



Republic of the Philippines
 Supreme Court
 Manila

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Welfredo V. Lapid
 WELFREDO V. LAPID
 Division Clerk of Court
 Third Division

FEB 17 2016

THIRD DIVISION

LUCITA TIOROSIO-ESPINOSA,
 Petitioner,

G.R. No. 185746

-versus-

**HONORABLE PRESIDING
 JUDGE VIRGINIA HOFILEÑA-
 EUROPA, in her capacity as
 Presiding Judge of the Regional
 Trial Court of Davao City, Branch
 11, 11th Judicial Region, Davao
 City, NICOLAS L. SUMAPIG, in
 his capacity as Sheriff IV of the
 Office of the Provincial Sheriff,
 Office of the Clerk of Court, 11th
 Judicial Region, Davao City and
 NECEFERO JOVERO,**

Respondents.

Present:

VELASCO, JR., *J.*, *Chairperson*
 PERALTA,
 PEREZ,*
 REYES, and
 JARDELEZA, *JJ.*

Promulgated:

January 20, 2016

Welfredo V. Lapid

x ----- x

DECISION

JARDELEZA, J.:

We consider the propriety of the Court of Appeals' outright dismissal of a petition for *certiorari* on procedural grounds and whether the awards of moral damages, exemplary damages, and attorney's fees may be included in an execution pending appeal.

Private respondent Necedero Jovero (Jovero) filed an action for damages against spouses Pompiniiano Espinosa¹ and petitioner Lucita

* Designated as Regular Member of the Third Division per Special Order No. 2311 dated January 14, 2016.

¹ Pompiniiano Espinosa, also referred to as Pompeniano Espinosa in his Death Certificate, was the husband of the petitioner. He died while the case was pending in the Court of Appeals, *rollo*, p. 71.

J

Tiorosio-Espinosa² (Spouses Espinosa) before the Regional Trial Court of Davao City (RTC). In the complaint, Jovero alleged that Spouses Espinosa maliciously filed several cases for theft, *estafa* and perjury against him for the sole purpose of vexing, harassing, and humiliating him. Accordingly, Jovero prayed that Spouses Espinosa be ordered to pay compensatory damages, moral damages, exemplary damages, attorney's fees, and costs of suit.³

After trial, the RTC rendered a decision⁴ dated November 21, 2005 in favor of Jovero. The dispositive portion reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiff Necefero Jovero, ordering defendants to pay Jovero:

1. The sum of One Hundred Thousand Pesos (P100,000.00) as compensatory damages;
2. The sum of Five Hundred Thousand Pesos (P500,000.00) as moral damages;
3. The sum of One Hundred Thousand Pesos (P100,000.00) as exemplary damages;
4. The sum of One Hundred Thousand Pesos (P100,000.00) for and as attorney's fees; and
5. The costs of suit.

SO ORDERED.⁵

Consequently, Jovero moved for execution pending appeal, citing his advanced age and failing health.⁶ Meanwhile, Spouses Espinosa moved for reconsideration of the RTC decision.⁷ On April 12, 2007, the RTC granted Jovero's motion for execution pending appeal and denied Spouses Espinosa's motion for reconsideration.⁸ The RTC subsequently issued a writ of execution pending appeal on April 19, 2007 which covered the entire amount stated in the decision.⁹

Aggrieved by the denial of their motion for reconsideration, Spouses Espinosa filed their notice of appeal of the main RTC decision.¹⁰

They also filed a separate motion to stay execution pending appeal and to approve/fix the *supersedeas* bond. They contended that execution

² Petitioner Lucita Tiorosio-Espinosa died during the pendency of the case before this Court and was substituted by her children, namely: Pompeniano Tiorosio Espinosa, Jr., Erlinda Tiorosio Espinosa, Elsa Tiorosio Espinosa, Elbert Toralba Espinosa, Edwin Tiorosio Espinosa, and Elizabeth Tiorosio Espinosa, *id.* at 408.

³ *Id.* at 146-157.

⁴ *Id.* at 103-107.

⁵ *Id.* at 106-107.

⁶ *Id.* at 124-128.

⁷ *Id.* at 108-117.

⁸ *Id.* at 97-99.

⁹ *Id.* at 225.

¹⁰ *Id.* at 139.

pending appeal involving awards of moral and exemplary damages is improper because it is contrary to the decisions of the Supreme Court.¹¹ The RTC denied the motion to stay execution pending appeal in an order dated September 14, 2007.¹²

On November 19, 2007,¹³ Spouses Espinosa filed a petition for *certiorari* with the Court of Appeals (CA) assailing the September 14, 2007 order.¹⁴ In a resolution dated December 14, 2007, the CA dismissed outright the petition for *certiorari* for failure to state the date when the assailed order was received.¹⁵ Spouses Espinosa filed their motion for reconsideration alleging that their previous counsel received the assailed order on October 4, 2007, attaching as proof a certified photocopy of postal registry return card.¹⁶ Thus, they filed the petition for *certiorari* on time. They explained that the return card was not yet available with the RTC at the time they filed the petition for *certiorari*, and that they disclosed this fact to the CA in the petition with an undertaking to submit it as soon as it was available. On November 18, 2008, however, the CA denied the motion for reconsideration. This time, it cited Spouses Espinosa's failure to file a motion for reconsideration of the RTC's September 14, 2007 order to sustain its earlier dismissal of the petition for *certiorari*.¹⁷

Lucita Tiorosio-Espinosa (Lucita) filed this petition for review on *certiorari* under Rule 45 to appeal the CA's dismissal of the case.¹⁸ She argues that the motion to stay execution was in fact a motion for reconsideration of the RTC's grant of Jovero's motion for execution pending appeal. She also reiterates that the petition for *certiorari* with the CA was timely filed, and that the reason for the omission of the date of receipt of the assailed RTC order in the petition was the unavailability of the registry return card at that time. On the substantive aspect, Lucita asserts that the RTC acted with grave abuse of discretion when it ordered the execution pending appeal of the awards of moral and exemplary damages. Lucita also questions the sheriff's issuance of the notice of public sale because the properties to be levied were excessive, and were part of the pool of properties that included their family home.¹⁹ She likewise prayed for the issuance of a temporary restraining order, which we granted on February 9, 2009.²⁰ At the time she posted the surety bond, Lucita concurrently filed an amended petition²¹ for the purpose of converting the petition for review to a petition for *certiorari* and impleading thereto as public respondents the

¹¹ *Id.* at 140-142.

¹² *Id.* at 100-101.

¹³ *Id.* at 25.

¹⁴ *Id.* at 74-96.

¹⁵ *Id.* at 63A-63B.

¹⁶ *Id.* at 267-268, 274.

¹⁷ *Id.* at 66-69.

¹⁸ See footnote 1; *rollo*, pp. 20-45.

¹⁹ *Rollo*, pp. 31-42.

²⁰ *Id.* at 276-277.

²¹ *Id.* at 297-324.

presiding RTC judge and sheriff.²² We admitted the amended petition on April 20, 2009.²³

In his comment, Jovero claims that the issues raised by Lucita are not germane to the CA resolutions subject of the present petition. He posits that the issues being raised in the petition for review properly pertain to the alleged errors of the RTC, not the CA. In any case, Jovero maintains that the RTC correctly granted the motion for execution pending appeal because of his advanced age and frail health.²⁴

II

The CA erred in dismissing outright the petition for *certiorari* on tenuous procedural grounds.

A

Under Section 3 of Rule 46²⁵ of the Rules of Court, the CA has the prerogative to dismiss the case outright for failure to comply with the formal requirements of an action filed under Rule 65. The formal requirements include, among others, a statement by the petitioner indicating the material dates when the order or resolution subject of the petition was received. The

²² *Id.* at 289-291.

²³ *Id.* at 326-327.

²⁴ *Id.* at 379-394.

²⁵ Rule 46, Section 3. *Contents and filing of petition; effect of non-compliance with requirements.* — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply any of the requirements shall be sufficient ground for the dismissal of the petition.

CA identified Spouses Espinosa's failure to comply with this requirement as the primary ground for dismissing the petition outright.

An examination of the petition for *certiorari* filed with the CA shows that the CA is technically correct with respect to its finding that Spouses Espinosa failed to indicate the exact date of receipt of the assailed RTC order. However, the CA should have considered Spouses Espinosa's explanation regarding this omission, which was apparent on the face of the petition. In paragraph 8(g), Spouses Espinosa stated:

On 18 September 2007, the Regional Trial Court, Branch 11, Davao City, has released for mailing to petitioners' former counsel, Atty. Eufracio Dayaday, the Order dated 14 September 2007, denying their "Motion To Stay Execution Pending Appeal and to Approve/Fix Supersedeas Bond"... The records surrendered by Atty. Eufracio Dayaday to petitioners after he withdrew his appearance as counsel for the latter does not bear the Order dated 14 September 2007. Upon verification made by petitioners, the records of the said case with the Regional Trial Court, Branch 11, Davao City, do not have the Postal Registry Return Card for the mailing of the Order dated 14 September 2007. Nevertheless, petitioners herein undertake to submit a certified photocopy of the postal registry return card, as soon as the same be made available in the records of the case.²⁶

Spouses Espinosa likewise executed a "Joint-Affidavit of Material Dates,"²⁷ which was attached to the petition for *certiorari* filed with the CA, attesting to the fact that the September 14, 2007 order was not among the documents turned over to them by their former counsel, and that the registry return card had not been returned to the RTC.²⁸

It is therefore apparent that Spouses Espinosa attempted to comply with the material date requirement. Unfortunately, they themselves could not ascertain when the subject order was received by their former counsel and thereby make an accurate statement as to such fact. Moreover, the best evidence to prove receipt of the RTC order, *i.e.*, the registry return card, was not yet available when they elevated the case to the CA. But, as a sign of good faith, Spouses Espinosa undertook to submit the return card as soon as it was available—which they subsequently did on January 30, 2008.²⁹ Given the foregoing circumstances, it may be deduced that the basic reason why no precise date of receipt was given by Spouses Espinosa is because they did not want to misrepresent the date in their petition. In fine, we find Spouses Espinosa's failure to indicate the date of receipt excusable; the CA's outright dismissal of their petition is not commensurate with the degree of their non-

²⁶ *Rollo*, p. 78.

²⁷ *Id.* at 144-145.

²⁸ *Id.* at 144.

²⁹ *Id.* at 302; see footnote 16.

compliance with the prescribed procedure. In any case, the return card showed that the order was received on October 4, 2007, which means that when Spouses Espinosa filed the petition for *certiorari* on November 19, 2007, they did so well within the sixty (60) day reglementary period.

Although it is true that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice, this is not an inflexible tenet. After all, rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application especially on technical matters, which tends to frustrate rather than promote substantial justice, must be avoided.³⁰

B

In denying Spouses Espinosa's motion for reconsideration of the dismissal of their petition for *certiorari*, the CA held that their failure to first file a motion for reconsideration of the RTC order, which denied their motion to stay execution, was fatal to their petition. While the CA's legal proposition is correct, the rule was misapplied in the present case.

A petition for *certiorari* before a higher court will generally not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. This is because a motion for reconsideration is the plain, speedy, and adequate remedy in the ordinary course of law alluded to in Section 1, Rule 65 of the 1997 Rules of Civil Procedure.³¹ A motion for reconsideration is required in order to grant the lower court an opportunity to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.³² Contrary to the CA's findings, however, Spouses Espinosa already complied with this requirement. Their motion to stay execution is, in fact, a motion for reconsideration of the RTC order dated April 12, 2007 which granted Jovero's motion for execution pending appeal.

Although not captioned as a "motion for reconsideration," Spouses Espinosa's motion to stay execution directly challenged the RTC's order of execution pending appeal insofar as it allowed the inclusion of the awards for moral and exemplary damages.³³ Thus, when the RTC denied Spouses Espinosa's motion to stay execution on September 14, 2007, it was already the second time the trial court had passed upon the issue of execution pending appeal. Both the April 12, 2007 and September 14, 2007 orders dealt with the same issue, *i.e.*, the propriety of execution pending appeal. In the first instance, the RTC allowed the execution pending appeal; in the

³⁰ *Samala v. Court of Appeals*, G.R. No. 128628, August 23, 2001, 363 SCRA 535, 541.

³¹ *Madarang v. Morales*, G.R. No. 199283, June 9, 2014, 725 SCRA 480, 495-496.

³² *Id.* at 496.

³³ *Rollo*, p. 141.

latter, it denied Spouses Espinosa's motion to stay execution and, thus, sustained its earlier ruling. On both occasions, the parties had been accorded ample opportunity to squarely argue their positions and the RTC more than enough opportunity to study the matter and to deliberate upon the issues raised by the parties. Under these circumstances, the filing of a motion for reconsideration of the order denying the stay of execution pending appeal by Spouses Espinosa could not be considered a plain and adequate remedy but a mere superfluity.³⁴

III

Having disposed of the procedural issues, we now proceed to the main substantive issue of whether the awards of moral and exemplary damages, as well as attorney's fees, may be the subject of execution pending appeal.³⁵

The resolution of this issue is straightforward. Jurisprudence is replete with pronouncements that execution pending appeal of awards of moral and exemplary damages, and attorney's fees is not allowed. In *Radio Communications of the Philippines, Inc. (RCPI) v. Lantin*,³⁶ we explained why these cannot be the subject of execution pending appeal:

...The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. **Unlike actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of the assignments of errors on appeal.** It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced.³⁷ (Emphasis supplied.)

³⁴ See *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.*, G.R. No. 177121, March 16, 2009, 581 SCRA 553, 561.

³⁵ RULES OF COURT, Rule 39, Sec. 2(a). *Execution of a judgment or final order pending appeal.*— On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

³⁶ G.R. Nos. L-59311 & L-59320, January 31, 1985, 134 SCRA 395.

³⁷ *Id.* at 400-401.

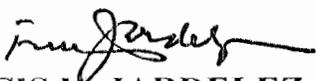
In *Engineering Construction Inc. v. National Power Corporation*,³⁸ we expanded the *RCPI* doctrine to likewise exclude consequential damages and attorney's fees from execution pending appeal.³⁹ The doctrine has since been reiterated in *Heirs of Santiago C. Divinagracia v. Ruiz*,⁴⁰ *International School, Inc. (Manila) v. Court of Appeals*,⁴¹ *Echauz v. Court of Appeals*,⁴² and *Valencia v. Court of Appeals*.⁴³ Clearly, the RTC committed legal error when it ordered the premature execution of the awards of moral damages, exemplary damages, and attorney's fees. Nonetheless, we recognize that the RTC had the power to order the execution pending appeal of actual or compensatory damages in accordance with the cited authorities.

IV

The rest of petitioner's arguments are devoted to assailing the sheriff's levy of her properties. However, a petition for *certiorari* is not the proper remedy to question the sheriff's actions. The special civil action of *certiorari* is directed only against a tribunal, board or officer exercising judicial or quasi-judicial functions.⁴⁴ It is not available as a remedy for the correction of acts performed by a sheriff during the execution process, which acts are neither judicial nor quasi-judicial but are purely ministerial functions.⁴⁵ The more appropriate remedy would have been a petition for prohibition filed under Section 2 of Rule 65. Moreover, the matters being raised by the petitioner are factual in nature and, hence, not proper for this Court to resolve at the first instance.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The resolutions dated December 14, 2007 and November 18, 2008 of the Court of Appeals in CA-G.R. SP No. 02061-MIN are **SET ASIDE**. The orders dated April 12, 2007 and September 14, 2007 of the Regional Trial Court, Branch 11, Davao City are **MODIFIED** to exclude moral damages, exemplary damages, and attorney's fees in the execution pending appeal. The temporary restraining order issued on February 9, 2009 is **LIFTED**.

SO ORDERED.


FRANCIS H. JARDELEZA
Associate Justice

³⁸ G.R. Nos. L-34589 & L-34656, June 29, 1988, 163 SCRA 9.

³⁹ *Id.* at 15-17.

⁴⁰ G.R. No. 172508, January 12, 2011, 639 SCRA 361.

⁴¹ G.R. No. 131109, June 29, 1999, 309 SCRA 474.

⁴² G.R. No. 79516, July 18, 1991, 199 SCRA 381.

⁴³ G.R. No. 89431, April 25, 1990, 184 SCRA 561.

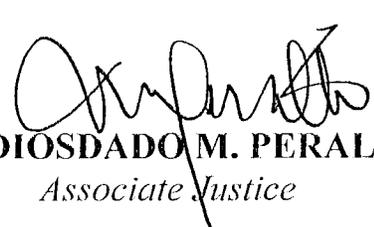
⁴⁴ RULES OF COURT, Rule 65, Sec. 1.

⁴⁵ *PAMANA, Inc. v. Court of Appeals*, G.R. No. 133033, June 15, 2005, 460 SCRA 133, 141.

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



BIENVENIDO L. REYES
Associate Justice

ATTESTATION

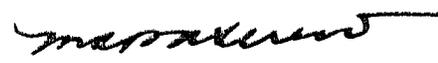
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



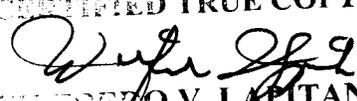
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision 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

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

FEB 17 2016