

EN BANC

[G.R. NO. 160445, February 16, 2006]

**JOSE TEOFILO T. MERCADO AND MA. AGNES R. MERCADO,
PETITIONERS, VS. SECURITY BANK CORPORATION,
RESPONDENT.**

R E S O L U T I O N

SANDOVAL GUTIERREZ, J.:

The dignity of the Court can never be protected where infraction of ethics meets with complacency rather than punishment. The people should not be given cause to break faith that a magistrate is the epitome of honor amongst men. To preserve its dignity, a court of justice should not yield to the assaults of disrespect.^[1]

Incidental to the present petition for review on *certiorari* is the contempt proceedings against petitioner Jose Teofilo T. Mercado arising from his letter dated October 18, 2004, insinuating that: **(1)** the *ponente* succumbed to the “tremendous pressure” of Chief Justice Hilario G. Davide, Jr. in denying his petition; **(2)** the Security Bank Corporation, respondent, financed the *ponente*’s travel to the United States; and **(3)** the *ponente* gave respondent a “go signal” to sell his property.

The facts are as follows:

On December 12, 2003, Jose Teofilo T. Mercado and Ma. Agnes R. Mercado, petitioners, filed with this Court a Petition for Review on *Certiorari* assailing the Court of Appeals **(a)** Decision^[2] dated May 27, 2003 in CA-G.R. SP No. 71570 dismissing their petition for annulment of judgment; and **(b)** its Resolution^[3] dated October 23, 2003 denying their motion for reconsideration.

On January 12, 2004, we denied the petition because of petitioners’ failure to show that a reversible error had been committed by the Appellate Court.^[4]

Petitioners filed a motion for reconsideration alleging that the Court of Appeals, in dismissing their petition for annulment of judgment, merely relied on technical rules of procedure, thereby sacrificing the greater interest of justice and equity; and that their former counsel’s gross negligence constitutes extrinsic fraud, a ground for annulling the trial court’s judgment.

On March 24, 2004, we issued a Resolution granting petitioners’ motion for reconsideration and reinstating their petition. We likewise required Security Bank Corporation, respondent, to comment on the petition.

In its comment, respondent averred that the issues raised in the present petition are mere rehash of the issues petitioners raised before the Appellate Court. As to the alleged negligence of their counsel, respondent pointed out that the same cannot be

considered an extrinsic fraud since through the same counsel, they actively pursued and recovered moral damages and attorney's fees. Furthermore, assuming that petitioners' counsel refused to file a motion for reconsideration with the trial court, still, they had the option to terminate his services and hire another; and that they should not have waited for four (4) years before filing the petition for annulment of judgment.

On June 7, 2004, we issued a Resolution denying the petition on the ground that petitioners indeed failed to show that a reversible error had been committed by the Appellate Court.

Petitioners filed a motion for reconsideration, but we dismissed the same in our Resolution dated September 15, 2004, thus:

We find no compelling reason to grant petitioner's motion for reconsideration.

The Court of Appeals was correct in holding that before a petition for annulment of judgment can prosper, petitioners must first file an appeal, a motion for new trial or a petition for relief as required by the Revised Rules of Court. Having failed to do so, they cannot avail of an action for annulment of judgment, otherwise, they would benefit from their inaction or negligence.

It bears emphasis at this point that an action for annulment of judgment cannot and is not a substitute for the lost remedy of appeal.

Petitioners' contention that their failure to appeal from the trial court's Decision was due to the negligence of their former counsel lacks merit. Records show that they participated actively, through their counsel, in the proceedings before the trial court. As party litigants, they were expected to be vigilant of their interests and, therefore, should monitor the progress of the case. Thus, they should have constantly communicated with their counsel to be advised of the status of their case. This way, they would not have lost their opportunity to appeal.

Granting that petitioners' petition for annulment of judgment is in order, still the same is dismissible. For the remedy of annulment of judgment to prosper, either one of the following grounds must be present: **(1)** extrinsic fraud or **(2)** lack of jurisdiction or denial of due process. Petitioner argues that their counsel's negligence constitutes extrinsic fraud. We are not convinced. Extrinsic fraud can be committed by a counsel against his client when the latter is prevented from presenting his case to the court. This situation is not present in this case.

We reiterate that in G.R. No. 151816, we ruled that the Court of Appeals did not commit reversible error in dismissing petitioners' petition for certiorari and prohibition assailing the trial court's order of execution of its Decision in favor of respondent bank.

In fine, this Resolution should now write *finis* to the instant case.^[5]

Petitioners filed a second motion for reconsideration but was denied for being prohibited.

On October 18, 2004, petitioner Mercado wrote Chief Justice Hilario G. Davide, Jr. stating that:

On March 24, 2004, the Third Division, in its Resolution, granted our Motion for Reconsideration and even gave due course and reinstated our petition.

But when I received the Resolution dated June 7, 2004 denying my Petition for Review on July 12, 2004, I immediately called my counsel, Atty. Jose P. Villanueva, on the phone. I asked him why on earth the *ponente* denied again my petition on the same ground 'for failure of petitioners to show that a reversible error had been committed by the appellate court? **My counsel said, the *ponente* informed him that she has to deny our petition on the same ground because of the tremendous pressure from the Chief Justice to favor Security Bank Corporation (SBC).** By the way, my counsel and the *ponente* are very close and long time friends to each other. When I heard the bad news, I was so shocked in disbelief. **It is true, what you did is unthinkable, ungodly, and malicious. It is also very suspicious that after a few days after my conversation with Atty. Villanueva, he and his family left for London, leaving my case to the care of one of his Associates. Later on, the *ponente* herself left for the U.S.A. to visit her children. Is this a coincidence? As the saying goes, 'when there is smoke, there is fire.'** Another coincidence, before the receipt of the Resolution dated June 7, 2004, denying our petition on the basis of SBC's unsubstantiated 'Comment,' SBC sold our property to M. Miranda Development Corporation and succeeded in getting a permit to demolish the four (4) building erected in our property from the Forbes Park Association, even if the case is still pending and we have not even filed our Motion for Reconsideration with the Supreme Court, not to mention the *Lis Pendens* annotated on the title of the property in the name of SBC. The person who bought our property from SBC for P120,000,000.00 is known to my nephew and us. While the buyer is drinking with my nephew and others, not knowing that one of them is my nephew, he bragged to them that he just bought the property of the Mercados in Forbes Park. **The buyer said 'I paid already the property because SBC told me that they already have the go-signal from the *ponente* to sell the property.'** Few days thereafter, all the improvements in our property were totally demolished by a construction company owned by my provincemate in Pampanga by the name of Mr. Bana, whom I personally met at the site while the demolition was being carried out.

Have you no conscience at all? Are you not bothered of the final judgment after life? Is this the legacy you want to impart to your children and all the Filipino people? What you did to my family and I is unforgivable not only to God and to humanity. You have deprived us of our precious possession without due process. This is also the abode of my wife, my children, their respective

spouses, and my 10 grandchildren, not to mention the several household members and their families.

I would like to believe that the Supreme Court is the last bulwark of true justice. **If you, the Chief Justice, himself, are the first person to make a mockery of our laws, no wonder why foreign investors do not want to invest in our country because they said, there is no justice in our courts, the Supreme Court in particular.** This is in the highest degree of injustice. You have deprived us of our basic fundamental rights in the protection of our property without due process. There is no justice in our courts, the Supreme Court in particular. Do you think I will bring my case to the Supreme Court by mere question of facts? From our petition for Annulment of Judgment filed before the Court of Appeals and now the Petition for Review on Certiorari with the Supreme Court, my wife and I as petitioners-movants have clearly invoked 'LACK OF JURISDICTION' on the part of the trial court to adjudicate respondent SBC's 'counterclaim' for the payment of the loan. As I understand, when the ground invoked as basis for Annulment of Judgment is 'LACK OF JURISDICTION', the Petition may be filed at any time before it is barred by estoppel or laches, neither of which is obtaining in our case. Even in layman's legal point of view, this Petition of ours clearly and undoubtedly raises a question of law.

Please I beg of you, have a last hard look on our Petition and the two (2) Motions for Reconsideration and **let us focus and not evade on the real issue on 'LACK OF JURISDICTION' on the part of the trial court and not concentrate on negligence of counsel and other trivial reasons, etc. Or better yet, please refrain from influencing the members of the Third Division. Let them deliberate regularly on our case or inhibit themselves on the case. Please let the Institution serve justice, and not individual pecuniary interests.** SBC's counsels are experts in fabrication of facts and in misleading the courts. I have a feeling that they might as well have led you to believe something, which is not true. **Please don't be an instrument of their wicked schemes, lest the Supreme Court itself becomes their means to perpetrate injustice.** This is the only Bank which is not interested in amicable settlement in spite of my several sincere offers of amicable settlement since the case was filed in 1995 up to 2003, and these are all in writing and duly received by SBC. Unfortunately, all my offers were rejected by them.

I wrote you this letter as a last resort because my family and I looked up at you before as the most honest and upright Chief Justice. As we would like to know if you really had intervened and put pressure, as the Ponente said to Atty. Villanueva, (my counsel) to favor SBC because if you did, then we rest our case. **Please enlighten us before we seek another forum to seek redress the injustices, sleepless nights, humiliation and embarrassment we suffered.** If we are wrong about you, and I hope we really are wrong, please accept our appeal for forgiveness and apologies. GOD is my witness, that what I have told you is the truth.

Mr. Chief Justice, the Filipino people know how religious you are. Please do what a religious man ought to do in serving justice. Please live up to our, as well as HIS expectations. (Emphasis supplied)

On November 2, 2004, Chief Justice Davide required Mercado's lawyer, Atty. Jose P. Villanueva, to comment on the letter and show cause why he should not be held in contempt of court.^[6]

On November 17, 2004, the Court's Third Division ordered Mercado to personally appear on November 22, 2004 and show cause why he should not be held in contempt of court.^[7]

On the scheduled date, Mercado, together with Atty. Pablo G. Macapagal, his new counsel, appeared before the Third Division and swore to the truth of the letter he wrote.^[8] He manifested that he only stated therein what Atty. Villanueva told him – that his petition was denied for the second time "because of the tremendous pressure from the Chief Justice." He further manifested that during the wake of Atty. Villanueva's mother, he (Atty. Villanueva) pointed to Justice Angelina Sandoval-Gutierrez, bragging that she is "a very very good, close and long time friend of his."

^[9] However, while stating this, Mercado referred to **Justice Conchita Carpio Morales as Justice Gutierrez.**^[10]

Forthwith, the Third Division issued in open court a Resolution directing Atty. Macapagal to submit a written explanation why Mercado should not be held in contempt of Court.

For his part, Atty. Villanueva submitted a comment,^[12] strongly denying Mercado's allegations in his letter. He denied having told petitioners that their petition had to be denied again "because there was a tremendous pressure from the Chief Justice in favor of Security Bank Corporation." He also stressed that there was no correlation between the ponente's trip to the United States and his trip to London. He explained that he and his family went to London to attend the graduation of his daughter, Cherriemaya Veloso Villanueva. To substantiate this, he submitted a photocopy of "London School of Economics (LSE) and Political Science Presentation Ceremonies" where the name of his daughter, Cherriemaya Veloso Villanueva, is listed as one of the successful graduates. He likewise submitted a photocopy of his passport indicating his departure for London on July 14, 2004 and his arrival in the Philippines on July 27, 2004. In addition, he said he never met anyone from respondent bank, including its lawyers, and that there is no truth to Mercado's statement regarding his nephew's alleged encounter with the new owners of the subject property.

On December 13, 2004, Mercado submitted his explanation^[13] why he should not be punished for contempt of court. He claimed that the contemptuous statements in his letter merely reiterate the tenor of Atty. Villanueva's statements. He offered an apology, explaining that he wrote the letter while he was "under the impulse of personal stress" as he was losing his residential house.

On January 26, 2005, the Third Division ordered both Mercado and Atty. Villanueva to appear on February 21, 2005 to elucidate their respective positions.