

## THIRD DIVISION

**[ G.R. No. 121488, November 21, 1996 ]**

**ROADWAY EXPRESS, INC., DANILO C. FLAVIANO AND JESUS I. GURAY, PETITIONERS, VS. COURT OF APPEALS, HON. JUDGE, REGIONAL TRIAL COURT, KALOOKAN CITY, ET. AL., AND EDILBERTO C. PEREZ, RESPONDENTS.**

### RESOLUTION

**FRANCISCO, J.:**

This petition involves Circular 28-91.

As a result of an accident involving a freight truck registered in the name of petitioner Roadway Express and a red Lancer car owned and driven by private respondent Perez, a complaint for damaged was filed on May 7, 1993 before the Municipal Trial Court (MTC) by petitioners against private respondent. The latter filed his answer with counter claim. After trial, the MTC dismissed both the complaint for lack of cause of action and the counterclaim for being beyond its judicial amount.<sup>[1]</sup> Petitioners received a copy of the MTC decision on February 27, 1995.<sup>[2]</sup> Both parties appealed to the Regional Trial Court (RTC) which affirmed the dismissal of the complaint but "reversed" the dismissal of the counterclaim. Petitioners received a copy of the RTC decision on April 25, 1995.<sup>[3]</sup> On May 5, 1995, they filed a petition for review with the Court of Appeals (CA). This was followed on May 26, 1995 by petitioners' "ex-parte manifestation" that they have not commenced nor do they have any knowledge of any pending action involving the "same issues before the Supreme Court, the CA or any other tribunal or agency."<sup>[4]</sup> They further manifested that should they thereafter learn that a similar case was filed or is pending in said courts, they shall promptly inform the Court of such fact.<sup>[5]</sup>

On May 30, 1995, the CA summarily dismissed the petition for review because the "caption does not state the docket number in the trial court" and there was no "certification concerning forum shopping."<sup>[6]</sup> Petitioners filed a motion for reconsideration on June 6, 1995 stating the docket numbers in the lower courts (MTC and RTC) and calling the CA's attention to their earlier ex-parte manifestation. The motion for reconsideration was denied, copy of which petitioners received on August 17, 1995. Hence, this petition for certiorari filed on August 31, 1995, alleging grave abuse of discretion on the part of the CA in dismissing the petition for review and on the part of the MTC and the RTC in holding petitioners liable to private respondent.

I. First, on the alleged grave abuse of discretion by the CA.

Circular 28-91 imposes two additional requirements for petitions filed before the SC

or CA, to wit: (a) a requirement related to the caption of a petition, and (b) the certification on non-forum shopping.

On the first requirement, the said Circular provides:

"1. Caption of petition or complaint. - The caption of the petition or complaint must include the docket number of the case in the lower court or quasi-judicial agency whose order or judgment is sought to be reviewed.

x x x   x x x   x x x"

The above rule has two (2) components: "First, the docket number of the case before the lower court whose order is sought to be reviewed, should be in the petition; and second, that docket number should be in the caption of the petition."

[7] The petition for review does not state the docket numbers in the caption nor anywhere in the body of the petition. However, the decisions of both lower courts which mentioned said docket numbers were attached and made an integral part of the petition. This fact, together with petitioner's subsequent compliance by stating those numbers in their motion for reconsideration, should have been considered by the CA. As previously held by this court, if the docket numbers of the case before the lower court were not indicated in the caption but were set out in the body of the petition, there is substantial compliance with Cir. 28-91.<sup>[8]</sup> Instead of dismissing the petition, the CA could and should have merely required petitioners to strictly comply with Circular 28-91 by amending the caption.

Even assuming *arguendo* that there was no substantial compliance with Circular 28-91, the dismissal was still unwarranted considering that the petition for review before the CA was filed after said Circular was revised on April 1, 1994. The revised version deleted the requirement that the docket number of the case before the lower court whose ruling is sought to be reviewed must be set out in the caption of the petition filed with the SC or CA.<sup>[9]</sup>

With respect to the second requisite, the records show that 14 days before the CA dismissed the petition for review, an "ex-parte manifestation" containing the requirement of the certification of non-forum shopping was already filed. Thus, the CA had no basis in ruling that there was no certification, although the same was in the form of a manifestation. If subsequent compliance<sup>[10]</sup> with Circular 28-91, after a petition was dismissed for non-compliance was considered by the court as substantial compliance<sup>[11]</sup> with the said Circular, with more reason should the petition for review be allowed in this case, in view of the compliance prior to the dismissal of the petition.

II. With respect to the alleged grave abuse of discretion committed by the MTC and the RTC, the same is not meritorious. First, a petition for *certiorari* under Rule 65 can be availed only if the party was left with no "plain, speedy and adequate" remedy in the ordinary course of law.<sup>[12]</sup> The remedy of appeal was available to petitioners which they even availed of before the RTC and then to the CA. Secondly, assuming that a petition for certiorari is the proper remedy, the same should be filed within the "reasonable period" of three months as adopted by this Court.<sup>[13]</sup> The instant petition, however, was filed only on August 31, 1995, which is more than