

**ELENA S. ONG, PETITIONER, VS. HON. FRANCISCO V. MAZO AS
PRESIDING JUDGE, REGIONAL TRIAL COURT, GUIUAN, EASTERN
SAMAR, BRANCH 3, ELVIRA C. LANUEVO AND CHARITO A.
TOMILLOSO, RESPO...**

G.R. No. 145542. June 04, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed in the present petition for review is the Court of Appeals August 17, 2000 Resolution dismissing the petition for certiorari of petitioner Elena S. Ong and October 10, 2000 Resolution denying her motion for reconsideration of the dismissal.

The facts originative of the petition are as follows:

Respondents Elvira C. Lanuevo (Lanuevo) and Charito A. Tomilloso (Tomilloso) filed a complaint for damages against petitioner along with Iluminado J. Caramoan (Caramoan) before the Regional Trial Court (RTC) of Guiuan, Eastern Samar,[1] docketed as Civil Case No. 887. The complaint which was raffled to Branch 3 of the RTC, arose from a vehicular accident whereby a bus owned by petitioner and driven by Caramoan allegedly bumped a jeep owned and driven by respondent Lanuevo, with respondent Tomilloso as her passenger at the time.

After petitioner filed her Answer with Counterclaim,[2] and later a motion to dismiss[3] the complaint, respondents filed a motion[4] for leave of court to file an amended complaint[5] which was granted.[6]

On November 14, 1996, petitioner served written interrogatories[7] upon respondents and on November 21, 1996, she filed a “Manifestation and Omnibus Motion”[8] seeking, among other things, an order from the trial court directing respondents to answer the interrogatories.

To the motion bearing on the written interrogatories, respondents filed their objection.[9]

By Order of May 6, 1999,[10] the trial court denied the motion to compel respondents to answer the interrogatories upon the ground that it constituted a “fishing expedition” which would be more properly ventilated in a pre-trial conference.

Following petitioner’s receipt on May 26, 1999[11] of said May 6, 1999 Order, she filed on July 19, 1999[12] a motion for reconsideration thereof where she also manifested that her original answer to the complaint would serve as her answer to the amended complaint. The motion for reconsideration was denied by Order of July 4, 2000.[13]

After her receipt on July 18, 2000[14] of the aforesaid July 4, 2000 Order, petitioner filed on August 4, 2000 with the Court of Appeals a petition captioned as “Petition for Certiorari” [15] assailing the above twin orders of the trial court as having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

By the now assailed Resolution of August 17, 2000,[16] the appellate court dismissed petitioner's Petition for Certiorari on the ground that it was belatedly filed. Read the Resolution:

An examination of the petition for certiorari shows that the assailed order dated May 6, 1999 was received on May 26, 1999 and that petitioner filed a motion for reconsideration on July 10, 1999, hence petitioner had only 15 days left from receipt of the order denying the motion for reconsideration on July 18, 2000 or until August 2, 2000 within which to file the petition. When the instant petition was filed on August 4, 2000, the same was late by two (2) days without any explanation being made by petitioner.

WHEREFORE, premises considered, the instant petition is hereby dismissed.

SO ORDERED. (Emphasis supplied)

Petitioner moved to reconsider the appellate court's dismissal of her petition, arguing that what was filed was a special civil action for certiorari under Rule 65 of the Rules of Court, not an appeal, which special civil action was timely brought within the 60-day reglementary period.[17]

By Resolution of October 10, 2000, the appellate court denied petitioner's motion for reconsideration.[18]

Hence, the present petition, petitioner insisting that the appellate court erred in treating her petition as an ordinary appeal to thus lead it to conclude that it was belatedly filed.[19]

To the present petition, respondents filed their Comment,[20] explaining that the appellate court considered petitioner's petition thereat as an appeal because it found the assailed orders of the trial court as not warranting the remedy of the special civil action of certiorari.

On the denial by the trial court of petitioner's motion to direct respondents to answer the written interrogatories, respondents justified the same, it contending that the trial court had jurisdiction to pass upon the propriety of such mode of discovery under Section 3, Rule 26 of the Rules of Court and that the remedy of certiorari is unavailing since what is traversed is an error of law or fact that is properly the subject of an appeal.

Insisting that the trial court erred in refusing to compel respondents to answer her written interrogatories, petitioner, in her Reply[21] to respondents' Comment, invokes this Court's plenary power to resolve not only the issue of the appellate court's dismissal of her petition but also the question of whether the trial court gravely abused its discretion in disallowing the written interrogatories.

In their respective memoranda,[22] both parties raise the issue of the propriety of availment of written interrogatories.

Meanwhile, on February 28, 2001, the trial court suspended indefinitely the proceedings in the initiatory civil case between the parties in light of petitioner's appeal before this Court.[23]

The appeal is impressed with merit.

On August 4, 2000, when petitioner filed her petition for certiorari before the appellate court, Section 4 of Rule 65, as amended by Circular No. 39-98 read:

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, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from such notice of denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Underscoring supplied)

Under the foregoing rule, when petitioner's counsel received on July 18, 2000 the trial court's order of July 4, 2000 denying her motion for reconsideration of the Order of May 6, 1999, she still had 15 days left of the 60-day period to file the petition for certiorari.

Section 4 of Rule 65 was subsequently further amended, however, by A.M. No. 00-2-03-SC which took effect on September 1, 2000 as follows:

SEC. 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. (Emphasis supplied)

In *Systems Factors Corporation v. NLRC*[24] and *Unity Fishing Development Corp. v. Court of Appeals*,[25] this Court applied retroactively the above-quoted amended rule on a fresh 60-day period for the filing of certiorari petitions from notice of the denial of the motion for reconsideration. Thus, a petition for certiorari admittedly filed past the 60-day period under Section 4, Rule 65, as amended by Circular No. 39-98, but filed on time where considered under the amendment in A.M. No. 00-2-03-SC, was held to be seasonably filed.

Applying retroactively too Sec. 4 of Rule 65, as amended by A.M. No. 00-2-03-SC, since petitioner's petition for certiorari was filed with the appellate court on August 4, 2000, after receipt on July 18, 2000 by petitioner of the order of the trial court denying her motion for reconsideration from which latter date the 60-day period should be reckoned, the petition was seasonably filed. It was thus error for the trial court to dismiss the same.

Contrary then to petitioner's protestation that the appellate court erred in treating her petition for certiorari as an appeal which was filed beyond the 15-day reglementary period, as reflected above, the 15-day period left for petitioner to file the petition referred to the remaining number of days left after computation of the 60-day period in Section 4 of Rule 65 of the Rules of Court, as then amended by Circular No. 39-98

With the setting aside of the appellate court's questioned orders, the resolution of the present petition should have been accomplished. Nonetheless, considering that the relatively simple case for damages, which was instituted by respondents against petitioner way back in 1996 or eight long years ago, had virtually come to a halt due to the lingering legal issue respecting the trial court's order stopping petitioner from availing of her written interrogatories as a mode of discovery, instead of remanding this case to the appellate court as anyway both parties have advanced and argued the sole issue which is purely one of law, in the overriding interest of justice, this Court shall now resolve the issue as if it had been raised via a special civil action for certiorari with this Court.[26]

No doubt, the twin orders denying the written interrogatories were interlocutory in nature for they leave something more to be done on the merits of the case.[27] And the extraordinary writ of certiorari is generally not available to challenge an interlocutory order of a trial court, the proper remedy in such cases being an ordinary appeal from an adverse judgment where incorporated in said appeal are the grounds for assailing the interlocutory order.[28] Nonetheless, this by no means is an absolute rule. If the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, certiorari may be allowed as a mode of redress.[29]

This Court finds that the orders disallowing petitioner's written interrogatories are patently erroneous, hence, the resort to certiorari is warranted. In denying petitioner's availment of interrogatories, the trial court was of the view that —

. . . in as much that the written interrogatories is (sic) a sort of fishing expedition, said questions and answer would be properly ventilated in a pre-trial conference for which this court direct the defendant Elena Ong to file her answer to the amended complaint anent thereto, both parties are required to file their respective pre-trial briefs after which this case will be calendared for pre-trial conference.[30]

This Court has long espoused the policy of encouraging the availment of the various modes or instruments of discovery as embodied in Rules 24 to 29 of the Revised Rules of Court. Thus, in *Republic v. Sandiganbayan*,[31] it held:

. . . Indeed it is the purpose and policy of the law that the parties – before the trial if not indeed even before the pre-trial – should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to their adversaries; in other words, the desideratum is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29.

The thrust of the Rules is to even make the availment of the modes of discovery – depositions, interrogatories and requests for admissions – without much court intervention since leave of court is not necessary to put into motion such modes after an answer to the complaint has been served.[32] The rationale behind the recognition accorded the modes of discovery is that they enable a party to discover the evidence of the adverse party and thus facilitate an amicable settlement or expedite the trial of the case.[33]

Thus, to deny a party the liberty to have his written interrogatories answered by his opponent, as what the trial court did, on the premise that the interrogatories were a “fishing expedition,” is to disregard the categorical pronouncement in aforementioned case of *Republic vs. Sandiganbayan* that the time-honored cry of ‘fishing expedition’ can no longer provide a reason to prevent a party from inquiring into the facts underlying the opposing party's case through the discovery procedures.[34]

The trial court's orders, not being in accordance with law and jurisprudential dictum, are therefore correctible by writ of certiorari.

WHEREFORE, the Resolutions of the Court of Appeals dated August 17, 2000 and October 10, 2000 are hereby SET ASIDE as are the orders of Branch 3 of the Regional Trial Court of Guiuan, Eastern Samar in Civil Case No. 887. The Presiding Judge of said branch of the court is ORDERED to REQUIRE respondents to serve their answers to petitioner's written interrogatories and to proceed with dispatch the disposition of said case.

SO ORDERED.

Vitug, (Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Records at 1-5.

[2] Id. at 23-30.

[3] Records at 37-43.

[4] Id. at 47-49.

[5] Id. at 50-54.

- [6] Id. at 61.
- [7] Id. at 72-83.
- [8] Id. at 85-88.
- [9] Id. at 90-92.
- [10] Id. at 109-110.
- [11] Court of Appeals (CA) Rollo at 3.
- [12] Records at 111-114.
- [13] Id. at 139.
- [14] CARollo at 11.
- [15] Id. at 2-8.
- [16] Rollo at 17.
- [17] CA Rollo at 62-64.
- [18] Rollo at 18.
- [19] Id. at 10-16.
- [20] Id. at 95-99.
- [21] Id. at 106-108.
- [22] Id. at 120-124, 129-133.
- [23] Records at 231.

[24] 346 SCRA 149 (2000).

[25] 351 SCRA 140 (2001).

- [26] See *San Luis v. Court of Appeals*, 365 SCRA 279 [2001], where the facts therein were very similar to the case at bar, with the Court instead of remanding the case to the Court of Appeals resolved the same on the merits.
- [27] *Miranda v. Court of Appeals*, 71 SCRA 295 (1976).
- [28] *Salcedo-Ortañez v. Court of Appeals*, 235 SCRA 111 (1994).
- [29] *Casil v. Court of Appeals*, 285 SCRA 264 (1998); *Go v. Court of Appeals*, 297 SCRA 574 (1998).
- [30] Records at 110.

[31] 204 SCRA 212 (1991).

- [32] RULES OF COURT, Rule 24, Sec. 1; Rule 25, Sec. 1; Rule 26, Sec. 1.
- [33] *Koh v. Intermediate Appellate Court*, 144 SCRA 259 (1986).
- [34] *Supra*, footnote 31 at 224.

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