



RECEIVED BU  
FRANCIS 4-06-17  
Sibon

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PHILIPPINE BANK OF  
COMMUNICATIONS,  
Petitioner,

G.R. No. 218901

Present:

- versus -

SERENO, C.J., Chairperson,  
LEONARDO-DE CASTRO,  
DEL CASTILLO,  
PERLAS-BERNABE, and  
CAGUIOA, JJ.

HON. COURT OF APPEALS, HON.  
HONORIO E. GUANLAO, JR., IN  
HIS CAPACITY AS PRESIDING  
JUDGE OF THE REGIONAL  
TRIAL COURT, MAKATI CITY,  
BRANCH 56, TRAVELLER KIDS  
INC., CELY L. GABALDON-CO  
AND JEANNIE L. LUGMOC,  
Respondents.

Promulgated:

FEB 15 2017

X-----X

DECISION

CAGUIOA, J.:

This Petition for Certiorari and Mandamus<sup>1</sup> filed by petitioner Philippine Bank of Communications (PBCOM) seeks to reverse and set aside the Decision dated July 31, 2014<sup>2</sup> and Resolution dated May 5, 2015<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 120884, and prays that Judge Honorio E. Guanlao, Jr. of the Regional Trial Court (RTC) of Makati City, Branch 56, be ordered to approve PBCOM's notice of appeal and to transmit the case records to the CA. The CA dismissed PBCOM's Petition for Certiorari and Mandamus and sustained the Order dated June 2, 2011<sup>4</sup> issued by the RTC, which denied due course to PBCOM's Notice of Appeal on the ground that said appeal was not the proper remedy.

<sup>1</sup> Rollo, pp. 3-42.

<sup>2</sup> Id. at 47-55. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario concurring.

<sup>3</sup> Id. at 57-58. Penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Ricardo R. Rosario and Victoria Isabel A. Paredes concurring.

<sup>4</sup> CA rollo, p. 22. Penned by Pairing Judge Honorio E. Guanlao, Jr.

### Facts

This case originated from a Complaint<sup>5</sup> for collection of a sum of money in the amount of ₱8,971,118.06 filed by PBCOM against private respondents before the RTC of Makati City, Branch 56 and docketed as Civil Case No. 10-185.

Private respondents moved for the dismissal of the Complaint alleging that their obligation had already been paid in full and that the RTC had no jurisdiction over the case because PBCOM failed to pay the correct docket fees.<sup>6</sup>

On September 29, 2010, the RTC issued an Order<sup>7</sup> directing PBCOM to pay additional docket fees in the amount of ₱24,765.70, within fifteen days from receipt of thereof.

On October 21, 2010, PBCOM paid the additional docket fees but filed its Compliance with the RTC only on November 11, 2010.<sup>8</sup>

In the interim, however, the RTC issued an Order dated November 4, 2010,<sup>9</sup> dismissing PBCOM's Complaint, which reads:

For failure of the plaintiff to comply with the Order dated September 29, 2010, this case is hereby DISMISSED.

SO ORDERED.<sup>10</sup>

PBCOM filed a Motion for Reconsideration dated November 22, 2010,<sup>11</sup> stating that it had paid the additional docket fees within the period prescribed by the court as evidenced by the Official Receipt attached thereto.

In an Order dated May 3, 2011,<sup>12</sup> the RTC denied PBCOM's motion for reconsideration, pertinent portions of which read as follows:

As per registry return slip, the plaintiff received a copy of the said order on October 7, 2010. Hence, it had until October 22, 2010 within which to pay the additional docket fee.

There being no proof [of] payment of the additional fee submitted to the Court by the plaintiff on or before October 23, 2010, the Court, in its Order dated November 4, 2010 dismissed the case, pursuant to Section 3, Rule 17 of the 1997 Rules of Civil Procedure.

---

<sup>5</sup> *Rollo*, pp. 63-68.

<sup>6</sup> *Id.* at 85-91 and 107-110.

<sup>7</sup> *Id.* at 257.

<sup>8</sup> *Id.* at 258-261.

<sup>9</sup> *Id.* at 262.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 263-268.

<sup>12</sup> *Id.* at 279-280.



It is only on November 11, 2010 that plaintiff filed with the Court a Compliance with the Order of the Court dated September 29, 2010 but without any plausible explanation relative to its failure to submit such proof of compliance on or before October 23, 2010.

x x x x

The Court finds to be impressed with merit the observation of the defendants in their comment/opposition in this wise:

“The Compliance dated November 11, 2010 filed by the plaintiff is suspicious because it was filed several weeks after it allegedly paid the additional docket fees on October 21, 2010.

Moreover, the subject Official Receipt was only signed by a certain Liza Maia Esteves Sirios who allegedly prepared the same. Amazingly, there is no signature above the name of Engracio M. Escasinas, Jr., Clerk of Court VII, who is supposed to receive said payment. Hence, the subject Official Receipt is highly irregular.”

WHEREFORE, for reasons afore-stated, the motion for reconsideration is hereby DENIED.

SO ORDERED.<sup>13</sup>

Undaunted, PBCOM timely filed a Notice of Appeal dated May 26, 2011.<sup>14</sup>

On June 2, 2011, the RTC issued an Order (Assailed Order), denying due course to PBCOM’s Notice of Appeal on the ground that said appeal is not the proper remedy.<sup>15</sup>

Without filing a motion for reconsideration, PBCOM filed a Petition for Certiorari and Mandamus with the CA.<sup>16</sup>

On July 31, 2014, the CA issued the assailed Decision<sup>17</sup> denying PBCOM’s Petition for Certiorari and Mandamus and affirming the order of the RTC. The CA reasoned that, apart from availing itself of a wrong mode of appeal, PBCOM failed to comply with the mandatory requirement of a motion for reconsideration. The CA emphasized that the filing of a motion for reconsideration is a condition *sine qua non* for a petition for certiorari to prosper.

---

<sup>13</sup> Id.

<sup>14</sup> Id. at 281-283.

<sup>15</sup> Supra note 4.

<sup>16</sup> Id. at 3-21.

<sup>17</sup> Supra note 2.



On August 26, 2014, PBCOM filed a Motion for Reconsideration<sup>18</sup> of the aforesaid Decision, but the same was denied by the CA for having been filed out of time.<sup>19</sup>

Hence, the present petition for certiorari and mandamus<sup>20</sup> anchored on the following grounds:

A.

RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PBCOM'S MOTION FOR RECONSIDERATION ON THE GROUND THAT IT WAS FILED ONE (1) DAY LATE.

B.

RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PBCOM'S PETITION FOR CERTIORARI AND MANDAMUS ON THE GROUND THAT A PRIOR MOTION FOR RECONSIDERATION IS REQUIRED.

x x x x

C.

RESPONDENT JUDGE SHOULD BE COMPELLED BY MANDAMUS TO APPROVE PBCOM'S NOTICE OF APPEAL AND TO TRANSMIT THE CASE RECORDS TO THE COURT OF APPEALS.

D.

RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT RULED THAT THE PETITION FOR CERTIORARI AND MANDAMUS IS A WRONG MODE OF APPEAL.<sup>21</sup>

### **The Court's Ruling**

Prefatorily, the Court notes that PBCOM availed of the wrong mode of appeal in bringing the case before the Court. A petition for certiorari under Rule 65 is not the proper remedy to assail the July 31, 2014 Decision and May 5, 2015 Resolution of the CA. In *Mercado v. Valley Mountain Mines Exploration, Inc.*,<sup>22</sup> this Court held that:

The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in

<sup>18</sup> CA *rollo*, pp. 148-165.

<sup>19</sup> *Supra* note 3.

<sup>20</sup> *Supra* note 1.

<sup>21</sup> *Id.* at 16-17.

<sup>22</sup> 677 Phil. 13 (2011).

Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.<sup>23</sup>

However, under exceptional circumstances, as when stringent application of the rules will result in manifest injustice, the Court may set aside technicalities and proceed with the appeal.<sup>24</sup> In *Tanenglian v. Lorenzo*,<sup>25</sup> the Court recognized the broader interest of justice and gave due course to the appeal even if it was a wrong mode of appeal and was even filed beyond the reglementary period provided by the rules. The Court reasoned that:

We have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules, allowing us, depending on the circumstances, to set aside technical infirmities and give due course to the appeal. In cases where we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. In those rare cases where we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. **Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.** X X X

X X X X

In *Sebastian v. Morales*, we ruled that rules of procedure must be faithfully followed except only when, **for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure**, thus:

X X X X

The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. **It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of**

<sup>23</sup> Id. at 51, citing *Sps. Leynes v. Former Tenth Division of the Court of Appeals*, 655 Phil. 25, 44-45 (2011), further citing *Fortune Guarantee and Insurance Corporation v. Court of Appeals*, 428 Phil. 783, 791 (2002).

<sup>24</sup> See *Sps. Leynes v. Former Tenth Division of the Court of Appeals*, 655 Phil. 25, 45-46 (2011).

<sup>25</sup> 573 Phil. 472 (2008).

**cases while actually resulting in more delay, if not a miscarriage of justice.**<sup>26</sup> (Emphasis supplied; citations omitted)

Considering that what is at stake in the present case is PBCOM's statutory right to appeal and the amplest opportunity for the proper and just determination of its cause, the Court resolves to set aside PBCOM's procedural mistake and give due course to its petition.

In the present petition, PBCOM is asking the Court to rule on the correctness of the CA's dismissal of its Petition for Certiorari and Mandamus on the grounds that (1) a petition for certiorari is a wrong mode of appeal and (2) in any event, PBCOM failed to comply with the mandatory requirement of a motion for reconsideration.

PBCOM argues that the CA should have given due course to its Petition for Certiorari and Mandamus because it is the proper remedy to question the Order dated June 2, 2011 of the RTC denying its Notice of Appeal and that a motion for reconsideration is not required when the order assailed of is a patent nullity for having been issued without jurisdiction.

The Court finds PBCOM's arguments impressed with merit.

In the assailed Decision, the CA appears to have confused the RTC Order dismissing PBCOM's complaint with the RTC Order denying PBCOM's notice of appeal, and mistakenly ruled that the petition for certiorari and mandamus filed by PBCOM was a wrong mode of appeal, viz:

Records will bear that the dismissal of the petitioner's complaint for sum of money was grounded on private respondents' [petitioner] failure to timely comply with the order dated 29 September 2010 of the public respondent which is pursuant to Section 3 Rule 17 of the Rules of Court.

Section 3 Rule 17 of the Rules of Court provides that:

"Sec. 3. Dismissal due to fault of plaintiff. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court."

Apparent from the aforesaid is the fact that the dismissal based thereon has the effect of an adjudication upon the merits, unless otherwise declared by court. Here there is no such declaration by the public respondent, thus, the dismissal of petitioner's complaint for sum of money

---

<sup>26</sup> Id. at 485-489.

is an adjudication on the merits and should be challenged by appeal within the reglementary period, thus, We cannot give due course to petitioner's petition for certiorari and mandamus not only because it is a wrong mode of appeal but it also failed to comply with the mandatory requirement of a motion for reconsideration.<sup>27</sup>

Notably, in its petition before the CA, PBCOM assailed the RTC Order denying due course to its notice of appeal. In *Neplum, Inc. v. Orbeso*,<sup>28</sup> this Court ruled that a trial court's order disallowing a notice of appeal, which is tantamount to a disallowance or dismissal of the appeal itself, is not a decision or final order from which an appeal may be taken. The suitable remedy for the aggrieved party is to elevate the matter through a special civil action under Rule 65.<sup>29</sup> Clearly, contrary to the CA's finding, PBCOM availed itself of the correct remedy in questioning the disallowance of its notice of appeal.

Moreover, while it is a settled rule that a special civil action for certiorari under Rule 65 will not lie unless a motion for reconsideration is filed before the respondent court;<sup>30</sup> there are well-defined exceptions established by jurisprudence, such as (a) **where the order is a patent nullity, as where the court a quo has no jurisdiction**; (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.<sup>31</sup>

The first exception applies in this case.

Rule 41, Section 13 of the 1997 Rules on Civil Procedure states:

SEC. 13. *Dismissal of appeal.* - Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may, *motu proprio* or on motion, dismiss the appeal for having been taken

---

<sup>27</sup> *Rollo*, p. 52.

<sup>28</sup> 433 Phil. 844, 854 (2002). See also *Fukuzumi v. Sanritsu Great International Corporation*, 479 Phil. 888 (2004).

<sup>29</sup> See *id.* at 854.

<sup>30</sup> *Ermita v. Aldecoa-Delorino*, 666 Phil. 122, 132 (2011), citing *People v. Duca*, 618 Phil. 154, 168 (2009).

<sup>31</sup> *Republic v. Bayao*, 710 Phil. 279, 287-288 (2013), citing *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124, 136-137 (2010). Emphasis supplied.

out of time or for non-payment of the docket and other lawful fees within the reglementary period.<sup>32</sup>

In *Salvan v. People*,<sup>33</sup> this Court held that the power of the RTC to dismiss an appeal is limited to the instances specified in the afore-quoted provision. In other words, the RTC has no jurisdiction to deny a notice of appeal on an entirely different ground – such as “that an appeal is not a proper remedy.”

The authority to dismiss an appeal for being an improper remedy is specifically vested upon the CA and not the RTC. Rule 50, Section 1 of the same Rules states:

SECTION 1. *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(i) **The fact that [the] order or judgment appealed from is not appealable.** (Emphasis supplied)

The Court’s pronouncement in *Ortigas & Company Limited Partnership v. Velasco*<sup>34</sup> is apropos:

Yet another serious error was the disallowance by His Honor of Ortigas’ appeal from the judgment in the reconstitution case, declaring its notice of appeal to be nothing but “a mere scrap of paper.” His Honor opined that “Ortigas is x x x not vested with any justiciable interest to be party in (the) case” because it had admittedly “already sold all the subdivision lots which it claims to overlap the disputed two lots (of Molina),” and Ortigas’ pleadings “failed to disclose x x x any allegation about its ownership of road lots that may overlap the land covered by the certificate of title of petitioner sought to be reconstituted;” and that therefore Ortigas was not a real party in interest since it would neither derive benefit nor suffer injury from the decision; hence, its opposition could not be entertained and, “by force of law,” it could not also appeal the decision.

His Honor was apparently incognizant of the principle that dismissals of appeals from the judgment of a Regional Trial Court by the latter are authorized only in the instances specifically set forth x x x in Section 13, Rule 41 of the Rules of Court. The succeeding provision, Section 14 of said Rule 41, provides that “(a) motion to dismiss an appeal may be filed in the (Regional Trial) Court x x x prior to the transmittal of the record to the appellate court;” and the grounds are limited to those “mentioned in the preceding section,” *i.e.*, Section 13 to wit: where “the notice of appeal, appeal bond, or record on appeal is not filed within the period of time herein provided x x x.”

<sup>32</sup> As amended by A.M. No. 00-2-10-SC, May 1, 2000.

<sup>33</sup> 457 Phil. 785, 793 (2003).

<sup>34</sup> 304 Phil. 620 (1994).

**These two (2) sections clearly establish “that unless the appeal is abandoned, the only ground for dismissing an appeal in the trial court is the failure of the appellant to file on time the notice of appeal, appeal bond, or record on appeal x x x. (A) trial court may not dismiss an appeal as frivolous, or on the ground that the case has become moot and academic, such step devolving upon the appellate courts. Otherwise, the way would be opened for (regional trial) courts x x x to forestall review or reversal of their decisions by higher courts, no matter how erroneous or improper such decisions should be.”**

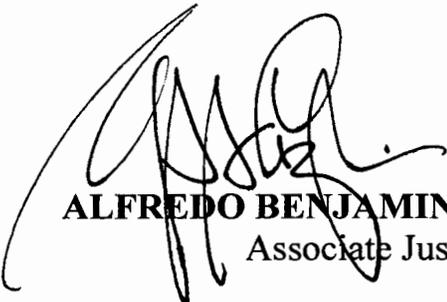
x x x x

**Dismissals of appeal may also be had upon the grounds specified by Rule 50 of the Rules of Court; but it is the Court of Appeals, not the trial court, which is explicitly authorized to dismiss appeals on said grounds. Generally, these grounds do not include matters which go into the merits of the cause or to the right of the plaintiff or defendant to recover. Case law has come to recognize other grounds for dismissal, by way of exception, e.g., that the cause has become moot, or the appeal is frivolous or manifestly dilatory. But, to repeat, authority to dismiss an appeal on the ground that it is frivolous or taken manifestly for delay “is not certainly with the court *a quo* whose decision is an issue, but with the appellate court.”<sup>35</sup> (Emphasis supplied; citations omitted)**

In fine, the assailed RTC Order, denying due course to PBCOM’s notice of appeal on the ground that it was a wrong remedy, is a patent nullity. The RTC acted without or in excess of its jurisdiction.

**WHEREFORE**, the instant petition is **GRANTED**. The Order dated June 2, 2011 issued by the Regional Trial Court, Branch 56 in Makati City and the assailed Decision dated July 31, 2014 and Resolution dated May 5, 2015 of the Court of Appeals in CA-G.R. SP No. 120884, are hereby **REVERSED** and **SET ASIDE**. The Regional Trial Court, Branch 56 in Makati City is **DIRECTED** to give due course to petitioner’s Notice of Appeal dated May 26, 2011 and to elevate the case records to the Court of Appeals for the review of petitioner’s appeal. No costs.

**SO ORDERED.**

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

---

<sup>35</sup> Id. at 659-661.

WE CONCUR:



**MARIA LOURDES P. A. SERENO**

Chief Justice  
Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**

Chief Justice

