

## THIRD DIVISION

[ G.R. No. 145169, May 13, 2004 ]

**SIENA REALTY CORPORATION, AS REPRESENTED BY LYDIA CO HAO AND LILIBETH MANLUGON, PETITIONER, VS. HON. LOLITA GAL-LANG, AS PRESIDING JUDGE OF THE RTC OF MANILA, BRANCH 44; ANITA CO NG IN TRUST FOR ROCKEFELLER NG; AND THE COURT OF APPEALS, SPECIAL 13TH DIVISION, RESPONDENTS.**

### DECISION

**CARPIO MORALES, J.:**

Challenged via petition for review on certiorari under Rule 45 of the 1997 Revised Rules of Court is the September 13, 2000 Resolution of the Court of Appeals in C.A.-G.R. SP No. 59096, *Siena Realty Corporation, as represented by Lydia Co Hao and Lilibeth Manlugon v. Hon. Lolita O. Gal- lang, as Presiding Judge of Br. 44 of the RTC of Manila, and Anita Co Ng in trust for Rockefeller Ng*.

Since the petition attributes grave abuse of discretion on the part of the Court of Appeals in the issuance of subject resolution, what should have been filed was one for certiorari under Rule 65. On this score alone, the petition must be denied due course.

But even if technicality were set aside, just the same the petition fails.

Petitioners filed a petition for certiorari before the Court of Appeals on June 7, 2000 or allegedly on the 60th day from their receipt of the March 23, 2000 Order of Branch 44 of the Manila Regional Trial Court denying their motion for Reconsideration of said court's Order **dismissing**, on motion of private respondent, **their complaint**.

The Court of Appeals, by Resolution<sup>[1]</sup> of June 20, 2000, dismissed petitioner's petition for certiorari, however, for being filed out of time, it holding that:

Per records, it appears that petitioners had only until May 29, 2000 within which to file the Petition for Certiorari considering the following:

1. Petitioners received a copy of the October 20, 1999 Order denying their [counsel's] Notice of Withdrawal [and likewise denying petitioners' Motion for Reconsideration of the Order dismissing their complaint] on November 8, 1999;
2. Petitioners filed a motion for reconsideration of the October 20, 1999 Order on November 17, 1999; and that

3. Petitioners received a copy of the March 23, 2000 Order denying their motion for reconsideration on April 8, 2000.

The instant petition was filed on June 7, 2000 or nine (9) days late.

Thus, for being belatedly filed, the instant petition is hereby DISMISSED.

Petitioners thereupon filed (on July 10, 2000) a motion for reconsideration <sup>[2]</sup> of the above-said June 20, 2000 Order of the appellate court.

In the meantime, this Court issued in A.M. No. 00-2-03-SC ( *Reglamentary Period to File Petitions for Certiorari and Petition for Review on Certiorari*) a Resolution dated August 1, 2000 approving the amendment to the following provision of Section 4, Rule 65 of the 1997 Rules of Civil Procedure:

SECTION 4. Where petition filed. **The petition may be filed not later than sixty (60) days from notice of the judgment, order, resolution sought to be assailed in the Supreme Court** or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

**If the petitioner had filed a motion for new trial or reconsideration after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.** (Emphasis and underscoring supplied)

The amendment to Sec. 4, Rule 65, which took effect on September 1, 2000, reads:

SECTION 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. **In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of the said motion.**

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in the aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and