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THIRD DIVISION

[G.R. No. 195547, December 02, 2015]

MA. CORAZON M. OLA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Resolutions[1] of the Court of Appeals (*CA*), dated September 9, 2010,[2] December 14, 2010,[3] and February 14, 2011[4] in CA-GR. CR No. 32066.

The instant petition traces its origin to an Information filed with the Regional Trial Court (*RTC*) of Las Piñas City, dated October 23, 2006, charging herein petitioner and a certain Manuel Hurtada (*Hurtada*) and Aida Ricarse (*Ricarse*) with the crime of estafa as defined and punished under Article 315, paragraph 2 of the Revised Penal Code. The Information reads as follows:

> That on or about the 27th day of September 2006, and prior thereto, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring and confederating together and all of them mutually helping and aiding one another by means of deceit, false pretenses and fraudulent acts executed prior to or simultaneously with the commission of fraud, did then and there wilfully, unlawfully and feloniously defraud ELIZABETH T. LAUZON in the following manner to wit: that accused by means of false pretenses and fraudulent representations which they made to the complainant that they are authorized to sell, dispose or encumber a parcel of land located at Las Piñas City covered by TCTNo. T-19987 issued by the [Register] of Deeds of Las Piñas City and that they promised to transfer the Certificate of Title in the name of the complainant, said accused fully knew that their manifestation and representations were false and untrue, complainant was induced to part with her money in the amount of P420,000.00, as she in fact gave the amount of P420,000.00 representing part of the purchase price of the said parcel of land and for which accused received and acknowledge[d] the same, and after complainant conducted the necessary verification with the Register of Deeds of Las Piñas City it turned out that the registered owner of the said parcel of land is Marita F. Sanlay and mortgaged to Household Development Bank then assigned to National Home Mortgage Finance Corporation (*NHMFC*), and that accused are not authorized to sell, dispose or encumber the parcel of land covered by TCT No. T-19987, to the damage and prejudice of the complainant in the amount of P420,000.00.[5]

After trial, the RTC found petitioner and her co-accused guilty of other forms of swindling under Article 316 of the Revised Penal Code. The dispositive portion of the RTC Decision reads, thus:

> WHEREFORE, as the crime was committed with abuse of confidence reposed on Manuel Hurtada by Elizabeth Lauzon without any mitigating circumstance to offset, all three accused, namely: 1) Manuel Hurtada, Jr. y Buhat; 2) Aida Ricarse y Villadelgado and 3) Ma. Corazon Ola, are hereby found guilty beyond reasonable doubt of Estafa under Article 316 of the Revised Penal Code and each sentenced to undergo imprisonment of Six (6) months straight penalty and to indemnify, jointly and severally, the complainant Elizabeth T. Lauzon in the amount of P320,000.00 and to pay a fine of P1,000,000.00 and to pay the cost of the suit.
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> SO ORDERED.[6]

Petitioner and the other accused appealed the RTC Decision to the CA. Petitioner and Ricarse jointly filed their Brief for Accused-Appellants[7] dated June 10, 2009, while Hurtada filed his Brief for the Accused-Appellant[8] dated September 9, 2009.

A Brief for the Appellee,[9] dated March 1, 2010, was subsequently filed.

On May 28, 2010, petitioner filed a Manifestation with Leave of Court praying that she be granted a period of twenty (20) days within which to file an appropriate pleading.

On June 29, 2010, petitioner filed a Motion for Leave of Court to File Amended Appellant's Brief.[10]

In its first assailed Resolution promulgated on September 9, 2010, the CA denied petitioner's motion for having been filed out of time.

Petitioner filed a Motion for Reconsideration,[11] but the CA denied it in its second assailed Resolution dated December 14, 2010.

Undeterred, petitioner, on January 4, 2011, filed a Very Urgent Ex-Parte Motion for [Extension of Time] to File for Vacation of Resolution or Appropriate Pleading.[12]

On February 14, 2011, the CA issued its third assailed Resolution denying petitioner's motion, treating the same as a second motion for reconsideration, which is a prohibited pleading.

Hence, the instant petition for review on *certiorari* based on the following grounds:

> (a) whether or not the Honorable Court of Appeals (*CA*) by wholly adopting the stance of the Honorable Office of the Solicitor General has overlooked the evidence on record, from the pleadings and four affidavits of merits filed with the CA, and in the process violated the due process of law of the petitioner as enunciated in *Ang Tibay v. CIR*, and subsequent SC decisions thereto.

(b) whether or not the petitioner has made a second motion for reconsideration.

(c) whether or not the governing law or rule is Rule 10 on amendments of pleading, and not Section 6, both of Rule 6 and 11, in relation to Section 9 of Rule 44 and Section 4 of Rule 124 on matter of reply, all of the Rules of Court; and

(d) whether or not the liberality rule for amendment of pleadings instead of the general rule on liberality must be applied in favor of the petitioner. [13]

At the outset, the Court notes that the instant case suffers from a procedural infirmity which this Court cannot ignore as it is fatal to petitioner's cause.

What petitioner essentially assails in the present petition is the CA's denial of her motion to file an amended appellant's brief. It is settled that the remedy of a party against an adverse disposition of the CA would depend on whether the same is a final order or merely an interlocutory order.[14] If the Order or Resolution issued by the CA is in the nature of a final order, the remedy of the aggrieved party would be to file a petition for review on *certiorari* under Rule 45 of the Rules of Court.[15] Otherwise, the appropriate remedy would be to file a petition for *certiorari* under Rule 65.[16]

In *Republic of the Phils., v. Sandigahbayan (Fourth Division), et al.,*[17] this Court laid down the rules to determine whether a court's disposition is already a final order or merely an interlocutory order and the respective remedies that may be availed in each case, thus:

> Case law has conveniently demarcated the line between a final judgment or order and an interlocutory one on the basis of the disposition made. A judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action; in such case, the remedy available to an aggrieved party is appeal. If the order or resolution, however, merely resolves incidental matters and leaves something more to be done to resolve the merits of the case, the order is interlocutory and the aggrieved party's remedy is a petition for *certiorari* under Rule 65. Jurisprudence pointedly holds that:
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> > *As distinguished from a final order which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, an interlocutory order does not dispose of a case completely, but leaves something more to be adjudicated upon. The term final judgment or order signifies a judgment or an order which disposes of the case as to all the parties, reserving no further questions or directions for future determination.*
> >
> > *On the other hand, a court order is merely* interlocutory in character if it leaves substantial proceedings yet to be had in connection with the controversy. It does not end the task of

> the court in adjudicating the parties' contentions and determining their rights and liabilities as against each other. In this sense, it is basically **provisional in its application**.[18]

In the present case, the Court agrees with the contention of the Office of the Solicitor General (*OSG*) that the assailed Resolutions of the CA are interlocutory orders, as they do not dispose of the case completely but leave something to be decided upon.[19] What has been denied by the CA was a mere motion to amend petitioner's appeal brief and the appellate court has yet to finally dispose of petitioner's appeal by determining the main issue of whether or not she is indeed guilty of estafa. As such, petitioner's resort to the present petition for review on *certiorari* is erroneous.

Thus, on this ground alone, the instant petition is dismissible as the Court finds no cogent reason not to apply the rule on dismissal of appeals under Section 5,[20] Rule 56 of the Rules of Court.

The Court is neither persuaded by petitioner's argument that the CA Resolution which denied her motion to amend her brief is appealable. Petitioner's reliance on the case of *Constantino, et al. v. Hon. Reyes, et al.*,[21] is misplaced. In the said case, petitioner Constantino wanted to amend his complaint after the same was dismissed by the then Court of First Instance (CFI) on the ground that the complaint stated no cause of action. However, the trial court dismissed petitioner's motion to admit the amended complaint. Petitioner sought to appeal the case but the trial court disapproved the record on appeal on the ground that the appeal had been filed out of time. In granting the petition for *mandamus* filed before this Court to compel the CFI judge to approve the record on appeal, this Court held that "[e]ven after an order dismissing his complaint is issued, an amendment may still be allowed. The motion to amend should be filed before the order of dismissal becomes final and unappealable, because thereafter there would be nothing to amend. If the amendment is denied, the order of denial is appealable and the time within which to appeal is counted from the order of denial — not from the order dismissing the original complaint."[22]

From the above factual and procedural antecedents, it is clear that petitioner has taken the Court's ruling in *Constantino* out of context. In the said case, the complaint which the petitioner therein sought to amend was already dismissed. The order which denied petitioner's motion to amend the complaint is, therefore, final, and not interlocutory, as there is nothing else to be done by the trial court after such denial other than to execute the order of dismissal. Thus, the order denying the motion to amend the complaint is appealable. On the other hand, what is sought to be amended in the present case is not a complaint but an appeal brief which was not dismissed by the CA. More importantly, the denial of petitioner's motion to amend her appeal brief does not end the task of the CA in adjudicating the parties' contentions and determining their rights and liabilities as against each other. Substantial proceedings are yet to be conducted in connection with the controversy, thus barring resort to an appeal.

In any case, even if the Court will consider petitioner's contentions in the present petition, the Court still finds that the CA did not commit any error in issuing the assailed Resolutions.