

THIRD DIVISION

[G.R. No. 183608, July 13, 2013]

**FAUSTINO T. CHINGKOE AND GLORIA CHINGKOE, PETITIONERS,
VS. REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
BUREAU OF CUSTOMS, RESPONDENT.**

D E C I S I O N

VELASCO JR., J.:

Before Us is a Petition for Review on Certiorari under Rule 45, seeking the reversal of the April 30, 2008 Decision^[1] of the Court of the Appeals (CA) and its subsequent June 27, 2008 Resolution^[2] in CA-G.R. SP No. 101394. The assailed CA issuances granted the Petition for Certiorari filed by respondent Bureau of Customs, thereby revoking the July 14, 2006 and August 31, 2007 Orders^[3] of the Regional Trial Court (RTC), Branch 34 in Manila and denying the Motion for Reconsideration, respectively.

The Facts

This petition stemmed from two collection cases filed by the Republic of the Philippines (Republic), represented by the Bureau of Customs (BOC) before the Regional Trial Court (RTC) of Manila. In the first Complaint^[4] for collection of money and damages, entitled Republic of the Philippines, represented by the *Bureau of Customs v. Chiat Sing Cardboard Inc. (defendant and third party plaintiff) v. Filstar Textile Industrial Corporation, Faustino T. Chingcoe (third party defendants)* and docketed as Civil Case No. 02-102612, the Republic alleged that Chiat Sing Cardboard Inc. (Chiat Sing), a corporation that imports goods to the Philippines, secured in 1997 fake and spurious tax credit certificates from Filstar Textile Industrial Corporation (Filstar), amounting to six million seventy-six thousand two hundred forty-six pesos (PhP 6,076,246). It claimed that Chiat Sing utilized the fraudulently-acquired tax credit certificates to settle its customs duties and taxes on its importations. BOC initially allowed the use of the said tax credit certificates, but after investigation, discovered that the same were fake and spurious. Despite due demand, Chiat Sing failed and refused to pay the BOC the amount of the tax credit certificates, exclusive of penalties, charges, and interest.

Along with its Answer,^[5] Chiat Sing, with leave of court,^[6] filed a Third-Party Complaint against Filstar. It claimed that it acquired the tax credit certificates from Filstar for valuable consideration, and that Filstar represented to it that the subject tax credit certificates are good, valid, and genuine.

Meanwhile, in the second Complaint, entitled *Republic of the Philippines, represented by the Bureau of Customs v. Filstar Textile Industrial Corporation* and docketed as Civil Case No. 02-102634, the Republic alleged that in the years 1992-

1998, defendant Filstar fraudulently secured 20 tax credit certificates amounting to fifty-three million six hundred fifty-four thousand six hundred seventy-seven pesos (PhP 53,654,677). Thereafter, Filstar made various importations, using the tax credit certificates to pay the corresponding customs duties and taxes. Later, BOC discovered the fact that they were fraudulently secured; thus, the Republic claimed, the customs duties and tax liability of Filstar remained unpaid.^[7]

The Complaint was amended to include Dominador S. Garcia, Amalia Anunciacion, Jose G. Pena, Grace T. Chingkoe, Napoleon Viray, Felix T. Chingkoe, Faustino Chingkoe, and Gloria Chingkoe as party defendants. Later, however, pursuant to an Order of the trial court, the case against Felix Chingkoe was dismissed.^[8]

After an Order^[9] of consolidation was issued on June 23, 2003, the two cases were jointly heard before the RTC, initially by Branch 40, Manila RTC,^[10] but after the presiding judge there inhibited from the case, they were re-raffled to Branch 34, Manila RTC.

Pursuant to a Notice of Mediation Hearing sent to the parties on October 17, 2005,^[11] the cases were referred to the Philippine Mediation Center (PMC) for mandatory mediation.^[12] The pre-trial for the consolidated cases was initially set on January 9, 2006, but come said date, the report of the mediation has yet to be submitted; hence, on the motion of the counsel of defendant Chiat Sing, the pre-trial was canceled and rescheduled to February 15, 2006.^[13]

On February 15, 2006, the PMC reported that the proceedings are still continuing; thus, the trial court, on motion of the same counsel for Chiat Sing, moved for the re-setting of the pre-trial to March 17, 2006.^[14] Unfortunately, the mediation proceedings proved to be uneventful, as no settlement or compromise was agreed upon by the parties.

During the March 17, 2006 pre-trial setting, the Office of the Solicitor General (OSG), representing the Republic, failed to appear. The counsel for defendant Filstar prayed for a period of 10 days within which to submit his motion or manifestation regarding the plaintiff's pre-trial brief. The trial court granted the motion, and again ordered a postponement of the pre-trial to April 19, 2006.^[15]

Come the April 19, 2006 hearing, despite having received a copy of the March 17, 2006 Order, the OSG again failed to appear. It also failed to submit its comment. Thus, counsels for the defendants Filstar, Chiat Sing, and Chingkoe moved that plaintiff be declared non-suited. Meanwhile, the counsel for BOC requested for an update of their case. In its Order¹⁶ on the same date, the trial court warned the plaintiffs Republic and BOC that if no comment is submitted and if they fail to appear during the pre-trial set on May 25, 2006, the court will be constrained to go along with the motion for the dismissal of the case.

The scheduled May 25, 2006 hearing, however, did not push through, since the trial court judge went on official leave. The pre-trial was again reset to June 30, 2006.

During the June 30, 2006 pre-trial conference, the OSG again failed to attend. A certain Atty. Bautista Corpin, Jr. (Atty. Corpin Jr.), appearing on behalf of BOC, was

present, but was not prepared for pre-trial. He merely manifested that the BOC failed to receive the notice on time, and moved for another re-setting of the pre-trial, on the condition that if either or both lawyers from the BOC and OSG fail to appear, the court may be constrained to dismiss the abovementioned cases of the BOC for failure to prosecute.^[17] Meanwhile, counsels for defendants Chiat Sing, Filstar, and third-party defendants Faustino T. Chingkoe and Gloria C. Chingkoe, who were all present during the pre-trial, moved for the dismissal of the case on the ground of respondent's failure to prosecute. The trial court judge issued an Order^[18] resetting the pre-trial to July 14, 2006.

At the hearing conducted on July 14, 2006, the respective counsels of the defendants were present. Notwithstanding the warning of the judge given during the previous hearing, that their failure to appear will result in the dismissal of the cases, neither the OSG nor the BOC attended the hearing. Thus, as moved anew by the respective counsels of the three defendants, the trial court issued an Order^[19] dismissing the case, which reads:

As prayed for, the charge of the Republic of the Philippines against Chiat Sing Cardboard Incorporation and the Third Party complaint of Chiat Sing Cardboard Inc., against Textile Industrial Corporation, Faustino Chingkoe and Gloria Chingkoe in Civil Case No. 02-102612 and the charge of the Republic of the Philippines against Filstar Industrial Corporation, Faustino Chingkoe and Gloria Chingkoe in Civil Case No. 02-102634 are hereby dismissed.^[20]

The motion for reconsideration of the July 14, 2006 Order was likewise denied by the RTC on August 31, 2007.^[21] As recourse, respondents filed a Petition for Certiorari under Rule 65 before the CA, alleging that the trial court judge acted with grave abuse of discretion in dismissing the two cases.

In its Decision dated April 30, 2008, the CA granted the petition and remanded the case to the RTC for further proceedings. In reversing the RTC Order, the CA ruled that the case, being a collection case involving a huge amount of tax collectibles, should not be taken lightly. It also stated that it would be the height of injustice if the Republic is deprived of due process and fair play. Finally, it took "judicial notice of the fact that the collection of customs duties and taxes is a matter imbued with public interest, taxes being the lifeblood of the government and what we pay for civilized society."^[22] The CA said:

We view that the swiftness employed by the Court *a quo* in dismissing the case without first taking a thoughtful and judicious look into whether or not there is good reason to delve into the merits of the instant case by giving the parties an equal opportunity to be heard and submit evidence [in] support of their respective claims, was a display of grave abuse of discretion in a manner that is capricious, arbitrary and in a whimsical exercise of power – the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions, thus *certiorari* is necessarily warranted under the premises.^[23]

The CA, thus, disposed of the case in this manner:

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Court *a quo*'s Orders dated 14 July 2006 and 31 August 2007, are hereby REVOKED and SET ASIDE and a new one rendered ordering the **REMAND** of this case to the Court *a quo* for further proceedings. The Bureau of Customs, through the Office of the Solicitor General (OSG), is hereby directed to give this case its **utmost and preferential attention**.^[24]

In a Resolution dated June 27, 2008, the CA denied the separate motions for reconsideration filed by private respondents Faustino T. Chingkoe and Gloria Chingkoe as well as Filstar Textile Industrial Corporation.

Thus, the present recourse.

Issues

Petitioners posit:

Whether the Honorable Court of Appeals committed a reversible error when it granted the petition for certiorari and revoked and set aside the order of dismissal of the RTC considering that:

1. The extraordinary writ of certiorari is not available in the instant case as an appeal from the order of dismissal as a plain, speedy and adequate remedy available to the respondent;
2. The dismissal of the complaints below for the repeated failure of the respondent to appear during the pre-trial and for its failure to prosecute for an unreasonable length of time despite the stern warning of the RTC is not a dismissal on mere technical grounds; and
3. The dismissal of the cases with prejudice was not attended with grave abuse of discretion on the part of the RTC.

Petitioners argue that the CA committed reversible error in granting the Petition for Certiorari, because such extraordinary writ is unavailing in this case. They posit that contrary to the position of respondent, an ordinary appeal from the order of dismissal is the proper remedy that it should have taken. Since the dismissal is due to the failure of respondent to appear at the pre-trial hearing, petitioners add, the dismissal should be deemed an adjudication on the merits, unless otherwise stated in the order.^[25]

Second, petitioner argue that the trial court properly dismissed the cases for the failure of the plaintiff *a quo*, respondent herein, to attend the pre-trial.

The Court's Ruling

The petition is meritorious.

The remedy of certiorari does not lie to question the RTC Order of dismissal

Respondent's Petition for Certiorari filed before the CA was not the proper remedy against the assailed Order of the RTC. Pursuant to Rule 65 of the Rules of Court, a special civil action for certiorari could only be availed of when a tribunal "acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of [its] judgment as to be said to be equivalent to lack of jurisdiction"^[26] or when it acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law.^[27]

It is settled that the Rules precludes recourse to the special civil action of certiorari if appeal by way of a Petition for Review is available, as the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.^[28]

Here, respondent cannot plausibly claim that there is no plain, speedy, and adequate remedy available to it to question the dismissal Order of the trial court. The RTC Order does not fall into any of the exceptions under Section 1, Rule 41, where appeal is not available as a remedy. It is clear from the tenor of the RTC's July 14, 2006 Order that it partakes of the nature of a final adjudication, as it fully disposed of the cases by dismissing them. In fine, there remains no other issue for the trial court to decide anent the said cases. The proper remedy, therefore, would have been the filing of a Notice of Appeal under Rule 41 of the Rules of Court. Such remedy is the plain, speedy, and adequate recourse under the law, and not a Petition for Certiorari under Rule 65, as respondent here filed before the CA.

A petition for certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. When an appeal is available, certiorari will not prosper, even if the basis is grave abuse of discretion.^[29] The RTC Order subject of the petition was a final judgment which disposed of the case on the merits; hence, an ordinary appeal was the proper remedy.

In any case, the rule is settled in *Mondonedo v. Court of Appeals*,^[30] where We said:

The Court finds no reversible error in the said Resolutions of the Court of Appeals. Well-settled is the rule that a dismissal for failure to appear at the pre-trial hearing is deemed an adjudication on the merits, unless otherwise stated in the order.

For nonappearance at the pre-trial, a plaintiff may be non-suited and a dismissal of the complaint for failure to prosecute has the effect of an adjudication upon the merits unless otherwise provided by the trial court.