

FIRST DIVISION

[G.R. No. 218901, February 15, 2017]

**PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS.
HON. COURT OF APPEALS, HON. HONORIO E. GUANLAO, JR., IN
HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL
COURT, MAKATI CITY, BRANCH 56, TRAVELLER KIDS INC., CELY
L. GABALDON-CO AND JEANNIE L. LUGMOC, RESPONDENTS.**

D E C I S I O N

CAGUIOA, J:

This Petition for Certiorari and Mandamus^[1] filed by petitioner Philippine Bank of Communications (PBCOM) seeks to reverse and set aside the Decision dated July 31, 2014^[2] and Resolution dated May 5, 2015^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 120884, and prays that Judge Honorio E. Guanlao, Jr. of the Regional Trial Court (RTC) of Makati City, Branch 56, be ordered to approve PBCOM's notice of appeal and to transmit the case records to the CA. The CA dismissed PBCOM's Petition for Certiorari and Mandamus and sustained the Order dated June 2, 2011^[4] issued by the RTC, which denied due course to PBCOM's Notice of Appeal on the ground that said appeal was not the proper remedy.

Facts

This case originated from a Complaint^[5] for collection of a sum of money in the amount of P8,971,118.06 filed by PBCOM against private respondents before the RTC of Makati City, Branch 56 and docketed as Civil Case No. 10-185.

Private respondents moved for the dismissal of the Complaint alleging that their obligation had already been paid in full and that the RTC had no jurisdiction over the case because PBCOM failed to pay the correct docket fees.^[6]

On September 29, 2010, the RTC issued an Order^[7] directing PBCOM to pay additional docket fees in the amount of P24,765.70, within fifteen days from receipt of thereof.

On October 21, 2010, PBCOM paid the additional docket fees but filed its Compliance with the RTC only on November 11, 2010.^[8]

In the interim, however, the RTC issued an Order dated November 4, 2010,^[9] dismissing PBCOM's Complaint, which reads:

For failure of the plaintiff to comply with the Order dated September 29, 2010, this case is hereby DISMISSED.

SO ORDERED.^[10]

PBCOM filed a Motion for Reconsideration dated November 22, 2010,^[11] stating that it had paid the additional docket fees within the period prescribed by the court as evidenced by the Official Receipt attached thereto.

In an Order dated May 3, 2011,^[12] the RTC denied PBCOM's motion for reconsideration, pertinent portions of which read as follows:

As per registry return slip, the plaintiff received a copy of the said order on October 7, 2010. Hence, it had until October 22, 2010 within which to pay the additional docket fee.

There being no proof [of] payment of the additional fee submitted to the Court by the plaintiff on or before October 23, 2010, the Court, in its Order dated November 4, 2010 dismissed the case, pursuant to Section 3, Rule 17 of the 1997 Rules of Civil Procedure.

It is only on November 11, 2010 that plaintiff filed with the Court a Compliance with the Order of the Court dated September 29, 2010 but without any plausible explanation relative to its failure to submit such proof of compliance on or before October 23, 2010.

x x x x

The Court finds to be impressed with merit the observation of the defendants in their comment/opposition in this wise:

"The Compliance dated November 11, 2010 filed by the plaintiff is suspicious because it was filed several weeks after it allegedly paid the additional docket fees on October 21, 2010.

Moreover, the subject Official Receipt was only signed by a certain Liza Maia Esteves Sirios who allegedly prepared the same. Amazingly, there is no signature above the name of Engracio M. Escasinas, Jr., Clerk of Court VII, who is supposed to receive said payment. Hence, the subject Official Receipt is highly irregular."

WHEREFORE, for reasons afore-stated, the motion for reconsideration is hereby DENIED.

SO ORDERED.^[13]

Undaunted, PBCOM timely filed a Notice of Appeal dated May 26, 2011.^[14]

On June 2, 2011, the RTC issued an Order (Assailed Order), denying due course to PBCOM's Notice of Appeal on the ground that said appeal is not the proper remedy.

^[15]

Without filing a motion for reconsideration, PBCOM filed a Petition for Certiorari and Mandamus with the CA.^[16]

On July 31, 2014, the CA issued the assailed Decision^[17] denying PBCOM's Petition for Certiorari and Mandamus and affirming the order of the RTC. The CA reasoned that, apart from availing itself of a wrong mode of appeal, PBCOM failed to comply with the mandatory requirement of a motion for reconsideration. The CA emphasized that the filing of a motion for reconsideration is a condition *sine qua non* for a petition for *certiorari* to prosper.

On August 26, 2014, PBCOM filed a Motion for Reconsideration^[18] of the aforesaid Decision, but the same was denied by the CA for having been filed out of time.^[19]

Hence, the present petition for *certiorari* and mandamus^[20] anchored on the following grounds:

A.

RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PBCOM'S MOTION FOR RECONSIDERATION ON THE GROUND THAT IT WAS FILED ONE (1) DAY LATE.

B.

RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PBCOM'S PETITION FOR CERTIORARI AND MANDAMUS ON THE GROUND THAT A PRIOR MOTION FOR RECONSIDERATION IS REQUIRED.

x x x x

C.

RESPONDENT JUDGE SHOULD BE COMPELLED BY MANDAMUS TO APPROVE PBCOM'S NOTICE OF APPEAL AND TO TRANSMIT THE CASE RECORDS TO THE COURT OF APPEALS.

D.

RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT RULED THAT THE PETITION FOR CERTIORARI AND MANDAMUS IS A WRONG MODE OF APPEAL.^[21]

The Court's Ruling

Prefatorily, the Court notes that PBCOM availed of the wrong mode of appeal in bringing the case before the Court. A petition for *certiorari* under Rule 65 is not the proper remedy to assail the July 31, 2014 Decision and May 5, 2015 Resolution of

the CA. In *Mercado v. Valley Mountain Mines Exploration, Inc.*,^[22] this Court held that:

The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.^[23]

However, under exceptional circumstances, as when stringent application of the rules will result in manifest injustice, the Court may set aside technicalities and proceed with the appeal.^[24] In *Tanenglian v. Lorenzo*,^[25] the Court recognized the broader interest of justice and gave due course to the appeal even if it was a wrong mode of appeal and was even filed beyond the reglementary period provided by the rules. The Court reasoned that:

We have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules, allowing us, depending on the circumstances, to set aside technical infirmities and give due course to the appeal. In cases where we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. In those rare cases where we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. **Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.** x x x

x x x x

In *Sebastian v. Morales*, we ruled that rules of procedure must be faithfully followed except only when, **for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure**, thus:

x x x x

The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote

substantial justice must always be avoided. **It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.**^[26] (Emphasis supplied; citations omitted)

Considering that what is at stake in the present case is PBCOM's statutory right to appeal and the amplest opportunity for the proper and just determination of its cause, the Court resolves to set aside PBCOM's procedural mistake and give due course to its petition.

In the present petition, PBCOM is asking the Court to rule on the correctness of the CA's dismissal of its Petition for Certiorari and Mandamus on the grounds that (1) a petition for *certiorari* is a wrong mode of appeal and (2) in any event, PBCOM failed to comply with the mandatory requirement of a motion for reconsideration.

PBCOM argues that the CA should have given due course to its Petition for Certiorari and Mandamus because it is the proper remedy to question the Order dated June 2, 2011 of the RTC denying its Notice of Appeal and that a motion for reconsideration is not required when the order assailed of is a patent nullity for having been issued without jurisdiction.

The Court finds PBCOM's arguments impressed with merit.

In the assailed Decision, the CA appears to have confused the RTC Order dismissing PBCOM's complaint with the RTC Order denying PBCOM's notice of appeal, and mistakenly ruled that the petition for certiorari and mandamus filed by PBCOM was a wrong mode of appeal, *viz*:

Records will bear that the dismissal of the petitioner's complaint for sum of money was grounded on private respondents' [petitioner] failure to timely comply with the order dated 29 September 2010 of the public respondent which is pursuant to Section 3 Rule 17 of the Rules of Court.

Section 3 Rule 17 of the Rules of Court provides that:

"Sec. 3. Dismissal due to fault of plaintiff. - If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court."

Apparent from the aforesaid is the fact that the dismissal based thereon has the effect of an adjudication upon the merits, unless otherwise declared by court. Here there is no such declaration by the public