

IRENE VILLAMAR-SANDOVAL, PETITIONER, VS. JOSE CAILIPAN, MARIA OFELIA M. GONZALES, LAURA J. CAYABYAB, ROGELIO COSTALES, AND FERNANDO V. AUSTRIA, RESPONDENTS.*G.R. No. 200727. March 04, 2013*

Ponente: PERLAS-BERNABE, J.

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Assailed in this Petition for Review on Certiorari[1] is the September 30, 2011 Decision[2] and February 1, 2012 Resolution[3] of the Court of Appeals (CA) of Cagayan de Oro City -in CA-G.R. SP No. 03976-MIN which set aside the October 20, 2010 and November 10, 2010 Orders of the Regional Trial Court (RTC) of Koronadal City, Branch 24 declaring respondents in default.

The Facts

Petitioner Irene Villamar-Sandoval (petitioner) instituted a complaint for damages before the RTC, claiming that she was prejudiced by the false, baseless and malicious libel case filed against her by respondent Jose Cailipan (Cailipan) which was supported by affidavits executed by the other respondents herein.[4] The said libel case circled around certain declarations purportedly made by petitioner during a homeowner's association meeting about Cailipan's criminal records for murder, slight physical injuries and estafa. These allegations were supposedly made by petitioner in order to tarnish Cailipan's reputation and facilitate his ouster as President of the said homeowner's association.[5]

During the course of the proceedings, respondents belatedly filed their answer (albeit by one day), prompting petitioner to move to declare respondents in default. Consequently, the RTC issued an Order dated September 27, 2010 denying the said motion and admitting the answer of respondents.[6]

Subsequently, the case was set for pre-trial, during which respondents' counsel, Atty. Sardido, failed to appear as well as file a pre-trial brief despite due notice, while petitioner and her counsel appeared and made such submission. In view of these lapses, petitioner prayed that respondents be declared in default which was granted by the RTC in its October 20, 2010 Order.[7]

Aggrieved, Atty. Sardido filed an Entry of Appearance with Motion for Reconsideration on October 29, 2010, seeking the reversal of the October 20, 2010 Order. He proffered the excuse that on the day of the pre-trial conference, he had to attend an urgent hearing in Cotabato City involving an election protest but that he immediately went back to Koronadal City to attend the mediation proceeding for the main case scheduled at 2:00 in the afternoon of the same day. Petitioner opposed the motion.[8]

Ruling of the RTC

On November 10, 2010, the RTC issued an Order denying respondents' motion for reconsideration, sustaining the declaration of default due to their counsel's failure to: (1) attend the scheduled pre-trial conference on October 20, 2010 and; (2) file a pre-trial brief despite due notice.[9] Notably, it observed that respondents were already

accorded consideration when their answer was admitted despite its belated filing. It also found that “[their] newly retained counsel miserably failed to attach a [pre-trial brief or] submit/attach an [affidavit of merit]” in the said motion for reconsideration.[10] Pursuant thereto, petitioner proceeded with the presentation of her evidence ex parte. Upon submission of her formal offer of evidence, the case was submitted for resolution.[11]

On January 11, 2011, respondents filed before the CA a petition for certiorari under Rule 65 of the Rules of Court, asserting that the RTC gravely abused its discretion in issuing the October 20, 2010 and November 10, 2010 Orders and in not dismissing the case for improper venue.[12]

On even date, the RTC rendered a Decision in favor of petitioner, a copy of which was received by respondents on January 24, 2011.[13]

On January 22, 2011, respondents filed a Notice of Appeal with the CA, while its initially filed certiorari petition was still pending resolution before the same appellate court.[14] In this relation, they subsequently filed on February 2, 2011 an Amended Notice of Appeal Ad Cautelam and a Joint Notice of Appeal Ad Cautelam (Amended Notices of Appeal), clarifying therein that they were not abandoning their petition for certiorari.[15]

Ruling of the CA

In its Decision dated September 30, 2011,[16] the CA, through its Twenty-First Division, denied respondents’ contention that the venue was improperly laid[17] but nevertheless, granted their petition grounded on the impropriety of the order of default. It applied the principle of substantial justice and deemed that “it would be most unfair” to declare respondents in default for their lawyer’s failure to attend the pre-trial conference.[18] With respect to the failure of respondents’ counsel to file a pre-trial brief on time, the CA held that the RTC’s Order “barring [respondents] from presenting evidence had been too precipitate and was not commensurate with the level of non-compliance by [respondents’] counsel with the [said order].”[19] Thus, for these reasons, the CA set aside the RTC’s October 20, 2010 and November 10, 2010 Orders and directed the remand of the case to the RTC to allow the respondents to present their evidence.[20]

Dissatisfied, petitioner filed a Partial Motion for Reconsideration,[21] arguing that: (1) since the main case had already been decided by the RTC through its January 11, 2011 Decision and respondents have availed of the remedy of appeal, the latter’s petition for certiorari filed with the CA on January 11, 2011 was already moot and academic; and (2) the RTC did not commit grave abuse of discretion when it declared respondents in default.

The foregoing motion was denied by the CA in its February 1, 2012 Resolution, holding that petitioner “failed to raise substantial issues that would warrant reconsideration.”[22] In sustaining the invalidity of the RTC’s October 20, 2010 and November 10, 2010 Orders, it ratiocinated that “[i]t is a far better and more prudent cause of action for the court to excuse a technical lapse” and afford the respondents the right to be heard.[23]

Separately, the CA noted that, per the January 27, 2012 Verification issued by its Judicial Records Division, the case records have yet to be forwarded to it, despite petitioner’s allegations that the RTC had already promulgated a decision and that the respondents filed a Notice of Appeal.[24] In this regard, it modified its initial September 30, 2011 Decision and thus deleted the portion which directed that the records of the case be remanded to the court a quo.[25]

Issues Before The Court

Essentially, the following issues are presented for the Court’s resolution: (1) whether respondents’ petition for certiorari was an improper remedy and/or had been rendered moot and academic by virtue of the RTC’s January 11, 2011 Decision; and (2) whether the CA erred in setting aside the October 20, 2010 and November 10, 2010 RTC Orders.

The Court's Ruling

The petition is meritorious

It is well-settled that the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[26] The simultaneous filing of a petition for certiorari under Rule 65 and an ordinary appeal under Rule 41 of the Revised Rules of Civil Procedure cannot be allowed since one remedy would necessarily cancel out the other. The existence and availability of the right of appeal proscribes resort to certiorari because one of the requirements for availment of the latter is precisely that there should be no appeal.[27]

Corollary thereto, an appeal renders a pending petition for certiorari superfluous and mandates its dismissal. As held in *Enriquez v. Rivera*: [28]

The general rule is that certiorari will not lie as a substitute for an appeal, for relief through a special action like certiorari may only be established when no remedy by appeal lies. The exception to this rule is conceded only "where public welfare and the advancement of public policy so dictate, and the broader interests of justice so require, or where the orders complained of were found to be completely null and void, or that appeal was not considered the appropriate remedy, such as in appeals from orders of preliminary attachment or appointments of receiver." (*Fernando v. Vasquez*, L- 26417, 30 January 1970; 31 SCRA 288). For example, certiorari maybe available where appeal is inadequate and ineffectual (*Romero Sr. v. Court of Appeals*, L-29659, 30 July 1971; 40 SCRA 172).

None of the exceptional circumstances have been shown to be present in this case; hence the general rule applies in its entirety. Appeal renders superfluous a pending petition for certiorari, and mandates its dismissal. In the light of the clear language of Rule 65 (1), this is the only reasonable reconciliation that can be effected between the two concurrent actions: the appeal has to be prosecuted, but at the cost of the petition for certiorari, for the petition has lost its *raison d'être*. To persevere in the pursuit of the writ would be to engage in an enterprise which is unnecessary, tautological and frowned upon by the law. (Emphasis and underscoring supplied.)

Applying the foregoing principles to the case at bar, it is clear that respondents' January 11, 2011 petition for certiorari was rendered superfluous by their January 22, 2011 appeal.

Although respondents did not err in filing the certiorari petition with the CA on January 11, 2011 – as they only received the RTC's Decision three (3) days after the said date and therefore could not have availed of the remedy of an appeal at that time[29] – they should have, however, upon receipt of the RTC's Decision or after the filing of their notices of appeal: (a) filed a motion with the CA's Twenty-First Decision[30] for the withdrawal/dismissal of their certiorari petition and instead raised the jurisdictional errors stated therein in their appeal;[31] or (b) filed a motion with the same division for the consolidation of the certiorari case with the appealed case. Having failed in this respect, respondents should be deemed to have effectively abandoned their certiorari petition, this notwithstanding their assertions in the Amended Notices of Appeal[32] that they were not abandoning the said petition and that a decision had been subsequently rendered by the CA on the same. To reiterate, an appeal and a petition for certiorari are mutually exclusive and hence, cannot be availed of successively. Therefore, an appeal renders superfluous a pending petition for certiorari and mandates its dismissal. To rule otherwise would be sanctioning a procedural aberration thereby, allowing respondents to benefit from their own neglect and omission.

In the foregoing light, the Ca's September 30, 2011 Decision and February 1, 2012 Resolution in the certiorari case should be set aside. This course of action will allow the CA Division where the appeal of the main case is pending to appropriately pass upon the merits of the RTC's January 11, 2011 Decision including all assailed irregularities in the proceedings such as the validity of the default orders.

Besides, respondents' petition for certiorari had long become moot by the RTC's January 11, 2011 Decision. In

particular, the grant of the petition for certiorari on mere incidental matters of the proceedings would not accord any practical relief to respondents because a decision had already been rendered on the main case which may be subject of an appeal. Lest it be misunderstood, a case becomes moot when no useful purpose can be served in passing upon its merits. As a rule, courts will not determine a moot question in case in which no practical relief can be granted.[33]

Given the foregoing pronouncement, there exists no cogent reason to further dwell on the issue regarding the RTC's grave abuse of discretion in issuing the October 20, 2010 and November 10, 2010 default orders. As earlier mentioned, that matter may be properly ventilated on appeal.

WHEREFORE, the petition is GRANTED. The September 30, 2011 Decision and February 1, 2012 Resolution of the Court of Appeals in CA--G.R. SP No. 03976-MIN are hereby SET ASIDE.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 27-67.

[2] Id. at 9-21. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Romulo V. Borja and Carmelita Salandanan-Manahan, concurring.

[3] Id. at 23-25.

[4] Id. at 10. Docketed as Civil Case No. 1936-24 (main case).

[5] Id. at 88-90

[6] Id. at 10-11.

[7] Id. at 11.

[8] Id. at 11-12.

[9] Id. at 12.

[10] Id.

[11] Id. at 13.

[12] Id. at 101-123.

[13] Id. at 87-100. Penned by Judge Oscar E. Dinopol.

[14] Id. at 32.

[15] Id. at 32-33.

[16] Id. at 9-21.

[17] Id. at 13-15.

[18] Id. at 18.

[19] Id.

[20] Id. at 21.

[21] Id. at 434-463.

[22] Id. at 23-25.

[23] Id. at 24.

[24] Id.

[25] Id.

[26] *Magestrado v. People*, G.R. No. 148072, July 10, 2007, 527 SCRA 125, 136, citing *Fajardo v. Bautista*, G.R. Nos. 102193-97, May 10, 1994, 232 SCRA 291, 298; emphasis and underscoring supplied.

[27] *Balindong v. Dacalos*, G.R. No. 158874, November 10, 2004, 441 SCRA 607, 612, citing *Metropolitan Manila Development Authority v. JANCOM Environmental Corp.*, G.R. No. 147465, January 30, 2002, 375 SCRA 320; emphasis and underscoring supplied.

[28] 179 Phil. 482, 486-487 (1979).

[29] To be clear, respondents filed their petition for certiorari with the CA on January 11, 2011. Only three (3) days after, or on January 14, 2011, did they receive the RTC's January 11, 2011 Decision. Therefore, prior to the receipt of the said RTC decision, they could not have availed of the remedy of an appeal under Rule 41 of the Rules of Court and as such, they filed a petition for certiorari.

[30] The CA division in which respondents' certiorari petition was pending.

[31] As held in *Silverio v. CA*, G.R. No. 178933, September 16, 2009, 600 SCRA 1, 14, after a judgment has been rendered in the case, the ground for the appeal of the interlocutory order may be included in the appeal of the judgment itself

[32] On February 2, 2011, respondents filed the Amended Notices of Appeal, stating therein that they were not abandoning their petition for certiorari, Id. at 32-33.

[33] *Baldo, Jr. v. Commission on Elections*, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 310-311, citing *Villarico v. CA*, 424 Phil. 26, 33-34 (2002).

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