

THIRD DIVISION

[G.R. No. 143440, February 11, 2003]

SERENA T. BACELONIA, GRACIANO BACELONIA, SR. AND GRACIANO T. BACELONIA, JR., PETITIONERS, VS. THE COURT OF APPEALS AND SPS. VICTORINO S. BOLOS, JR. AND OLIVIA P. BOLOS, RESPONDENTS.

DECISION

CORONA, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the resolution^[1] of the Court of Appeals promulgated on March 6, 2000 in CA.G.R. SP No. 57455 dismissing the petition for certiorari filed by the petitioners and its resolution^[2] promulgated on May 19, 2000 denying the motion for reconsideration.

The facts show that, on January 12, 1998, private respondents Victorino and Olivia Bolos filed a complaint^[3] for damages against herein petitioners including Simeon Roxas-Cu and Daniel Cariño before the Regional Trial Court of Quezon City which was docketed as Civil Case No. Q-98-33149. The case stemmed from a vehicular accident, involving a tamaraw-type school shuttle service vehicle and a 6 x 6 Isuzu cargo truck, that occurred along Aurora Blvd. in Quezon City on February 3, 1993 resulting in the untimely demise of private respondents' daughter, Jemelee Bolos. Jemelee was on board the school shuttle service vehicle that used to transport her from Marikina City to St. Bridget School in Quezon City.

Petitioners-spouses Graciano, Sr. and Serena Bacelonia were named defendants in the said complaint for damages as owners/operators of the school shuttle service that figured in the accident. Graciano Bacelonia, Jr. was the driver thereof. The other defendants therein, Simeon Roxas-Cu and Daniel Cariño were the owner and the driver of the cargo truck, respectively.

On February 9, 1998, the petitioners filed their answer^[4] with special and affirmative defenses and counterclaim while their co-defendants, Simeon Roxas-Cu and Daniel Cariño, filed their answer with affirmative defenses and cross-claim.

Meanwhile, it appears that, prior to the filing of the complaint for damages by the private respondents, herein petitioners filed on March 1, 1995 a complaint^[5] for damages arising from the said accident against their co-defendants with the Regional Trial Court of Quezon City which was docketed as Civil Case No. Q-95-23169. On April 27, 1995, herein petitioners and their co-defendants entered into a compromise agreement^[6] that led to the dismissal^[7] of the complaint in Civil Case No. Q-95-23169 on April 28, 1995 by the trial court.

On September 24, 1999, and upon termination of the testimony of the second witness for the complainants (herein private respondents) in Civil Case No. Q-98-33149, petitioners filed a motion^[8] to be dropped as defendants therefrom on the ground that a compromise agreement had already been entered into by the parties in Civil Case No. 95-23169. The petitioners opined in essence that their co-defendants, Simeon Roxas-Cu and Daniel Cariño, had explicitly admitted sole responsibility for the vehicular accident by entering into the compromise agreement. Thus, they (the Bacelonias) should be excluded as defendants in Civil Case No. 98-33149. However, their co-defendants, Simeon Roxas-Cu and Daniel Cariño, filed an opposition^[9] thereto substantially contending that *res-judicata* does not obtain insofar as the present case is concerned, and that, on the contrary, they never admitted any responsibility for the accident on February 3, 1993.

The trial court resolved to deny the motion of the petitioners to be dropped as defendants from Civil Case No. Q-98-33149 on January 10, 2000 for lack of merit and scheduled the reception of evidence of the defense on February 3, 2000.

On January 31, 2000, the petitioners filed a motion for reconsideration^[10] of the trial court's order denying their motion to be dropped as defendants from Civil Case No. Q-98-33149 and set the date of hearing^[11] thereof on February 15, 2000 at 8:30 o'clock in the morning. On the same day, January 31, 2000, the petitioners also filed a separate motion to cancel^[12] the hearing for the presentation of evidence for the defense earlier scheduled on February 3, 2000 so that their motion for reconsideration, scheduled for hearing on February 15, 2000, may not be rendered moot and academic. The motion to cancel hearing was itself scheduled to be heard on February 3, 2000. Private respondents opposed the twin motions of the petitioners for lack of merit and argued that the scheduled hearing on February 3, 2000 for the initial presentation of evidence of the defense may be availed of by said petitioners for oral argument in support of their motion for reconsideration.

During the scheduled hearing for the initial presentation of evidence of the defense on February 3, 2000, the trial court denied the motion for reconsideration of the petitioners for lack of merit.^[13] The petitioners elevated the matter to the Court of Appeals through a petition for certiorari^[14] maintaining that they were not accorded their right to due process when their motion for reconsideration was denied by the trial court prior to its scheduled hearing on February 15, 2000. However, the petition was dismissed by the Court of Appeals in the questioned Resolution promulgated on March 6, 2000 for being premature and for lack of merit. The appellate court explained that the questioned order of the trial court was interlocutory and could not be assailed in a petition for certiorari and that, moreover, *res judicata* did not apply insofar as the claim in Civil Case No. Q-98-33149 was concerned. The subsequent motion for reconsideration was denied by the appellate court on May 19, 2000. Hence, the instant petition^[15] raising the sole issue of whether or not the Court of Appeals exceeded its jurisdiction when it dismissed the petition in CA-G.R. SP No. 57455.

The private respondents filed their Comment^[16] on October 9, 2000 which elicited a Reply^[17] from the petitioners on May 15, 2001. Both parties filed their respective memoranda^[18] on December 18, 2001 in compliance with our resolution dated October 8, 2001 after which the case was deemed submitted for decision.

It should be noted at the outset that, while the instant petition is ostensibly denominated as a petition for review on certiorari under Rule 45 of the Revised Rules of Court seeking a review of the questioned resolutions of the Court of Appeals, the discussion therein exclusively dwells on the sole issue of whether or not the appellate court committed grave abuse of discretion, a question which may be appropriately addressed through a petition for certiorari under Rule 65. Specifically, petitioners claim that the Court of Appeals exceeded its jurisdiction when it dismissed their petition in CA G.R. S.P. No. 57455 allegedly for being premature and for lack of merit, thereby totally ignoring the basic issue on the alleged violation by the trial court of their basic right to due process. It must be emphasized that a petition for review under Rule 45 of the Revised Rules of Court is generally limited only to questions of law or errors of judgment. [19] On the other hand, the petition for certiorari under Rule 65 may be availed of to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction.[20] Consequently, the instant petition for review may be denied for being an erroneous legal recourse.

At any rate, and to finally dispose of the instant controversy, we rule that the Court of Appeals correctly dismissed the petition in CA G.R. S.P. No. 57455 for the reason that the trial court did not abuse its discretion in denying the petitioners' motion for reconsideration on February 3, 2000. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as would be equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[21]

It should be noted that the motion for reconsideration of the trial court's resolution on January 10, 2000 was filed by the petitioners on January 31, 2000. The date and time of hearing thereof was set by the petitioners on February 15, 2000 at 8:30 o'clock in the morning. In this connection, Rule 15, Section 5 of the Revised Rules of Court on motions provides:

Section 5. Notice of hearing.- The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which **must** not be later than ten (10) days after the filing of the motion.
(Emphasis ours)

It is clear then that the scheduled hearing of the said motion for reconsideration was beyond the period specified by the Revised Rules of Court which was not later than ten (10) days after the filing of the motion, or no later than February 10, 2000. Significantly, the above provision of Rule 15, Section 5 uses the mandatory term "must" in fixing the period within which the motion shall be scheduled for hearing. A motion that fails to religiously comply with the mandatory provision of Rule 15, Section 5 is *pro forma* and presents no question which merits the attention and consideration of the court.[22]

The mandatory character of Rule 15, Section 5 of the Revised Rules of Court becomes specially significant in this case, considering the claim of the private respondents that the petitioners have been engaging in dilatory tactics, an imputation not without factual basis. As borne by the records, herein petitioners and