

THIRD DIVISION

[G.R. No. 145542, June 04, 2004]

**ELENA S. ONG, PETITIONER, VS. HON. FRANCISCO V. MAZO AS
PRESIDING JUDGE, REGIONAL TRIAL COURT, GUIUAN, EASTERN
SAMAR, BRANCH 3, ELVIRA C. LANUEVO AND CHARITO A.
TOMILLOSO, RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

Assailed in the present petition for review is the Court of Appeals August 17, 2000 Resolution dismissing the petition for certiorari of petitioner Elena S. Ong and October 10, 2000 Resolution denying her motion for reconsideration of the dismissal.

The facts originative of the petition are as follows:

Respondents Elvira C. Lanuevo (Lanuevo) and Charito A. Tomilloso (Tomilloso) filed a complaint for damages against petitioner along with Iluminado J. Caramoan (Caramoan) before the Regional Trial Court (RTC) of Guiuan, Eastern Samar,^[1] docketed as Civil Case No. 887. The complaint which was raffled to Branch 3 of the RTC, arose from a vehicular accident whereby a bus owned by petitioner and driven by Caramoan allegedly bumped a jeep owned and driven by respondent Lanuevo, with respondent Tomilloso as her passenger at the time.

After petitioner filed her Answer with Counterclaim,^[2] and later a motion to dismiss^[3] the complaint, respondents filed a motion^[4] for leave of court to file an amended complaint^[5] which was granted.^[6]

On November 14, 1996, petitioner served written interrogatories^[7] upon respondents and on November 21, 1996, she filed a "Manifestation and Omnibus Motion"^[8] seeking, among other things, an order from the trial court directing respondents to answer the interrogatories.

To the motion bearing on the written interrogatories, respondents filed their objection.^[9]

By Order of May 6, 1999,^[10] the trial court denied the motion to compel respondents to answer the interrogatories upon the ground that it constituted a "fishing expedition" which would be more properly ventilated in a pre-trial conference.

Following petitioner's receipt on May 26, 1999^[11] of said May 6, 1999 Order, she

filed on July 19, 1999^[12] a motion for reconsideration thereof where she also manifested that her original answer to the complaint would serve as her answer to the amended complaint. The motion for reconsideration was denied by Order of July 4, 2000.^[13]

After her receipt on July 18, 2000^[14] of the aforesaid July 4, 2000 Order, petitioner filed on August 4, 2000 with the Court of Appeals a petition captioned as "Petition for Certiorari" ^[15] assailing the above twin orders of the trial court as having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

By the now assailed Resolution of August 17, 2000,^[16] the appellate court dismissed petitioner's Petition for Certiorari on the ground that it was belatedly filed. Read the Resolution:

An examination of the petition for certiorari shows that the assailed order dated May 6, 1999 was **received on May 26, 1999** and that petitioner **filed a motion for reconsideration on July 10, 1999**, hence petitioner had only **15 days left from receipt of the order denying the motion for reconsideration on July 18, 2000** or until August 2, 2000 within which to file the petition. When the instant petition was filed on August 4, 2000, the same was late by two (2) days without any explanation being made by petitioner.

WHEREFORE, premises considered, the instant petition is hereby dismissed.

SO ORDERED. (Emphasis supplied)

Petitioner moved to reconsider the appellate court's dismissal of her petition, arguing that what was filed was a special civil action for certiorari under Rule 65 of the Rules of Court, not an appeal, which special civil action was timely brought within the 60-day reglementary period.^[17]

By Resolution of October 10, 2000, the appellate court denied petitioner's motion for reconsideration.^[18]

Hence, the present petition, petitioner insisting that the appellate court erred in treating her petition as an ordinary appeal to thus lead it to conclude that it was belatedly filed.^[19]

To the present petition, respondents filed their Comment,^[20] explaining that the appellate court considered petitioner's petition thereat as an appeal because it found the assailed orders of the trial court as not warranting the remedy of the special civil action of certiorari.

On the denial by the trial court of petitioner's motion to direct respondents to answer the written interrogatories, respondents justified the same, it contending that the trial court had jurisdiction to pass upon the propriety of such mode of discovery under Section 3, Rule 26 of the Rules of Court and that the remedy of certiorari is unavailing since what is traversed is an error of law or fact that is properly the subject of an appeal.

Insisting that the trial court erred in refusing to compel respondents to answer her written interrogatories, petitioner, in her Reply^[21] to respondents' Comment, invokes this Court's plenary power to resolve not only the issue of the appellate court's dismissal of her petition but also the question of whether the trial court gravely abused its discretion in disallowing the written interrogatories.

In their respective memoranda,^[22] both parties raise the issue of the propriety of availing of written interrogatories.

Meanwhile, on February 28, 2001, the trial court suspended indefinitely the proceedings in the initiatory civil case between the parties in light of petitioner's appeal before this Court.^[23]

The appeal is impressed with merit.

On August 4, 2000, when petitioner filed her petition for certiorari before the appellate court, Section 4 of Rule 65, as amended by Circular No. 39-98 read:

SEC. 4. *Where petition 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 appellate 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 such notice of denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Underscoring supplied)

Under the foregoing rule, when petitioner's counsel received on July 18, 2000 the trial court's order of July 4, 2000 denying her motion for reconsideration of the Order of May 6, 1999, she still had 15 days left of the 60-day period to file the petition for certiorari.

Section 4 of Rule 65 was subsequently further amended, however, by A.M. No. 00-2-03-SC which took effect on September 1, 2000 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