

**EDUARDO S. MERCADO, HEREIN REPRESENTED BY HIS COUNSEL,
ATTY. ENRICO M. UYEHARA, PETITIONER, VS. THE COURT OF
APPEALS, THE HONORABLE LETICIA P. MORALES, IN HER CAPACITY
AS PRESID...**

G.R. No. 150241. November 04, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special civil action for certiorari seeks to annul the Court of Appeals' Resolutions dated February 23, 2001[1] and July 31, 2001,[2] in CA-G.R. SP No. 62678, dismissing Eduardo S. Mercado's petition for certiorari for late payment of docket fees and denying his Motion for Reconsideration.

The facts and antecedent proceedings, as culled from records, are as follows:

On various dates from January to August 1988, private respondent Armando V. Gatmaitan obtained a series of loans from petitioner Eduardo S. Mercado totaling P850,000, to renovate and repair two houses located at 1827 Santan St., Dasmariñas Village, Makati City. Said houses were the conjugal properties of Armando and Concepcion Gatmaitan. The loan agreement was in writing.

The agreement stipulated that Armando was to lease the aforementioned houses and deliver all the rentals collected to Eduardo. Despite repeated demands, Armando did not pay any amount to Eduardo.

Sometime in 1989, Eduardo learned that Concepcion had filed a Complaint docketed as Civil Case No. 89-4506 against Armando for the separation and liquidation of their conjugal properties before the Regional Trial Court (RTC) of Makati City, Branch 149.[3] Eduardo immediately filed a Motion for Leave to File Complaint in Intervention, claiming that he had an interest as a creditor in the unpaid loans he extended to Armando for the renovation of the conjugal properties subject of said civil case.

For failure to file his Answer, Armando was declared in default and Concepcion was allowed to present evidence ex parte. Petitioner then filed a Manifestation and Motion praying that the trial court hold in abeyance the resolution of the case pending resolution of his Motion for Leave to File Complaint in Intervention. Meanwhile, Armando moved to lift the Order of Default and sought to have his Answer admitted.

In two separate Orders, both dated February 19, 1990, the trial court denied Armando's Motion to Lift Order of Default and Motion for Admission of Answer as well as petitioner's Motion for Leave to File Complaint in Intervention.[4] However, Eduardo allegedly did not immediately learn of the denial of his motion to intervene.

On January 7, 1994, the trial court handed down its Decision in Civil Case No. 89-4506. Again, Eduardo allegedly had no knowledge about the judgment or the subsequent appeal of said ruling.

On February 22, 1999, Eduardo, thru a different counsel, filed a Motion for Early Resolution of the Motion for Leave to File Complaint in Intervention, which was raffled to Branch 140 of the Makati City RTC. During the

hearing of the motion, the trial court informed Eduardo that a Decision had already been rendered in Civil Case No. 89-4506 by Branch 149 and the appeal from said judgment had already been resolved by the Court of Appeals. Nonetheless, it directed the parties to file their respective position papers. Concepcion filed an Opposition with Motion for Issuance of Writ of Execution but she died on May 15, 1999, before her motion could be resolved.

In an Order^[5] dated September 27, 1999, Branch 140, denied Eduardo's motion for want of merit, pointing out that his Motion for Leave to File Complaint in Intervention had been dismissed previously by Branch 149 in its Order dated February 19, 1990, without any Motion for Reconsideration being filed from the aforesaid order of dismissal.

On September 30, 1999, the trial court granted the Motion for Writ of Execution.

Eduardo moved for reconsideration but this was denied on October 27, 1999. He then filed a Petition for Relief dated January 30, 2000, raising denial of due process and fraud as his grounds since he allegedly never received a copy of the Order of September 19, 1990, thus preventing him from moving for reconsideration. In paragraphs 14 and 15 of the Petition for Relief, however, petitioner admits he did receive an Order dated February 19, 1990.

In an Order dated April 6, 2000, the Regional Trial Court of Makati City, Branch 140, ruled on the petition, as follows:

Finding no cogent reasons to reverse or set aside the [O]rders dated September 27, 1999 and October 27, 1999, the petition for relief filed by petitioner-intervenor Eduardo S. Mercado praying that he be allowed to file complaint in intervention is hereby DENIED.

SO ORDERED.^[6]

On May 18, 2000, petitioner moved for reconsideration of the foregoing Order but this was denied in an Order dated September 26, 2000, a copy of which was received by petitioner on November 17, 2000.

Petitioner then filed a petition for certiorari with the Court of Appeals, which was dismissed for lack of jurisdiction due to late payment of docket fees. The appellate court found that while Eduardo filed his petition for certiorari by registered mail on January 16, 2001, the sixtieth (60th) day from the receipt of the Order of Denial of Motion for Reconsideration, the docket and other lawful fees were paid only on January 17, 2001, one day after the expiration of the reglementary period for filing his petition. The Court of Appeals applied Rule 46, Section 3 of the 1997 Rules of Civil Procedure^[7] which allows payment of docket fees within a reasonable time if it was not paid during the filing of the initiatory pleading, but in no case beyond the applicable prescriptive period. It held that while the rule on the payment of docket fees may be liberally construed if only to secure a just and speedy disposition of every action and proceeding, nonetheless, it should not be ignored or belittled, lest it scathes and prejudices the other party's substantive rights.^[8] Petitioner then filed a Motion for Reconsideration but was denied.

Dissatisfied, petitioner now comes to this Court on the grounds that:

- THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION, SOLELY ON PROCEDURAL GROUNDS.
- PETITIONER HAS A GOOD AND MERITORIOUS CAUSE OF ACTION AS THE PUBLIC RESPONDENT REGIONAL TRIAL COURT, BRANCH 140, MAKATI CITY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED THE PETITION FOR RELIEF FILED BY THE HEREIN PETITIONER.^[9]

Petitioner's arguments lack persuasiveness. It bears stressing that this case must be dismissed outright as the petitioner adopted the wrong remedy in bringing this case before this Court. Petitioner should have filed a petition for review under Rule 45 of the 1997 Rules of Civil Procedure instead of a special civil action for certiorari under Rule 65. The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not identical to a petition for certiorari under Rule 65. Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that to be taken under Rule 45. Accordingly, when a party adopts an improper remedy, as in this case, his petition may be dismissed outright.[10]

Petitioner should have availed of the ordinary appeal process such as a petition for review under Rule 45, within 15 days after notice of denial of his Motion for Reconsideration. Undoubtedly, petitioner had already lost this remedy when he filed this special civil action on January 16, 2001. A Petition for Certiorari cannot be a substitute for the lost or lapsed remedy of appeal, where such loss is occasioned by the petitioner's own neglect or error in the choice of remedies.[11] By his own account, petitioner received the Order denying the Motion for Reconsideration from the RTC on November 17, 2000. Instead of filing a petition for review with the appellate court within 15 days thereof or until December 2, 2000, he filed a petition for certiorari by registered mail on January 16, 2001, but belatedly made the payment of docket fees only on January 17, 2001. Noteworthy, petitioner did not even attempt to explain why he was unable to file a petition for review within the reglementary period.

Indeed, not infrequently, litigants and parties to a petition have invoked liberal construction of the Rules of Court to justify lapses in its observance. Hopefully, it is not simply a cover-up of their own neglect or sheer ignorance of procedure. While indeed this Court has on occasion set aside procedural irregularities in the interest of justice, it must be stressed that liberality of construction of the rules should not be a panacea for all procedural maladies. For this Court will not tolerate wanton disregard of the procedural rules under the guise of liberal construction.

In any event, even if we were to disregard the procedural defects, we find that this petition must still be dismissed as the appellate court did not commit any grave abuse of discretion amounting to want or excess of jurisdiction in dismissing the petition for late payment of filing fees. Petitioner undeniably paid his docket fees beyond the reglementary period of 60 days for filing a petition for certiorari. Well settled is the rule that the court cannot acquire jurisdiction over the subject matter of a case, unless the docket fees are paid.[12] And where the filing of the initiatory pleading is not accompanied by payment of the docket fees, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.[13]

Thus, the Court of Appeals correctly dismissed the petition for certiorari pursuant to Rule 46, Section 3[14] in relation to Rule 65, Section 6 (2)[15] of the 1997 Rules of Civil Procedure.

WHEREFORE, the instant petition is DISMISSED for lack of merit. The assailed Resolutions dated February 23, 2001 and July 31, 2001 of the Court of Appeals are hereby AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), and Carpio, JJ., concur.

Ynares-Santiago, J., no part, Ponente of RTC Decision.

Azcuna, J., on leave.

[1] Rollo, pp. 59-61. Penned by Associate Justice Marina L. Buzon (vice Associate Justice Eubulo G. Verzola who was then on leave), with Associate Justices Eriberto U. Rosario, Jr., and Bienvenido L. Reyes concurring.

[2] Id. at 66-68.

[3] Presided over by then Judge Consuelo Ynares-Santiago who is at present a member of the Supreme Court.

[4] Rollo, p. 72.

[5] Id. at 70.

[6] Id. at 35.

[7] SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. – ...

...

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

[8] Rollo, p. 60.

[9] Id. at 12.

[10] See *Fortune Guarantee and Insurance Corporation v. Court of Appeals*, G.R. No. 110701, 12 March 2002, 379 SCRA 7, 14 citing *Heirs of Pagobo v. CA*, G.R. No. 121687, 16 October 1997, 345 Phil. 1119, 1133.

[11] *Fajardo v. Bautista*, G.R. Nos. 102193-97, 10 May 1994, 232 SCRA 291, 298.

[12] *Philippine Pryce Assurance Corp. v. Court of Appeals*, G.R. No. 107062, 21 February 1994, 230 SCRA 164, 171.

[13] *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*, G.R. Nos. 79937-38, 13 February 1989, 170 SCRA 274, 285.

[14] *Supra*, note 7.

[15] SEC. 6. Order to comment. – ...

In petitions for certiorari before the Supreme Court and the Court of Appeals, the provisions of Section 2, Rule 56, shall be observed....

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