

**ALLIED LEASING & FINANCE CORPORATION, PETITIONER, VS.
HONORABLE COURT OF APPEALS, HON. MILAGROS V. CAGUIOA,
JUDGE, RTC-PASIG, METRO MANILA, BRANCH 165, EMETERIO SIA
AND LUCIA SI...**

G.R. No. 91988. May 14, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition assails the Resolutions of the Court of Appeals dated December 11, 1989 and January 30, 1990 which dismissed the petitioner's petition for certiorari questioning the Orders dated January 30, 1989 and July 14, 1989 issued in Civil Case No. 52114 by the Regional Trial Court of Pasig, Metro Manila, Branch 165 on the ground that it was not filed within a reasonable period of time. The petition likewise asks for the setting aside of the Orders of the trial court quashing the writ of replevin earlier issued by the same court for not requiring the mandatory counterbond under the Rules of Court.

On March 4, 1985, petitioner Allied Leasing and Finance Corporation filed a complaint for sum of money with petition for issuance of writ of replevin against respondent-spouses Emeterio Sia and Lucia Sia with the Regional Trial Court of Pasig, Metro Manila. The case was docketed as Civil Case No. 52114.

The complaint alleged that the petitioner leased to the respondent-spouses several printing equipment evidenced by four (4) lease agreements (Annexes A, B, C, and D). The agreements stipulate that if the respondent-spouses should fail to perform any obligations thereunder, including payment of monthly rentals, all amounts due shall become immediately demandable without notice or demand. The respondent-spouses defaulted in the payment of monthly rentals and were unable to pay despite the petitioner's demand.

On March 11, 1985, Presiding Judge Eutropio Migriño of Branch 151 issued an Order granting the prayer for a writ of replevin conditioned on the petitioner's filing a bond in the amount of Two Million Pesos (P2,000,000.00) and its approval. This was complied with by the petitioner which posted the required bond. The issuance of the writ of replevin was made ex-parte. The Order stated that the petitioner was "entitled to the possession of the properties which are more particularly described in the complaint x x x" based on the allegations in the complaint and the affidavit of Ruperto Lomibao the Chief Accountant and authorized signatory of the petitioner.

On January 8, 1986, the trial court upon motion of the petitioner declared the respondent-spouses in default for failure to file their Answer within the reglementary period.

On November 27, 1986, the respondent-spouses filed a motion to quash writ of replevin. On November 30, 1986, the respondent-spouses filed a motion to set aside Order of default and for additional allegations relative to the motion to quash writ of replevin.

On March 18, 1987, Presiding Judge Migriño issued an Order inhibiting himself voluntarily from further hearing this case. The case was then re-raffled and re-assigned to Branch 165 presided by Judge Milagros V. Caguioa.

On April 27, 1988, the trial court issued an Order setting aside the Order of default. Thereafter, the respondent-spouses filed their Answer on May 6, 1988. The respondents-spouses claimed ownership of the printing equipment. They alleged that the lease agreements did not reflect the true agreement of the parties.

On May 23, 1988, the petitioner filed its "Reply with Answer to Counterclaim."

On January 30, 1989, the trial court issued an Order quashing the writ of replevin on its finding that the real and true nature of the transaction whether it was really a lease according to the petitioner or chattel mortgage according to the respondent-spouses in their Answer, as well as the ownership of the printing equipment are in issue in this case. The trial court stated that "this dark cloud of doubt" should first be cleared before the court can re-issue the writ.

On February 7, 1989, the petitioner received a copy of the afore-mentioned January 30, 1989 Order.

On February 14, 1989, the petitioner filed a motion for reconsideration of the January 30, 1989 Order.

On July 14, 1989, the trial court issued an Order denying the motion for reconsideration.

On July 21, 1989 the petitioner received the July 14, 1989 Order.

On October 24, 1989, the petitioner filed a petition for certiorari with the Court of Appeals assailing the trial court's Orders dated January 30, 1989 and July 14, 1989.

On December 11, 1989, the appellate court issued a resolution dismissing the petition on the ground that it was not filed within a reasonable period of time from January 30, 1989.

Upon a motion for reconsideration, the appellate court issued another Resolution dated January 30, 1990. The appellate court stated that the petitioner was guilty of laches for filing the petition 102 days from the denial of its motion for reconsideration of the July 14, 1989 Order of the trial court.

The petitioner then filed the instant petition.

On July 16, 1990, we issued a Resolution denying the petition. The petitioner filed a motion for reconsideration.

On October 15, 1990, we issued a Resolution granting the motion for reconsideration. We reconsidered the resolution of July 16, 1990 and gave due course to the petition.

The petitioner contends that the time within which it can file the petition for certiorari should be counted from July 21, 1989, the date of its receipt of the Order denying its subsequent motion for reconsideration and not from January 30, 1989 the date of the issuance of the order, subject of the said motion for reconsideration.

While it is true that in the questioned Resolution dated December 11, 1989, the appellate court stated that the petition for certiorari was filed nine (9) months after the issuance of the January 30, 1989 Order, this was rectified in the Resolution dated January 30, 1990. The January 30, 1990 Resolution stated that the petitioner incurred a delay of 102 days counting from July 14, 1989, not from January 30, 1989 when it received the denial of its motion for reconsideration of the January 30, 1989 Order quashing the writ of replevin to October 24, 1989, the date the petitioner filed the petition for certiorari before the appellate court.

As can be gleaned from the records, the appellate court was in error in reckoning the period from July 14, 1989 to October 24, 1989. The date July 14, 1989 was when the trial court issued the Order denying the petitioner's motion for reconsideration. Furthermore, it is not rebutted that the petitioner received the July 14, 1989 Order on July 21, 1989. Hence, we agree with the petitioner that the period from July 21, 1989 to October 24, 1989 and not from July 14, 1989 to October 24, 1989 should be considered in addressing the issue as to whether or not the

petition for certiorari was filed within a reasonable period of time as contemplated by Rule 65 of the Rules of Court.

Rule 65 of the Rules of Court does not specify any period for the filing of the petition for certiorari and mandamus. (*Contreras v. Villaraza*, 99 SCRA 329 [1980]). We have consistently ruled that a pleading filed under Rule 65 should be within a reasonable period of time. Thus, we stated that "the yardstick to measure the timeliness of a petition for certiorari is the reasonableness of the duration of time that had expired from the commission of the acts complained of up to the institution of the proceedings to annul the same" (*San Juan v. Cuento*, 160 SCRA 277 [1988], citing *Cortez v. CFI of Cadiz*, 52 Phil. 214 [1928]; *Centenera v. Yatco*, 106 Phil. 1064 [1960]; *Province of Misamis Occidental v. Catolico*, 23 SCRA 1295 [1968]; *Toledo v. Pardo*, 118 SCRA 566 [1982]).

In the instant case, the petition for certiorari questioning the July 14, 1989 Order of the trial court was filed ninety-five (95) days or about three (3) months and a few days after the petitioner received the said order. Under the circumstances of this case and considering the issues involved, the time appears reasonable.

In the petition for certiorari, the petitioner questioned the quashal of the writ of replevin earlier issued by the trial court on the ground that the quashal was without the necessary counterbond and compliance with the other requirements laid down in sections 5 and 6 of Rule 60, Rules of Court.

We agree. In the case of *Yang v. Valdez*, (177 SCRA 141 [1989]) we ruled:

"A defendant in a replevin suit may demand return of possession of the property replevied by filing a redelivery bond within the periods specified in Sections 5 and 6 of Rule 60, which provide:

"Sec. 5. Return of property. - If the defendant objects to the sufficiency of the plaintiffs's bond, or of the surety or sureties thereon, he cannot require the return of the property as in this section provided; but if he does not so object, he may, at any time before the delivery of the property to the plaintiff, require the return thereof, by filing with the clerk or judge of the court a bond executed to the plaintiff, in double the value of the property stated in the plaintiff's affidavit, for the delivery of the property to the plaintiff, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the defendant, and by serving a copy of such bond on the plaintiff or his attorney;

"Sec. 6. Disposition of property by officer. - If within five (5) days after the taking of the property by the officer, the defendant does not object to the sufficiency of the bond, or of the surety or sureties thereon, or require the return of the property as provided in the last preceding section; or if the defendant so objects and the plaintiff's first or new bond is approved; or if the defendant so requires, and his bond is objected to and found insufficient and does not forthwith file an approved bond, the property shall be delivered to the plaintiff. If for any reason the property is not delivered to the plaintiff, the officer must return it to the defendant.

Under Section 5, petitioner may 'at any time before the delivery of the property to the plaintiff' require the return of the property; in Section 6, he may do so, 'within five (5) days after the taking of the property by the Officer.' Both these periods are mandatory in character. (*Bachrach Motor Co., Inc. v. Albert*, 60 Phil. 308 [1934]). . . ."

The records show that the respondent-spouses never offered a counterbond and neither did the trial court demand one before quashing the writ of replevin. There was, therefore, a patent abuse of discretion on the part of the trial court in issuing the questioned July 14, 1989 Order. The fact that the respondent-spouses claimed ownership of the printing equipment subject of the writ of replevin does not alter the situation. Allegation of ownership of properties by the defendant is a common defense in a suit of replevin. (See *Pajunar v. Court of Appeals*, 175 SCRA 464 [1989]) Furthermore, the trial court, in its questioned Order did not find the issuance of the writ of

replevin irregular. The trial court stated:

"It is also to be recalled that the issuance of Hon. Migriño of the writ of replevin on May 10, 1985, (should be May 11, 1985) was made ex-parte, which means that the defendants did not have the opportunity to contest the propriety of plaintiff's application for a writ of replevin, before it was issued. Of course, it is to be correctly assumed that Judge Migriño, at the time he issued the writ of replevin, was fully satisfied of plaintiff's showing of its entitlement to the writ and so the writ was issued." (Rollo, p. 98)

The writ is a provisional remedy in replevin suits. It is in the "nature of a possessory action and the applicant who seeks the immediate possession of the property need not be the holder of the legal title to the property." It is sufficient that at the time he applied for a writ of replevin he is found to be "entitled to a possession thereof" as stated in Section 2, Rule 60 of the Rules of Court. (See *Yang v. Valdez*, supra)

Going back to the issue regarding the reasonableness of the period to file a petition for certiorari or mandamus we stated in the case of *Province of Misamis Occidental v. Catolico* (supra):

"The last principal objection raised in the answer that mandamus could no longer be availed of by petitioner as it allowed more than four (4) months and twenty-one (21) days, from November 17, 1965, when the appeal was denied before this petition was filed could easily be disposed of by reference to the leading case of *Centenera v. Yatco*. (L-13564, January 30, 1960). This Court, in an opinion penned by Justice J.B.L. Reyes, stated: 'Respondent finally urges that this petition for mandamus is frivolous and dilatory, having been filed only after four months from the denial of petitioner's motion to reconsider the disapproval of his appeal, and after the lower court had already issued a writ of execution. On this question, it is significant to note that Section 15, Rule 41 of the Rules of Court does not specify the period for the filing of mandamus proceedings against an order disapproving an appeal, which implies that the period for its filing is variable as the ends of justice may demand. Indeed, the constant policy of the courts is not to deny the writ if the result would be to deprive a party of his substantial right and leave him without remedy'"

The same principles can be applied in the instant case. The trial court committed a grave abuse of discretion in quashing the writ of replevin without the mandatory counterbond as provided for in the Rules of Court. The questioned Orders of the trial court, subject of the petition for certiorari were highly irregular. Not allowing the petition for certiorari which was filed very much less than four (4) months after the receipt of the questioned July 14, 1989 Order would deprive the petitioner "its substantial right and leave it without remedy."

Under these circumstances we rule that the petition for certiorari was filed within a reasonable period of time under Rule 65 of the Rules of Court.

WHEREFORE, the instant petition is GRANTED. The questioned Resolutions dated December 11, 1989 and January 30, 1990 of the Court of Appeals and the Orders dated January 30, 1989 and July 14, 1989 issued in Civil Case No. 52114 of the Regional Trial Court of Pasig, Metro Manila, Branch 65 are REVERSED and SET ASIDE. Costs against the private respondents.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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