

SECOND DIVISION

[G.R. No. 171626, August 06, 2014]

OLONGAPO CITY, PETITIONER, VS. SUBIC WATER AND SEWERAGE CO., INC., RESPONDENT.

DECISION

BRION, J.:

We resolve in this petition for *certiorari*^[1] under Rule 65 the challenge to the July 6, 2005 decision^[2] and the January 3, 2006 resolution^[3] (*assailed CA rulings*) of the Court of Appeals (CA) in CA-G.R. SP No. 80947.

These assailed CA rulings annulled and set aside: a) the July 29, 2003 order^[4] of the Regional Trial Court of Olongapo, Br. 75 (*RTC Olongapo*), which directed the issuance of a writ of execution in Civil Case No. 582-0-90, against respondent Subic Water and Sewerage Co., Inc. (*Subic Water*); b) the July 31, 2003 writ of execution^[5] subsequently issued by the same court; and c) the October 7, 2003 order^[6] of RTC Olongapo, denying Subic Water's special appearance with motion to reconsider order dated July 29, 2003 and to quash writ of execution dated July 31, 2003.^[7]

Factual Antecedents

On May 25, 1973, Presidential Decree No. 198^[8] (*PD 198*) took effect. This law authorized the creation of local water districts which may acquire, install, maintain and operate water supply and distribution systems for domestic, industrial, municipal and agricultural uses.^[9]

Pursuant to PD 198, petitioner Olongapo City (*petitioner*) passed Resolution No. 161, which transferred all its *existing water facilities and assets under the Olongapo City Public Utilities Department Waterworks Division*, to the jurisdiction and ownership of the Olongapo City Water District (OCWD).^[10]

PD 198, as amended,^[11] allows local water districts (*LWDs*) which have acquired an existing water system of a local government unit (*LGU*) to enter into a contract to pay the concerned LGU. In lieu of the LGU's share in the acquired water utility plant, it shall be paid by the LWD an amount not exceeding three percent (3%) of the LWD's gross receipts from water sales in any year.^[12]

On October 24, 1990, petitioner filed a complaint for sum of money and damages against OCWD. Among others, petitioner alleged that OCWD failed to pay its electricity bills to petitioner and remit its payment under the contract to pay, pursuant to OCWD's acquisition of petitioner's water system. In its complaint,

petitioner prayed for the following reliefs:

"WHEREOF, it is respectfully prayed of this Honorable Court that after due hearing and notice, judgment be rendered in favor of plaintiff ordering the defendant to:

- (a) pay the amount of P26,798,223.70 plus legal interests from the filing of the Complaint to actual full payment;
- (b) pay the amount of its in lieu share representing three percent of the defendant's gross receipts from water sales starting 1981 up to present;
- (c) pay the amount of P1,000,000 as moral damages; and
- (d) pay the cost of suit and other litigation expenses."^[13]

In its answer,^[14] OCWD posed a counterclaim against petitioner for unpaid water bills amounting to P3,080,357.00.^[15]

In the interim, OCWD entered into a Joint Venture Agreement^[16] (JVA) with Subic Bay Metropolitan Authority (SBMA), Biwater International Limited (*Biwater*), and D.M. Consunji, Inc. (DMCI) on November 24, 1996. Pursuant to this agreement, **Subic Water** – a new corporate entity – was incorporated, with the following equity participation from its shareholders:

SBMA	19.99% or 20%
OCWD	9.99% or 10%
Biwater	29.99% or 30%
DMCI	39.99% or 40% ^[17]

On November 24, 1996, Subic Water was granted the franchise to operate and to carry on the business of providing water and sewerage services in the Subic Bay Free Port Zone, as well as in Olongapo City.^[18] Hence, Subic Water took over OCWD's water operations in Olongapo City.^[19]

To finally settle their money claims against each other, petitioner and OCWD entered into a compromise agreement^[20] on June 4, 1997. In this agreement, petitioner and OCWD offset their respective claims and counterclaims. OCWD also undertook to pay to petitioner its net obligation amounting to P135,909,467.09, to be amortized for a period of not exceeding twenty-five (25) years at twenty-four percent (24%) per annum.^[21]

The compromise agreement also contained a provision regarding the parties' **request** that *Subic Water, Philippines, which took over the operations of the defendant Olongapo City Water District be made the co-maker* for OCWD's obligations. Mr. Noli Aldip, then chairman of Subic Water, acted as its representative and signed the agreement on behalf of Subic Water.

Subsequently, the parties submitted the compromise agreement to RTC Olongapo for approval. In its decision dated June 13, 1997,^[22] the trial court approved the

compromise agreement and adopted it as its judgment in Civil Case No. 580-0-90.

Pursuant to the compromise agreement and in payment of OCWD's obligations to petitioner, petitioner and OCWD executed a Deed of Assignment on November 24, 1997.^[23] OCWD assigned all of its rights in the JVA in favor of the petitioner, *including but not limited to the assignment of its shares, lease payments, regulatory assistance fees and other receivables arising out of or related to the Joint Venture Agreement and the Lease Agreement.*^[24] On December 15, 1998, OCWD was judicially dissolved.^[25]

On May 7, 1999, to enforce the compromise agreement, the petitioner filed a motion for the issuance of a writ of execution^[26] with the trial court. In its July 23, 1999 order,^[27] the trial court granted the motion, but did not issue the corresponding writ of execution.

Almost four years later, on May 30, 2003, the petitioner, through its new counsel, filed a notice of appearance with urgent motion/manifestation^[28] and prayed again for the issuance of a writ of execution against OCWD. A certain Atty. Segundo Mangohig, claiming to be OCWD's former counsel, filed a manifestation alleging that OCWD had already been dissolved and that Subic Water is now the former OCWD.^[29]

Because of this assertion, Subic Water also filed a manifestation informing the trial court that *as borne out by the articles of incorporation and general information sheet of Subic Water x x x defendant OCWD is not Subic Water.*^[30] The manifestation also indicated that OCWD was only a ten percent (10%) shareholder of Subic Water; and that its 10% share was already in the process of being transferred to petitioner pursuant to the Deed of Assignment dated November 24, 1997.^[31]

The trial court granted the motion for execution and directed its issuance against OCWD and/or Subic Water. Because of this unfavorable order, Subic Water filed a special appearance with motion to: (1) reconsider order dated July 29, 2003; and (2) quash writ of execution dated July 31, 2003.^[32]

The trial court denied Subic Water's special appearance, motion for reconsideration, and its motion to quash. Subic Water then filed a petition for *certiorari*^[33] with the CA, imputing grave abuse of discretion amounting to lack or excess of jurisdiction to RTC Olongapo for issuing its July 29, 2003 and October 7, 2003 orders as well as the writ of execution dated July 31, 2003.

The CA's Ruling

In its decision dated July 6, 2005,^[34] the CA granted Subic Water's petition for *certiorari* and reversed the trial court's rulings.

The CA found that the writ of execution dated July 31, 2003^[35] did not comply with Section 6, Rule 39 of the Rules of Court, to wit:

Section 6. Execution by motion or by independent action. — A final and executory judgment or order may be executed **on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.** The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. (6a) [emphasis ours]

A judgment on a compromise agreement is immediately executory and is considered to have been entered on the date it was approved by the trial court.^[36] Since the compromise agreement was approved and adopted by the trial court on June 13, 1997, this should be the reckoning date for the counting of the period for the filing of a valid motion for issuance of a writ of execution. Petitioner thus had until June 13, 2002, to file its motion.

The CA further remarked that while it was true that a motion for execution was filed by petitioner on May 7, 1999, and the same was granted by the trial court in its July 23, 1999 order,^[37] no writ of execution was actually issued.

As the CA looked at the case, petitioner, instead of following up with the trial court the issuance of the writ of execution, did not do anything to secure its prompt issuance. It waited another four years to file a second motion for execution on May 30, 2003.^[38] By this time, the allowed period for the filing of a motion for the issuance of the writ had already lapsed. Hence, the trial court's July 29, 2003 order granting the issuance of the writ was null and void for having been issued by a court without jurisdiction.

The CA denied petitioner's subsequent motion for reconsideration. Petitioner is now before us on a petition for *certiorari* under Rule 65.

The Petition

The petitioner acknowledged the rule that the execution of a judgment could no longer be made by mere motion after the prescribed five-year period had already lapsed. However, it argued that the delay for the issuance of the writ of execution was caused by OCWD and Subic Water. The petitioner submitted that this Court had allowed execution by mere motion even after the lapse of the five-year period, when the delay was caused or occasioned by the actions of the judgment debtor.^[39]

Also, the petitioner asserted that although Subic Water was not a party in the case, it could still be subjected to a writ of execution, since it was identified as OCWD's co-maker and successor-in-interest in the compromise agreement.^[40]

Lastly, the petitioner contended that the compromise agreement was signed by Mr. Noli R. Aldip, then Subic Water's chairman, signifying Subic Water's consent to the agreement.

The Court's Ruling

We **DISMISS** the petition for being the wrong remedy and, in any case, for lack of merit; what we have before us is a final judgment that we can no longer touch unless there is grave abuse of discretion.

A. Procedural Law Aspect

Certiorari is not a substitute for a lost appeal.

At the outset, we emphasize that the present petition, brought under Rule 65, merits outright dismissal for having availed an improper remedy.

The instant petition should have been brought under Rule 45 in a petition for review on *certiorari*. Section 1 of this Rule mandates:

Section 1. Filing of petition with Supreme Court. — A party desiring to **appeal by certiorari from a judgment or final order or resolution of the Court of Appeals**, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (1a, 2a) [emphasis supplied]

Supplementing Rule 45 are Sections 3^[41] and 4^[42] of Rule 56 which govern the applicable procedure in the Supreme Court.

Appeals from judgments or final orders or resolutions of the CA should be made through a verified petition for review on *certiorari* under Rule 45.^[43] In this case, petitioner questioned the July 6, 2005 decision^[44] and the January 3, 2006 resolution^[45] of the CA which declared as null and void the writ of execution issued by the trial court. Since the CA's pronouncement **completely disposed of the case and the issues raised by the parties**, it was the proper subject of a Rule 45 petition. It was already a final order that resolved the subject matter in its entirety, leaving nothing else to be done.

A petition for *certiorari* under Rule 65 is appropriate only if there is **no appeal**, or any plain, speedy, and adequate remedy in the ordinary course of law available to the aggrieved party. As we have distinctly explained in the case of *Pasiona v. Court of Appeals*:^[46]

The aggrieved party is proscribed from assailing a decision or final order of the CA *via* Rule 65 because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law. In this case, **petitioner had an adequate remedy, namely, a petition for review on certiorari under Rule 45 of the Rules of Court. A petition for review on certiorari, not a special civil action for certiorari was, therefore, the correct remedy.**