

GOLD CITY INTEGRATED PORT SERVICES, INC. (INPORT), PETITIONER, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT AND ATTY. FLORENTINO G. DURLAO, JR., RESPONDENTS.

G.R. Nos. 71771-73. March 31, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this Petition for Review on Certiorari, petitioner assails the consolidated Decision of respondent Court of Appeals * dismissing petitioners' three (3) Petitions for Certiorari and Mandamus, docketed in said Court as AC-G.R. SP Nos. 04984, 05086 and 05114, promulgated on 25 June 1985, as well as the denial of petitioner's Motion for Reconsideration dated 25 July 1985.

The background facts disclose that private respondent, Atty. Florentino G. Dumlao, Jr., was a retained counsel for petitioner company, an arrastre and stevedoring operator since 1976 when it was established up to 1 June 1984. As retained counsel, he was given a monthly fee of P1,000.00, representation allowance of P500.00, and 100 liters per month as gasoline allowance. On 1 March 1984 private respondent asked for an increase in retainer fee. Instead of giving the same, petitioner discarded the previous arrangement and on 30 March 1984 proposed that private respondent specify, instead, the legal fee for every legal case to be handled by him, effective 1 June 1984.

On 9 and 16 July 1984, in three pending cases handled by private respondent for petitioner before the lower Courts, private respondent filed Manifestations/Motions for the payment of attorney's fees based on quantum meruit. The same were granted by the respective Trial Courts as follows:

- (1) Order of Judge Eulalio D. Rosete in Civil Case No. 6776 dated July 20, 1984 awarding P20,000.00 to private respondent as attorney's fees in said case (AC-G.R. Sp. No. 04984);
- (2) Order of Judge Senen C. Penaranda in Criminal Case No. 1905 dated August 3, 1984 awarding to private respondent the amount of P5,000.00 for his legal services in said case (AC-G.R. No. 05086).
- (3) Order of Judge Eulalio D. Rosete in Civil Case No. 6983 dated November 16, 1984 directing petitioner to pay private respondent the amount of P10,000.00 as attorney's fees (AC-G.R. SP. No. 05114).

Challenging the aforesaid Orders, petitioner resorted to Petitions for Certiorari, not appeals, before the then Intermediate Appellate Court, which decided against petitioner in a consolidated Decision dated 25 June 1985, the dispositive portion of which reads:

"In the main, therefore, what petitioner should have done was to appeal on time the questioned orders. This, it failed to do, and at the very least if these petitions had only been interposed seasonably they could have been considered the appeals. Then, even if We were for the moment to ignore the fatal procedural error of petitioner of not appealing, and were We to treat the petitions for certiorari as such, still no comfort and relief could be extended to petitioner, because grave abuse of discretion on the part of respondent judges had not been shown to exist.

"WHEREFORE, finding no merit in the petitions, this Court hereby dismisses the same, and the temporary restraining orders issued in SP-05086 and in SP 05114 are hereby lifted and vacated, without pronouncement as to costs." (pp. 31-32, Rollo)

Petitioner's Motion for Reconsideration of said judgment was denied by the Appellate Court. Hence, this recourse.

In its Memorandum petitioner defines the issues, thus:

"I. WHAT SHOULD HAVE BEEN THE PROPER LEGAL REMEDY TAKEN BY THE PETITIONER IN BRINGING THE THREE (3) QUESTIONED ORDERS FROM THE REGIONAL TRIAL COURT TO THE INTERMEDIATE APPELLATE COURT, APPEAL OR CERTIORARI?

"II. IS PRIVATE RESPONDENT ATTY. FLORENTINO G. DURLAO, JR. LEGALLY ENTITLED TO RECOVER ALLEGED ATTORNEY'S FEES IN THE THREE (3) CASES, NOW THE SUBJECT OF THIS APPEAL BY CERTIORARI?" (p. 117, Rollo)

For an appeal to lie, Orders or Resolutions of any Court must be final. The test in determining whether or not a judgment or order is final is whether or not something remains to be done by the Court. A final judgment, order or decree is one that finally disposes of, adjudicates or determines the rights or some right or rights of the parties, either on the entire controversy or on some definite and separate branch thereof, and which concludes them until it is reversed or set aside (*Puertollano, et al. vs. IAC*, G.R. No. 73698, December 3, 1987, 156 SCRA 188).

In this case, the Orders of the Trial Courts are, indeed, final in character because they finally disposed of the matter of attorney's fees, and nothing more remained for the respective lower Courts to do. No further questions can come on the issue before the Trial Courts except the execution of said Orders. They concluded the right of private respondent to said claim until reversed or set aside. As the Appellate Court had ruled, therefore, appeal was the proper remedy. But since no timely appeals were interposed, the questioned Orders have become final and the issue of private respondent's entitlement to those fees deemed to have been laid at rest.

Petitioner contends, however, that under the circumstances, appeal is not possible because the main cases are still being litigated in the lower Courts. It relies on Section 39 of BP Blg. 129 which reads:

"No record on appeal shall be required to take an appeal. In lieu thereof, the entire record shall be transmitted with all the pages prominently numbered consecutively together with an index of the contents thereof."

In so arguing, Petitioner fails to take into account that a claim for attorney's fees may be asserted either in the very action in which the services in question have been rendered or in an independent action (*Palanca vs. Pecson* 94 Phil. 419 [1954]; *Tolentino vs. Escalona*, L-26556, January 24, 1969, 26 SCRA 613). In the cases at bar, although private respondent sought to enforce his claim for attorney's fees in the principal case, that issue remained separate and distinct from the main litigation and resolution of the former will in no way affect or disturb the latter as, in fact, the cases below still pend, as petitioner itself admits (p. 3, Memorandum). And on appeal only the pleadings and documents pertinent to the issue of attorney's fees need be presented to the Appellate Court. Besides, although Section 39, of BP 129, supra, eliminates the Record on Appeal and requires instead the transmission of the entire records, it also explicitly allows multiple appeals in "other cases under applicable provisions of the Rules of Court."

Furthermore, the questions raised by petitioner delve on "possible errors of judgment made by respondent Judges concerning facts and law," in which case, they are correctible only by appeal (*People vs. Vallarta*, L-32728, June 30, 1977, 77 SCRA 476).

Contrary to petitioner's submission, Certiorari will neither lie. Certiorari will not be issued to cure errors in proceedings or correct erroneous conclusions of law or fact. As long as a Court acts within its jurisdiction, any

alleged errors committed in the exercise of its jurisdiction, will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by a special civil action of certiorari (Santos, Jr. vs. Court of Appeals, G. R. No. 56614, July 28, 1987, 152 SCRA 378).

As pointed out in Tolentino vs. Escalona, supra, having failed to interpose a timely appeal from the impugned Orders, petitioners may not avail of the Writ of Certiorari to offset the adverse effects of their omission.

And even if Certiorari were the proper remedy, petitioner has failed to show that the Orders complained of are tainted with grave abuse of discretion, meaning such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Abuse of discretion alone is not sufficient. Rather, it must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law (Arguelles vs. Young, G. R. No. 59880, September 11, 1987, 153 SCRA 690). That the Courts below were lawfully vested with jurisdiction to hear and act on the Motions to fix attorney's fees is beyond question. Any alleged mistakes committed in the exercise thereof would be errors of judgment not reviewable by a special civil action of Certiorari. While petitioner claims that the Orders were issued ex-parte, its filing of a Motion for Reconsideration, which was orally argued and subsequently supported by a memorandum and documents, had cure that defect.

The broader interests of justice, as petitioner claims, do not justify a contrary conclusion in the face of procedural lapses vis-a-vis valid and lawful Orders.

WHEREFORE, the judgment under review is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Justice Jose A. R. Melo and concurred in by Justices Milagros A. German, Santiago M. Kapunan and Alfredo M. Lazaro.

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