Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

KENNETH C. DUREMDES,
Petitioner,

G.R. No. 234491

- *versus* -

CAROLINE G. JORILLA, RODOLFO C. DE LEON, MANOLITO SIOSON,[*] ELMER B. GASANG, MICHAEL DE CASTRO, GENNETE E. RIVERA, SYLVIA ORBASE, IRENE MAGSOMBOL, NENITA R. DOMAGUING, and CHERILYN PALMA,
Respondents.

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
REYES, A., JR.,
HERNANDO,
INTING, and
DELOS SANTOS, *JJ.*

Promulgated:
26 FEB 2020

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D E C I S I O N

INTING, *J.*:

This is a Petition for Review on *Certiorari* (With Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction)[1] under Rule 45 of the Rules of Court of the Resolutions dated July 25, 2017[2] and September 26, 2017[3] of the Court of Appeals (CA) in CA-G.R. SP No. 151644. The CA dismissed the Petition for *Certiorari* filed by Kenneth Duremdes (petitioner) and affirmed the Decision[4] dated

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[*] Sionson in some parts of the *rollo*.

[1] *Rollo*, pp. 26-57.

[2] *Id.* at 98-100; penned by Associate Justice Fernanda Lampas-Peralta with Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan, concurring.

[3] *Id.* at 15-16.

[4] *Id.* at 232-239; penned by Judge Bernelito R. Fernandez.

July 21, 2016 of Branch 97, Regional Trial Court (RTC), Quezon City that denied petitioner's Petition for Relief from Judgment due to lack of merit.

Antecedents

On August 27, 2009, respondents Caroline G. Jorilla, Rodolfo C. De Leon, Manolito Sioson, Elmer B. Gasang, Michael De Castro, Gennete E. Rivera, Sylvia Orbase, Irene Magsombol, Nenita R. Domaguing, and Cherilyn Palma (collectively, respondents) filed a Complaint for Collection of Sum of Money plus Damages[5] against petitioner and a certain Emerflor B. Manginsay, Jr.[6] (Manginsay). The case was docketed as Civil Case No. Q-09-65496. In their Complaint, respondents sought the recovery of payments they allegedly made to Vitamins & Cebu Artists International, Inc. (VCAII) as the latter's alleged victims of illegal recruitment.[7] Respondents alleged that petitioner and Manginsay were majority stockholders of VCAII.[8]

On March 20, 2014, the RTC rendered its Decision[9] awarding the respondents actual and moral damages.[10] In the Decision, the RTC explained that summons was served upon petitioner and Manginsay by publication in the March 29 to April 4, 2010, April 5 to 11, 2010, and April 12 to 18, 2010 issues of *Viewliner Weekly News*.[11] However, petitioner and Manginsay failed to file their respective answers or any responsive pleading. Thus, upon respondents' motion, the RTC declared petitioner and Manginsay in default and allowed respondents to present their evidence *ex parte*.[12]

Subsequently, petitioner filed a Petition for Relief from Judgment[13] dated May 22, 2014 accompanied by his own Affidavit of Merit.[14] In the petition, he sought the annulment of the Decision dated March 20, 2014 of the RTC.[15]

5 *Id.* at 419-425.
6 Emerflor B. Mangisay, Jr. in some parts of the *rollo*.
7 *Rollo*, p. 420.
8 *Id.* at 421-422.
9 *Id.* at 129-135.
10 *Id.* at 134-135.
11 *Id.* at 133.
12 *Id.*
13 *Id.* at 136-157.
14 *Id.* at 205-207.
15 *Id.* at 137.

Petitioner argued, among others, that the RTC Decision dated March 20, 2014 should be set aside on the ground of fraud considering that respondents knowingly specified an erroneous address for the purpose of fraudulently gaining a favorable judgment.[16] Petitioner further argued that respondents could have referred to the General Information Sheet of VCAII where the valid address of petitioner was mentioned.[17] As a result, petitioner was not properly served with summons to be able to answer the allegations of respondents, and for the RTC to acquire jurisdiction over his person.[18]

Petitioner furthermore argued that respondents committed fraud through the following acts: (1) violating Section 1(a), Rule 111 of the Rules of Court relating to the institution of criminal and civil actions, *i.e.*, respondents filed a civil case against petitioner despite the previous filing and dismissal of criminal cases against him and his co-accused;[19] and (2) stating in their Verification and Certificate of Non-Forum Shopping that they have not filed any similar case despite the fact that they filed the civil case to recover civil liability even though it was already deemed instituted in the criminal case.[20]

Respondents then filed their Answer.[21] Afterwards, petitioner filed his Reply.[22]

Ruling of the RTC

Subsequently, on July 21, 2016, the RTC rendered its Decision[23] denying the petition for lack of merit. The dispositive portion reads:

> WHEREFORE, premises considered, the Petition for Relief from Judgment filed by petitioner-defendant Kenneth Duremdes, through counsel, is hereby DENIED for lack of merit.
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> Accordingly and as prayed by the respondents-plaintiffs in their Answer to the Petition, let a Writ of Execution be ISSUED in

[16] *Id.* at 153.
[17] *Id.* at 144.
[18] *Id.*
[19] *Id.* at 146-147.
[20] *Id.* at 147-148.
[21] *Id.* at 213-220.
[22] *Id.* at 222-231.
[23] *Id.* at 232-239.

> view of the Decision dated March 20, 2014 in Civil Case No. Q-09-65496 for collection of sum of money plus damages.
>
> SO ORDERED.[24]

Petitioner filed a Motion for Reconsideration, but the RTC denied it in its Order[25] dated April 12, 2017. The RTC then ordered the issuance of a writ of execution in view of the finality of the Decision dated March 20, 2014.[26]

Thus, on July 17, 2017, petitioner filed a Petition for *Certiorari* (With Application for a Temporary Restarining Order and/or Writ of Preliminary Injunction)[27] before the CA.

Ruling of the CA

In its Resolution[28] dated July 25, 2017, the CA dismissed the petition. It ruled that the petition for *certiorari* was fatally defective based on the following infirmities which the CA enumerated, as follows:

> (1) There is no explanation at all in the present petition and in the petition for relief from judgment as to why petitioner did not avail of the remedy of appeal upon his receipt of the trial court's Decision dated March 20, 2014. The petition for relief from judgment, merely alleged:
>
> > In this case, petitioner only learned about the said Decision of this Honorable Court dated 20 March 2014 last 25 April 2014. Hence, under Section 3 of Rule 38 of the Rules of Court, petitioner has sixty days (60) from notice or until 24 June 2014 and six (6) months after the judgment or final order was entered.
>
> It is basic that a petition for relief from judgment is an equitable remedy and is allowed only in exceptional cases from final judgments or orders when no other remedy is available. It will not be entertained when the proper remedy is appeal or certiorari. Apparently, in this case, the petition for relief from judgment was

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[24] *Id.* at 238-239.
[25] *Id.* at 262-265.
[26] *Id.*
[27] *Id.* at 266-294
[28] *Id.* at 98-100

> filed on May 28, 2014 as a substitute for a lost appeal. It necessarily follows that the present petition for certiorari, an extraordinary remedy, cannot be availed of to cure a previously lost legal remedy.
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> (2) There is no original, duplicate original or certified true copy of the assailed Decision dated July 21, 2016 attached to the petition, in violation of Section 1, Rule 65, in relation to Section 3, Rule 46, Revised Rules of Court. The Decision dated July 21, 2016 attached as Annex "C" of the petition was only marked with "ORIGINAL SIGNED" on page 8 thereof. Apart from this, the Decision dated March 20, 2014 attached to the petition as Annex "A" is an illegible photocopy.
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> (3) Copies of pertinent pleadings/documents and other relevant portions of the records, such as the opposition to the motion for reconsideration, reply, writ of execution, among others, are not attached as annexes to the petition.[29]

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution[30] dated September 26, 2017.

Hence, the petition.

The Court's Ruling

The Court grants the petition.

At the outset, the Court finds no merit in respondents' argument that the present petition should be dismissed for failure to implead the CA as a public respondent.[31] Suffice it to state that what petitioner filed is a petition for review on *certiorari*. Unlike in a petition for *certiorari* under Rule 65, wherein the public respondent is included as a nominal party, Rule 45 of the Rules of Court does not require the public respondent to be impleaded.[32]

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[29] *Id.* at 99-100.

[30] *Id.* at 15-16.

[31] *Id.* at 534.

[32] Section 5, Rule 65 of the Rules of Court provides:

> SEC. 5. *Respondents and costs in certain cases.* – When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall

The Court will now discuss the propriety of the CA's dismissal of the petition for *certiorari.*

Substantial compliance with the formal requirements of a petition for certiorari.

To reiterate, among the grounds relied upon by the CA in dismissing petitioner's petition for *certiorari* were: (1) petitioner failed to attach a certified true copy of the RTC Decision dated July 21, 2016 and the attached copy merely bore the notation "ORIGINAL SIGNED;" (2) the RTC Decision dated March 20, 2014 attached to the petition was an illegible photocopy; and (3) copies of pertinent pleadings/documents and other relevant portions of the records, such as the opposition to the motion for reconsideration, reply, writ of execution, among others, were not attached as annexes to the petition.

In *Jaro v. Court of Appeals*,[33] the Court ruled that while rules of procedure are essential to the proper, efficient and orderly dispensation of justice, such rules are to be applied in a manner that will help secure and not defeat justice.[34] Thus, the Court has ruled against the dismissal of appeals based solely on technicalities, especially so when the appellant had substantially complied with the formal requirements.[35] Specifically, the Court ruled that subsequent and substantial compliance may call for the relaxation of procedural rules;[36] thus:

> In *Cusi-Hernandez vs. Diaz* and *Piglas-Kamao vs. National Labor Relations Commission*, we ruled that **the subsequent submission of**

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be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein. (5a)

[33] 427 Phil. 532 (2002).

[34] *Id.* at 535.

[35] *Id.* at 535-536.

[36] *Id.* at 536. See also *Santos v. Litton Mills Incorporated and/or Atty. Mariño*, 667 Phil. 640, 653 (2011) and *Security Bank Corporation v. Indiana Aerospace University*, 500 Phil. 51, 60 (2005).

> **the missing documents with the motion for reconsideration amounts to substantial compliance. The reasons behind the failure of the petitioners in these two cases to comply with the required attachments were no longer scrutinized.** What we found noteworthy in each case was the fact that the petitioners therein substantially complied with the formal requirements. We ordered the remand of the petitions in these cases to the Court of Appeals, stressing the ruling that by precipitately dismissing the petitions "the appellate court clearly put a premium on technicalities at the expense of a just resolution of the case."[37] (Emphasis supplied; citations omitted.)

The documents required to be attached in a petition for *certiorari* that is filed before the CA, such as the instant case, are found under Section 3, Rule 46 and Section 1, Rule 65 of the Rules of Court. As explained by the Court in *Republic v. Carmel Dev't. Inc.*,[38] Rule 46 primarily governs original actions for *certiorari* filed in the CA, but Rule 65 generally serves to supplement it.[39] Specifically, Section 2,[40] Rule 46 expressly states that Rule 46 shall apply to original actions for *certiorari*, and that except as otherwise provided in Rule 46, the actions for *certiorari* shall be governed by Rule 65.[41] As such, Rules 46 and 65 co-exist with each other and should be construed so as to give effect to every provision of both rules.[42] Section 3, Rule 46 provides:

> SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* –
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> x x x x
>
> x x x [The petition] shall be x x x 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. x x x.
>
> x x x x

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37 *Id.* at 547.

38 427 Phil. 723 (2002).

39 *Id.* at 737.

40 SEC. 2. *To what actions applicable.* – This Rule shall apply to original actions for *certiorari*, prohibition, mandamus and *quo warranto*.

Except as otherwise provided, the actions for annulment of judgment shall be governed by Rule 47, for *certiorari*, prohibition and mandamus by Rule 65, and for *quo warranto* by Rule 66. (n)

41 *Republic v. Carmel Dev't. Inc., supra* note 38 at 736 (2002).

42 *Id.* at 737.

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

On the other hand, Section 1, Rule 65 provides:

> SEC. 1. *Petition for certiorari.* – x x x x
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a)

In *Air Philippines Corp. v. Zamora*,[43] the Court explained that the foregoing rules require two sets of documents to be attached to the petition: (1) a duplicate original or certified true copy of the judgment, order or resolution subject thereof; and (2) copies of all pleadings and documents relevant and pertinent thereto.[44]

As to the first set of documents, Administrative Circular (A.C.) No. 3-96 provides for the definition of a duplicate original copy, as follows:

> 1. The "duplicate original copy" shall be understood to be that copy of the decision, judgment, resolution or order which is intended for and furnished to a party in the case or proceeding in the court or adjudicative body which rendered and issued the same. x x x.
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> 2. The duplicate original copy must be duly signed or initialed by the authorities or the corresponding officer or representative of the issuing entity, or shall at least bear the dry seal thereof or any other official indication of the authenticity and completeness of such copy. x x x.[45]

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[43] 529 Phil. 718 (2006).

[44] *Id.* at 727, citing *Durban Apartments Corporation v. Catacutan*, G.R. No. 167136, December 14, 2005, 477 SCRA 801, 808 and *Teoville Homeowners Association, Inc. v. Ferreira*, 498 Phil. 499, 509-510 (2005).

[45] Administrative Circular No. 3-96 as cited in *Republic of the Philippines v. Carmel Development, Inc.*, 427 Phil. 723, 737 (2002) and *Sps. Lim v. Uni-Tan Marketing Corporation*, 427 Phil. 762, 771-772 (2002).

A.C. No. 3-96 also provides for the definition of a certified true copy, as follows:

> 3. The "certified true copy" thereof shall be such other copy furnished to a party at his instance or in his behalf, duly authenticated by the authorized officers or representatives of the issuing entity as herein before specified.

Further, Section 3, Rule 46 of the Rules of Court provides that "[t]he certification [of the judgment, order, resolution or ruling subject of the petition] 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."

As to the second set of documents, mere photocopies may be attached to the petition.[46] Further, as a general rule, a petition lacking copies of essential pleadings and portions of the case record may be dismissed.[47] However, since the exact nature of the pleadings and parts of the case record which must accompany the petition is not specified, the appellate court is left with the discretion to determine the necessity for copies of pleading and other documents.[48] Thus, the Court in *Air Philippines Corp. v. Zamora*,[49] provided the guideposts to be followed, to wit:

> First, not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.
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> Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also be found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.

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[46] *Id.* at 727, citing *OSM Shipping Phil., Inc. v. NLRC*, 446 Phil. 793, 802-803 (2003).
[47] *Id.* at 727. Citations omitted.
[48] *Id.* at 727-728, citing *San Miguel Corporation v. Aballa*, 500 Phil. 170, 193-194 (2005).
[49] *Supra* note 43.

> Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.[50]

Here, the copy of the RTC Decision[51] dated July 21, 2016 with the notation "ORIGINAL SIGNED" attached to the petition for *certiorari* was not a duplicate copy; thus not compliant with the requirement under Section 3, Rule 46 in relation to Section 1, Rule 65. However, after the denial of his petition for *certiorari*, petitioner filed a Motion for Reconsideration[52] with a certified true copy of the RTC Decision dated July 21, 2016.[53] Hence, the Court considers it as substantial compliance with the requirement under Section 3, Rule 46 in relation to Section 1, Rule 65.

Further, as regards the Decision dated March 20, 2014 that ruled on the civil case for Collection of Sum of Money plus Damages against petitioner and Manginsay, the Court deems it proper to explain that the Decision assailed in the petition for *certiorari* is the Decision dated July 21, 2016, which denied petitioner's petition for relief and not the Decision dated March 20, 2014. Thus, a mere photocopy of the Decision dated March 20, 2014 would have sufficed. Notably, what petitioner attached in his petition for *certiorari* was a photocopy of the aforesaid Decision with the notation "ORIGINAL SIGNED."[54] Considering the characterization of a duplicate original, *i.e.*, duly signed or initialed by the authorities or the corresponding officer or representative of the issuing entity, or shall at least bear the dry seal thereof or any other official indication of the authenticity and completeness of such copy, it follows that what petitioner should have submitted was a photocopy of the Decision dated March 20, 2014, which was signed by the judge and not mere a photocopy bearing the notation "ORIGINAL SIGNED," in *lieu* of the judge's signature. In any event, the Court considers as substantial compliance with the rule the petitioner's attachment of the certified true copy of the Decision dated March 20, 2014 in his Motion for Reconsideration before the CA.[55]

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[50] *Id.* at 728. Citations omitted.
[51] *Rollo*, pp. 232-239.
[52] CA *rollo*, pp. 182-200.
[53] *Id.* at 201-208.
[54] *Id.* at 33-39.
[55] *Id.* at 209-218.

As to petitioner's purported failure to attach copies of other pertinent pleadings/documents and other relevant portions of the records, petitioner reasoned that his counsel deemed it only necessary to attach the Petition for Relief and respondent's Answer, and not the Opposition to the Motion for Reconsideration and the Reply thereto considering that the latter were summarized in the Order dated April 12, 2017 of the RTC.[56]

In any event, petitioner still attached to the Motion for Reconsideration before the CA copies of the Comment/Opposition to the Motion for Reconsideration of Order[57] dated July 21, 2016 and the Reply thereto.[58] Petitioner also explained that a writ of execution has yet to be issued by the RTC at the time of filing the motion for reconsideration. Thus, petitioner attached only the copies of the Urgent Motion to Issue Writ of Execution[59] and Opposition[60] thereto.

In fine, the CA should not have been too rigid in applying the rules to dismiss the petition based on mere technicalities. Applying our pronouncements in *Jaro v. Court of Appeals*[61] and *Air Philippines Corp. v. Zamora*,[62] the CA should have considered petitioner's submissions attached to the motion for reconsideration as substantial compliance to the formal requirements under Section 1 of Rule 65.

Propriety of availing oneself of the remedy of a petition for relief despite failure to appeal.

Another ground relied upon by the CA in dismissing the petition for *certiorari* is petitioner's failure to explain as to why he did not avail himself of the remedy of an appeal. However, in this particular case wherein the extrinsic fraud alleged by petitioner allegedly resulted in the lack of valid service of summons upon him and consequently, the RTC's lack of jurisdiction over his person, the Court rules that the issues on the

[56] *Id.* at 219-223.
[57] *Id.* at 224-229.
[58] *Id.* at 230-232.
[59] *Id.* at 490-492.
[60] *Id.* at 233-238.
[61] *Supra* note 33.
[62] *Supra* note 43.

availability of an appeal and the propriety of availing oneself of the remedy of petition for relief may only be resolved by looking into the merits of petitioner's arguments.

First, a discussion on the nature of a petition for relief is proper.

A petition for relief is governed by Section 1, Rule 38 of the Rules of Court. It provides:

> SEC. 1. *Petition for relief from judgment, order, or other proceedings.* – When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

In *Philippine Amanah Bank v. Contreras*,[63] the Court explained the remedy of a petition for relief as follows:

> Relief from judgment is a remedy provided by law to any person against whom a decision or order is entered through fraud, accident, mistake, or excusable negligence. It is a remedy, equitable in character, that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may either be a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake, or excusable negligence from filing such motion or taking such appeal, he cannot avail of the remedy of petition for relief.[64]

Further, in *City of Dagupan v. Maramba*,[65] the Court explained the grounds for relief from judgment under Rule 38; thus:

> Excusable negligence as a ground for a petition for relief requires that the negligence be so gross "that ordinary diligence and prudence could not have guarded against it." This excusable

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[63] 744 Phil. 256 (2014).

[64] *Id.* at 268, citing *Guevarra, et al. v. Sps. Bautista, et al.*, 593 Phil. 20, 26 (2008); as cited in *Thomasites Center for International Studies (TCIS) v. Rodriguez*, 779 Phil. 536, 544 (2016).

[65] 738 Phil. 71 (2014).

> negligence must also be imputable to the party-litigant and not to his or her counsel whose negligence binds his or her client. The binding effect of counsel's negligence ensures against the resulting uncertainty and tentativeness of proceedings if clients were allowed to merely disown their counsels' conduct.
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> Nevertheless, this court has relaxed this rule on several occasions such as: "(1) where [the] reckless or gross negligence of counsel deprives the client of due process of law; (2) when [the rule's] application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require." Certainly, excusable negligence must be proven.
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> Fraud as a ground for a petition for relief from judgment pertains to extrinsic or collateral fraud. This court explained this type of fraud as follows:
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> Where fraud is the ground, the fraud must be extrinsic or collateral. The extrinsic or collateral fraud that invalidates a final judgment must be such that it prevented the unsuccessful party from fully and fairly presenting his case or defense and the losing party from having an adversarial trial of the issue. There is extrinsic fraud when a party is prevented from fully presenting his case to the court as when the lawyer connives to defeat or corruptly sells out his client's interest. Extrinsic fraud can be committed by a counsel against his client when the latter is prevented from presenting his case to the court.
>
> On the other hand, mistake as used in Rule 38 means mistake of fact and not mistake of law. A wrong choice in legal strategy or mode of procedure will not be considered a mistake for purposes of granting a petition for relief from judgment. Mistake as a ground also "does not apply and was never intended to apply to a judicial error which the court might have committed in the trial [since] such error may be corrected by means of an appeal."
>
> Mistake can be of such nature as to cause substantial injustice to one of the parties. It may be so palpable that it borders on extrinsic fraud.[66]

Also, the time for filing a petition for relief is provided under Section 3, Rule 38 of the Rules of Court; thus:

> SEC. 3. *Time for filing petition; contents and verification.* -- A petition provided for in either of the preceding sections of this Rule

[66] *Id.* at 90-91. Citations omitted.

> must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

The double period provided under Section 3, Rule 38, *i.e.*, (1) 60 days after petitioner learns of the judgment, final order, or other proceeding to be set aside; and (2) not more than six months after such judgment or final order was entered, or such proceeding was taken, is jurisdictional and must be strictly complied with.[67] Thus, a petition for relief from judgment filed beyond the reglementary period is dismissed outright.[68]

Thus, for the filing of a petition for relief to be proper, petitioner must satisfy the following requirements: (1) he or she has no adequate remedy available to him, which is either a motion for new trial or appeal from adverse decisions of the lower court, and he was prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking the appeal;[69] and (2) he or she must comply with the double period set forth under Section 3, Rule 38 of the Rules of Court.[70]

However, these rules are not to be taken as absolute. In fact, the Court deems it proper to make an exception in this case.

Specifically, the above-stated rule will not apply when a petition for relief which is grounded on extrinsic fraud ultimately results in the court's lack of jurisdiction over the defendant, and which consequently makes the judgment rendered by the trial court void. In such a case, the petition for relief should not be dismissed for failure of one to avail himself of the remedy of an appeal and for untimeliness.

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[67] *Id.* at 95, citing *Madarang, et al. v. Sps. Morales*, 735 Phil 632, 640 (2014), further citing *Spouses Reyes v. Court of Appeals*, 557 Phil. 241, 248 (2007).

[68] *Id.*

[69] *Supra* note 64.

[70] *Supra* note 67.

The Court explains below.

Here, petitioner invoked the ground of extrinsic fraud in his petition for relief. He argued that he was deprived of the opportunity to participate in the proceedings before the RTC in Civil Case No. Q-09-65496 by reason of respondents' act of providing the court with an erroneous address where summons may be served on him. Petitioner alleged that respondents' act was for the purpose of fraudulently gaining a favorable judgment.

The rule is that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority.[71] Thus, in the absence of service or when the service of summons upon the person of defendant is defective, the court acquires no jurisdiction over his person, and the judgment rendered against him is null and void.[72]

Here, the action filed by respondents before the RTC which is an action for Collection of Sum of Money plus Damages is an action *in personam* because respondents sought to enforce a personal obligation against petitioner. In an action *in personam*, if the defendant does not voluntarily appear in court, the court acquires jurisdiction through personal or substituted service of summons.[73]

Assuming the truth on petitioner's argument, the necessary consequence of the extrinsic fraud committed upon petitioner is that the RTC lacked jurisdiction over his person.

Lack of jurisdiction on the part of the trial court in rendering the judgment or final order is either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the petitioner. The former is a matter of substantive law because statutory law defines the jurisdiction of the courts over the subject matter or nature of the action. The latter is a matter of procedural law, for it involves the service of summons or other processes on the petitioner.[74]

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[71] *Interlink Movie Houses, Inc. v. CA*, G.R. No. 203298, January 17, 2018, citing *Spouse Belen v. Judge Chavez*, 673 Phil. 58, 67 (2008).

[72] *Id.*

[73] *Id.*

[74] *Yuk Ling Ong v. Co*, 755 Phil 158, 165 (2015), citing *Pinausukan Seafood House, Roxas Blvd.,*

In *Bilag, et al. v. Ay-ay, et al.*,[75] citing *Tan v. Cinco*,[76] the Court ruled that a judgment rendered by a court without jurisdiction is null and void and may be attacked anytime.[77] As it is no judgment at all, all acts performed pursuant to it and all claims emanating from it have no legal effect.[78]

Thus, in *Sps. Laus v. Court of Appeals*,[79] the Court did not deem as fatal to the petition for *certiorari*, prohibition and injunction before the CA the failure of petitioner to appeal from the judgment of default which the Court ruled as null and void on the ground that the substituted service of summons was not validly effected.[80] The Court ruled that in the first place, a void judgment can never become final and executory and may even be assailed or impugned anytime.[81]

Further, in *NHA v. Commission on Settlement of Land Problems*,[82] the Court ruled that a petition for *certiorari* to declare the nullity of a void judgment should not be dismissed for untimeliness since a void judgment never acquires finality and any action to declare its nullity does not prescribe.[83]

Also, under Section 2[84] in relation to Section 3,[85] Rule 47 of the Rules of Court, when the petition for annulment of judgment is grounded on lack of jurisdiction, the petition may be filed before it is barred by laches or estoppel.

Inc. v. Far East Bank & Trust Co., et al., 725 Phil. 19 (2014).

75 809 Phil. 236 (2017).

76 787 Phil. 441 (2016).

77 *Supra* note 75, citing *id.* at 450.

78 *Id.*

79 292 Phil. 692 (1993).

80 *Id.* at 712.

81 *Id.*, citing *Zaide v. Court of Appeals*, G.R. No. 68152, April 25, 1990, 184 SCRA 531.

82 535 Phil 766 (2006), as cited in *Hon. Buenaflor v. Ramirez*, 805 Phil. 853, 868 (2017).

83 *Id.* at 775, citing *Heirs of Mayor Nemencio Galvez v. Court of Appeals*, G.R. No. 119193, March 29, 1996, 255 SCRA 672.

84 SEC. 2. *Grounds for annulment.* -- The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. (n)

85 SEC. 3. *Period for filing action.* -- If based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel. (n)

Similarly, a petition for relief which is grounded on extrinsic fraud and which ultimately negates the court's jurisdiction may be filed anytime as long as the action is not barred by laches or estoppel.

Unfortunately, the CA dismissed the petition for petitioner's failure to appeal from the RTC Decision dated July 21, 2016 without realizing that if petitioner's allegations are true, *i.e.*, that respondents committed extrinsic fraud by providing the court an erroneous address where summons may be served on petitioner, this would have made the RTC Decision dated July 21, 2016 void for lack of jurisdiction over the petitioner, and thus, may be assailed anytime.

Clearly, the propriety of filing the petition for relief in this case and its timeliness are necessarily intertwined with the merits of petitioner's petition for *certiorari* which involve questions of fact and law. Since Rule 45 of the Rules of Court clearly provides that only questions of law shall be entertained in a petition for review on *certiorari*, the Court deems it proper to remand the case to the CA for determination of the merits of petitioner's petition for *certiorari*.[86]

WHEREFORE, the petition is **PARTIALLY GRANTED.** The Resolutions dated July 25, 2017 and September 26, 2017 of the Court of Appeals in CA-G.R. SP No. 151644 are **REVERSED** and **SET ASIDE**. The instant case is **REMANDED** to the Court of Appeals for a determination of the merits of the petition for *certiorari*.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

[86] *Sps. Paderanga v. Sps. Bogabong, et al.*, 764 Phil. 290 (2015).

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

ANDRES B. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

EDGARDO L. DELOS SANTOS
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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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.

DIOSDADO M. PERALTA
Chief Justice