

**SPOUSES JOSE R. LANSANG, JR. AND ELSIE D. LANSANG AND
ROBERTO CO, PETITIONERS, VS. THE HON. COURT OF APPEALS,
HON. MANUEL L. GUMBAN, IN HIS CAPACITY AS PRESIDING JUDGE
OF THE RE...**

G.R. NO. 76028. April 06, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

What at the beginning was a simple action for damages in the amount of P30,000.00 ended up in the fantastic amount of P600,000.00 simply because the trial court denied defendant another day in court and the appellate court did not believe that a petition for certiorari can be filed after a case had been appealed.

The antecedents are undisputed. Private respondent Renato Salangsang filed an action for damages arising from a vehicular accident against petitioners in the Regional Trial Court of South Cotabato. In his answer, petitioner filed a third party complaint against private respondent insurance corporation. The pre-trial was held but no settlement was reached. Trial commenced and private respondent Salangsang presented his evidence.

On September 12, 1984, the court issued an order resetting the hearing of the case to November 8, 1984. At said date of hearing neither petitioners nor their counsel appeared. The case was deemed submitted for resolution on same day.

Petitioners explained to the trial court the reasons for their absence at the November 8 hearing to be (a) their counsel, Atty. Rufino Bañas who was then a member of parliament failed to appear at the hearing due to pressing and urgent work at the Batasang Pambansa; and (b) petitioner Jose Lansang, Jr. was in Manila and since his mother died in September, 1984, he was still in Manila when the order of September 12 was issued setting the case for hearing on November 8. Petitioner Roberto Co was out of town since 1983.

Nevertheless, on December 8, 1984, the trial court rendered a judgment, the dispositive part of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering them to pay jointly and severally to plaintiff, the following:

- 1)- NINETEEN THOUSAND PESOS (P19,000.00) as costs of repairs and TWENTY PESOS (P20.00) per day as storage fee from October 11, 1982;
- 2)- TWO HUNDRED FIFTY PESOS (P250.00) per day from December 19, 1981 until the car is returned, as unrealized income;
- 3)- TEN THOUSAND PESOS (P10,000.00) as attorney's fees; and
- 4)- Expenses of litigation and costs of this suit."

On January 25, 1985, petitioners filed a motion for reconsideration and/or to set aside order or decision dated December 8, 1984 and to allow them to present evidence reiterating the foregoing reasons, and a supplement dated February 6, 1985 alleging that the damages awarded are excessive and unwarranted, so that if they are given the chance to present evidence, they can show that private respondent did not suffer such damage in his business of buying and selling of cattle as he has a motorcycle and a van which he uses for his business in lieu of his car that was damaged.

The motion was denied in an order dated March 11, 1985. On March 14, 1985 petitioners filed their notice of appeal/certiorari as follows:

"COME NOW the defendants/third party plaintiffs, through counsel and hereby respectfully serve notice that they are appealing the decision dated December 8, 1985, copy received on January 14, 1985, and the order dated March 11, 1985 denying the Motion for Reconsideration and/or set aside order and the decision dated December 8, 1984 and to allow defendants to present evidence, copy of which was received on March 13, 1985, and/or to file a petition for certiorari contesting the LATTER order, to the Intermediate Appellate Court, Manila."[2]

On March 19, 1985, the trial court approved the appeal and ordered the records of the case forwarded to the then Intermediate Appellate Court.

On April 3, 1985, petitioners filed in the appellate court a petition for certiorari directed against the order of the trial court dated March 11, 1985 which denied the aforesaid motion for reconsideration and which in effect is one for a new trial. The petition was docketed as AC-G.R. S.P. No. 05856. In the petition, it is alleged that petitioners have perfected their appeal and that they are not abandoning it, but the same is not an adequate, speedy and plain remedy because of the P250.00 daily penalty mentioned in the award.

In a decision dated April 29, 1985, the appellate court denied due course to and dismissed the petition. Without awaiting the finality of the decision, private respondent Salangsang filed in the trial court a motion for execution of its judgment and this was granted on July 6, 1985. On July 18, 1985, it denied the motion for reconsideration of said order filed by petitioners.

Thereafter, petitioners filed in the Court of Appeals a petition for certiorari, prohibition and mandamus with preliminary injunction docketed as CA-G.R. No. 06746-SP. On June 30, 1986, the Court of Appeals rendered a decision denying due course to and dismissing the petition.[3] A motion for reconsideration thereof filed by petitioners was denied in a resolution dated September 17, 1986.

Hence, the herein petition for review on certiorari, wherein the issues raised are -

"1. Is appeal inconsistent with the remedy of certiorari?

2. Under the circumstances obtaining in the case at bar, was the appeal taken by the petitioners from the decision of the trial court deemed abandoned when they filed a petition for certiorari contesting the order denying their motion for reconsideration and to allow them to present evidence which in effect is for new trial?"[4]

The petition is impressed with merit.

In the appealed decision, it was held that by the filing of the petition for certiorari petitioners in effect abandoned their appeal and that the perfected appeal is inconsistent with the remedy of certiorari. It was further ruled that petitioners cannot be permitted to first resort to appeal and then shift the remedy to certiorari.

The purpose of an appeal is to bring up for review a final judgment or order of the lower court. The remedy of

certiorari is to correct certain acts of any tribunal, board or officer exercising judicial functions performed without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.[5] A certiorari proceeding may be instituted during the pendency of a case or even after judgment.

If after judgment, the petition for certiorari is availed of when appeal is a plain, speedy and adequate remedy, then the petition must fail as certiorari may not be resorted to as a substitute for appeal much less for a lost one. In such a case, the right to appeal is deemed abandoned.

However, after a judgment had been rendered and an appeal therefrom had been perfected, a petition for certiorari relating to certain incidents therein may prosper where the appeal does not appear to be a plain, speedy and adequate remedy. Hence, appeal and certiorari are not remedies that exclude each other.

In *De Vera vs. Santos*,[6] this Court held -

"Although the petitioner Mercy Almonidovar had already perfected an appeal from the judgment of the respondent court, she is not barred from applying for the extraordinary remedy of certiorari since appeal is not an adequate remedy to correct lack or excess of jurisdiction because appeal cannot promptly relieve the petitioner from the injurious effects of an invalid order."

In *Jaca vs. Davao Lumber Company*,[7] We ruled:

"The availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of certiorari where the appeal is not an adequate remedy or equally beneficial, speedy and sufficient. It is the inadequacy - not the mere absence of all other legal remedies and the danger of failure of justice without the writ, that must usually determine the propriety of certiorari."

Indeed, there are instances when this Court relaxed the application of Rule 65 on certiorari and allowed the writ to issue even while appeal was available in the interest of justice,[8] or due to the dictates of public welfare and for the advancement of public policy.[9]

In this case, after judgment was rendered, petitioners filed a motion for reconsideration which is in effect a motion for new trial. The failure of counsel and petitioners to appear on November 8, 1985 in order to present its evidence was duly explained and which may be considered excusable. The courts are called upon to be liberal in the assessment of the non-appearance of counsel or the party if only to promote the greater interest of justice.

While it appears that the vehicle of petitioners hit the car of private respondent while parked it is contended by petitioners that it was parked in a prohibited zone. Assuming the petitioners to be at fault, they contend the additional damage of P250.00 per day is unconscionable in addition to the actual damage to the car of P19,500.00 and P10,000.00 attorney's fees and expenses of litigation. They estimate the damage awarded can run up to the amount of P600,000.00.

These circumstances justify the grant to petitioners of another day in court. It is a pity that this case has been pending in court for so long. But this is what happens when an overly strict and narrow interpretation of the rules is undertaken. The liberal application of the rules must always be in the mind of the courts.

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals dated June 30, 1986 and its resolution dated September 17, 1986, as well as the decision of the trial court dated December 8, 1984, the order of execution dated July 6, 1985 and the order dated July 18, 1985 which denied the motion for reconsideration, are hereby set aside, and another judgment is hereby rendered granting the motion for new trial. The records of the case are returned to the lower court for further proceedings with deliberate dispatch by giving petitioners their day in court and thereafter rendering the judgment based on the evidence and applicable law.

No costs.

SO ORDERED.

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

[1] Page 72, Rollo.

[2] Page 8, Rollo.

[3] Justice Santiago M. Kapunan was the ponente, concurred in by Justices Juan A. Sison and Alfredo M. Lazaro.

[4] Page 11, Rollo.

[5] Rule 65, Rules of Court.

[6] 79 SCRA 72, 77 (1977).

[7] 113 SCRA 107, 129 (1982).

[8] Tirona vs. Nañawa, 21 SCRA 395, 400-401 (1967).

[9] Jose vs. Zulueta, 2 SCRA 574 (1961).

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