Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

IRENE VILLAMAR-SANDOVAL, Petitioner,	**G.R. No. 200727**
	Present:
-versus-	
	CARPIO, *J.*, Chairperson,
JOSE CAILIPAN, MARIA OFELIA M. GONZALES, LAURA J. CAYABYAB, ROGELIO COSTALES, and FERNANDO V. AUSTRIA,	BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
Respondents.	Promulgated: MAR 0 1 2013

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RESOLUTION

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] is the September 30, 2011 Decision[2] and February 1, 2012 Resolution[3] of the Court of Appeals (CA) of Cagayan de Oro City in CA-G.R. SP No. 03976-MIN which set aside the October 20, 2010 and November 10, 2010 Orders of the Regional Trial Court (RTC) of Koronadal City, Branch 24 declaring respondents in default.

The Facts

Petitioner Irene Villamar-Sandoval (petitioner) instituted a complaint for damages before the RTC, claiming that she was prejudiced by the false, baseless and malicious libel case filed against her by respondent Jose

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1 *Rollo*, pp. 27-67.

2 Id. at 9-21. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Romulo V. Borja and Carmelita Salandanan-Manahan, concurring.

3 Id. at 23-25.

Cailipan (Cailipan) which was supported by affidavits executed by the other respondents herein.[4] The said libel case circled around certain declarations purportedly made by petitioner during a homeowner's association meeting about Cailipan's criminal records for murder, slight physical injuries and *estafa*. These allegations were supposedly made by petitioner in order to tarnish Cailipan's reputation and facilitate his ouster as President of the said homeowner's association.[5]

During the course of the proceedings, respondents belatedly filed their answer (albeit by one day), prompting petitioner to move to declare respondents in default. Consequently, the RTC issued an Order dated September 27, 2010 denying the said motion and admitting the answer of respondents.[6]

Subsequently, the case was set for pre-trial, during which respondents' counsel, Atty. Sardido, failed to appear as well as file a pre-trial brief despite due notice, while petitioner and her counsel appeared and made such submission. In view of these lapses, petitioner prayed that respondents be declared in default which was granted by the RTC in its October 20, 2010 Order.[7]

Aggrieved, Atty. Sardido filed an Entry of Appearance with Motion for Reconsideration on October 29, 2010, seeking the reversal of the October 20, 2010 Order. He proffered the excuse that on the day of the pre-trial conference, he had to attend an urgent hearing in Cotabato City involving an election protest but that he immediately went back to Koronadal City to attend the mediation proceeding for the main case scheduled at 2:00 in the afternoon of the same day. Petitioner opposed the motion.[8]

Ruling of the RTC

On November 10, 2010, the RTC issued an Order denying respondents' motion for reconsideration, sustaining the declaration of default due to their counsel's failure to: (1) attend the scheduled pre-trial conference on October 20, 2010 and; (2) file a pre-trial brief despite due notice.[9] Notably, it observed that respondents were already accorded consideration when their answer was admitted despite its belated filing. It also found that "[their] newly retained counsel miserably failed to attach a [pre-trial brief or] submit/attach an [affidavit of merit]" in the said motion for

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4 Id. at 10. Docketed as Civil Case No. 1936-24 (main case).
5 Id. at 88-90
6 Id. at 10-11.
7 Id. at 11.
8 Id. at 11-12.
9 Id. at 12.

reconsideration. [10] Pursuant thereto, petitioner proceeded with the presentation of her evidence *ex parte*. Upon submission of her formal offer of evidence, the case was submitted for resolution.[11]

On January 11, 2011, respondents filed before the CA a petition for *certiorari* under Rule 65 of the Rules of Court, asserting that the RTC gravely abused its discretion in issuing the October 20, 2010 and November 10, 2010 Orders and in not dismissing the case for improper venue.[12]

On even date, the RTC rendered a Decision in favor of petitioner, a copy of which was received by respondents on January 24, 2011.[13]

On January 22, 2011, respondents filed a Notice of Appeal with the CA, while its initially filed *certiorari* petition was still pending resolution before the same appellate court.[14] In this relation, they subsequently filed on February 2, 2011 an Amended Notice of Appeal *Ad Cautelam* and a Joint Notice of Appeal *Ad Cautelam* (Amended Notices of Appeal), clarifying therein that they were not abandoning their petition for *certiorari*.[15]

Ruling of the CA

In its Decision dated September 30, 2011, [16] the CA, through its Twenty-First Division, denied respondents' contention that the venue was improperly laid[17] but nevertheless, granted their petition grounded on the impropriety of the order of default. It applied the principle of substantial justice and deemed that "it would be most unfair" to declare respondents in default for their lawyer's failure to attend the pre-trial conference.[18] With respect to the failure of respondents' counsel to file a pre-trial brief on time, the CA held that the RTC's Order "barring [respondents] from presenting evidence had been too precipitate and was not commensurate with the level of non-compliance by [respondents'] counsel with the [said order]."[19] Thus, for these reasons, the CA set aside the RTC's October 20, 2010 and November 10, 2010 Orders and directed the remand of the case to the RTC to allow the respondents to present their evidence.[20]

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10 Id.
11 Id. at 13.
12 Id. at101-123.
13 Id. at 87-100. Penned by Judge Oscar E. Dinopol.
14 Id. at 32.
15 Id. at 32-33.
16 Id. at 9-21.
17 Id. at 13-15.
18 Id. at 18.
19 Id.
20 Id. at 21.

Dissatisfied, petitioner filed a Partial Motion for Reconsideration,[21] arguing that: (1) since the main case had already been decided by the RTC through its January 11, 2011 Decision and respondents have availed of the remedy of appeal, the latter's petition for *certiorari* filed with the CA on January 11, 2011 was already moot and academic; and (2) the RTC did not commit grave abuse of discretion when it declared respondents in default.

The foregoing motion was denied by the CA in its February 1, 2012 Resolution, holding that petitioner "failed to raise substantial issues that would warrant reconsideration."[22] In sustaining the invalidity of the RTC's October 20, 2010 and November 10, 2010 Orders, it ratiocinated that "[i]t is a far better and more prudent cause of action for the court to excuse a technical lapse" and afford the respondents the right to be heard.[23]

Separately, the CA noted that, per the January 27, 2012 Verification issued by its Judicial Records Division, the case records have yet to be forwarded to it, despite petitioner's allegations that the RTC had already promulgated a decision and that the respondents filed a Notice of Appeal.[24] In this regard, it modified its initial September 30, 2011 Decision and thus deleted the portion which directed that the records of the case be remanded to the court *a quo*.[25]

Issues Before The Court

Essentially, the following issues are presented for the Court's resolution: (1) whether respondents' petition for *certiorari* was an improper remedy and/or had been rendered moot and academic by virtue of the RTC's January 11, 2011 Decision; and (2) whether the CA erred in setting aside the October 20, 2010 and November 10, 2010 RTC Orders.

The Court's Ruling

The petition is meritorious

It is well-settled that the remedies of appeal and *certiorari* are mutually exclusive and **not alternative or successive**.[26] The simultaneous filing of a petition for *certiorari* under Rule 65 and an ordinary appeal under

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21 Id. at 434-463.
22 Id. at 23-25.
23 Id. at 24.
24 Id.
25 Id.
26 *Magestrado v. People*, G.R. No. 148072, July 10, 2007, 527 SCRA 125, 136, citing *Fajardo v. Bautista*, G.R. Nos. 102193-97, May 10, 1994, 232 SCRA 291, 298; emphasis and underscoring supplied.

Rule 41 of the Revised Rules of Civil Procedure cannot be allowed **since one remedy would necessarily cancel out the other**. The existence and availability of the right of appeal proscribes resort to *certiorari* because one of the requirements for availment of the latter is precisely that there should be no appeal.[27]

Corollary thereto, an appeal renders a pending petition for *certiorari* superfluous and mandates its dismissal. As held in *Enriquez v. Rivera:*[28]

> The general rule is that certiorari will not lie as a substitute for an appeal, for relief through a special action like *certiorari* may only be established when no remedy by appeal lies. The exception to this rule is conceded only "where public welfare and the advancement of public policy so dictate, and the broader interests of justice so require, or where the orders complained of were found to be completely null and void, or that appeal was not considered the appropriate remedy, such as in appeals from orders of preliminary attachment or appointments of receiver." (Fernando v. Vasquez, L- 26417, 30 January 1970; 31 SCRA 288). For example, *certiorari* maybe available where appeal is inadequate and ineffectual (Romero Sr. v. Court of Appeals, L-29659, 30 July 1971; 40 SCRA 172).
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> None of the exceptional circumstances have been shown to be present in this case; hence the general rule applies in its entirety. **Appeal renders superfluous a pending petition for *certiorari*, and mandates its dismissal. In the light of the clear language of Rule 65 (1), this is the only reasonable reconciliation that can be effected between the two concurrent actions: the appeal has to be prosecuted, but at the cost of the petition for *certiorari*, for the petition has lost its *raison d'etre*. To persevere in the pursuit of the writ would be to engage in an enterprise which is unnecessary, tautological and frowned upon by the law**. (Emphasis and underscoring supplied.)

Applying the foregoing principles to the case at bar, it is clear that respondents' January 11, 2011 petition for *certiorari* was rendered superfluous by their January 22, 2011 appeal.

Although respondents did not err in filing the *certiorari* petition with the CA on January 11, 2011 – as they only received the RTC's Decision three days after the said date and therefore could not have availed of the remedy of an appeal at that time[29] – the Court observes that respondents

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[27] *Balindong v. Dacalos*, G.R. No. 158874, November 10, 2004, 441 SCRA 607, 612, citing *Metropolitan Manila Development Authority v. JANCOM Environmental Corp.*, G.R. No. 147465, January 30, 2002, 375 SCRA 320; emphasis and underscoring supplied.

[28] 179 Phil. 482, 486-487 (1979).

[29] To be clear, respondents filed their petition for *certiorari* with the CA on January 11, 2011. Only three (3) days after, or on January 14, 2011, did they receive the RTC's January 11, 2011 Decision. Therefore, prior to the receipt of the said RTC decision, they could not have availed of the remedy of an appeal under Rule 41 of the Rules of Court and as such, they filed a petition for *certiorari*.

should have (*a*) withdrawn their *certiorari* petition and instead raised the jurisdictional errors stated therein in their appeal[30] or (*b*) at the very least, informed the CA's Twenty-First Division[31] of the Decision rendered on the main case and the filing of their Notice of Appeal on January 22, 2011. Prudence should have guided them to pursue either course of action considering the well-entrenched conflict between the remedies of an appeal and a petition for *certiorari*, of which they should have been well aware of. Unfortunately, their omission resulted in the CA's issuance of the September 30, 2011 Decision and February 1, 2012 Resolution in the *certiorari* case which set aside the assailed interlocutory orders, notwithstanding the supervening rendition of a decision on the main case, thus creating an evident procedural impasse.

It should be noted that respondents' petition for *certiorari* had long become moot by the RTC's January 11, 2011 Decision. In particular, the grant of the petition for *certiorari* on mere incidental matters of the proceedings would not accord any practical relief to respondents because a decision had already been rendered on the main case and therefore, may be elevated on appeal. Lest it be misunderstood, a case becomes moot when no useful purpose can be served in passing upon its merits. As a rule, courts will not determine a moot question in a case in which no practical relief can be granted.[32]

In view of the above-discussed considerations and considering the fact that respondents' petition for *certiorari* cannot anymore be dismissed, the Court is constrained to set aside the September 30, 2011 Decision and February 1, 2012 Resolution of the CA. Consequently, this course of action will allow the CA Division where the appeal of the main case is pending to appropriately pass upon the merits of the RTC's January 11, 2011 Decision including all assailed irregularities in the proceedings such as the validity of the default orders. To rule otherwise would only serve to perpetuate the procedural errors already committed in this case.

Given the foregoing pronouncement, there exists no cogent reason to further dwell on the issue regarding the RTC's grave abuse of discretion in issuing the October 20, 2010 and November 10, 2010 default orders. As earlier mentioned, that matter may be properly ventilated on appeal.

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30 As held in *Silverio v. CA*, G.R. No. 178933, September 16, 2009, 600 SCRA 1, 14, after a judgment has been rendered in the case, the ground for the appeal of the interlocutory order may be included in the appeal of the judgment itself

31 The CA division in which respondents' *certiorari* petition was pending.

32 *Baldo, Jr. v. Commission on Elections*, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 310-311, citing *Villarico v. CA*, 424 Phil. 26, 33-34 (2002).

WHEREFORE, the petition is **GRANTED**. The September 30, 2011 Decision and February 1, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 03976-MIN are hereby **SET ASIDE**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice