

EN BANC

[G.R. No. 137448, January 31, 2002]

**GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS.
BENGSON COMMERCIAL BUILDINGS, INC., RESPONDENT.**

[G.R. No. 141454. January 31, 2002]

**GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS.
COURT OF APPEALS, JUDGE VICENTE PACQUING, RTC-SAN
FERNANDO, LA UNION, BRANCH 26, SHERIFF MARIO ANACLETO
M. BAÑEZ, PROVINCIAL SHERIFF OF LA UNION, BENGSON
COMMERCIAL BLDGS., AND MR. ENRIQUE LL. YUSINGCO, IN HIS
CAPACITY AS CORPORATE SECRETARY OF SAN MIGUEL
CORPORATION, RESPONDENTS.**

DECISION

DAVIDE JR., C.J.:

Before us are two consolidated cases docketed as G.R. No. 137448 and G.R. No. 141454, which were both filed by the Government Service Insurance System (GSIS, for brevity). The first is a petition for review on *certiorari* assailing the 24 November 1998^[1] and 29 January 1999^[2] Resolutions of the Court of Appeals in CA-G.R. SP No. 47669, which denied GSIS's petition for *certiorari* for having been filed out of time and for non-compliance with procedural requirements. The second is a special civil action for *certiorari* challenging the 14 January 2000 Decision^[3] of the Court of Appeals in the consolidated cases of CA-G.R. SP Nos. 51131 & 47699, which dismissed GSIS's petitions on the ground of forum-shopping.

The pertinent facts are as follows:

Private respondent Bengson Commercial Buildings, Inc., (hereafter BENGSON) obtained loans from GSIS on 20 August 1965 and 23 November 1971 in the amounts of P1.25 million and P3 million, respectively, or in the aggregate sum of P4.25 million. As a security for the payment of these loans, BENGSON executed real estate and chattel mortgages in favor of GSIS. On 26 May 1972, BENGSON sold to GSIS nine units of debenture bonds in the total amount of P900,000. For BENGSON's failure to settle its arrearages despite due notices, the mortgaged properties were extra-judicially foreclosed and sold at public auction to the highest bidder, the GSIS itself. A certificate of sale and new certificates of title were thereafter issued in favor of GSIS.^[4]

On 23 June 1977, BENGSON filed with then Court of First Instance of San Fernando, La Union, an action for the annulment of the foreclosure sale, which was docketed as Civil Case No. 2794. After trial, the trial court (Regional Trial Court of San Fernando, La Union, Branch 26) rendered a decision (1) nullifying the foreclosure of

BENGSON's mortgaged properties; (2) ordering the cancellation of the titles issued to GSIS and the issuance of new ones in the name of BENGSON; (3) ordering BENGSON to pay GSIS P900,000 for the debenture bonds; and (4) directing GSIS to (a) restore to BENGSON full possession of the foreclosed properties, (b) restructure the P4.25 million loans at the legal rate of interest from the finality of the judgment, (c) pay BENGSON P1.9 million representing accrued monthly rentals and P20,000 rental monthly until the properties are restored to BENGSON's possession, and (e) pay the costs.^[5]

In its 19 January 1988 Decision in CA-G.R. Civil Case No. 09361, the Court of Appeals affirmed with modification the decision of the court *a quo*, and the case was ordered remanded to the trial court for reception of evidence on the costs of suit and for the determination of the veracity of the provincial sheriff's report that the mortgaged properties were no longer in existence, as well as a determination of their replacement value should GSIS fail to return them. As stated in our decision in *GSIS v. Gines*,^[6] GSIS "did not lift a finger to question the legality and soundness of that decision"; it did not file a motion for reconsideration or an appeal, and hence that decision of the Court of Appeals became final and executory on 10 February 1988.

On 15 July 1988, BENGSON filed with the trial court a Motion for Hearing on the Costs of Suit and submitted a Schedule of Costs of Suit,^[7] which consisted of various loans owing to different persons, mortgaged jewelry, foreclosed appliances, car, etc., amounting to P42,619,798.56. The trial court thus conducted hearings.

On 6 April 1995, the trial court issued an order^[8] awarding to BENGSON the sum of P31 million as costs of suit. A copy of that order was received on that same date by GSIS's counsel Atty. Rogelio Terrado. After the said order became final, or on 24 April 1995, the trial court granted^[9] Bengson's *ex-parte* motion for execution.

It was only on 4 May 1995, upon receipt of a copy of the order of execution, that GSIS became aware of the 6 April 1995 Order because Atty. Terrado had been absent without official leave (AWOL) since 6 April 1995. Hence, on 15 May 1995, GSIS, through its corporate counsel, Atty. Oscar Garcia, filed with the trial court an Urgent Omnibus Motion.^[10] Attached to the motion was an affidavit of merit^[11] executed by Margarito C. Recto, Manager of Legal Department II of GSIS Legal Services Group, stating that the Omnibus Motion should be considered by the court as a petition for relief from the 6 April 1995 Order. He also stated that GSIS had not received yet the said Order because its former counsel Atty. Terrado had been on AWOL since 6 April 1995, and that this gross negligence of Atty. Terrado should not legally bind GSIS, for to do otherwise would result in the deprivation of GSIS's property "without due process of law on mere technicality." He then proceeded to discuss GSIS's "good and substantial defenses."

Incidentally, on 5 June 1995, Atty. Terrado was administratively charged with gross misconduct for his alleged willful, unlawful and deliberate act of not filing the appropriate motion for the reconsideration of, or appeal from, the questioned orders of the trial court.^[12] He was eventually found guilty and dismissed from the service.

^[13]

In its Decision^[14] of 16 January 1997, the trial court denied GSIS's Urgent Omnibus Motion, which was treated as a petition for relief from judgment, on the following grounds: (1) GSIS is bound by the negligence of its counsel; (2) to grant the petition would be to revive the right to appeal which GSIS had irretrievably lost through its gross inaction; (3) equity or fairness could not be invoked as valid grounds for petition for relief from judgment; (4) the case could not be reopened because *res judicata* had already set in; (5) no evidence of extrinsic or collateral fraud was adduced by GSIS; and (6) the questioned orders are already final and executory. Petitioner received a copy of this order on 4 February 1997, and filed its motion for reconsideration on 16 February 1997.

Its motion for reconsideration having been denied in the Order of 23 April 1998 of the trial court,^[15] which it received on 29 April 1998, GSIS instituted on 11 June 1998 with the Court of Appeals a special civil action for *certiorari*. This case was docketed as **CA-G.R. SP No. 47669**.

In its 24 November 1998 Resolution, the Court of Appeals dismissed the petition in **CA-GR SP No. 47669** for the following reasons: (1) the petition was filed out of time, as three years had already lapsed since the issuance of the order awarding P31 million costs of suit; (2) the Verification and Certification on Non-Forum Shopping were not done by petitioner's duly authorized officer, but only by its counsel; (3) no copy of the relevant writ of execution allegedly issued on 24 April 1995 was attached to the petition; (4) the copy of the 16 January 1997 Decision was not a certified true copy; (5) petitioner did not rebut BENGSON's evidence; and (6) the assailed Order of 6 April 1995 had become final and executory.

When its motion for the reconsideration^[16] of the Resolution of 24 November 1998 was denied by the Court of Appeals in its Resolution of 29 January 1999, GSIS filed with us a petition, which was docketed as **G.R. No. 137448**.

Meanwhile, on 16 December 1998, the trial court ordered^[17] the issuance of an alias writ for the execution of the award of P31 million costs of suit adjudged in its 6 April 1995 Order. Pursuant thereto, an alias writ was issued and 6.2 million Class "A" shares of stocks of San Miguel Corporation owned by GSIS were garnished and later sold at public auction, with BENGSON as the only bidder. Upon denial on 8 January 1999^[18] by the trial court of the Motion for Reconsideration with Motion to Quash Alias Writ of Execution,^[19] GSIS filed with this Court a petition, docketed as G.R. No. 136874, seeking the annulment of both the 16 December 1998 and 8 January 1999 Orders of the trial court.

On 31 January 1999, this Court issued a Temporary Restraining Order (TRO)^[20] enjoining the implementation of the 6 April 1995 Order and the transfer, registration or issuance of new certificates of stocks in the name of BENGSON. The Court thereafter referred the petition to the Court of Appeals for consideration and adjudication on the merits or any other action it would deem appropriate.^[21] The petition was thus re-docketed as **CA-G.R. SP No. 51131**.

On 29 November 1999, CA-G.R. SP No. 47669, which was then still pending in view of BENGSON's unresolved motion for partial reconsideration of the 29 January 1999 Resolution of the Court of Appeals, was ordered consolidated with CA-G.R. SP No.

51131. On 14 January 2000, the Court of Appeals rendered a consolidated decision dismissing both petitions on the ground of forum-shopping and lifting the TRO issued in G.R. No. 136874.

Hence, GSIS filed with this Court a special civil action for *certiorari* with very urgent motion for the issuance of a preliminary injunction and/or TRO. This petition was docketed as **G.R. No. 141454** and consolidated with G.R. No. 137448. A TRO^[22] was issued on 7 February 2000, and as clarified in our 2 October 2000 Resolution,^[23] it enjoined the following: (1) the implementation of the 14 January 2000 Decision of the Court of Appeals; (2) the execution of the 6 April 1995 Order awarding P31 million costs of suit; (3) the recording, transfer, or registration of any disposition or issuance of new certificates of stocks in the name of BENGSON; and (4) any disposition or alienation by BENGSON of said shares to third persons.

We find merit in the petition docketed as G.R. No. 141454, which ascribes to the Court of Appeals grave abuse of discretion in dismissing CA-G.R. SP Nos. 51131 and 47669 on the ground of forum-shopping.

Forum-shopping is an act of a party against whom an adverse judgment or order has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*.^[24] It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.^[25] For it to exist, there should be (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to **res judicata** in the action under consideration.^[26] Thus, there is no forum-shopping where, for instance, the special civil action for *certiorari* and the appeal brought by a party do not involve the same issue.^[27]

The petition in CA-G.R. SP No. 47669 was a special civil action for *certiorari* filed by GSIS after its petition for relief from the 6 April 1995 Order of the trial court and its motion for reconsideration were both denied in the 16 January 1997 Decision and 23 April 1998 Order of the trial court, respectively. On the other hand, the petition in CA-G.R. No. 51131, which was formerly G.R. No. 136874 filed by GSIS and referred by us to the Court of Appeals, was a petition for *certiorari* seeking the annulment of (1) the 16 December 1998 Order of the trial court directing the issuance of an alias writ of execution to enforce the 6 April 1995 Order; and (2) the 8 January 1999 Order denying petitioner's Motion for Reconsideration with Motion to Quash the Alias Writ of Execution. The main issue or argument raised in the first petition was that the 6 April Order awarding P31 million costs of suit contradicts the pertinent provisions of the Rules of Court, equity and justice. In the second petition, GSIS argued that the Alias Writ of Execution, together with the corresponding levy and execution sale of the 6.2 million shares of stock in San Miguel Corporation, is void for being contrary to the provision of Republic Act No. 8291, which exempts the "funds and/or properties" of GSIS from attachment, garnishment, execution or levy. Moreover, the reliefs sought in both petitions were distinct from each other. Hence, the proscription against forum-shopping was not violated by GSIS. The dismissal of CA-G.R. SP Nos. 47669 and 51131 on the ground of forum-shopping cannot,

therefore, be sustained.

We rule, however, that the Court of Appeals did not err in dismissing CA-G.R. SP No. 47669 for non-compliance with some of the requirements mentioned in Section 3, Rule 46 of the 1997 Rules of Civil Procedure. It is undisputed that the petition was not accompanied with a clearly legible duplicate copy or a certified true copy of the judgment subject thereof. Indeed, what was submitted was not a certified true copy of the 16 January 1997 Decision of the trial court. Hence, on this score alone the special civil action was properly dismissed by the Court of Appeals. Moreover, the Verification and Certificate on Non-Forum Shopping were executed by petitioner's counsel, not by its duly authorized officer. This was also in itself a sufficient ground to dismiss the petition.^[28]

It must be observed that if the petition in CA G.R. SP No. 47669 had assailed the 23 April 1998 Order of the trial court denying petitioner's motion for reconsideration, as well as its 16 January 1997 Decision denying the petition for relief from judgment, as stated in petitioner's motion for extension of time to file a petition, the said petition could not have been said to have been filed out of time.

The records disclose that the petitioner received on 4 February 1997 a copy of the 16 January 1997 Decision denying its petition for relief from judgment. On 16 February 1997, petitioner filed a motion for reconsideration. On 29 April 1998, it received a copy of the 23 April 1998 Order denying its motion for reconsideration. It then filed a Motion for Extension of Time to File Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction to question the 23 April 1998 Order of the trial court. On 11 June 1998, it filed the petition for certiorari, which was docketed as CA-G.R. SP No. 47669.

Under the former rule,^[29] an order denying a petition for relief from judgment was subject to appeal and, in the course thereof, the appellant could assail the judgment On the merits. The purpose of this rule was to enable the appellate court to determine not only the existence of any of the grounds relied upon whether it be fraud, accident, mistake or excusable negligence, but also and primarily the merit of appellant's cause of action or defense, as the case may be. Should the appellate court find that one of the grounds for relief from judgment existed and the petitioner had a good cause of action or defense, it would not reverse or modify the judgment on the merits because the judgment involved had become final and executory. Instead, it would reverse the denial or dismissal of the petition for relief from judgment, set aside the judgment in the main case, and remand the case to the lower court for a new trial in accordance with then Section 7 of Rule 38 of the former Rules.^[30]

On the other hand, the 1997 Rules of Civil Procedure, specifically Section 1(b) of Rule 41, provides that no appeal may be taken from an order denying a petition for relief or any similar action seeking the relief from judgment. The last paragraph thereof, however, allows the aggrieved party to file a special civil action for *certiorari* under Rule 65 of the Rules.

Under Section 4 of Rule 65 of the new Rules, the petition may be filed not later than 60 days from notice of the judgment, order, or resolution sought to be annulled. The petition for *certiorari* in CA-G.R. SP No. 47669 was filed on 11 June 1998, or 43