



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **October 9, 2019** which reads as follows:

**“G.R. No. 244662 (Joahnes A. Panares<sup>1</sup> v. Sumifru Philippines, Inc., and/or AJMR Port Services Corporation)**

This appeal by *certiorari*<sup>2</sup> seeks to reverse and set aside the November 22, 2018<sup>3</sup> and January 17, 2019<sup>4</sup> Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 08700-MIN. The CA dismissed, for being filed out of time, the Verified Petition for *Certiorari* and *Mandamus* filed by Joahnes A. Panares (*petitioner*) assailing the February 7, 2018 Decision<sup>5</sup> and the September 7, 2017<sup>6</sup> and February 16, 2018<sup>7</sup> Orders of the Regional Trial Court of Davao City, Branch 52 (RTC).

**Antecedents**

Petitioner is the plaintiff in a case for Collection of Sum of Money entitled *Panares v. Sumifru Philippines, Inc. and/or AJMR Port Services, Inc.*, docketed as Civil Case No. R-DVO-16-05245-CV. On January 16, 2017, the RTC set the case for pre-trial conference on March 20, 2017. Judge Ronald S. Tolentino (*Judge Tolentino*), Presiding Judge of the RTC, however, went on leave from March 13 to 28, 2017. Notices were sent to the parties informing them

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<sup>1</sup> Referred to as “Pañares” in other pleadings.

<sup>2</sup> *Rollo*, pp. 4-24.

<sup>3</sup> *Id.* at 108-114; penned by Associate Justice Walter S. Ong, with Associate Justices Oscar V. Badelles and Evalyn M. Arellano-Morales, concurring.

<sup>4</sup> *Id.* at 133-134; penned by Associate Justice Walter S. Ong, with Associate Justices Edgardo T. Lloren and Florencio Mallanao Mamauag, Jr., concurring.

<sup>5</sup> *Id.* at 42-65; penned by Presiding Judge Ronald S. Tolentino.

<sup>6</sup> *Id.* at 69.

<sup>7</sup> *Id.* at 72-73.

of the cancellation of the pre-trial conference on March 20, 2017 and its new schedule on May 10, 2017.<sup>8</sup>

Unfortunately, the RTC process server, Dennis Majadas, was unable to serve a copy of the notice to petitioner and his counsel, Atty. Reni Dublin (*Atty. Dublin*), due to the sheer number of court processes he had to serve at that time. A copy was given to Atty. Dublin only when he arrived in court on March 20, 2017, the original schedule of the pre-trial conference. When petitioner and his girlfriend, Jenelita V. Bacaro (*Bacaro*), arrived at the courtroom, they found out that the scheduled pre-trial conference was moved to another date. Petitioner and Bacaro then went on a long and loud rant, accusing Judge Tolentino and his staff of accepting a bribe from respondent Sumifru Philippines, Inc. (*Sumifru*) to delay the proceedings. The pair also shouted expletives at the employees for their failure to notify them properly. Instead of pacifying his clients, Atty. Dublin joined in. When they left, the employees were shaken, with some even in tears. During their rant, the court stenographer, Merceditas Pingol (*Pingol*), turned on her recorder and was able to record the whole incident.<sup>9</sup>

#### *Indirect Contempt Proceedings*

On April 3, 2017, Judge Tolentino issued a Show Cause Order<sup>10</sup> to petitioner, Bacaro, and Atty. Dublin directing them to explain why they should not be cited in contempt. A hearing was then scheduled for the indirect contempt proceedings.

During the hearing, Atty. Jose Paolo Evangelista (*Atty. Evangelista*), a private practitioner, entered his appearance as counsel for the court employees in order to ensure that their testimonies were properly given. Pingol and her fellow court stenographer, Ceferina B. Rivera, took the witness stand.<sup>11</sup>

For their defense, Atty. Dublin first presented petitioner. During the hearing, Atty. Dublin objected to the conduct of the cross-examination. When Judge Tolentino overruled his objection, he walked out of the courtroom. The cross-examination continued after Judge Tolentino appointed a counsel *de officio* to protect petitioner's rights. Shortly, after Atty. Dublin returned and presented Bacaro as the next witness. After completing the direct examination, he walked

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<sup>8</sup> Id. at 43.

<sup>9</sup> Id.

<sup>10</sup> Id. at 25.

<sup>11</sup> Id. at 47.

out again. Thus, a counsel *de officio* was again appointed to protect the rights of Bacaro. Finally, Atty. Dublin himself, took the witness stand. Atty. Evangelista did not conduct a cross-examination on Atty. Dublin out of courtesy.<sup>12</sup>

For rebuttal, Atty. Evangelista presented two more witnesses. On the other hand, petitioner, Bacaro, and Atty. Dublin were deemed to have waived the presentation of sur-rebuttal evidence for their failure to appear on the scheduled hearing date and failure to submit any judicial affidavits of sur-rebuttal witnesses. The proceeding was thereafter submitted for resolution.<sup>13</sup>

In its February 7, 2018 Decision,<sup>14</sup> the RTC found petitioner and Bacaro guilty of indirect contempt. Atty. Dublin, on the other hand, was sternly admonished for his actions. While the RTC understood petitioner and Bacaro's frustration over the lack of notice, it still found their behavior beyond the borders of respect and propriety. The dispositive portion of the decision reads:

**WHEREFORE**, Joahnes A. Pañares and Jenelita V. Bacaro are found GUILTY OF INDIRECT CONTEMPT and are both hereby sentenced to suffer the penalty of ONE (1) MONTH OF IMPRISONMENT and are ordered to pay a FINE of TWENTY THOUSAND PESOS (₱20,000.00) each payable within ten (10) days from receipt of this Decision.

Atty. Reni M. Dublin is sternly admonished for his actuations on March 20, 2017 and hereby warned that a repetition of similar acts will warrant a more severe sanction.

x x x x<sup>15</sup>

Meanwhile, during the course of the proceedings, it was learned that Atty. Dublin, who was suspended by this Court for a period of six (6) months as a result of an administrative case against him, had filed the collection case on behalf of petitioner during the period of his suspension on November 22, 2016; his suspension having been lifted only on January 18, 2017 per OCA Circular No. 14-2017. In view thereof, the RTC sent a copy of its decision to the Office of the Bar Confident and the Office of the Court Administrator of this Court for appropriate action.<sup>16</sup>

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<sup>12</sup> Id. at 47-48.

<sup>13</sup> Id. at 49.

<sup>14</sup> Id. at 42-65.

<sup>15</sup> Id. at 65.

<sup>16</sup> Id. at 64-65.

*Collection Case Proceedings*

On April 3, 2017, Judge Tolentino issued an Order<sup>17</sup> referring the case for mediation.<sup>18</sup> When the parties failed to reach a settlement, the RTC set the case for Judicial Dispatch Resolution (*JDR*).<sup>19</sup> Since the JDR failed, the case was set for trial by the RTC.<sup>20</sup>

On September 5, 2017, petitioner filed an Urgent Motion to Recuse,<sup>21</sup> praying that Judge Tolentino inhibit himself from handling the case since he conducted the JDR proceedings and since he could no longer be expected to be neutral and impartial in view of the indirect contempt proceedings initiated by the RTC against petitioner, Bacaro and Atty. Dublin.<sup>22</sup>

In its September 7, 2017 Order,<sup>23</sup> the RTC denied petitioner's urgent motion for being a mere scrap of paper, there being no notice of hearing, in violation of Sections 4 and 5, Rule 15 of the Rules of Court (*Rules*).

On September 12, 2017, petitioner filed a Motion for Reconsideration (to the Order Denying the Motion to Recuse)<sup>24</sup> assailing the "impromptu" dismissal of his urgent motion on the basis of technicalities and rigid application of the rules. Petitioner insists that the recusal of the judge in the JDR proceedings is mandatory pursuant to OCA Circular No. 51-2011.<sup>25</sup>

In its February 16, 2018 Order,<sup>26</sup> the RTC denied petitioner's motion for reconsideration. The RTC clarified that the motion to recuse was denied because it did not contain a notice of hearing. The urgent motion is deemed a mere scrap of paper which cannot be acted upon by the court. The RTC held that OCA Circular No. 51-2011 is not applicable to the instance case since no JDR proceeding was actually conducted due to respondent's stern refusal to enter into any form of settlement with petitioner; thus, there was no confidential information disclosed by the parties which would necessitate Judge Tolentino from inhibiting himself from the case.<sup>27</sup>

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<sup>17</sup> Id. at 39-40.

<sup>18</sup> Id. at 39.

<sup>19</sup> Id. at 41.

<sup>20</sup> Id.

<sup>21</sup> Id. at 66-68.

<sup>22</sup> Id. at 67.

<sup>23</sup> Id. at 69.

<sup>24</sup> Id. at 70-71.

<sup>25</sup> Id. at 71.

<sup>26</sup> Id. at 72-73.

<sup>27</sup> Id.

On April 19, 2018, the petitioner filed a Motion for Extension of Time to File Verified Petitions<sup>28</sup> with the CA seeking an additional period of thirty (30) days, or until May 21, 2018, within which to file a petition for *certiorari* and *mandamus* under Rule 65 of the Rules. He averred that the intended petition for *certiorari* would be directed against the February 7, 2018 Decision of the RTC which found him and Bacaro guilty of indirect contempt while the petition for *mandamus* would be directed against the September 7, 2017 and February 16, 2018 Orders of the RTC which denied his urgent motion to recuse and motion for reconsideration, respectively.<sup>29</sup>

On May 12, 2018, petitioner filed a *Verified Petition for Certiorari and Mandamus*.<sup>30</sup> He averred that the petition for a writ of *certiorari* is directed against the February 7, 2018 Decision of the RTC on the indirect contempt proceedings and the petition for a writ of *mandamus* is directed against the September 7, 2017 and February 16, 2018 Orders of the RTC to compel Judge Tolentino to inhibit himself from further participation in the collection case.<sup>31</sup>

### The CA Ruling

In its November 22, 2018 Resolution,<sup>32</sup> the CA denied petitioner's motion for extension of time to file verified petitions and noted without action, the verified petition.<sup>33</sup>

With regard to the February 7, 2018 Decision, the CA held that petitioner availed of the wrong mode of appeal. Under Section 11, Rule 71 of the Rules, a "person adjudged in indirect contempt must file an appeal under Rule 41 (Appeal from the Regional Trial Courts) and post a bond for its suspension *pendente lite*."<sup>34</sup>

With regard to the September 7, 2017 and February 16, 2018 Orders of the RTC, the CA held that the petition for a *writ of mandamus* is not the proper remedy to compel Judge Tolentino from inhibiting himself from the proceedings in the collection case. For a petition for *mandamus* to prosper, the subject of the petition must be a ministerial act or duty, and not a discretionary one. Here, the subject of the petition - the inhibition of Judge Tolentino, is a discretionary act.<sup>35</sup>

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<sup>28</sup> Id. at 74-77.

<sup>29</sup> Id. at 76.

<sup>30</sup> Id. at 6.

<sup>31</sup> Id. at 109.

<sup>32</sup> Id. at 108-114.

<sup>33</sup> Id. at 113.

<sup>34</sup> Id. at 109-110.

<sup>35</sup> Id. at 110-111.

At any rate, the CA held that even if the petition is entertained, it would not prosper since it was filed out of time. A petition for *certiorari* or *mandamus* must be filed within sixty (60) days from notice of judgment or order, and said period may be extended only in certain exceptional situations. Here, petitioner filed the motion for extension seeking an additional thirty (30) days within which to file the petition. The CA, however, found that his reason of the period of sixty (60) days being insufficient to file an intelligible petition, hardly meritorious or reasonable for the Court to apply liberality in extending the period. Hence, the CA denied his motion for extension; as a consequence, the verified petition was filed out of time.<sup>36</sup>

Finally, the CA held that, even if the verified petition is considered timely filed, it suffers from several infirmities, namely: (1) it contains an incomplete statement of material dates, since it did not state the date of receipt of the September 7, 2017 RTC Order and the date of filing of the motion for reconsideration thereof, and (2) pertinent pleadings and/or material portions of the records were not attached to the petition.<sup>37</sup>

On December 19, 2018, petitioner filed a Verified Motion for Reconsideration<sup>38</sup> insisting that his prayer for an extension of time to file the petition was justified. In its January 17, 2019 Resolution,<sup>39</sup> the CA, in consonance with its November 22, 2018 Resolution, dismissed petitioner's verified petition and declared the case closed and terminated.

Hence, petitioner filed this verified petition under Rule 45 of the Rules contending that the CA should have granted his motion for extension in the interest of justice and fair play. He claims that the filing of the petition necessitates more time to scrutinize the allegations to be raised in order to avoid being pre-judged as mere exaggerations.<sup>40</sup>

### **The Court's Ruling**

This Court partly grants the petition.

*Petition for certiorari before the CA  
was filed out of time*

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<sup>36</sup> Id. at 111-112.

<sup>37</sup> Id. at 113.

<sup>38</sup> Id. at 115-124.

<sup>39</sup> Id. at 133-134.

<sup>40</sup> Id. at 11.

In *Labao v. Flores*,<sup>41</sup> this Court enumerated the exceptions to the strict observance of the 60-day period rule in filing petitions under Rule 65:

(1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. Thus, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.<sup>42</sup> (citation omitted)

Moreover, there should be an effort on the part of the litigant invoking liberality to satisfactorily explain why he or she was unable to abide by the rules.<sup>43</sup>

In seeking for an extension of the period to file the petition for *certiorari*, Atty. Dublin reasoned that he needed more time to meticulously and carefully review the merits of the case so he could file an intelligible petition. Unfortunately, this Court cannot consider this as a compelling or meritorious reason. It is settled that a counsel's heavy workload and daily appearance in court, by themselves, are not acceptable reasons to extend the period.<sup>44</sup> Thus, Atty. Dublin's self-serving reason could not justify a deviation from the 60-day rule.

Nevertheless, even though the petition for *certiorari* was filed out of time, this Court, in the interest of substantial justice, is inclined to give due course to the present petition.

*No grave abuse of  
discretion in the conduct  
of indirect contempt  
proceedings*

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<sup>41</sup> 649 Phil. 213 (2010).

<sup>42</sup> Id. at 222-223.

<sup>43</sup> Id.

<sup>44</sup> See *Laguna Metts Corporation v. Court of Appeals*, 611 Phil. 530, 537 (2009).

Sections 3 and 4, Rule 71 of the Rules provide the procedure to be followed in case of indirect contempt. Indirect contempt proceedings may be initiated only in two ways: (1) *motu proprio* by the court; or (2) through a verified petition and upon compliance with the requirements for initiatory pleadings. Procedural requirements as outlined must be complied with.<sup>45</sup>

Here, the contempt proceedings were initiated by the RTC *motu proprio*. As such, the prescribed procedure must be followed: first, there must be an order requiring the respondent to show cause why he should not be cited for contempt; second, the respondent must be given the opportunity to comment on the charge against him; and third, there must be a hearing and the court must investigate the charge and consider respondent's answer. Finally, only if found guilty will respondent be punished accordingly.<sup>46</sup>

In this case, the Court finds that Judge Tolentino observed the proper procedure in the exercise of the power to punish for indirect contempt. First, petitioner, Bacaro and Atty. Dublin were served show cause orders requiring them to explain why they should not be charged with indirect contempt. Second, petitioners were given a chance to explain their side of the case. Third, a hearing was conducted and the imposition of the penalty was given only after a finding of guilt.

*No violation of  
petitioner's right to due  
process*

Petitioner, Bacaro and Atty. Dublin contend that the entire indirect contempt proceedings violated their constitutional right to due process. They first assail the show cause order for being couched in general terms, without specifying the alleged contumacious acts. They further allege that Judge Tolentino gravely abused his authority when he conducted a trial-type proceeding to hear the indirect contempt charge, even hiring a private lawyer to take the testimonies of the witnesses. They also complain Judge Tolentino's decision to proceed with the cross-examination of petitioner and Bacaro despite Atty. Dublin's absence, in violation of their right to have a counsel of their choice.

The arguments deserve no merit.

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<sup>45</sup> *Regalado v. Go*, 543 Phil. 578, 593 (2007).

<sup>46</sup> *In the Matter of the Contempt Orders Against Lt. Gen. Calimlim*, 584 Phil. 377, 382 (2008).



While indirect contempt proceedings are criminal in nature, nowhere in Rule 71 does it state that the show cause order must have the precision of a criminal Information. This Court finds the show cause order sufficient since it states when the complained behavior was committed and that their conduct violated Sec. 3(a) and (d) of Rule 71. As to the conduct of a trial-type proceeding, this Court finds nothing irregular with it. It is in no way violative of petitioner's right to due process since they were given a chance to air their side and even confront the witnesses of the other party. The participation of Atty. Evangelista was also limited to protecting the rights of the witnesses when their testimonies were being taken. Thus, while the proceeding was indeed extraordinary, it was far from being irregular. What is most essential is that the alleged contemner be granted an opportunity to meet the charges against him and to be heard in his defenses. This is due process, which must be observed at all times.<sup>47</sup> Lastly, Atty. Dublin's absence during his clients' cross examination was his own doing since he walked out on his clients during their respective cross-examinations.

*Petitioner availed of the  
wrong remedy to  
question the February 7,  
2018 RTC Decision*

At any rate, the CA correctly ruled that petitioner availed of the wrong remedy in assailing the February 7, 2018 RTC Decision. Sec. 11, Rule 71 of the Rules lays down the proper remedy from a judgment in indirect contempt proceedings. It states:

**Sec. 11. Review of judgment or final order; bond for stay.** —The judgment or final order of a court in a case of indirect contempt may be appealed to the proper court as in criminal cases. But execution of the judgment or final order shall not be suspended until a bond is filed by the person adjudged in contempt, in an amount fixed by the court from which the appeal is taken, conditioned that if the appeal be decided against him he will abide by and perform the judgment or final order.

The recourse provided for in the above-mentioned provision is clear enough: a person adjudged in indirect contempt must file an appeal under Rule 41 (Appeal from the Regional Trial Courts) and post a bond for its suspension *pendente lite*.<sup>48</sup> These were not done in this case. Petitioner's reliance in *Paredes-Garcia v. CA*<sup>49</sup> to justify his

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<sup>47</sup> *Esperida v. Jurado, Jr.*, 686 Phil. 775, 782 (2012).

<sup>48</sup> *Capitol Hills Golf and Country Club, Inc. v. Sanchez*, 728 Phil. 58, 74 (2014).

<sup>49</sup> 330 Phil. 420 (1996).

resort to Rule 65 is misplaced since, in said case, Paredes-Garcia was found guilty of direct contempt just one day after a show cause order was given in open court. She had no plain or speedy remedy available to her, hence the recourse to a Rule 65 petition.

*Respondent Judge has no authority  
to conduct the trial of the case*

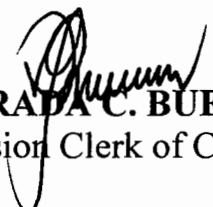
Anent the petition for a writ of *mandamus*, this Court finds the petition meritorious.

Pursuant to A.M. No. 11-1-6-SC-PHILJA,<sup>50</sup> the JDR judge shall not preside over the trial of the case when the parties did not settle their dispute at JDR.<sup>51</sup> The only instance where a JDR Judge may still preside over the case is when both parties, before the commencement of the JDR proceedings, file a joint motion requesting that the judge conduct both the JDR proceedings and trial. However, this option is available in single sala courts only. In this case, since the RTC here is a multiple sala court, Judge Tolentino should have had the case re-raffled.<sup>52</sup>

**WHEREFORE**, the petition is **PARTLY GRANTED**. The November 22, 2018 and January 17, 2019 Resolutions of the Court of Appeals in CA-G.R. SP No. 08700-MIN are **REVERSED** and **SET ASIDE** insofar as it totally dismissed the Verified Petition. The Petition for *Mandamus* is hereby **GRANTED**. Judge Ronald S. Tolentino is hereby **ORDERED** to **CEASE** and **DESIST** from hearing Civil Case No. R-DVO-16-05245-CV and the Executive Judge of the Regional Trial Court of Davao City is hereby **DIRECTED** to **RE-RAFFLE** the case pursuant to A.M. No. 11-1-6-SC-PHILJA.

**SO ORDERED.**” *Zalameda, J., designated as Additional Member per Special Order No. 2712 dated September 27, 2019.*

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court 10/13/19  
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<sup>50</sup> Consolidated and Revised Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation and Judicial Dispute Resolution, January 11, 2011.

<sup>51</sup> *Id.*, Part 3, II.

<sup>52</sup> *Id.*, Part 3, III, No. 1.

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The Hon. Executive Judge<sup>a</sup>  
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