

FRANCISCO TAN, PETITIONER, VS. INTERMEDIATE APPELLATE COURT, HON. PEDRO RAMIREZ, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION...

G.R. No. 63552. August 05, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

The petition in this case is rather long and the memorandum in support thereof exceedingly so.[1] There is a difference between thoroughness and irrelevance. The latter only unnecessarily takes up the valuable time of the Court which could be devoted to other matters equally demanding its attention. The best policy is to make one's point and stop. The petitioner in the case at bar just kept rambling on.

The chronology of this case is, by contrast, short and swift. The petitioner filed a complaint for ejectment against Lorenza Dongsal, the private respondent, in the city court of Manila. On the day of the trial she appeared without counsel and asked for a resetting. The petitioner objected. The judge[2] suggested that the parties confer for a possible settlement. The result was that the petitioner and his lawyer succeeded in persuading her to sign a compromise agreement under which she would pay her rental arrears in the sum of P2,020.00 plus an attorney's fees of P800.00.[3] This was submitted to and accepted by the court after the private respondent assured it that she understood its contents.[4] The accrued rentals were paid on that date. On March 26, 1982, when the attorney's fee was to be paid, the private respondent, accompanied by her counsel, waited in the courtroom for the petitioner and his counsel to ask for an amendment of the compromise agreement but they did not show up.[5] On May 11, 1982, the private respondent filed a motion to dismiss the complaint and to set aside the motion for execution, alleging jurisdictional grounds and fraud in the execution of the compromise agreement.[6] On June 23, 1982, she received the order of execution of judgment although she had not yet been notified of the denial of her motion. She then filed with the court of first instance of Manila[7] a petition for relief from judgment under Rule 38 of the Rules of Court,[8] which was given due course after denial of the motion to dismiss filed by the herein petitioner.[9] Certiorari was subsequently denied by the respondent court,[10] which is now faulted before us on four assigned errors, to wit:

- The challenged decision is invalid because it was rendered by a division of only three members when under BP 129, each division of the Intermediate Appellate Court should consist of five members.
- The petition for relief from judgment should not have been allowed because there was no valid cause of action.

- The petition for certiorari should not have been dismissed even if the order appealed from was interlocutory because the trial court had committed grave abuse of discretion.

- Contrary to the holding of the respondent court, an ordinary appeal was not the proper remedy.

The first issue is easily disposed of as the pertinent provision of the Judiciary Reorganization Law is quite simple. There was no need to belabor this matter, and at such length, since Section 11 of BP 129 clearly provides that "three members shall constitute a quorum for the sessions of a division" of the Intermediate Appellate Court (now the Court of Appeals) and "the affirmative vote of three members of a division shall be necessary for the pronouncement of a decision or final resolution x x x." The required quorum of three was present in the division, and all the three members concurred in the challenged decision and in the resolution denying the motion for reconsideration.[11] Hence, the proceedings were doubtless in accordance with law. That is all there is to it.

Secondly, the petition for relief from judgment clearly alleged that Lorenza Dongsal, who was then not assisted by her own counsel, committed an error when she allowed herself to be inveigled by the herein petitioner and his counsel to sign the compromise agreement on February 9, 1982.[12] Fraud and mistake are among the grounds for relief from judgment under Rule 38 of the Rules of Court.[13] It is also axiomatic that the existence of a cause of action is determined by the allegations in the complaint on which, assuming their validity, the court can render a valid judgment.[14] In any event, it is for the trial court to initially determine whether the grounds invoked will justify the relief sought, subject to the right of the losing party to elevate the matter for appellate review. The elaborate discussion of these grounds in these proceedings was totally unnecessary. It should be submitted not here but at the hearing of the case on the merits before the trial court.

The denial of the motion to dismiss the petition for relief was, as correctly pointed out by the respondent court, an interlocutory order. Hence, it cannot be questioned in a petition for certiorari which is an extraordinary writ that is not allowed as a substitute for an ordinary appeal. It is the common gambit of some counsel to go around this principle by alleging that the respondent court committed grave abuse of discretion. But it is not as simple as that. That allegation must be proved, or at least shown *prima facie*, to justify availment of this remedy and deviation from the regular procedure. That requirement has not been established in the present case. Accordingly, the resolution of the trial court denying the motion to dismiss, and whatever other errors the petitioner feels will have been committed at the hearing of the petition for relief, may be raised, if desired, only by ordinary appeal.

The petitioner argues in his memorandum that another reason for the dismissal of the petition for relief from judgment is that it was tardily filed by the private respondent. As it does not appear that this matter was raised in the motion to dismiss and in the respondent court, the alleged defence is deemed waived and cannot be considered in this Court.[15]

Counsel are admonished to confine themselves to the issues before this Court, avoiding all extraneous matters that only needlessly clutter the records and lengthen the proceedings to the prejudice of a simpler and speedier administration of justice. Arguments are weighed, not measured.

WHEREFORE, the petition is DENIED, with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] The petition consists of 85 pages and the memorandum of 125 pages.

- [2] Judge Rosario R. Veloso.
- [3] Annex "A" of Petition (Rollo, pp. 87-88).
- [4] Rollo, pp. 90-93.
- [5] Ibid., pp. 44, 99.
- [6] Annex "D" of Petition (Rollo, pp. 94-101).
- [7] Presided by Judge Pedro A. Ramirez.
- [8] Annex "F" of Petition (Rollo, pp. 105-111).
- [9] Annex "I" of Petition (Rollo, pp. 146-148).
- [10] Justice Milagros A. German, ponente, with Justices Jose A.R. Melo and Santiago M. Kapunan.
- [11] Ibid.
- [12] Rollo, pp. 106-107.
- [13] Secs. 1 & 2.
- [14] Domaoal v. Bea, 131 SCRA 512; Azur v. Provincial Board, 27 SCRA 50; Garcon v. Redemptorist Fathers, 17 SCRA 341; Paminsan v. Costales, 28 Phil. 487.
- [15] Director of Lands v. Daño, et al., 96 SCRA 161; Ramos v. Osorio, 38 SCRA 469.

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