

## SECOND DIVISION

[ G.R. No. 172980, July 22, 2015 ]

**CELSO F. PASCUAL, SR. AND SERAFIN TERCENCIO, PETITIONERS,  
VS. CANIOGAN CREDIT AND DEVELOPMENT COOPERATIVE,  
REPRESENTED BY ITS CHAIRMAN OF THE BOARD, JOSE  
ANTONIO R. LEE, ATTY. VENANCIO C. REYES, JR., AND NESTOR  
P. TINIO, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

An appeal of the outright dismissal of a petition for certiorari against an interlocutory order of a lower court becomes moot and academic where, during its pendency, judgment on the merits has been rendered in the main case and has become final and executory. An intra-cooperative dispute between two officers on one hand and the Board of Directors on the other falls within the jurisdiction of the regular courts, not of the Labor Arbiter.

Before this court is a Petition for Review on Certiorari<sup>[1]</sup> dated June 23, 2006 filed under Rule 45. The Petition seeks to reverse the Resolutions dated April 7, 2006<sup>[2]</sup> and May 30, 2006<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP No. 93621, which dismissed outright petitioners' Petition for Certiorari with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction for being premature and denied its motion for reconsideration, respectively.

Petitioners Celso F. Pascual, Sr. (Pascual) and Serafin Terencio (Terencio) were appointed by the former Board of Directors of Caniogan Credit and Development Cooperative (CCDC) to act as the cooperative's General Manager and Collection Manager, respectively, from start of operations until they reach the compulsory age of retirement of 65.<sup>[4]</sup>

Despite their retirement on January 9, 1997 and on March 2003, Pascual continued to serve as General Manager and Terencio as Collection Manager of CCDC.<sup>[5]</sup>

On August 13, 2005, the Board of Directors of CCDC passed Resolution Nos. 05-08-127<sup>[6]</sup> and 05-08-128,<sup>[7]</sup> terminating Pascual's and Terencio's services and declaring that they should serve only until September 30, 2005 and October 15, 2005, respectively. Despite the lapse of these periods given, Pascual and Terencio refused to vacate their positions.<sup>[8]</sup>

On November 29, 2005, CCDC and Atty. Venancio Reyes, Jr., the newly appointed General Manager, filed a Complaint for Injunction with prayer for issuance of writ of preliminary injunction and/or temporary restraining order<sup>[9]</sup> before the Regional Trial Court of Malolos, Bulacan. The Complaint was raffled to Branch 12.<sup>[10]</sup>

On December 1, 2005, the Regional Trial Court issued a temporary restraining order enjoining Pascual and Terencio for a period of 20 days from performing the functions of their offices.<sup>[11]</sup>

On December 7, 2005, Pascual and Terencio filed a Motion to Dismiss with prayer to defer all proceedings.<sup>[12]</sup> They questioned the Regional Trial Court's jurisdiction because the case allegedly involves a labor dispute in the guise of an injunction.

On December 8, 2005, CCDC filed an *Ex Parte* Motion<sup>[13]</sup> to drop Atty. Venancio Reyes, Jr. as party plaintiff and a Motion for Leave to Intervene<sup>[14]</sup> and to admit the attached complaint-in-intervention of Nestor P. Tinio as the newly appointed Acting General Manager in place of Atty. Venancio Reyes, Jr.

At the hearing of the Motion to Dismiss on December 15, 2005, counsel for both parties requested that they be allowed to file their respective oppositions or comments on the Motions filed. It was then agreed in open court that the running of the 20-day period of the temporary restraining order would be interrupted and continued only upon resolution of the Motion to Dismiss. The court also declared that the Motion to Dismiss should be considered submitted for resolution upon simultaneous filing of the parties of their respective memoranda.<sup>[15]</sup>

The parties filed their memoranda and their respective oppositions/comments to the other motions filed.

On January 5, 2006, Pascual and Terencio also filed a Very Urgent Manifestation with prayer for the immediate lifting of the temporary restraining order,<sup>[16]</sup> alleging that the continued implementation of the order would not help CCDC but would cause its further degradation and deterioration.

On January 10, 2006, finding that the case involves a dispute between the Board of Directors and officers of CCDC, the Regional Trial Court issued the Order<sup>[17]</sup> referring the case and all its records to the Clerk of Court of the Regional Trial Court of Bulacan for re-affle to branches specifically assigned to hear and decide intra-corporate disputes.

Allegedly without notice to Pascual and Terencio, the case was re-raffled to Branch 79, and an order was issued in open court during the hearing on January 30, 2006 to the effect that pending incidents were deemed submitted for resolution.<sup>[18]</sup>

However, Branch 79 issued another Order<sup>[19]</sup> dated February 10, 2006 returning the case to Branch 12. It reasoned that the case is not an intra-corporate dispute but an intra-cooperative one.

On March 3, 2006, Branch 12 of the Regional Trial Court issued the Order<sup>[20]</sup> denying the Motion to Dismiss for lack of merit because the case involves an intra-cooperative dispute. However, both the *Ex Parte* Motion to drop Atty. Venancio Reyes, Jr. as plaintiff and the Motion for Leave to Intervene were granted. Finally, the trial court deferred action on Pascual and Terencio's Very Urgent Motion to lift the temporary restraining order.

Pascual and Terencio challenged the March 3, 2006 Order before the Court of Appeals through a Petition for Certiorari<sup>[21]</sup> with prayer for an issuance of a temporary restraining order and/or writ of preliminary injunction and lifting of the temporary restraining order issued against them.

The Petition was dismissed by the Court of Appeals Ninth Division in its Resolution<sup>[22]</sup> dated April 7, 2006, which held that it was premature because: (1) petitioners did not file a motion for reconsideration of the impugned Regional Trial Court Order; and (2) the case involved an intra-cooperative dispute, and there was no showing that prior recourse to the modes of settlement required in Article 121 of Republic Act No. 6938<sup>[23]</sup> and Section 8 of Republic Act No. 6939<sup>[24]</sup> were resorted to before seeking judicial relief and intervention.

Pascual and Terencio filed a Motion for Reconsideration, but it was likewise denied by the Court of Appeals in its Resolution<sup>[25]</sup> dated May 30, 2006.

Hence, this Petition<sup>[26]</sup> was filed, anchored on the following issues:

First, whether the Court of Appeals gravely erred in dismissing outright petitioners Celso F. Pascual, Sr. and Serafm Terencio's Rule 65 Petition on the ground of prematurity; and

Second, whether the case is one of illegal dismissal of an employee which is subject to the exclusive jurisdiction of the Labor Arbiter or of the National Labor Relations Commission, not the trial court.

At the outset, this case had become moot and academic with the finality of the judgment by default,<sup>[27]</sup> rendered on July 20, 2006 by Branch 12 of the Regional Trial Court of Malolos, Bulacan.<sup>[28]</sup> The judgment permanently enjoined petitioners from assuming the positions of General Manager and Collection Manager of respondent CCDC and ordered them to pay it, jointly and severally, the sum of P50,000.00 as attorney's fees and the costs of suit.

Nonetheless, even on the merits, the Petition must be denied.

The general rule is that a motion for reconsideration is indispensable before resort to the special civil action for certiorari is made. This is to afford the court or tribunal the opportunity to correct its error, if any.<sup>[29]</sup> An omission to comply with this procedural requirement justifies a denial of the writ of certiorari applied for.<sup>[30]</sup>

We find no exceptional circumstance<sup>[31]</sup> to justify petitioners' omission to file a motion for reconsideration. Their allegation that the trial court was unable to resolve their many motions for a long time is belied by the facts on record. Their Motions to Dismiss and to lift the temporary restraining order were submitted for resolution on January 30, 2006. On March 3, 2006, a little over one month later, the trial court issued its impugned order. To our mind, this period of time does not constitute undue delay on the part of the trial court in resolving the motions.

Furthermore, contrary to petitioners' allegations, we find no "extreme necessity and

urgency" to excuse their direct resort to a certiorari before the Court of Appeals. Hence, the Court of Appeals correctly dismissed petitioners' Rule 65 Petition.

However, we disagree with the Court of Appeals' observation that prior recourse to the modes of settlement under Article 121 of Republic Act No. 6938<sup>[32]</sup> and Section 8 of Republic Act No. 6939<sup>[33]</sup> should have been made before seeking judicial relief. As pointed out by petitioners, it is clear from the Complaint filed by respondents before the trial court that the dispute was, indeed, referred to the Regional Office of the Cooperative Development Authority for mediation and arbitration. However, despite its earnest efforts, no settlement was reached between the parties, thus prompting the Authority to issue a certificate of non-resolution.

As regards the issue on jurisdiction, this court finds no reversible error in the Court of Appeals' ruling that the case involves an intra-cooperative dispute which falls within the jurisdiction of the regular courts. There is evidently no employment relationship between the parties.

In *Tabang v. NLRC*:<sup>[34]</sup>

[A]n "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.<sup>[35]</sup>

Here, petitioners were officers of respondent CCDC. They were appointed directly by the former Board of Directors according to the by-laws of respondent CCDC, and their salaries were likewise set by the same Board.<sup>[36]</sup> Petitioners do not refute this fact. Their termination or removal is clearly an intra-cooperative matter.<sup>[37]</sup> It involves a dispute within the cooperative between two officers on one hand and the Board of Directors on the other.

Petitioners clarify that they do not take issue on the power of the Board of Directors to remove them. Rather, they dispute the "manner, cause[,] and legality" of their removal from their respective offices as General Manager and Collection Manager.<sup>[38]</sup> Even so, we hold that an officer's dismissal is a matter that comes with the conduct and management of the affairs of a cooperative and/or an intra-cooperative controversy, and that nature is not altered by reason or wisdom that the Board of Directors may have in taking such action. Accordingly, the case a quo is not a labor dispute requiring the expertise of the Labor Arbiter or of the National Labor Relations Commission. It is an intra-cooperative dispute that is within the jurisdiction of the Regional Trial Court, pursuant to Section 121 of Republic Act No. 6938, which expressly provides:

ARTICLE 121. *Settlement of Disputes.* — Disputes among members, officers, directors, and committee members, and intra-cooperative disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative, and in applicable laws.