

REMEDIOS VELASCO VDA. DE CALDITO, PETITIONER, VS. HON. ROSALIO C. SEGUNDO, ETC., ET AL., RESPONDENTS.

G.R. No. 58187. September 30, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

This petition for certiorari was given due course in the Resolution dated March 17, 1982 which required the parties to submit their simultaneous memoranda within thirty (30) days from notice thereof. Neither the petitioner nor the respondents complied with said requirement.

Petitioner seeks to annul an order of the respondent Judge of the Court of First Instance of Pangasinan, Branch V, in Civil Case No. U-3484 dismissing the complaint filed by the petitioner for the recovery of damages for the death of her husband who was killed while riding a motorized tricycle owned and operated by the private respondent when the same was bumped by a truck while travelling on the public highway in Villasis, Pangasinan, in the evening of December 19, 1972.

The complaint was filed on April 10, 1980. The private respondent moved to dismiss the complaint on the ground that the cause of action is barred by the statute of limitations. In an Order dated September 29, 1980, the respondent Judge sustained the said contention and ordered the dismissal of the case. It was reasoned out that the action, being based on quasi- delict, the same prescribed in four (4) years in accordance with Article 1146 of the Civil Code; and the action having been instituted after more than seven (7) years from the date of the incident, the same is already barred by the statute of limitations.

Although the order of dismissal was issued since April 11, 1980, it was not until December 17, 1981 that the petitioner instituted this proceeding before the Supreme Court in order to secure a declaration of its nullity. No explanation was given for the undue delay in seeking the nullification of the order of dismissal complained of. The petition alleges that the said order of dismissal is null and void for being contrary to law inasmuch as the proper period of prescription is ten (10) years and not four (4) years, the action being based on a contract of carriage and not quasi- delict. Mention is also made that the respondent Judge showed his partiality by commenting in open court that he considered this case as one of pure harassment, and by manifesting a "too friendly alliance with defendant's counsel."

After a closer consideration of the merits of the petition, We are led to reconsider our previous action of giving due course to the same. We find the petition to be without merit. The petitioner is seeking to avail of the remedy of certiorari as a substitute for appeal. The questioned order of dismissal is appealable and the proper remedy should have been to appeal the same. No circumstance had been shown to explain why such procedure was not observed, nor to justify a deviation from the same as to make available a petition for certiorari in lieu of taking an appropriate appeal. As may be noted, the petition was filed almost one (1) year after the issuance of the order of dismissal complained of. Even in situations wherein certiorari is allowed as a remedy in lieu of appeal, said period may not be considered as a reasonable time within which to avail of such a remedy. Moreover, the imputed error

to the challenged order is not jurisdictional but merely one of judgment which is not correctible by certiorari.

WHEREFORE, the petition is hereby DENIED, without costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

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