

THIRD DIVISION

[G.R. NO. 149508, October 10, 2007]

**SPOUSES RICARDO AND LEONILA DE LOS SANTOS,
PETITIONERS, VS. MA. SOCORRO V. VDA. DE MANGUBAT, SPS.
PURIFICACION V. LINAO AND DOMINGO LINAO, BIENVENIDO G.
VILLARENTE, SPS. CESAR G. VILLARENTE AND MARIA DE LUZ
HALILI, AND SPS. LILIA V. MONTENEGRO AND RUDY
MONTENEGRO IN THEIR INDIVIDUAL CAPACITIES AND AS
HEIRS OF JOSEFA R. CABAGAT, REPRESENTED BY BIENVENIDO
G. VILLARENTE, RESPONDENTS.***

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

In the present Petition for *Certiorari* under Rule 65 of the Rules of Court, Spouses Ricardo and Leonila de los Santos (petitioners) assail the Resolution^[1] dated October 27, 2000 of the Court of Appeals (CA) in CA-G.R. SP No. 61394 which dismissed the petition for *certiorari* filed by the petitioners before it; and the CA Resolution^[2] dated July 3, 2001 denying petitioners' motion for reconsideration of the October 27, 2000 Resolution.

The procedural antecedents and factual background of the case are as follows:

Private respondents are the registered owners of Lot No. 1033 located in Sta. Cruz, Sta. Maria, Bulacan with an area of 793 square meters and covered by Transfer Certificate of Title No. 61.279.^[3] Located in the east of Lot No. 1033 is Lot No. 1034 where the house of petitioners is erected, with an area of 530 square meters and covered by Tax Declaration No. 18929 in the name of a certain Elena San Jose.^[4] In front of Lot No. 1034 is the provincial road.^[5]

On June 5, 1998, private respondents filed with the Regional Trial Court, Malolos, Bulacan (RTC) a Complaint for Damages with Prayer for a Writ of Preliminary Injunction^[6] against the petitioners docketed as Civil Case No. 442-M-98. In their Complaint, private respondents alleged that: they cannot reach the public road without using and passing upon a portion of Lot No. 1034, as it is the nearest and shortest passage way; the alleged owners of Lot No. 1034 executed a duly notarized Deed of Assignment of Right of Way dated July 24, 1991 conveying a strip of Lot No. 1034 in favor of the private respondents to be used as a permanent right of way; sometime in June 1998, the petitioners, without any authority over the strip of land, deliberately placed sand and gravel along the passageway which violated the right of way of the private respondents and caused irreparable damage and injury to the rights of the private respondents.

In their Answer dated 22 June 1998, petitioners denied liability on the grounds that

the persons who allegedly executed the Deed of Assignment of Right of Way are neither the owners nor possessors of Lot No. 1034 and thus, the Deed of Assignment of Right of Way is null and void; that the Deed of Assignment was executed because of the anticipation that Lot No. 1034 will be allotted to the assignors as their share in the estate of their ascendant, Pedro San Jose; that instead, Lot No. 1034 was inherited by petitioner Leonila de los Santos; and that the private respondents cannot demand the right of way there being no proof that they have indemnified the petitioners.

Trial ensued and on May 3, 2000, the RTC rendered its Decision which granted a permanent right of way in favor of the private respondents measuring 2.7 meters wide and 21 meters long, upon payment of the proper indemnification in the amount of P28,350.00; but which denied the private respondents' prayer for damages.^[7]

A copy of the RTC's Decision was received by petitioners on May 12, 2000.^[8] On May 29, 2000, the petitioners filed a Motion for Reconsideration *via* registered mail^[9] which was denied by the RTC in its Order^[10] dated July 19, 2000. The petitioners received a copy of the July 19, 2000 Order on August 3, 2000.

Dissatisfied, the petitioners filed a Notice of Appeal on August 15, 2000.^[11] However, the RTC denied due course to the appeal in its Order^[12] dated August 17, 2000. The RTC held that from the records, the Motion for Reconsideration of the petitioners was filed out of time, more so was their Notice of Appeal.

Petitioners then filed a petition for *certiorari* with the CA, docketed as CA-G.R. SP No. 61394.^[13] On October 27, 2000, the CA issued a Resolution^[14] dismissing the petition on two grounds: *first*, the verification and the non-forum shopping certification is signed by petitioners' counsel which is proscribed by law; and *second*, the petitioners failed to file a Motion for Reconsideration before resorting to the petition for *certiorari*. Petitioners filed a Motion for Reconsideration but to no avail.^[15]

Hence, the present petition based on the following grounds:

I.

WHETHER OR NOT THE PUBLIC RESPONDENT APPELLATE COURT GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OF JURISDICTION, WHEN IT ISSUED THE QUESTIONED RESOLUTIONS DATED OCTOBER 27, 2000 BASED SOLELY ON TECHNICAL CONSIDERATIONS x x x AS WELL AS EFFECTIVELY AFFIRMING PUBLIC RESPONDENT TRIAL COURT'S MANIFESTLY NULL AND VOID ORDER OF AUGUST 17, 2000 DENYING DUE COURSE TO PETITIONER'S NOTICE OF APPEAL EVEN AS THE SAME WAS FILED WITHIN THE REGLEMENTARY PERIOD.

II.

WHETHER OR NOT THE PUBLIC RESPONDENT APPELLATE COURT GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OF

JURISDICTION, WHEN IT ISSUED THE ASSAILED ORDER OF JULY 3, 2001 DENYING PETITIONER'S MOTION FOR RECONSIDERATION NOTWITHSTANDING THE FACT THAT IT HAD MERITORIOUS GROUNDS AND WAS TIMELY FILED.

On October 1, 2001, the Court issued a temporary restraining order directing private respondents to refrain from executing the RTC decision until further orders from the Court.^[16]

In 2005, pending resolution of herein petition, the Court amended the Rules of Court on the appeal period in *Neypes v. Court of Appeals*,^[17] to wit:

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.

x x x x

To recapitulate, a party litigant may either file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of the order (the "final order") denying his motion for new trial or motion for reconsideration. Obviously, the new 15-day period may be availed of *only* if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41, Section 3.

This "fresh period rule" served as the beacon of light that guided the Court in the resolution of the present petition.

However, there are existing procedural rules that would have blocked the outright application of *Neypes* to the present case.

First, the dismissal by the CA of the petition for *certiorari* filed before it by the petitioners was based on the grounds that the verification and non-forum shopping certification were signed by petitioners' counsel; and that petitioners failed to file a motion for reconsideration of the order denying due course to the appeal before resorting to a petition for *certiorari*.

Supreme Court Circular No. 28-91,^[18] as amended by SC Administrative Circular No. 04-94,^[19] specifically provided that the verification and certification of non-forum shopping must be signed by the plaintiff, petitioner, applicant or principal party seeking relief and failure to do so shall be a cause for the dismissal of the petition.^[20] This rule is now embodied in Section 1, Rule 65 of the Rules of Court.^[21]

In the present case, it was Atty. Eduardo G. Araullo, the counsel for the petitioners, who signed both the verification and certification against forum shopping instead of the petitioners.^[22]

In *Pajuyo v. Court of Appeals*,^[23] the Court held that the requirement on verification of a pleading is a formal and not a jurisdictional requisite. It is intended simply to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation. A party's representative, lawyer or any person who personally knows the truth of the facts alleged in the pleading may sign the verification.

The rule that the certification on non-forum shopping should be signed by the petitioner has been relaxed by the Court in several instances where procedural lapses are overlooked in the interest of substantial justice and for compelling reasons.^[24]

In the present case, the issue whether the RTC committed an error in awarding a right of way in favor of private respondents, together with the other issues mentioned in the petition for *certiorari* filed with the CA, are proper subjects of appeal. The fact that litigants have been given a "fresh period" of appeal, constrains the Court to give due course to the petition.

Second, the general rule is that before *certiorari* under Rule 65 can be availed of, a motion for reconsideration must first be filed.^[25] However, this rule admits of exceptions.^[26]

In a plethora of cases, the Court held that when the Rules of Procedure are rigid and strict in application, resulting in technicalities that tend to frustrate rather than promote justice, the Court is empowered to suspend them.^[27] The Court finds that the present case is one of the instances where the rigid application of the rule on filing a motion for reconsideration before filing a petition for *certiorari* may be suspended to give way to the application of the new rule enunciated in *Neypes*.

Third, the present Petition for *Certiorari* filed with this Court is an improper remedy in bringing the instant case before this Court. The proper remedy to obtain reversal of the CA's October 27, 2000 and July 3, 2001, Resolutions is a petition for review on *certiorari* under Rule 45 of the Rules of Court.

While the Court may treat a petition for *certiorari* under Rule 65 as having been filed under Rule 45 to serve the higher interest of justice, such liberal application of the rules finds no application if the petition is filed well beyond the reglementary period for filing a petition for review without any reason therefor.^[28]

Herein petition for *certiorari* was filed on the 60th day from date of receipt of the denial of the motion for reconsideration,^[29] well beyond the 15-day period within which to file the petition for review under Rule 45.

However, considering that rules of procedure are mere tools designed to facilitate the attainment of justice, it is well-recognized that the Supreme Court is empowered to suspend its operation, when the rigid application thereof tends to frustrate rather than to promote the ends of justice.^[30]

Taking into account the fact that private respondent is entitled to the "fresh period rule," in the interest of substantial justice, procedural rules of the most mandatory