

SPOUSES RICARDO AND LEONILA DE LOS SANTOS, PETITIONERS, VS. MA. SOCORRO V. VDA. DE MANGUBAT, SPS. PURIFICACION V. LINAO AND DOMINGO LINAO, BIENVENIDO G. VILLARENTE, SPS. CESAR G...

G.R. NO. 149508. October 10, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

In the present Petition for Certiorari under Rule 65 of the Rules of Court, Spouses Ricardo and Leonila de los Santos (petitioners) assail the Resolution[1] dated October 27, 2000 of the Court of Appeals (CA) in CA-G.R. SP No. 61394 which dismissed the petition for certiorari filed by the petitioners before it; and the CA Resolution[2] dated July 3, 2001 denying petitioners' motion for reconsideration of the October 27, 2000 Resolution.

The procedural antecedents and factual background of the case are as follows:

Private respondents are the registered owners of Lot No. 1033 located in Sta. Cruz, Sta. Maria, Bulacan with an area of 793 square meters and covered by Transfer Certificate of Title No. 61.279.[3] Located in the east of Lot No. 1033 is Lot No. 1034 where the house of petitioners is erected, with an area of 530 square meters and covered by Tax Declaration No. 18929 in the name of a certain Elena San Jose.[4] In front of Lot No. 1034 is the provincial road.[5]

On June 5, 1998, private respondents filed with the Regional Trial Court, Malolos, Bulacan (RTC) a Complaint for Damages with Prayer for a Writ of Preliminary Injunction[6] against the petitioners docketed as Civil Case No. 442-M-98. In their Complaint, private respondents alleged that: they cannot reach the public road without using and passing upon a portion of Lot No. 1034, as it is the nearest and shortest passage way; the alleged owners of Lot No. 1034 executed a duly notarized Deed of Assignment of Right of Way dated July 24, 1991 conveying a strip of Lot No. 1034 in favor of the private respondents to be used as a permanent right of way; sometime in June 1998, the petitioners, without any authority over the strip of land, deliberately placed sand and gravel along the passageway which violated the right of way of the private respondents and caused irreparable damage and injury to the rights of the private respondents.

In their Answer dated 22 June 1998, petitioners denied liability on the grounds that the persons who allegedly executed the Deed of Assignment of Right of Way are neither the owners nor possessors of Lot No. 1034 and thus, the Deed of Assignment of Right of Way is null and void; that the Deed of Assignment was executed because of the anticipation that Lot No. 1034 will be allotted to the assignors as their share in the estate of their ascendant, Pedro San Jose; that instead, Lot No. 1034 was inherited by petitioner Leonila de los Santos; and that the private respondents cannot demand the right of way there being no proof that they have indemnified the petitioners.

Trial ensued and on May 3, 2000, the RTC rendered its Decision which granted a permanent right of way in favor of the private respondents measuring 2.7 meters wide and 21 meters long, upon payment of the proper indemnification in the amount of P28,350.00; but which denied the private respondents' prayer for damages.[7]

A copy of the RTC's Decision was received by petitioners on May 12, 2000.[8] On May 29, 2000, the petitioners filed a Motion for Reconsideration via registered mail[9] which was denied by the RTC in its Order[10] dated July 19, 2000. The petitioners received a copy of the July 19, 2000 Order on August 3, 2000.

Dissatisfied, the petitioners filed a Notice of Appeal on August 15, 2000.[11] However, the RTC denied due course to the appeal in its Order[12] dated August 17, 2000. The RTC held that from the records, the Motion for Reconsideration of the petitioners was filed out of time, more so was their Notice of Appeal.

Petitioners then filed a petition for certiorari with the CA, docketed as CA-G.R. SP No. 61394.[13] On October 27, 2000, the CA issued a Resolution[14] dismissing the petition on two grounds: first, the verification and the non-forum shopping certification is signed by petitioners' counsel which is proscribed by law; and second, the petitioners failed to file a Motion for Reconsideration before resorting to the petition for certiorari. Petitioners filed a Motion for Reconsideration but to no avail.[15]

Hence, the present petition based on the following grounds:

I.

WHETHER OR NOT THE PUBLIC RESPONDENT APPELLATE COURT GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OF JURISDICTION, WHEN IT ISSUED THE QUESTIONED RESOLUTIONS DATED OCTOBER 27, 2000 BASED SOLELY ON TECHNICAL CONSIDERATIONS x x x AS WELL AS EFFECTIVELY AFFIRMING PUBLIC RESPONDENT TRIAL COURT'S MANIFESTLY NULL AND VOID ORDER OF AUGUST 17, 2000 DENYING DUE COURSE TO PETITIONER'S NOTICE OF APPEAL EVEN AS THE SAME WAS FILED WITHIN THE REGLEMENTARY PERIOD.

II.

WHETHER OR NOT THE PUBLIC RESPONDENT APPELLATE COURT GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OF JURISDICTION, WHEN IT ISSUED THE ASSAILED ORDER OF JULY 3, 2001 DENYING PETITIONER'S MOTION FOR RECONSIDERATION NOTWITHSTANDING THE FACT THAT IT HAD MERITORIOUS GROUNDS AND WAS TIMELY FILED.

On October 1, 2001, the Court issued a temporary restraining order directing private respondents to refrain from executing the RTC decision until further orders from the Court.[16]

In 2005, pending resolution of herein petition, the Court amended the Rules of Court on the appeal period in *Neypes v. Court of Appeals*,[17] to wit:

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.

x x x x

To recapitulate, a party litigant may either file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of the order (the "final order") denying his motion for new trial or motion for reconsideration. Obviously, the new 15-day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41, Section 3.

This "fresh period rule" served as the beacon of light that guided the Court in the resolution of the present

petition.

However, there are existing procedural rules that would have blocked the outright application of Neypes to the present case.

First, the dismissal by the CA of the petition for certiorari filed before it by the petitioners was based on the grounds that the verification and non-forum shopping certification were signed by petitioners' counsel; and that petitioners failed to file a motion for reconsideration of the order denying due course to the appeal before resorting to a petition for certiorari.

Supreme Court Circular No. 28-91,[18] as amended by SC Administrative Circular No. 04-94,[19] specifically provided that the verification and certification of non-forum shopping must be signed by the plaintiff, petitioner, applicant or principal party seeking relief and failure to do so shall be a cause for the dismissal of the petition.[20] This rule is now embodied in Section 1, Rule 65 of the Rules of Court.[21]

In the present case, it was Atty. Eduardo G. Araullo, the counsel for the petitioners, who signed both the verification and certification against forum shopping instead of the petitioners.[22]

In *Pajuyo v. Court of Appeals*,[23] the Court held that the requirement on verification of a pleading is a formal and not a jurisdictional requisite. It is intended simply to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation. A party's representative, lawyer or any person who personally knows the truth of the facts alleged in the pleading may sign the verification.

The rule that the certification on non-forum shopping should be signed by the petitioner has been relaxed by the Court in several instances where procedural lapses are overlooked in the interest of substantial justice and for compelling reasons.[24]

In the present case, the issue whether the RTC committed an error in awarding a right of way in favor of private respondents, together with the other issues mentioned in the petition for certiorari filed with the CA, are proper subjects of appeal. The fact that litigants have been given a "fresh period" of appeal, constrains the Court to give due course to the petition.

Second, the general rule is that before certiorari under Rule 65 can be availed of, a motion for reconsideration must first be filed.[25] However, this rule admits of exceptions.[26]

In a plethora of cases, the Court held that when the Rules of Procedure are rigid and strict in application, resulting in technicalities that tend to frustrate rather than promote justice, the Court is empowered to suspend them.[27] The Court finds that the present case is one of the instances where the rigid application of the rule on filing a motion for reconsideration before filing a petition for certiorari may be suspended to give way to the application of the new rule enunciated in *Neypes*.

Third, the present Petition for Certiorari filed with this Court is an improper remedy in bringing the instant case before this Court. The proper remedy to obtain reversal of the CA's October 27, 2000 and July 3, 2001, Resolutions is a petition for review on certiorari under Rule 45 of the Rules of Court.

While the Court may treat a petition for certiorari under Rule 65 as having been filed under Rule 45 to serve the higher interest of justice, such liberal application of the rules finds no application if the petition is filed well beyond the reglementary period for filing a petition for review without any reason therefor.[28]

Herein petition for certiorari was filed on the 60th day from date of receipt of the denial of the motion for reconsideration,[29] well beyond the 15-day period within which to file the petition for review under Rule 45.

However, considering that rules of procedure are mere tools designed to facilitate the attainment of justice, it is well-recognized that the Supreme Court is empowered to suspend its operation, when the rigid application thereof tends to frustrate rather than to promote the ends of justice.[30]

Taking into account the fact that private respondent is entitled to the "fresh period rule," in the interest of substantial justice, procedural rules of the most mandatory character in terms of compliance may be relaxed.[31]

Thus, setting aside technicalities, the Court will proceed to determine the merits of herein petition.

For a better perspective in the resolution of the present case, it is necessary that the Court examine the petition for certiorari[32] filed by petitioners before the CA.

Petitioners raised the following issues, viz:

I.

WHETHER or not the public respondent gravely abused his discretion amounting to lack of jurisdiction, when it issued the questioned Decision dated May 3, 2000 granting a right of way to private respondents which was clearly more prejudicial and burdensome to the servient estate there being an existing concrete residential building getting in the way of the subject right of way owned not by petitioners but by third parties who were never impleaded in this case.

II.

WHETHER or not the public respondent gravely abused his discretion, amounting to lack of jurisdiction, when it issued the assailed order of July 19, 2000 denying petitioners' Motion for Reconsideration notwithstanding the fact that it had meritorious grounds and was timely filed;

III.

WHETHER or not the public respondent gravely abused his discretion, amounting to lack of jurisdiction, when it issued the assailed order dated August 17, 2000 denying due course to petitioners' Notice of Appeal even as the same was filed within the reglementary period.[33] (Emphasis supplied)

The Court will limit itself only to the sub-issue mentioned in the second issue regarding the timeliness of the motion for reconsideration of the RTC Decision and to the third issue involving the filing of the Notice of Appeal. The first two issues involve matters which go into the merits of the case which should be properly threshed out in an appeal before the CA.

The petitioners argue that the notice of appeal filed before the RTC on August 15, 2000 was within the reglementary period of perfecting an appeal.

Before Neypes, Section 3, Rule 41 of the Rules of Court provides that the appeal shall be taken within fifteen (15) days from the notice of the judgment or final order appealed from; and the period of appeal shall be interrupted by a timely motion for new trial or reconsideration.

The RTC acknowledges that on May 12, 2000,[34] the petitioners received a copy of the RTC Decision dated May 3, 2000. Computing the 15-day period limitation within which a party may file a motion for reconsideration or appeal, the petitioners' last day for filing their motion for reconsideration should be on May 27, 2000, which fell on a Saturday. Thus, the following Monday or on May 29, 2000, the petitioners filed their Motion for Reconsideration via registered mail.[35] The RTC denied the motion in its Order dated July 19, 2000 which petitioners received on August 3, 2000.[36] Petitioners filed a Notice of Appeal on August 15, 2000, or twelve (12) days later. Under the aforementioned Rules, petitioners should have filed the Notice of Appeal on August 4,

2000.

In Neypes, the trial court issued an order dated February 12, 1998 which dismissed the complaint of petitioners Neypes on the ground of prescription. Upon receipt of the order on March 3, 1998, the petitioners filed a motion for reconsideration on March 18, 1998. On July 1, 1998, the trial court issued another order which dismissed the motion for reconsideration which petitioners received on July 22, 1998. Five days later, or on July 27, 1998, petitioners filed a notice of appeal which was denied by the trial court on August 4, 1998, holding that it was filed eight days late. Petitioners filed a motion for reconsideration but this too was denied in an Order dated September 3, 1998.[37]

The Court elucidated in Neypes that in order to standardize the appeal periods provided in the Rules of Court and to afford litigants a fair opportunity to appeal their cases, it is practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration. Thus, the Court held that petitioners Neypes seasonably filed their notice of appeal within the fresh period of 15 days counted from the date of receipt of notice denying their motion for reconsideration.[38]

Procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice.[39] Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes - they may be given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in rules of procedure.[40]

The "fresh period rule" is a procedural law as it prescribes a fresh period of 15 days within which an appeal may be made in the event that the motion for reconsideration is denied by the lower court. Following the rule on retroactivity of procedural laws, the "fresh period rule" should be applied to pending actions, such as the present case.

Also, to deny herein petitioners the benefit of the "fresh period rule" will amount to injustice, if not absurdity, since the subject notice of judgment and final order were issued two years later or in the year 2000, as compared to the notice of judgment and final order in Neypes which were issued in 1998. It will be incongruous and illogical that parties receiving notices of judgment and final orders issued in the year 1998 will enjoy the benefit of the "fresh period rule" while those later rulings of the lower courts such as in the instant case, will not.

Petitioners filed their Notice of Appeal on August 15, 2000 or 12 days from receipt of the Order denying their motion for reconsideration on August 3, 2000. Hence, following the "fresh period rule," the notice of appeal filed by petitioners may now be considered as having been filed well within the fresh period of 15 days.

WHEREFORE, the instant petition is GRANTED. In the higher interest of substantial justice, the assailed Court of Appeals Resolutions dated October 27, 2000 and July 31, 2001 are SET ASIDE and the RTC of Malolos, Bulacan, Branch 9, is directed to GIVE DUE COURSE to the Notice of Appeal filed by the petitioners on August 14, 2000. The temporary restraining order issued by the Court during the pendency of herein petition is LIFTED.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

* The Court of Appeals and Presiding Judge D. Roy A. Masadao, Jr., of the RTC, Malolos, Bulacan, Branch 9,

having been included as co-respondents, are deleted from the title pursuant to Section 4, Rule 45 of the Rules of Court.

[1] Penned by Associate Justice Conrado M. Vasquez (now Acting Presiding Justice) with the concurrence of Associate Justices Presbitero J. Velasco, Jr. (now Supreme Court Associate Justice) and Juan Q. Enriquez, Jr., rollo, pp.32-33.

[2] Id. at 35-37.

[3] Id. at 44, 97.

[4] Id. at 97.

[5] Id.

[6] Id. at 38-43.

[7] Id. at 96- 109.

[8] Id. at 110.

[9] Id.

[10] Id. at 122.

[11] Id. at 123.

[12] Id. at 125.

[13] Id. at 128-149.

[14] Supra note 1.

[15] Supra note 2.

[16] Rollo, pp. 150 and 163.

[17] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[18] Effective January 1, 1992.

[19] Effective April 1, 1994.

[20] Rambuyon v. Fiesta Brands, Inc., G.R. No. 157029, December 15, 2005, 478 SRA 133.

[21] Section 1, Rule 65, Rules of Court provides: "[T]he petition shall be accompanied by x x x a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46."

[22] Rollo at p. 149.

[23] G.R. No. 146364, June 3, 2004, 430 SCRA 492.

[24] Office of the Ombudsman v. Valera, G.R. No. 164250, September 30, 2005, 471 SCRA 715.

[25] Building Care Corporation v. National Labor Relations Commission, G.R. No. 94237, February 26, 1997, 268 SCRA 666; Philippine National Construction Corporation v. National Labor Relations Commission, G.R. No. 112629, July 7, 1995, 245 SCRA 668; Gonpu Services Corp. v. National Labor Relations Commission, G.R. No. 111897, January 27, 1997, 266 SCRA 657.

[26] See *Acance v. Court of Appeals*, G.R. No. 159699, March 16, 2005, 453 SCRA 548.

[27] *Rivera v. People*, G.R. No. 163996, June 9, 2005, 460 SCRA 85; *Security Bank Corporation v. Indiana Aerospace University*, G.R. No. 146197, June 27, 2005, 461 SCRA 260; *Barnes v. Padilla*, G.R. No. 160753, June 28, 2005, 461 SCRA 533; *Agote v. Lorenzo*, G.R. No. 142675, July 22, 2005, 464 SCRA 60; *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, November 15, 2005, 475 SCRA 41.

[28] *Caballes v. Court of Appeals*, G.R. No. 163108, February 23, 2005, 452 SCRA 312.

[29] *Rollo*, p. 1.

[30] *Metro Rail Transit Corporation v. Court of Tax Appeals*, G.R. No. 166273, September 21, 2005, 470 SCRA 562.

[31] *Department of Agrarian Reform v. Republic*, G.R. No. 160560, July 29, 2005, 465 SCRA 77.

[32] *Rollo*, pp. 128-149.

[33] *Id.*

[34] RTC Order dated August 17, 2000, *rollo*, p. 125.

[35] *Id.*

[36] Annex "M," *rollo*, p. 123.

[37] *Id.*

[38] *Id.*

[39] *Lopez v. Gloria*, 40 Phil 28 (1919).

[40] *Jamero v. Melicor*, G.R. No. 140929, May 26, 2005, 459 SCRA 113.

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