

## SECOND DIVISION

[ G.R. No. 146019, June 08, 2004 ]

**ARMANDO M. LASCANO, PETITIONER, VS. UNIVERSAL STEEL SMELTING CO., INC., REYNALDO U. LIM AND HON. REGIONAL TRIAL COURT OF QUEZON CITY, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

For review are (1) the resolution<sup>[1]</sup> dated August 7, 2000 of the Court of Appeals in CA-G.R. SP No. 59972, which dismissed petitioner's special civil action for certiorari because of late filing; and (2) the resolution<sup>[2]</sup> of November 15, 2000, denying petitioner's motion for reconsideration. In the interest of the speedy administration of justice, we shall also inquire into the merits of said special civil action.

The antecedent facts are as follows:

Sometime in 1990, petitioner Armando Lascano had a construction project at No. 18 Dalsol Street, GSIS Village, Project 8, Quezon City. This project required a number of steel bars of various grades, which petitioner ordered from private respondent Universal Steel Smelting Co., Inc. (USSCI). On August 30, 1990, the steel bars valued at P104,268 were received by petitioner's representative, Rolando Nanquil. When the amount due thereon was not paid, USSCI demanded payment. Instead of complying, petitioner denied that he ordered the steel bars from USSCI.

Upon advice of its lawyer, USSCI filed a criminal complaint for *estafa* against petitioner with the Quezon City Prosecutor's Office. The complaint was dismissed on September 5, 1991. USSCI's motion for reconsideration was denied on November 14, 1991 and its petition for review filed with the Department of Justice was also dismissed per resolution dated June 19, 1992.

In the meantime, the Manila Bulletin in its August 23, 1991 issue, published a news item entitled "School Owner in QC Sued." On August 27, 1991, another news item, "School Owner Faces Rap," was published, this time by *Tempo*. In both news items, the school owner referred to was petitioner Armando Lascano.

Hence, on August 25, 1992, petitioner filed with public respondent Regional Trial Court of Quezon City, Branch 93, a complaint for damages against private respondents USSCI and its Vice-President Reynaldo Lim, for alleged malicious prosecution and allegedly causing the publication in two (2) newspapers of general circulation, that he was being sued for *estafa*.

The case was docketed as Civil Case No. Q-92-13212 and on December 27, 1994, the trial court dismissed the complaint, thus:

WHEREFORE, premises considered, the Court hereby dismisses the complaint for failure of plaintiff to establish his causes of action by preponderant evidence.

On the counterclaim, the Court orders plaintiff to pay the defendants the following:

1. P104,268.00 with interest thereon at 14% per annum from August 30, 1990 until fully paid;
2. P100,000.00 for moral damages;
3. P50,000.00 for exemplary damages;
4. P35,000.00 as and for reasonable attorney's fees; and
5. Costs of suit.

SO ORDERED.<sup>[3]</sup>

Petitioner received said Decision on January 16, 1995. Petitioner's counsel then filed a Notice of Appeal on January 20, 1995, which was approved by the trial court in an Order dated January 25, 1995. However, the Court of Appeals dismissed the appeal in its Resolution dated August 13, 1998, in this wise:

Pursuant to Section 1 (c), Rule 50 in relation to Section 4 of Rule 41 of the 1997 Rules of Civil Procedure, as amended, the instant appeal is hereby DISMISSED for failure of the appellant to pay the docket and other lawful fees.

SO ORDERED.<sup>[4]</sup>

On September 5, 1998, said Resolution became final and executory and the Court of Appeals issued an entry of judgment thereon. Private respondents then promptly filed on January 10, 2000 a motion for execution of the December 27, 1994 judgment, which the court *a quo* granted on February 9, 2000. On March 15, 2000, petitioner filed a motion for reconsideration of the trial court's Order granting the motion for execution, but the same was denied on April 28, 2000.

Thus, on July 31, 2000, petitioner filed a special civil action for *certiorari* with the Court of Appeals. However, the Court of Appeals, in its Resolution of August 7, 2000, dismissed said petition on the ground of late filing. Petitioner then filed a motion for reconsideration, which was denied in the appellate court's Resolution dated November 15, 2000.

Hence, the instant petition ascribing to the appellate court the following errors:

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THE COURT OF APPEALS GRAVELY ERRED IN STRICTLY APPLYING THE RULES IN THE FILING OF PETITION FOR CERTIORARI CONTRARY TO THE LIBERAL CONSTRUCTION RULE AS ECHOED IN SEVERAL SUPREME

## COURT DECISIONS.

### II

THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE RULE ON INTEREST OF JUSTICE AND EQUITY IN FAVOR OF TECHNICALITY WHERE THE RTC DECISION SUBJECT OF EXECUTION WAS UNJUST AND VOID HAVING BEEN RENDERED ON PURE SPECULATION AND CONJECTURE WITHOUT CITATION OF SPECIFIC EVIDENCE.<sup>[5]</sup>

On the procedural aspect, we find merit in the petition.

In finding that the special civil action for certiorari was filed out of time, the Court of Appeals applied Supreme Court Circular No. 39-98,<sup>[6]</sup> which took effect on September 1, 1998. Said circular amended Section 4, Rule 65 of the 1997 Rules of Civil Procedure as follows:

*Sec. 4. Where and when petition to be filed.* – The petition may be filed not later than sixty (60) days from notice of the judgment, order or 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 appellate jurisdiction, or in the *Sandiganbayan* if it 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 in due time 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 to file petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.  
(Underscoring ours).

Records show that petitioner received on March 3, 2000 a copy of respondent trial court's February 9, 2000 Order granting the motion for execution of the December 27, 1994 judgment. He filed the motion for reconsideration on March 15, 2000 or twelve (12) days after notice of the assailed Order. Thus, consistent with SC Circular No. 39-98, the original 60-day period was interrupted when petitioner filed a motion for reconsideration. Since the motion was denied, petitioner had the remaining period of forty-eight (48) days within which to file the special civil action for certiorari with the Court of Appeals.

Evidence on record shows petitioner received on June 1, 2000 a copy of the trial court's April 28, 2000 Order denying his motion for reconsideration. Therefore, conformably with SC Circular No. 39-98, the filing of the special civil action for certiorari with the Court of Appeals on July 31, 2000, or on the 60th day, was twelve (12) days beyond the reglementary period.

We must point out, however, that Supreme Court Circular No. 56-2000,<sup>[7]</sup> which took effect on September 1, 2000 further amended Section 4 of Rule 65 as follows:

Sec 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. (Underscoring ours).

Under the second amendment, the 60-day period within which to file the special civil action for certiorari starts to run from receipt of notice of the denial of the motion for reconsideration. However, it bears stressing, at the time of petitioner's filing of the special civil action for certiorari with the Court of Appeals on July 31, 2000, SC Circular No. 56-2000 was not yet in effect. Therefore, the sole issue for our consideration in this case is whether or not said circular may be applied retroactively.

The present question does not pose a novel issue. In an analogous case, *San Luis v. Court of Appeals*,<sup>[8]</sup> the Court of Appeals likewise reckoned the counting of the 60-day period from petitioner's receipt of a copy of the assailed Order, considered the interruption of the running of the period by the filing of the motion for reconsideration, and held that the remaining period resumed to run on the date petitioner received the Order denying his motion for reconsideration.

In said case of *San Luis*, petitioner's special civil action for certiorari was filed with the Court of Appeals on January 7, 2000, long before SC Circular No. 56-2000 took effect. Nonetheless, we applied the circular retroactively and held that the appellate court erred in dismissing the special civil action for certiorari on the ground of late filing. We said therein:

Settled is the rule that remedial statutes or statutes relating to remedies or modes of procedure, which do not create new rights or take away vested rights but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the purview of the general rule against the retroactive operation of statutes. Procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. As a general rule, the retroactive application of procedural laws cannot be considered violative of any personal rights because no vested right may attach to nor arise therefrom.<sup>[9]</sup>

We see no reason why we should treat the instant case differently. Thus, pursuant to SC Circular No. 56-2000, petitioner's 60-day period to file the special civil action for certiorari should be counted from his receipt on June 1, 2000 of the Order of April 28, 2000, denying his motion for reconsideration. Hence, the special civil action for certiorari having been filed on July 31, 2000, or the last day before the reglementary period expired, the Court of Appeals should not have dismissed the same on the ground of late filing.

Considering the circumstances in this case, we could direct the Court of Appeals to