

GLICERIA SARMIENTO, PETITIONER, VS. EMERITA ZARATAN, RESPONDENT.

G.R. NO. 167471. February 05, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This petition for Review on Certiorari under Rule 45 of the Rules of Court seeks to nullify the Court of Appeals Decision[1] in CA-G.R. SP No. 79001 entitled, "Emerita Zaratan v. Hon. Ramon A. Cruz, as Presiding Judge of RTC, Quezon City, Branch 223, and Gliceria Sarmiento," dated 17 August 2004, which reversed and set aside the Orders dated 19 June 2003 and 31 July 2003 of the Regional Trial Court (RTC) of Quezon City in Civil Case No. Q-03-49437, dismissing respondent's appeal for failure to file the memorandum within the period provided for by law.

On 2 September 2002, petitioner Gliceria Sarmiento filed an ejectment case[2] against respondent Emerita Zaratan, in the Metropolitan Trial Court (MeTC) of Quezon City, Branch 36, docketed as Civil Case No. 29109.

On 31 March 2003, the MeTC rendered a decision in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, the Court finds that plaintiff has sufficiently established her causes against the defendant and hereby order the defendant and all persons claiming rights under her:

- to pay plaintiff the monthly rentals of P3,500.00 for the said premises from August 1, 2002 until defendant vacates the premises;

- to pay plaintiff the sum of P20,000.00 plus P1,500.00 per appearance of counsel in court, as and for attorney's fees; and to pay the cost of suit.[3]

Respondent filed her notice of appeal.[4] Thereafter, the case was raffled to the RTC of Quezon City, Branch 223, docketed as Civil Case No. Q-03-49437.

In the Notice of Appealed Case,[5] the RTC directed respondent to submit her memorandum in accordance with the provisions of Section 7(b) of Rule 40 of the Rules of Court and petitioner to file a reply memorandum within 15 days from receipt.

Respondent's counsel having received the notice on 19 May 2003, he had until 3 June 2003 within which to file the requisite memorandum. But on 3 June 2003, he filed a Motion for Extension of Time of five days due to his failure to finish the draft of the said Memorandum. He cited as reasons for the delay of filing his illness for one week, lack of staff to do the work due to storm and flood compounded by the grounding of the computers because the wirings got wet.[6] But the motion remained unacted.

On 9 June 2003, respondent filed her Memorandum. On 19 June 2003, the RTC dismissed the appeal as follows:

Record shows that defendant-appellant received the Notice of Appealed Case, through counsel, on May 19, 2003 (Registry Return Receipt dated May 12, 2003, Record, back of p. 298). Thus, under Section 7(b), Rule 40

of the 1997 Rules of Civil Procedure, she had fifteen (15) days or until June 3, 2003 within which to submit a memorandum on appeal. As further appears on record, however, the required Memorandum was filed by defendant-appellant only on June 9, 2003 (Record, p. 623), or six (6) days beyond the expiration of the aforesaid fifteen day period.

It should be stressed that while the rules should be liberally construed, the provisions on reglementary periods are strictly applied as they are "deemed indispensable to the prevention of needless delays and necessary to the orderly and speedy discharge of judicial business" (Legaspi-Santos vs. Court of Appeals, G.R. No. 60577, October 11, 1983) and strict compliance therewith is mandatory and imperative (FJR Garments Industries vs. Court of Appeals, G.R. No. L-49329, June 29, 1984). The same is true with respect to the rules on the manner and periods for perfecting appeals (Gutierrez vs. Court of Appeals, L-25972, November 26, 1968).

Premises considered, the instant appeal is hereby DISMISSED. This renders academic defendant-appellant's application for a writ of preliminary injunction.[7]

On the basis of the above-quoted Order, petitioner filed a Motion for Immediate Execution,[8] while respondent moved for the Reconsideration.[9] Both motions were denied by the RTC on 31 July 2003. The Order in part reads:

In the main, defendant-appellants Motion for Reconsideration is premised on the argument that she filed a timely "Motion for Extension of Time To File Memorandum," dated and filed on June 3, 2003, but that her motion was not acted upon by this Court. She adds that her appeal memorandum was filed well within the period sought by her in her "Motion for Extension of Time to File Memorandum" so that her appeal should not have been dismissed.

The argument is without merit. This Court did not take cognizance of defendant-appellant's "Motion for Extension of Time to File Memorandum," and rightly so, because it did not contain a notice of hearing as required by Sections 4 and 5, Rule 15 of the Rules of Court, an omission for which it could offer no explanation. As declared in the case of Gozon, et al. v. court of Appeals (G.R. No. 105781, June 17, 1993);

x x x

It is well-entrenched in this jurisdiction that a motion does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper which the clerk has no right to receive, and the court has no authority to act upon.

x x x

Moreover, parties and counsel should not assume that courts are bound to grant the time they pray for. A motion that is not acted upon in due time is deemed denied (Orosa vs. Court of Appeals, 261 SCRA 376 [1996]). Thus, defendant-appellant's appeal was properly dismissed on account of her failure to file an appeal memorandum within the fifteen (15) day period provided under Section 7(b), Rule 40 of the 1997 Rules of Civil Procedure.

With regard to the "Motion for Immediate Execution," dated June 23, 2003, filed by plaintiff-appellee, the rule is explicit that the execution of a judgment in an ejectment case, must be sought with the inferior court which rendered the same. The appellate court which affirms a decision brought before it on appeal cannot decree its execution in the guise of an execution of the affirming decision. The only exception is when said appellate court grants an execution pending appeal, which is not the case herein (City of Manila vs. Court of Appeals, 204 SCRA 362; Sy vs. Romero, 214 SCRA 187).[10]

Petitioner moved for reconsideration of the said Order, while respondent sought clarification on whether the 31 July 2003 Order dismissing the appeal was anchored on Section (b), Rule 40 or Section 7(c) of the same Rule.

On 27 August 2003, the RTC reconsidered its previous Order by granting petitioner's motion for Immediate

Execution, but denied respondent's Motion for Clarification, in this wise:

Section 21, Rule 70 of the Rules of Court provides that "the judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom. Pursuant to this Rule and taking into account the arguments of the plaintiff in her "Urgent Motion for Reconsideration," the Court is inclined to grant the same. As further correctly argued by the plaintiff, through counsel, during the hearing on her motion on August 15, 2003, the cases of *City of Manila v. Court of Appeals* (204 SCRA 362) and *Sy vs. Romero* (214 SCRA 187) cited in the July 31, 2003 Order refer to ejectment cases which has (sic) been decided with finality and hence, inapplicable to this case where a further appeal is still available to the defendant. It should likewise be noted that while the Supreme Court ruled in these cases that execution of a judgment in an ejectment case must be sought with the inferior court which rendered the same, it likewise provided that for an exception to this rule, that is, in cases where the appellate court grants an execution pending appeal, as the case herein.

With regard to defendant's Motion for Clarification, contained in her Opposition, the Court notes that the issues raised therein have already been squarely dealt with in the July 31, 2003 Order. The same must, therefore, be denied.[11]

Aggrieved, respondent filed a Petition for Certiorari in the Court of Appeals, which was granted in a decision dated 17 August 2004. The appellate court nullified and set aside the 19 June 2003 and 31 July 2003 Orders of the RTC and ordered the reinstatement of respondent's appeal. Consequently, respondent's appeal memorandum was admitted and the case remanded to the RTC for further proceedings.[12]

Petitioner filed a motion for reconsideration[13] on 13 September 2004, followed by a Motion for Inhibition[14] of the members of the Eighth Division of the Court of Appeals on 20 September 2004. Both motions were denied for lack of merit on 10 March 2005.[15]

Hence, this appeal by petitioner posing the following issues,[16] thus:

- Whether respondent's petition for certiorari should have been dismissed in the first place;
- Whether the trial court committed grave abuse of discretion in denying respondent's motion for extension;
- Whether it is Section 19 of Rule 7 that applies, and not Section 21; and
- Whether the Court of Appeals Justices should have inhibited themselves from further proceeding with the subject case.

Stated otherwise, the main issue for resolution is whether the Court of Appeals committed a reversible error of law in granting the Writ of Certiorari. In granting the petition, the Court of Appeals ruled that the RTC erred in dismissing respondent's appeal for failure to file the required Memorandum within the period provided by law and in granting petitioner's Motion for Immediate Execution of the MeTC decision.

Before resolving the substantive issues raised by petitioner, the Court will first address the procedural infirmities ascribed by petitioner. Petitioner assails the correctness and propriety of the remedy resorted to by respondent by filing a Petition for Certiorari in the Court of Appeals. According to petitioner, certiorari is not appropriate and unavailing as the proper remedy is an appeal.

It must be noted that respondent's appeal in the RTC was dismissed for failure to file the required memorandum within the period allowed by law, as the Motion for Extension of Time to file Memorandum was not acted upon for failure to attach a notice of hearing. From the said dismissal, respondent filed a Petition for Certiorari in the Court of Appeals.

Respondent correctly filed said petition pursuant to Section 41 of the Rules of Court, which provides:

Section 1. Subject of appeal. An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken:

x x x x

(d) An order disallowing or dismissing an appeal;

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 civil action under Rule 65. (Underscoring supplied.)

Petitioner also contends that the Petition for Certiorari filed in the Court of Appeals should be dismissed as the certification of non-forum shopping was defective. The verification in part reads:

I, EMERITA ZARATAN, of legal age, after having been duly sworn to, according to law, depose and say:

That I, Emerita Zaratan is one of the respondent (sic) in the above entitled case, hereby declare, that I have caused the preparation and filing of the foregoing Comment on the Petition; that I have read all the allegations therein, which are true and correct to the best of my own knowledge.

That as respondent, I further certify that I have not commenced any other action or proceeding involving the same issues in the foregoing Petition in the Court of Appeals, the Supreme Court, or different Divisions thereof, respectively, or any tribunal, or agency; and should it be known that a similar action or proceeding has been filed or is pending in any of the abovementioned Courts or different Divisions thereof, the petitioner shall notify the Honorable Court to which this certification is filed, within five (5) days from such notice. (Underscoring ours.)

Petitioner avers that respondent by stating in the above-quoted certification that she was the respondent, while in truth she was the petitioner and by stating that respondent caused the preparation of the comment on the petition, instead of the petition itself, indicate that respondent did not understand what she was signing. The defect of the verification all renders the petition in the Court of Appeals without legal effect and constitutes ground for its dismissal.

The contention is baseless.

The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings and non-compliance therewith does not necessarily render it fatally defective.[17] Perusal of the verification in question shows there was sufficient compliance with the requirements of the Rules and the alleged defects are not so material as to justify the dismissal of the petition in the Court of Appeals. The defects are mere typographical errors. There appears to be no intention to circumvent the need for proper verification and certification, which are intended to assure the truthfulness and correctness of the allegations in the petition and to discourage forum shopping.[18]

Now, the substantial issues.

Corollary to the dismissal of the appeal by the RTC is the question of whether the lack of notice of hearing in the Motion for Extension of Time to file Memorandum on Appeal is fatal, such that the filing of the motion is a worthless piece of paper.

Petitioner avers that, because of the failure of respondent to include a Notice of Hearing in her Motion for Extension of Time to file Memorandum on Appeal in the RTC, the latter's motion is a worthless piece of paper with no legal effect.

It is not disputed that respondent perfected her appeal on 4 April 2003 with the filing of her Notice of Appeal and payment of the required docket fees. However, before the expiration of time to file the Memorandum, she filed a Motion for Extension of Time seeking an additional period of five days within which to file her Memorandum, which motion lacked the Notice of Hearing required by Section 4, Rule 15 of the 1997 Rules of Court which provides:

SEC. 4. Hearing of Motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

As may be gleaned above and as held time and again, the notice requirement in a motion is mandatory. As a rule, a motion without a Notice of Hearing is considered pro forma and does not affect the reglementary period for the appeal or the filing of the requisite pleading.[19]

As a general rule, notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand that his right be not affected without an opportunity to be heard.[20] The three-day notice required by law is intended not for the benefit of the movant but to avoid surprises upon the adverse party and to give the latter time to study and meet the arguments of the motion.[21] Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.[22]

The test is the presence of the opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.[23] Considering the circumstances of the present case, we believe that procedural due process was substantially complied with.

There are, indeed, reasons which would warrant the suspension of the Rules: (a) the existence of special or compelling circumstances, b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.[24] Elements or circumstances (c), (d) and (e) exist in the present case.

The suspension of the Rules is warranted in this case. The motion in question does not affect the substantive rights of petitioner as it merely seeks to extend the period to file Memorandum. The required extension was due to respondent's counsel's illness, lack of staff to do the work due to storm and flood, compounded by the grounding of the computers. There is no claim likewise that said motion was interposed to delay the appeal.[25] As it appears, respondent sought extension prior to the expiration of the time to do so and the memorandum was subsequently filed within the requested extended period. Under the circumstances, substantial justice requires that we go into the merits of the case to resolve the issue of who is entitled to the possession of the land in question.

Further, it has been held that a "motion for extension of time x x x is not a litigated motion where notice to the adverse party is necessary to afford the latter an opportunity to resist the application, but an ex parte motion made to the court in behalf of one or the other of the parties to the action, in the absence and usually without the knowledge of the other party or parties." As a general rule, notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand that his rights be not affected

without an opportunity to be heard. It has been said that "ex parte motions are frequently permissible in procedural matters, and also in situations and under circumstances of emergency; and an exception to a rule requiring notice is sometimes made where notice or the resulting delay might tend to defeat the objective of the motion." [26]

It is well to remember that this Court, in not a few cases, has consistently held that cases shall be determined on the merits, after full opportunity to all parties for ventilation of their causes and defense, rather than on technicality or some procedural imperfections. In so doing, the ends of justice would be better served. [27] Furthermore, this Court emphasized its policy that technical rules should accede to the demands of substantial justice because there is no vested right in technicalities. Litigations, should, as much as possible, be decided on their merits and not on technicality. Dismissal of appeals purely on technical grounds is frowned upon, and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very aims. As has been the constant rulings of this Court, every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, free from constraints of technicalities. [28] Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided. [29]

The visible emerging trend is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from constraints and technicalities.

Parenthetically, it must be noted also that when the appeal was dismissed on 19 June 2003, the memorandum was already filed in court on 9 June 2003.

On the issue of immediate execution of judgment.

The applicable provision is Section 19, Rule 70 of the Rules of Court, which reads:

SEC. 19. Immediate Execution of judgment; how to stay the same.- If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. x x x.

To stay the immediate execution of judgment in ejectment proceedings, Section 19 requires that the defendant-appellant must (a) perfect his appeal, (b) file a supersedeas bond, and (c) periodically deposit the rentals falling due during the pendency of the appeal.

As correctly observed by the Court of Appeals, execution pending appeal was premature as respondent had already filed a supersedeas bond and the monthly rental for the current month of the premises in question. [30]

The invocation of petitioner of the provisions of Section 21, Rule 70 of the Rules of Court, which runs:

Sec. 21. Immediate execution on appeal to Court of Appeals or Supreme Court.- The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom.

to justify the issuance of the writ of execution pending appeal in this case is misplaced.

A closer examination of the above-quoted provision reveals that said provision applies to decision of the RTC

rendered in its appellate jurisdiction, affirming the decision of the MeTC. In the case at bar, the RTC order was an order dismissing respondent's appeal based on technicality. It did not resolve substantive matters delving on the merits of the parties' claim in the ejectment case. Thus, the case brought to the Court of Appeals was the dismissal of the appeal for failure to file the required memorandum within the period provided by law, and not on the merits of the ejectment case.

Lastly, petitioner posited the view that the Court of Appeals' justices should have inhibited themselves because of bias and partiality for deciding the case within eight months and for being very selective in discussing the issues.

We reject the proposition.

Inhibition must be for just and valid causes. The mere imputation of bias and partiality is not enough ground for judges to inhibit, especially when the charge is without basis. This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias and partiality.[31] This Court has invariably held that for bias and prejudice to be considered valid reasons for the voluntary inhibition of judges, mere suspicion is not enough. Bare allegations of their partiality will not suffice "in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear and favor." [32]

There is no factual support to petitioner's charge of bias and partiality. A perusal of the records of the case fails to reveal that any bias or prejudice motivated the Court of Appeals in granting respondent's petition. Neither did this Court find any questionable or suspicious circumstances leading to the issuance of the questioned decision, as suggested by petitioner.

The fact alone that the Court of Appeals decided the case within eight months does not in any way indicate bias and partiality against petitioner. It is within the constitutional mandate to decide the case within 12 months.[33]

As to petitioner's allegation that the Court of Appeals was selective in choosing what issues to resolve, it bears to stress again that "a judge's appreciation or misappreciation of the sufficiency of evidence x x x adduced by the parties, x x x, without proof of malice on the part of respondent judge, is not sufficient to show bias and partiality." [34] We also emphasized that "repeated rulings against a litigant, no matter how erroneously, vigorously and consistently expressed, do not amount to bias and prejudice which can be bases for the disqualification of a judge." [35]

IN ALL, petitioner utterly failed to show that the appellate court erred in issuing the assailed decision. On the contrary, it acted prudently in accordance with law and jurisprudence.

WHEREFORE, the instant petition is hereby DENIED for lack of merit. The Decision dated 17 August 2004 and the Resolution dated 10 March 2005 of the Court of Appeals in CA-G.R. SP No. 79001 are hereby AFFIRMED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Portia Aliño-Hormachuelos and Aurora Santiago-Lagman, concurring. Rollo, pp. 231-238.

[2] Records, Vol. I, pp. 2-4.

[3] Id. at 275.

- [4] Id. at 283.
- [5] Id. at 298.
- [6] Id. at 321.
- [7] Id. at 343.
- [8] Id. at 345.
- [9] Id. at 349.
- [10] Id. at 387-388.
- [11] Id. at 406-407.
- [12] Rollo, pp. 108-115.
- [13] Id. at 116-121.
- [14] Id. at 122-123.
- [15] Id. at 126-129.
- [16] Id. at 10-11.
- [17] *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, 6 July 2004, 433 SCRA 455, 463-464.
- [18] *Pilipinas Shell Petroleum v. John Boardman Ltd. of Iloilo, Inc.*, G.R. No. 159831, 14 October 2005, 473 SCRA 151, 162.
- [19] *Tan v. Court of Appeals*, 356 Phil. 1058, 1067-1068 (1998).
- [20] *Commercial Union Assurance Company Limited v. Lepanto Consolidated Mining Company*, G.R. No. L-43342, 30 October 1978, 86 SCRA 79, 96; citing *Amante v. Judge Suñga*, 159-A Phil. 476 (1975); *Pimentel v. Court of Appeals*, 159-A Phil. 728 (1975).
- [21] *J.M. Tuason & Co., Inc. v. Magdangal*, G.R. No. L-15539, 30 January 1962, 4 SCRA 84, 86.
- [22] *Gonzales v. Balikatan Kilusang Bayan sa Pananalapi, Inc.*, G.R. No. 150859, 28 March 2005, 454 SCRA 111, 117.
- [23] *Jehan Shipping Corporation v. National Food Authority*, G.R. No. 159750, 14 December 2005, 477 SCRA 781, 789.
- [24] *Sanchez v. Court of Appeals*, 452 Phil. 665, 674 (2003).
- [25] *Records*, Vol. 1, p. 321.
- [26] *Amante v. Judge Suñga*, supra note 20 at 477.
- [27] *Durban Apartments Corporation v. Catacutan*, G.R. No. 167136, 14 December 2005, 477 SCRA 801, 809.
- [28] *Fonseca v. Court of Appeals*, G.R. No. L-36035, 30 August 1988, 165 SCRA 40, 46.
- [29] *Durban Apartments Corporation v. Catacutan*, supra note 27 at 809.
- [30] CA Decision, p. 7; rollo, p. 114.

[31] *Gochan v. Gochan*, 446 Phil. 433, 447 (2003).

[32] *People v. Kho*, G.R. No. 139381, 20 April 2001, 357 SCRA 290, 297.

[33] Section 15, Article 8 of the 1987 Constitution. All cases or matters filed after the effectivity of this Constitution must be decided or resolved within x x x twelve months for all lower collegiate courts x x x.

[34] *Republic v. Evangelista*, G.R. No. 156015, 11 August 2005, 466 SCRA 544, 555.

[35] *Id.*

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