



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 11, 2020** which reads as follows:*

“G.R. No. 250882 (Maricel C. Francisco v. The City Government of Dipolog and the Hon. Court of Appeals)

At the outset, the petition must be dismissed for non-compliance with the requirement of filing a motion of reconsideration prior to a petition for certiorari under Rule 65 of the Rules of Court.

As a general rule, a motion for reconsideration is a prerequisite for the availment of a petition for certiorari under Rule 65. The filing of a motion for reconsideration before resort to certiorari is intended to afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case.¹

While there are well recognized exceptions to this rule,² this petition is not covered by any of those exceptions. Here, petitioner

- over – four (4) pages ...

14

¹ *Malayang Manggagawa ng Stayfast Phils. Inc. v. National Labor Relations Commission*, 716 Phil. 500, 513-514 (2013).

² Exceptions to the rule that a Motion for Reconsideration is a condition *sine qua non* for the filing of a petition for certiorari:

- (a) where the order is a patent nullity, as where the court a quo has no jurisdiction;
- (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court improbable;
- (g) where the proceedings in the lower court are a nullity for lack of due process;
- (h) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and
- (i) where the issue raised is one purely of law or public interest is involved.

failed to substantiate her allegation that the Court Appeals' decision was a patent nullity. The Court of Appeals was not given any opportunity either to rectify the alleged errors it may have made or to address the ascription of grave abuse of discretion thrown at it by petitioner. The instant petition for certiorari is therefore fatally defective.

To emphasize, a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, one who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. Petitioner may not arrogate upon himself or herself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner here failed to do.³

As for petitioner's alleged exemption from payment of legal fees, it is undisputed that the trial court did not declare Cecilia a pauper litigant. In fact, in its Resolutions dated April 18, 2018 and April 4, 2018, the trial court explicitly denied Cecilia's motion to litigate as pauper. It ruled that Cecilia herself filed the petition asserting her right as one of the heirs of the property's registered owner Victorio Cuenca, and that by his death, Cecilia, together with the other heirs became the owner of the property. By Cecilia's own claim, therefore, she is an "owner" of a prime city lot with a market value of ₱68,755,533.00. Evidently, she could not be considered as an indigent litigant. Too, hiring a private lawyer of high caliber speaks volumes of her financial status and capacity to pay. Neither was there any showing that her counsel's services were rendered *pro bono*.

Further, while it is true that the trial court previously gave due course to Cecilia's Notice of Appeal, it has, under its residual jurisdiction,⁴ the discretion to reverse itself. The trial court is not precluded from going over the records again to ensure that all requirements for the perfection of the appeal had been complied with.

- over -

14 /

³ *Nuque v. Aquino*, 763 Phil. 362, 370 (2015).

⁴ Section 9, Rule 41 of the Rules of Court

x x x x x x x x x

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.

Sections 4 and 13, Rule 41 of the Rules of Court decree:

Section 4. *Appellate court docket and other lawful fees.* — Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal. (n)

Section 13. *Dismissal of appeal.* — Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may *motu proprio* or on motion dismiss the appeal for having been taken out of time or non-payment of the docket and other lawful fees within the reglementary period.⁵

The provisions are clear. Payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the case.⁶

The right to appeal is not a natural right or a part of due process but a mere statutory privilege. Thus, the perfection of an appeal **in the manner and within the period prescribed** is not only mandatory but also jurisdictional. The failure of the appellant to conform with the rules on appeal renders the judgment final and executory.⁷

In *Hodges v. Court of Appeals*,⁸ for the respondents' lawyers' deliberate non-payment of prescribed docket fees, the Court rendered the entire proceedings undertaken by the trial court as well as the Court of Appeals in the assailed cases void for lack of jurisdiction over the subject matter of the cases.

Here, even after the trial court denied her motion for exemption from legal fees and categorically stated that Cecilia was not a pauper litigant, and consequently specifically ordered her to pay the appropriate docket and appeal fees, Cecilia still failed to pay said prescribed docket fees. Such defiance rendered her appeal nothing more than a mere scrap of paper. Accordingly, the trial court's Resolution dated April 18, 2018 dismissing her petition became final and executory.

- over -

14

⁵ As amended by A.M. No. 00-2-10-SC which took effect on May 1, 2000.

⁶ *Gipa, et al. v. Southern Luzon Institute*, 736 Phil. 515, 527 (2014)

⁷ See *Petalver v. People*, G.R. No. 242107, January 16, 2019.

⁸ G.R. No. 87617, April 6, 1990, 184 SCRA 281, 286.

While late payment of docket fees may be allowed in the interest of substantial justice and equity, the same only applies in cases where the appellant shows willingness to pay the prescribed docket fees.⁹ Here, even after Cecilia was ordered by the trial court to pay the docket fees, she intentionally defied such order and insisted that she is exempt from paying legal fees.

All told, the Court of Appeals did not gravely abuse its discretion in rendering its Decision dated September 20, 2019 which affirmed the trial court's Resolution dated April 4, 2018 and Order dated June 1, 2018.

WHEREFORE, the petition is **DISMISSED**. The Decision dated September 20, 2019 of the Court of Appeals is **AFFIRMED**.

The Cash Collection and Disbursement Division is directed to **RETURN** to petitioner the excess payment for the legal fees in the amount of ₱170.00 under O.R. No. 0272357-SC-EP dated January 14, 2020.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

14

Atty. Cres N. Palpagan, Jr.
Counsel for Petitioner
Herrera Street Ext., Miputak, Dipolog City
7100 Zamboanga del Norte

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Cash Collection and Disbursement Division (x)
Supreme Court

Judgment Division (x)
Supreme Court

UR

Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. SP No. 08831-MIN)

CITY LEGAL OFFICE
Counsel for Respondent
City Hall, Dipolog City
7100 Zamboanga del Norte

City Government of Dipolog
Respondent
City Hall Building, Dipolog City
7100 Zamboanga del Norte

The Hon. Presiding Judge
Regional Trial Court, Branch 8
Dipolog City, 7100 Zamboanga del Norte
(Sp. Proc. No. R-4931)

⁹ See *MCIAA v. Mangubat*, 371 Phil. 393, 398-399 (1999).

