

AQUALYN CORPORATION, PETITIONER, VS. THE HON. COURT OF APPEALS, HON. WILLIAM M. BAYHON IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH XXIII, REGIONAL TRIAL COURT OF MANILA, NATION...

G.R. No. 99046. September 28, 1992

Ponente: MELO, J.

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MELO, J.:

The petition before this Court, premised on the hackneyed aspersion of wanton exercise of discretion, impugns the Resolution of respondent Court of Appeals dated May 9, 1991 in CA-G.R. SP No. 24829, (Puno, Lantin, and Francisco, C. (P), JJ.) which denied due course to herein petitioner's application for certiorari (p. 76, Rollo). Assailed as well in consequence of respondent Court's action are the orders emanating from the court of origin relative to its Civil Case No. 90-53263, viz:

- a). the order dated April 30, 1991 which dissolved the writ of injunction previously issued in favor of petitioner (p. 35, Rollo), and
- b). the Order dated May 14, 1991 which directed Philippine Marisco Corporation of Tacloban City to pay to Cabral Fishpond Industry Corporation and to Editha Cabral, the private respondents herein, the sum of P57,356.75 (p. 79, Rollo).

The instant petition has its roots in the complaint instituted by petitioner docketed as Civil Case No. 90-53263, for reformation of a management and development contract it entered into on February 13, 1989 with Cabral Fishpond Industry Corporation (p. 25, Rollo), the herein respondent corporation, on the supposition that the covenant did not reflect the true intention of the parties. The Honorable William M. Bayhon, Presiding Judge of Branch 23 of the Regional Trial Court stationed at Manila, to whose sala the case was assigned, issued a restraining order which was supplemented later by a writ of preliminary injunction enjoining Cabral from putting an end to the contract, from interfering in the management of the fishponds at Samar and Kalibo, Aklan, and from taking possession thereof.

Private respondents Cabral Fishpond Industry Corporation and Editha Cabral reacted by alleging, inter alia, that the contract was not approved by the Bureau of Fisheries and Aquatic Resources and that petitioner is not entitled to occupy the subject fishponds (Paragraph 17, Answer; pp. 66, Rollo). Thereafter, private respondents submitted a motion for summary judgment, coupled with the plea for the lifting of the writ of preliminary injunction and the dismissal of the complaint as well. The court of origin was persuaded by private respondents' argument along this line that there is no contract to reform inasmuch as the management contract had been nullified on December 20, 1989 by the Bureau of Fisheries, which nullification was well within the knowledge of herein petitioner even prior to the filing of its suit for reformation (p. 5, Decision in Civil Case No. 90-53263, p. 32, Rollo; Paragraph 26, Complaint, p. 45, Rollo).

Consequently, petitioner's complaint was dismissed for lack of cause of action and the writ of preliminary injunction initially issued was ordered lifted. This judgment of dismissal was received on April 22, 1991 by petitioner, per its candid statement in the petition before this court (paragraph 14, Petition; p. 6, Rollo).

Eight days later, or on April 30, 1991, Judge Bayhon issued an order instructing Deputy Sheriff Zacarias Cunanan, the other respondent herein, to implement the dissolution of the injunction which instruction (p. 35, Rollo), together with the judgment of dismissal and the order lifting the injunction, was challenged via a petition for certiorari on May 6, 1991 before respondent Court of Appeals (CA-G.R. SP No. 24829; p. 2, Rollo in CA-G.R. SP No. 24829). However, on May 9, 1991, the Court of Appeals ruled that the petition for certiorari was not the proper course of action to pursue, and that instead petitioner should have appealed from both the judgment of dismissal and the order calling for the implementation of the dissolved injunction on the basis of Section 4, Rule 39 of the Revised Rules of Court (p. 77, Rollo).

Petitioner then turned back to the court of origin and filed a "Petition for Relief From Judgment and/or Motion for Reconsideration" in regard to the questioned decision on July 26, 1991, insisting that the management contract was never intended by the Bureau of Fisheries to be nullified in accordance with the memorandum from that office. (p. 107, Rollo).

A few days thereafter, petitioner this time lodged a petition for injunction at the Regional Trial Court of Calbiga, Samar on August 2, 1991 (p. 123, Rollo) which was favorably acted upon by Judge Dacuycuy, the Presiding Judge of Branch 33 stationed thereat (p. 138, Rollo).

Perturbed by this development, Cabral Fishpond Industry filed a petition for certiorari with the Court of Appeals which momentarily restrained Judge Dacuycuy from enforcing his order (p. 144, Rollo).

Private respondents informed Us on October 14, 1991 that Judge Dacuycuy's directive was set aside and that the petition filed by herein petitioner in the Samar court was ordered dismissed by the Court of Appeals on October 9, 1991 in CA-G.R. SP No. 25949 (p. 176, Rollo).

On January 22, 1992, Our attention was again invited to the fact that the petition for relief filed by petitioner before the Regional Trial Court of Manila was denied because "the period to appeal had already expired on May 7, 1991 and the instant petition/motion was filed only on July 26, 1991" beyond the 60-day period specified under Section 3, Rule 38 of the Revised Rules of Court (p. 4, Omnibus Order in Civil Case No. 90-53263; p. 244, Rollo).

The rejection it experienced in CA-G.R. SP No. 24829 when its petition for certiorari was denied due course paved the way for the filing of the present petition (p. 2, Rollo) but despite six favorable extensions of time within which to file its memorandum, petitioner has not bothered to heed the directive of this Court to comply therewith (p. 271, Rollo).

Focusing now Our attention to the argument advanced by petitioner that respondent Court of Appeals seriously erred in denying due course to the petition for certiorari in CA-G.R. SP No. 24829, We are of the firm belief that on the contrary, respondent Court did not deliberate on the issue that confronted it in an arbitrary fashion.

It is axiomatic under the law on procedure that a summary judgment is a final disposition in a legal suit which can be rectified by means of an appeal therefrom (*Rongo vs. Abastillas*, 74 Phil. 176; cited by *Martin*, Rules of Court in the Philippines, with Notes and Comments, Volume 2, 1982 edition, p. 162; *Bell Carpets International Trading Corporation vs. Court of Appeals*, 185 SCRA 35; 40; cited by *Herrera*, Remedial Law, Volume 2, 1990 edition, p. 52).

In the Bell Carpets case, this Court had occasion to pronounce through then Justice, now Chief Justice Andres Narvasa that the petition for certiorari in that case, which was designed to challenge the affirmance by the Intermediate Appellate Court of the summary judgment rendered by the Regional Trial Court, must be denied for want of merit, because:

"In the first place, the judgment of the Trial Court sought to be annulled has become final and executory by reason of BCITC's failure to appeal therefrom within the time appointed, i.e., 15 days from notice of the judgment. The summary judgment was unquestionably a final one. It disposed of the case on the merits. It definitely declared which party was in the right and the nature and extent of the obligations of one party in relation to the other, and left nothing more to be done by the Trial Court. The remedy against such a judgment is an appeal, regardless of the questions sought to be raised on appeal, whether of fact, or of law, whether involving jurisdiction or grave abuse of discretion of the Trial Court. No appeal was taken from the summary judgment. Instead a petition for certiorari under Rule 65 of the Rules of Court was filed with the Intermediate Appellate Court. But it is obvious that the party aggrieved thereby did not have the option to substitute the special civil action of certiorari under Rule 65 for the remedy of appeal provided for in Rule 41. Indeed, the existence and availability of the right of appeal are antithetical to the availment of the special civil action of certiorari. The summary judgment having thus become final and executory, the proceedings at bar for its annulment are futile and inefficacious."

Danger signals should have flashed when petitioner acknowledged that it received a copy of the judgment dismissing its complaint on April 22, 1991 (paragraph 14, Petition; p. 6, Rollo), for indeed an appeal or a motion for reconsideration therefrom, could have been interposed until May 7, 1991. Unfortunately, petitioner committed error after procedural error, first by filing a petition for certiorari with the Court of Appeals, thence compounding that blunder by filing a petition for relief from judgment beyond the period allowed by the Rules and also by filing a petition for injunction with the Samar regional trial court.

At this juncture, it would be wise to recall the rule that certiorari is not a substitute for an available or lost appeal as a remedial measure in adjective law (*Dulos vs. Court of Appeals*, 188 SCRA 413; 419). Of course, there are notable exceptions to this precept which are recognized by jurisprudence and too basic to be ignored. None of the exceptional circumstances, however, appears to be present in the instant petition. The justification offered by petitioner is that the Court of Appeals, in effect, allowed private respondents to take over the possession and control of the fishponds (Paragraph 29, Petition; p. 10, Rollo). Yet, petitioner must realize and accept the proposition that capricious exercise of the faculty conferred upon the magistrates concerned should be demonstrated by petitioner to such a degree as to overcome the presumption of regularity of official duty (Section 3 (m, n), Rule 131, Revised Rules on Evidence) which it did not so discharge in the manner expected. The mere fact that the Court of Appeals, in essence, upheld the summary judgment does not in the least suggest gross abuse of its discretion.

Insofar as the dissolution of the writ of injunction in Civil Case No. 90-53263 is concerned, We also have to impress upon petitioner that wanton exercise of discretion cannot be inferred from the mere issuance of the order from the court of origin on April 30, 1991 (p. 35, Rollo) since it is expressly sanctioned by the first sentence of Section 6, Rule 58 of the Revised Rules of Court that:

"The injunction may be refused, or if granted ex parte, may be dissolved, upon the insufficiency of the complaint as shown by the complaint itself, with or without notice to the adverse party."

after the complaint for reformation was ascertained to be insufficient in cause of action (p. 34, Rollo). Hence, no serious objection can be interposed by petitioner when the other impugned order dated May 14, 1991 was issued as it is the logical and posterior result of the lifting of the injunction which, as aforesaid, was not timely and properly questioned.

WHEREFORE, the petition is hereby ordered DISMISSED for lack of merit. Counsel for petitioner is hereby warned that a repetition of the abhorred practice of forum shopping will subject him to disciplinary action. With costs against the petitioner.

SO ORDERED.

Bidin, Davide, Jr., and Romero, JJ., concur.

Gutierrez, Jr.,* J., (Chairman), on official leave.

* On official leave.

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