

PANFILO A. ABAIGAR, PETITIONER, VS. JESUS A. ABAIGAR, RESPONDENT.

G.R. NO. 167003. October 23, 2006

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

On challenge are the Resolutions of the Court of Appeals dated November 30, 2004[1] and February 4, 2005[2] dismissing herein petitioner's Petition for Review, its certification against forum shopping having been signed merely by his counsel as petitioner had, before its filing, left for the United States.

Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended, provides:

SEC. 5. Certification against forum shopping. "The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. x x x (Italics in the original; emphasis supplied)

Similarly, Sections 2 and 3, Rule 42[3] state:

SEC. 2. Forms and contents. - x x x

The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

SEC.3. Effect of failure to comply with requirements. "The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof. (Italics in the original; emphasis supplied)

A certification by counsel and not by the principal party himself is no certification at all.[4] It is a defective certification which is tantamount to non-compliance with the requirement prescribed by the Rules of Court and

constitutes a valid cause for the dismissal of the petition.[5] This is because it is the petitioner and not the counsel who is in the best position to know whether he actually filed or caused the filing of the petition.[6] The appellate court, strictly speaking, was, therefore, correct when it dismissed the petition in this case. There have been instances, however, that the Rule on the matter has been relaxed.

Thus, in *Donato v. Court of Appeals*[7] where the therein petitioner was, at the time of he filing of the petition, in the United States where he was residing, the Rule on certification against forum shopping was relaxed.

The petition for review filed before the CA contains a certification against forum shopping but said certification was signed by petitioner's counsel. In submitting the certification of non-forum shopping duly signed by himself in his motion for reconsideration, petitioner has aptly drawn the Court's attention to the physical impossibility of filing the petition for review within the 15-day reglementary period to appeal considering that he is a resident of 1125 South Jefferson Street, Roanoke, Virginia, U.S.A. were he to personally accomplish and sign the certification.

We fully agree with the petitioner that it was physically impossible for the petition to have been prepared and sent to the petitioner in the United States, for him to travel from Virginia, U.S.A. to the nearest Philippine Consulate in Washington, D.C., U.S.A., in order to sign the certification before the Philippine Consul, and for him to send back the petition to the Philippines within the 15-day reglementary period. Thus, we find that petitioner has adequately explained his failure to personally sign the certification which justifies relaxation of the rule. [8] (Emphasis and underscoring supplied)

In *Sy Chin v. Court of Appeals*[9] and in the recent case of *Paul Lee Tan v. Paul Sycip and Merritto Lim*[10] where the therein petitions before the Court of Appeals bore defective Verifications and Certifications of Non-forum Shopping, this Court excused the procedural lapse in the interest of substantial justice.

In fine, when the interest of substantial justice overrides the procedural lapse, the Rule on the matter may be relaxed. An examination of the records of the case is thus in order to determine whether a relaxation of the Rule is warranted in the interest of substantial justice.

From the records of the case, the following material facts are culled:

Panfilo A. Abaigar (petitioner) filed on July 5, 2000 a complaint[11] for Forcible Entry against his brother-herein respondent Jesus A. Abaigar before the Municipal Circuit Trial Court (MCTC) in Calbiga, Samar which docketed it as Civil Case No. 02-2000.

In his Complaint, petitioner alleged as follows: Respondent, by separate letters both dated August 25, 1997,[12] demanded from his (petitioner's) tenants, Domingo G. Alea and Jesus Solayao, who were cultivating a 2-hectare parcel of land covered by Tax Declaration No. 3059 (formerly by Tax Declaration No. 12057 in the name of his (petitioner's) and respondent's father), to vacate the land. As respondent's demand remained unheeded, he forcibly entered the land in December 1999 and prevented the tenants from cultivating it. On petitioner's arrival from the United States in April 2000, he contracted a laborer to cultivate the land, but on June 29, 2000, again, with open display of force, threat, and intimidation, and despite his protest, respondent forcibly ousted the laborer.

By Decision of March 19, 2004,[13] the MCTC ruled in favor of petitioner.

On appeal, the Regional Trial Court (RTC) noted that respondent had been adjudged in a decision in Civil Case No. CC-92-0045, *Panfilo Abaigar v. Prospero Leanda, Luis Baco and Pablito Pachoco*, for Recovery of Possession,[14] to be the owner of the land in question, which decision had become final and executory in 1999; that respondent and petitioner's purported tenants Domingo Alea and Jesus Solayao entered into a tenancy agreement, but the latter failed to pay rentals, hence, they were evicted in December 1998; and that petitioner's

allegation that respondent acquired possession of the property by force, intimidation, threat, strategy or stealth, was unsubstantiated.

More importantly, the RTC found that petitioner was not in actual possession of the land as early as 1992, hence, he was not in prior physical possession of the premises when he was allegedly deprived thereof by respondent.

Thus, by Resolution dated July 16, 2004,[15] the RTC reversed the trial court's decision, disposing as follows:

WHEREFORE, the appealed decision is hereby REVERSED and the Complaint is DISMISSED; the defendant[-herein respondent] is declared the owner and actual possessor of one-half of the property in question under Tax Declaration No. 3059 now revised per ARP-04040-0002; and for the plaintiff not to bother anymore the defendant in his possession of the said property.

Plaintiff is ordered to pay the defendant litigation expenses in the amount of Php. 5,000.00; Attorney's fees of Php. 15,000.00; moral damages of Php. 15,000.00 and costs.[16] (Underscoring in the original; emphasis supplied)

As stated early on, the Court of Appeals, by Resolution dated November 30, 2004,[17] dismissed the petition on the ground that petitioner did not personally sign the certification against forum-shopping.

Petitioner moved for reconsideration of the appellate court's dismissal of his petition, explaining that he had left for the United States before the filing of the petition, which fact should, so petitioner pleaded, be deemed "reasonable cause for failure to personally sign the certification;" and that he has a good and meritorious case and substantial justice could be better served if his petition is reinstated. The motion was denied by the Court of Appeals by Resolution dated February 4, 2005.[18]

In his present petition, petitioner "most humbly submit[s] that the circumstances prevailing in the instant case and the opportunity for [him] to have the case reviewed on appeal, at his instance (sic), [be considered] compelling reasons" to relax the Rule.[19]

Petitioner does not specify "the prevailing circumstances" nor advance that he has or why he has a meritorious case to merit setting aside of technicalities.

To this Court, the above-stated material facts do not call for a relaxation of the Rule on certification against forum shopping.

WHEREFORE, the petition is DENIED.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] CA rollo, pp. 135-136. Penned by Justice Isaias P. Dicdican with the concurrence of Justices Sesinando E. Villon and Ramon M. Bato, Jr.

[2] CA rollo, pp.152-153. Penned by Justice Isaias P. Dicdican with the concurrence of Justices Pampio A. Abarintos and Vicente L. Yap.

[3] Petition for Review from the Regional Trial Courts to the Court of Appeals.

[4] Go v. Rico, G.R. No. 140862, April 25, 2006, 488 SCRA 137,145.

[5] Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005, 461 SCRA369, 382-383.

[6] Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, *supra* at 382; Chan v. Regional Trial Court of Zamboanga de Norte in Dipolog City, Br. 9, G.R. No. 149253, April 15, 2004, 427 SCRA 796, 806.

[7] G.R. No. 129638, December 8, 2003, 417 SCRA 216.

[8] *Id.* at 225.

[9] 399 Phil 442 (2000).

[10] G.R. No. 153468, August 17, 2006.

[11] Records, pp. 5-9.

[12] Annexes "A" and "B", records, pp. 10-11.

[13] Records, pp. 210-213.

[14] *Id.* at 33-65.

[15] *Id.* at 279-285.

[16] *Id.* at 285.

[17] *Vide* note 1.

[18] *Vide* note 2.

[19] Rollo, p. 15.

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