

## THIRD DIVISION

[ G.R. No. 156067, August 11, 2004 ]

**MADRIGAL TRANSPORT, INC., PETITIONER, VS. LAPANDAY HOLDINGS CORPORATION; MACONDRAY AND COMPANY, INC.; AND LUIS P. LORENZO JR., RESPONDENTS.**

### DECISION

#### **PANGANIBAN, J.:**

The special civil action for certiorari and appeal are two different remedies that are mutually exclusive; they are not alternative or successive. Where appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion. Basic is the rule that certiorari is not a substitute for the lapsed remedy of appeal.

#### The Case

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the February 28, 2002 Decision<sup>[2]</sup> and the November 5, 2002 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-GR SP No. 54861. The challenged Decision disposed as follows:

“WHEREFORE, in consideration of the foregoing premises, private respondents Lapanday and Lorenzo, Jr.’s Motion for Reconsideration dated 10 February 2000 is GRANTED. Accordingly, the Resolution dated 10 January 2000 is RECONSIDERED and SET ASIDE, thereby dismissing the Petition for Certiorari dated 10 September 1999.”<sup>[4]</sup>

The assailed Resolution denied reconsideration.

#### The Facts

The pertinent facts are undisputed. On February 9, 1998, Petitioner Madrigal Transport, Inc. (“Madrigal”) filed a Petition for Voluntary Insolvency before the Regional Trial Court (RTC) of Manila, Branch 49.<sup>[5]</sup> Subsequently, on February 21, 1998, petitioner filed a Complaint for damages against Respondents Lapanday Holdings Corporation (“Lapanday”), Macondray and Company, Inc. (“Macondray”), and Luis P. Lorenzo Jr. before the RTC of Manila, Branch 36.<sup>[6]</sup>

In the latter action, Madrigal alleged (1) that it had entered into a joint venture agreement with Lapanday for the primary purpose of operating vessels to service the shipping requirements of Del Monte Philippines, Inc.;<sup>[7]</sup> (2) that it had done so on the strength of the representations of Lorenzo, in his capacity either as chairman of the board or as president of Del Monte, Lapanday and Macondray; (3) that Macondray had thereafter been appointed -- allegedly upon the insistence of

Lapanday -- as broker, for the purpose of securing charter hire contracts from Del Monte; (4) that pursuant to the joint venture agreement, Madrigal had purchased a vessel by obtaining a P10,000,000 bank loan; and (5) that contrary to their representations and guarantees and despite demands, Lapanday and Lorenzo had allegedly been unable to deliver those Del Monte charter hire contracts.<sup>[8]</sup>

On February 23, 1998, the insolvency court (RTC Branch 49) declared petitioner insolvent.<sup>[9]</sup> On March 30, 1998 and April 6, 1998, Respondents Lapanday, Lorenzo and Macondray filed their respective Motions to Dismiss the case pending before the RTC Branch 36.<sup>[10]</sup>

On December 16, 1998, Branch 36 granted the Motion, for failure of the Complaint to state a cause of action. Applying Sections 32 and 33 of the Insolvency Law,<sup>[11]</sup> the trial court opined that upon the filing by Madrigal of a Petition for Voluntary Insolvency, the latter lost the right to institute the Complaint for Damages. The RTC ruled that the exclusive right to prosecute the actions belonged to the court-appointed assignee.<sup>[12]</sup>

On January 26, 1999, petitioner filed a Motion for Reconsideration,<sup>[13]</sup> which was later denied on July 26, 1999.<sup>[14]</sup> Subsequently, petitioner filed a Petition for Certiorari with the Court of Appeals, seeking to set aside the December 16, 1998 and the July 26, 1999 Orders of the trial court.<sup>[15]</sup> On September 29, 1999, the CA issued a Resolution requiring petitioner to explain why its Petition should not be dismissed outright, on the ground that the questioned Orders should have been elevated by ordinary appeal.<sup>[16]</sup>

On January 10, 2000, the appellate court ruled that since the main issue in the instant case was purely legal, the Petition could be treated as one for review as an exception to the general rule that certiorari was not proper when appeal was available.<sup>[17]</sup> Respondents Lapanday and Lorenzo challenged this ruling through a Motion for Reconsideration dated February 10, 2000.<sup>[18]</sup> The CA heard the Motion for Reconsideration in oral arguments on April 7, 2000.<sup>[19]</sup>

### **Ruling of the Court of Appeals**

On February 28, 2002, the appellate court issued the assailed Decision granting Respondents Lapanday and Lorenzo's Motion for Reconsideration and dismissing Madrigal's Petition for Certiorari. The CA opined that an order granting a motion to dismiss was final and thus the proper subject of an appeal, not certiorari.<sup>[20]</sup>

Furthermore, even if the Petition could be treated as an appeal, it would still have to be dismissed for lack of jurisdiction, according to the CA.<sup>[21]</sup> The appellate court held that the issues raised by petitioner involved pure questions of law that should be brought to the Supreme Court, pursuant to Section 2 of Rule 50 and Section 2(c) of Rule 41 of the Rules of Court.<sup>[22]</sup>

Hence, this Petition.<sup>[23]</sup>

### **The Issues**

In its Statement of Issues, petitioner contends:

"I

The Honorable Court of Appeals committed egregious error by ruling that the order of the lower court which granted private respondents' Motions to Dismiss are not proper subjects of a Petition for Certiorari under Rule 65.

'A. Section 5, Rule 16 does not apply in the present case since the grounds for dismissal [were] petitioner's purported lack of capacity to sue and its failure to state a cause of action against private respondents, and not any of the three (3) grounds provided under said provision, namely, *res judicata*, extinction of the claim, and Statute of Frauds.

'B. Section 1 of Rule 41, which is the applicable provision in petitioner's case, expressly proscribes the taking of an appeal from an order denying a motion for reconsideration or one which dismisses an action without prejudice, instead, the proper remedy is a special civil action under Rule 65.

'C. A petition for certiorari under Rule 65 was correctly resorted to by petitioner from the dismissal order of the lower court, which had clearly acted with grave abuse of discretion amounting to lack of jurisdiction.

"II

The Honorable Court of Appeals committed serious error in ruling that it had no jurisdiction to entertain the Petition for Certiorari filed by petitioner before it.

'A. Section 2, Rule 50 nor Section 2(c) and Section 2(c), Rule 41 find no application in the present case, since said rule contemplates of a case where an appeal is the proper remedy, and not where the appropriate remedy is a petition for certiorari where questions of facts and laws may be reviewed by the court a quo.

'B. The court a quo erroneously concluded that it has no jurisdiction over the subject matter of the petition based on the wrong premise that an appeal from the lower court's dismissal order is the proper remedy by applying Section 2, Rule 50 and Section 2(c), Rule 41 of the Rules of Court."<sup>[24]</sup>

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

The Petition is unmeritorious.

**First Issue:**

## **Remedy Against Dismissal of Complaint**

The resolution of this case hinges on the proper remedy: an appeal or a petition for certiorari. Petitioner claims that it correctly questioned the trial court's Order through its Petition for Certiorari. Respondents insist that an ordinary appeal was the proper remedy. We agree with respondents.

### **Appeal**

Under Rule 41, Rules of Court, an appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by the Rules of Court to be appealable.<sup>[25]</sup> The manner of appealing an RTC judgment or final order is also provided in Rule 41 as follows:

Section 2. *Modes of appeal.* —

(a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.* — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.<sup>[26]</sup>

An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. *Au contraire*, an interlocutory order does not dispose of the case completely, but leaves something to be done as regards the merits of the latter.<sup>[27]</sup>

### **Petition for Certiorari**

A petition for certiorari is governed by Rule 65, which reads:

Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and

justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.<sup>[28]</sup>

A writ of certiorari may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.<sup>[29]</sup>

For certiorari to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.<sup>[30]</sup>

“Without jurisdiction” means that the court acted with absolute lack of authority.<sup>[31]</sup> There is “excess of jurisdiction” when the court transcends its power or acts without any statutory authority.<sup>[32]</sup> “Grave abuse of discretion” implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.<sup>[33]</sup>

### **Appeal and Certiorari Distinguished**

Between an appeal and a petition for certiorari, there are substantial distinctions which shall be explained below.

**As to the Purpose.** Certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment.<sup>[34]</sup> In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light:

“When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of certiorari.”<sup>[35]</sup>

The supervisory jurisdiction of a court over the issuance of a writ of certiorari cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court -- on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision.<sup>[36]</sup> Even if the findings of the court are