration and granted the motion for the issuance of a writ of execution (Annex “A”, Petition; p. 14, *ibid.*).

On March 21, 1995, a writ of execution was issued by the court directing public respondent Deputy Sheriff Jose R. Santos to cause the execution of the judgment (Annex “B”, Petition; p. 15, *ibid.*).[3]

Petitioner interposed an appeal via a petition for review with prayer for preliminary injunction and/or temporary restraining order. On November 17, 1998, the appellate court promulgated its decision denying the appeal for lack of merit.[4]

In its decision, the Court of Appeals noted that the petition before it did not contain a statement of material dates showing the timeliness of the petition. It also maintained that the petition was filed out of time, because the motion to reconsider the decision of the trial court did not contain a notice of hearing. Hence, being a mere scrap of paper, it did not interrupt the period for filing the petition before the appellate court, and the period had lapsed before the petition was filed. It also ruled that petitioner’s second motion was not only a prohibited pleading but it was also filed out of time. Petitioner’s motion for reconsideration before the Court of Appeals was denied.[5] Hence, the present petition, raising the following errors:

I

THAT THE REQUIREMENT ON NOTICE OF HEARING DOES NOT APPLY IN PETITIONER’S MOTION FOR RECONSIDERATION.

II

THAT THE REGIONAL TRIAL COURT HAS NO AUTHORITY TO ISSUE A WRIT OF EXECUTION.[6]

Petitioner argues that the requirement of a notice of hearing does not apply to the motion for reconsideration he filed before Branch 261 of the Regional Trial Court of Pasig City, as said court was acting only in its appellate jurisdiction, the proceedings therein being summary in nature. He further asserts that said trial court gravely abused its discretion when it issued the writ of execution, because it was the court of origin, the Metropolitan Trial Court of Pasig City, Branch 68, which had the authority to issue the writ.

For our resolution now is whether or not the Court of Appeals erred in denying the petition for review and the subsequent motion for reconsideration.

Petitioner received a copy of the decision of the Regional Trial Court on February 1, 1995. From that date, he had 15 days, or until February 16, 1995, to file a motion for reconsideration. On February 8, 1995, petitioner did file a motion for reconsideration of the trial court’s decision. The motion, however, lacked a notice of hearing.

We have ruled in a number of cases that the requirements laid down in the Rules of Court, that the notice of hearing shall be directed to the parties concerned and shall state the time and place for the hearing of the motion, are mandatory. If not religiously complied with, they render the motion pro forma. As such the motion is a useless piece of paper that will not toll the running of the prescriptive period.[7]

Under the present rules, the notice of hearing is expressly made a requirement.[8] In the instant case, it is undisputed that the motion for reconsideration filed by petitioner with the Regional Trial Court did not contain any notice of hearing. It was therefore pro forma; hence, it did not suspend the running of the prescriptive period.[9] This defect was not cured by the filing of a second motion for reconsideration, which is prohibited under the rules.[10]

Petitioner claims that the requirement of a notice of hearing did not apply to the motion for reconsideration he filed before the Regional Trial Court, since it was acting only in its appellate jurisdiction. This is error, as the Rules of Court apply to all courts, except as otherwise provided by the Supreme Court.[11] Regional Trial Courts are not precluded from conducting hearings on matters on which the parties need to be heard, even in the exercise of their appellate jurisdiction.

Additionally, to assail the RTC's issuance of a writ of execution, petitioner filed a petition for review under Rule 45 with the Court of Appeals. This was improper. What it should have filed was a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. Under the Rules, no appeal may be taken from an order denying a motion for new trial or reconsideration and an order of execution. Instead, where the judgment or final order may not be appealed, the appropriate recourse is a special civil action under Rule 65.[12] Thus, the appellate court did not err in denying said petition for review.

WHEREFORE, the instant petition is DENIED for lack of merit. The decision dated November 17, 1998 and the resolution dated May 25, 1999, of the Court of Appeals in CA-G.R. SP No. 37031 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and Austria-Martinez, JJ., concur.
Callejo, Sr., J., no part. Concurred in Decision subject of petition.

[1] Rollo, pp. 19-26.

[2] Id. at 27-28.

[3] Id. at 20-21.

[4] Id. at 26.

[5] Id. at 27-28.

[6] Id. at 12-13.

[7] *De la Peña vs. De la Peña*, 258 SCRA 298, 304 (1996), citing *Pojas vs. Gozo-Dalole*, 192 SCRA 575 (1990); *New Japan Motors, Inc. vs. Perucho*, 74 SCRA 14 (1976); *Sembrano vs. Ramirez*, 166 SCRA 30 (1988); *In re Almacen*, 31 SCRA 562 (1970) and *Manila Surety and Fidelity Co., Inc. vs. Bath Construction and Company*, 14 SCRA 435 (1965).

[8] Section 2, Rule 37, 1997 Rules of Civil Procedure:

SEC. 2. Contents of motion for new trial or reconsideration and notice thereof.—The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

x x x x x x x x

A pro forma motion for new trial or reconsideration shall not toll the reglementary period of appeal.

[9] *Ibid*.

[10] Section 5, Rule 37, 1997 Rules of Civil Procedure:

SEC. 5. Second motion for new trial.

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No party shall be allowed a second motion for reconsideration of a judgment or final order.

[11] Section 2, Rule 1, 1997 Rules of Civil Procedure:

SEC. 2. In what courts applicable.—These Rules shall apply in all the courts, except as otherwise provided by the Supreme Court.

[12] Section 1, Rule 41, 1997 Rules of Civil Procedure:

SEC. 1. Subject of appeal. –

x x x x x x x x

No appeal may be taken from:

a) An order denying a motion for new trial or reconsideration;

x x x x x x x x

(f) An order of execution

x x x x x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

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