

WILLIE ONG, DOING BUSINESS UNDER THE NAME AND STYLE EXCEL FITNESS CENTER, PETITIONER, VS. LUCIA N. BASCO (AND HUSBAND ANTONIO BASCO, AS NOMINAL PARTY), RESPONDENTS.

G.R. No. 167899. August 06, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the Resolution[1] dated March 16, 2005 of the Court of Appeals in CA-G.R. SP No. 87699 which had dismissed petitioner's petition for certiorari.

It appears from the records that on April 23, 2004, the Regional Trial Court (RTC) of Manila, Branch 43, rendered a Decision[2] in Civil Case No. 98-92072 ordering petitioner Willie Ong, doing business under the name and style EXCEL Fitness Center, to pay respondent Lucia N. Basco the amount of P200,000 as moral damages, P150,000 as exemplary damages plus 10% of the total amount as attorney's fees.

On June 23, 2004, Ong filed a Motion for Reconsideration.[3] He also filed on July 16, 2004, a Motion for Inhibition[4] seeking the voluntary inhibition of the trial judge, Judge Amor A. Reyes, on the grounds of bias and partiality in favor of Basco.

In an Order[5] dated September 13, 2004, Judge Reyes denied Ong's motion for reconsideration as well as his motion for inhibition.

On October 9, 2004, Ong filed a Notice of Appeal[6] with the RTC. The records of Civil Case No. 98-92072 were elevated to the Court of Appeals and the appeal was docketed as CA-G.R. No. CV-83646.[7]

On December 14, 2004, Ong filed with the Court of Appeals a Petition for Certiorari[8] under Rule 65 of the Rules of Court. The case was docketed as CA-G.R. SP No. 87699. Ong alleged that Judge Reyes acted without or in excess of her jurisdiction in denying his motion for inhibition. He also imputed bias and partiality against Judge Reyes when the latter appreciated the case against him. He further claimed that the decision was rendered with indecent haste because Judge Reyes never presided in any hearing as she took over the case only when it was in the memorandum stage.

On March 16, 2005, the Court of Appeals issued the assailed Resolution dismissing CA-G.R. SP No. 87699 for lack of merit. It ruled that certiorari lies only when there is no appeal nor any plain, speedy or adequate remedy. In Ong's case, he had in fact availed of the remedy of appeal, adequate to deal with any factual or legal question. It further ruled that absent any evidence of bad faith, malice, or corrupt purpose, repeated adverse rulings on a litigant are not bases for disqualification of a judge on the grounds of bias and prejudice. Moreover, a petition for certiorari, in order to prosper, must be based on jurisdictional grounds; any error committed in the exercise thereof will only amount to an error of judgment, reviewable or correctible by ordinary appeal.[9] The decretal portion of the Courts of Appeals' Resolution reads,

WHEREFORE, the petition for certiorari is DISMISSED for lack of merit.

SO ORDERED.[10]

Hence, this petition wherein Ong alleges that the Court of Appeals erred in dismissing his petition for certiorari because:

I. SPECIAL CIVIL ACTION OF CERTIORARI WAS THE PROPER REMEDY AGAINST THE DENIAL OF THE MOTION FOR INHIBITION...

II. UNDER THE SPECIAL CIRCUMSTANCES OF THE CASE, THE REMEDY OF APPEAL WAS INADEQUATE TO RELIEVE PETITIONER FROM THE INJURIOUS EFFECTS OF THE DENIAL OF THE MOTION FOR INHIBITION.[11]

Essentially, the issue is: Did the Court of Appeals err when it ruled that a petition for certiorari under Rule 65 of the Rules of Court was not the proper remedy from the denial of petitioner's motion for inhibition?

Petitioner contends that a special civil action for certiorari was the proper remedy. He argues that the issue he raised before the Court of Appeals involved an error of jurisdiction on the part of Judge Reyes, thus, correctible only by a special civil action for certiorari. He maintains that Judge Reyes exhibited bias when she simultaneously denied his motions for reconsideration and inhibition. He further contends that the factual findings of Judge Reyes were baseless and erroneous. Assuming *arguendo* that appeal was the proper remedy, he avers that it is inadequate to afford him relief.

Respondent counters that certiorari was not the proper remedy from the denial of petitioner's motion for inhibition. First, she points out that petitioner did not file a motion for reconsideration on the denial of his motion for inhibition before filing the petition for certiorari with the Court of Appeals. Second, she stresses that Judge Reyes acted within her jurisdiction and an alleged misapprehension of facts, if any, is a mere error of judgment correctible by appeal. She asserts that partiality and bad faith of a judge cannot be presumed but must be proven by clear and convincing evidence. Third, she contends that petitioner is guilty of forum-shopping when he availed both remedies of appeal and certiorari in assailing the RTC Order which denied his motions for reconsideration and inhibition.

After carefully considering the parties' contentions, we are in agreement that the petition lacks merit.

First of all, under the circumstances of the case, i.e., after a judgment had been rendered by the RTC and an appeal therefrom had been perfected, petitioner's resort to a special civil action for certiorari is no longer proper because there exists plain, speedy and adequate remedy, i.e. an ordinary appeal. Section 2, Rule 137 of the Rules of Court is controlling:

SEC. 2. Objection that judge disqualified, how made and effect.—If it be claimed that an official is disqualified from sitting as [provided in Section 1 hereof], the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw, therefrom in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by means of, his decision in favor of his own competency, until after final judgment in the case. (Emphasis supplied.)

Here the appeal affords petitioner adequate and expeditious relief because the issue of whether the trial judge acted correctly or erroneously on her competency to take cognizance of a case could be raised on appeal from the main decision.[12]

Second, while the restriction in the Rule against appeal or stay of the proceedings where the trial judge rules in favor of her competency to sit in a case is not an absolute rule in civil cases, and has not precluded a resort in

appropriate cases to the special civil action of certiorari before the higher courts for determination, this will apply only in cases where the denial of the motion for inhibition or disqualification was made ahead of the trial court's judgment on the merits and there is a clear showing that the case is an exceptional one. This is not true in the case of the present petitioner.

In this case, a judgment on the merits has already been rendered by Judge Reyes before she issued the Order dated September 13, 2004, deciding in favor of her competency and denying petitioner's motion for reconsideration of the April 23, 2004 RTC Decision. Judge Reyes acted judiciously when she decided to sit in Civil Case No. 98-92072 and proceeded to render the decision in the case,[13] and later resolved petitioner's motion for reconsideration. It was her official duty to do so.

Third, we cannot indulge on the unfounded assumptions of bias, prejudice and partiality hurled by petitioner against Judge Reyes. While those grounds have been recognized as valid reasons for the voluntary inhibition of a judge under Section 1, paragraph 2,[14] of Rule 137 of the Rules of Court, the rudimentary rule is that the mere suspicion that a judge is partial is not enough.[15] Petitioner cannot validly argue that Judge Reyes acted with bias and partiality simply because Judge Reyes decided the case against him.

Fourth, the instant case does not fall under the instances covered by the rule on the mandatory disqualification of judges as enumerated in Section 1, paragraph 1[16] of Rule 137 of the Rules of Court; thus, the issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge.[17]

We must emphasize that the special civil action for certiorari cannot prosper when there are no special circumstances clearly demonstrating the inadequacy of an appeal. As this Court held in *Bristol Myers Squibb, (Phils.), Inc. v. Vilorio*[18]

...the settled rule is that a writ of certiorari may be granted in cases where, despite availability of appeal after trial, there is at least a prima facie showing on the face of the petition and its annexes that: (a) the trial court issued the order with grave abuse of discretion amounting to lack of or in excess of jurisdiction; (b) appeal would not prove to be a speedy and adequate remedy; (c) where the order is a patent nullity; (d) the decision in the present case will arrest future litigations; and (e) for certain considerations such as public welfare and public policy.[19]

To be a disqualifying circumstance, the grounds relied upon must be shown to have stemmed from an extrajudicial source and resulted in an opinion on the merits on some basis other than what the judge learned from his participation in the case.[20] Since petitioner failed to show any strong ground of bias and partiality on the part of Judge Reyes, there can be no irregularity or grave abuse of discretion amounting to lack or excess of jurisdiction to speak of that would merit the filing of a certiorari case.

WHEREFORE, the instant petition is DENIED for lack of merit. The Resolution dated March 16, 2005 of the Court of Appeals in CA-G.R. SP No. 87699 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 42-45. Penned by Associate Justice Marina L. Buzon, with Associate Justices Mario L. Guariña III and Santiago Javier Ranada concurring.

[2] Id. at 178-185. Penned by Acting Presiding Judge Amor A. Reyes.

[3] Id. at 186-218.

[4] Id. at 219-226.

[5] Id. at 232-235.

[6] Id. at 236-238

[7] Id. at 43.

[8] CA rollo, pp. 11-35.

[9] Rollo, pp. 44-45.

[10] Id. at 45.

[11] Id. at 318.

[12] Paredes v. Gopengco, No. L-23710, September 30, 1969, 29 SCRA 688, 694-695.

[13] People v. Moreno, 83 Phil 286, 294 (1949).

[14] SECTION 1. Disqualification of judges. – ...

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

[15] Te v. Court of Appeals, G.R. No. 126746, November 29, 2000, 346 SCRA 327, 339-340.

[16] SECTION 1. Disqualification of judges.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

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[17] Chin v. Court of Appeals, G.R. No. 144618, August 15, 2003, 409 SCRA 206, 212.

[18] G.R. No. 148156, September 27, 2004, 439 SCRA 202.

[19] Id. at 211.

[20] Chin v. Court of Appeals, *supra* at 214.

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