

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**MADRIGAL TRANSPORT, INC.,
*Petitioner,***

-versus-

**G.R. No. 156067
August 11, 2004**

**LAPANDAY HOLDINGS
CORPORATION; MACONDRA Y AND
COMPANY, INC.; and LUIS P.
LORENZO JR.,**

Respondents.

X-----X

DECISION

PANGANIBAN, J.:

The Special Civil Action for Certiorari and Appeal are two different remedies that are mutually exclusive; they are not alternative or successive. Where appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion. Basic is the rule that certiorari is not a substitute for the lapsed remedy of appeal.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the February 28, 2002 Decision^[2] and the November

5, 2002 Resolution^[3] of the Court of Appeals (CA) in CA-GR SP No. 54861. The challenged Decision disposed as follows:

“WHEREFORE, in consideration of the foregoing premises, private respondents Lapanday and Lorenzo, Jr.’s Motion for Reconsideration dated 10 February 2000 is GRANTED. Accordingly, the Resolution dated 10 January 2000 is RECONSIDERED and SET ASIDE, thereby dismissing the Petition for Certiorari dated 10 September 1999.”^[4]

The assailed Resolution denied reconsideration.

The Facts

The pertinent facts are undisputed. On February 9, 1998, Petitioner Madrigal Transport, Inc. (“Madrigal”) filed a Petition for Voluntary Insolvency before the Regional Trial Court (RTC) of Manila, Branch 49.^[5] Subsequently, on February 21, 1998, petitioner filed a Complaint for damages against Respondents Lapanday Holdings Corporation (“Lapanday”), Macondray and Company, Inc. (“Macondray”), and Luis P. Lorenzo Jr. before the RTC of Manila, Branch 36.^[6]

In the latter action, Madrigal alleged (1) that it had entered into a joint venture agreement with Lapanday for the primary purpose of operating vessels to service the shipping requirements of Del Monte Philippines, Inc.;^[7] (2) that it had done so on the strength of the representations of Lorenzo, in his capacity either as chairman of the board or as president of Del Monte, Lapanday and Macondray; (3) that Macondray had thereafter been appointed -- allegedly upon the insistence of Lapanday -- as broker, for the purpose of securing charter hire contracts from Del Monte; (4) that pursuant to the joint venture agreement, Madrigal had purchased a vessel by obtaining a P10,000,000 bank loan; and (5) that contrary to their representations and guarantees and despite demands, Lapanday and Lorenzo had allegedly been unable to deliver those Del Monte charter hire contracts.^[8]

On February 23, 1998, the insolvency court (RTC Branch 49) declared petitioner insolvent.^[9] On March 30, 1998 and April 6, 1998,

Respondents Lapanday, Lorenzo and Macondray filed their respective Motions to Dismiss the case pending before the RTC Branch 36.^[10]

On December 16, 1998, Branch 36 granted the Motion, for failure of the Complaint to state a cause of action. Applying Sections 32 and 33 of the Insolvency Law,^[11] the trial court opined that upon the filing by Madrigal of a Petition for Voluntary Insolvency, the latter lost the right to institute the Complaint for Damages. The RTC ruled that the exclusive right to prosecute the actions belonged to the court-appointed assignee.^[12]

On January 26, 1999, petitioner filed a Motion for Reconsideration,^[13] which was later denied on July 26, 1999.^[14] Subsequently, petitioner filed a Petition for Certiorari with the Court of Appeals, seeking to set aside the December 16, 1998 and the July 26, 1999 Orders of the trial court.^[15] On September 29, 1999, the CA issued a Resolution requiring petitioner to explain why its Petition should not be dismissed outright, on the ground that the questioned Orders should have been elevated by ordinary appeal.^[16]

On January 10, 2000, the appellate court ruled that since the main issue in the instant case was purely legal, the Petition could be treated as one for review as an exception to the general rule that certiorari was not proper when appeal was available.^[17] Respondents Lapanday and Lorenzo challenged this ruling through a Motion for Reconsideration dated February 10, 2000.^[18] The CA heard the Motion for Reconsideration in oral arguments on April 7, 2000.^[19]

Ruling of the Court of Appeals

On February 28, 2002, the appellate court issued the assailed Decision granting Respondents Lapanday and Lorenzo's Motion for Reconsideration and dismissing Madrigal's Petition for Certiorari. The CA opined that an order granting a motion to dismiss was final and thus the proper subject of an appeal, not certiorari.^[20]

Furthermore, even if the Petition could be treated as an appeal, it would still have to be dismissed for lack of jurisdiction, according to the CA.^[21] The appellate court held that the issues raised by petitioner involved pure questions of law that should be brought to the Supreme

Court, pursuant to Section 2 of Rule 50 and Section 2(c) of Rule 41 of the Rules of Court.^[22]

Hence, this Petition.^[23]

The Issues

In its Statement of Issues, petitioner contends:

“I

The Honorable Court of Appeals committed egregious error by ruling that the order of the lower court which granted private respondents’ Motions to Dismiss are not proper subjects of a Petition for Certiorari under Rule 65.

‘A. Section 5, Rule 16 does not apply in the present case since the grounds for dismissal [were] petitioner’s purported lack of capacity to sue and its failure to state a cause of action against private respondents, and not any of the three (3) grounds provided under said provision, namely, res judicata, extinction of the claim, and Statute of Frauds.

‘B. Section 1 of Rule 41, which is the applicable provision in petitioner’s case, expressly proscribes the taking of an appeal from an order denying a motion for reconsideration or one which dismisses an action without prejudice, instead, the proper remedy is a special civil action under Rule 65.

‘C. A petition for certiorari under Rule 65 was correctly resorted to by petitioner from the dismissal order of the lower court, which had clearly acted with grave abuse of discretion amounting to lack of jurisdiction.

“II

The Honorable Court of Appeals committed serious error in ruling that it had no jurisdiction to entertain the Petition for Certiorari filed by petitioner before it.

‘A. Section 2, Rule 50 nor Section 2(c) and Section 2(c), Rule 41 find no application in the present case, since said rule contemplates of a case where an appeal is the proper remedy, and not where the appropriate remedy is a petition for certiorari where questions of facts and laws may be reviewed by the court a quo.

‘B. The court a quo erroneously concluded that it has no jurisdiction over the subject matter of the petition based on the wrong premise that an appeal from the lower court’s dismissal order is the proper remedy by applying Section 2, Rule 50 and Section 2(c), Rule 41 of the Rules of Court.”^[24]

The Court’s Ruling

The Petition is unmeritorious.

First Issue:

Remedy Against Dismissal of Complaint

The resolution of this case hinges on the proper remedy: an appeal or a petition for certiorari. Petitioner claims that it correctly questioned the trial court’s Order through its Petition for Certiorari. Respondents insist that an ordinary appeal was the proper remedy. We agree with respondents.

Appeal

Under Rule 41, Rules of Court, an appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by the Rules of Court to be appealable.^[25] The manner of appealing an RTC judgment or final order is also provided in Rule 41 as follows:

Section 2. Modes of appeal. —

(a) Ordinary appeal. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal

with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) Petition for review. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) Appeal by certiorari. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.^[26]

An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. Au contraire, an interlocutory order does not dispose of the case completely, but leaves something to be done as regards the merits of the latter.^[27]

Petition for Certiorari

A petition for certiorari is governed by Rule 65, which reads:

Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

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.^[28]

A writ of certiorari may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.^[29]

For certiorari to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.^[30]

“Without jurisdiction” means that the court acted with absolute lack of authority.^[31] There is “excess of jurisdiction” when the court transcends its power or acts without any statutory authority.^[32] “Grave abuse of discretion” implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.^[33]

Appeal and Certiorari Distinguished

Between an appeal and a petition for certiorari, there are substantial distinctions which shall be explained below.

As to the Purpose. Certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment.^[34] In Pure Foods

Corporation vs. NLRC, we explained the simple reason for the rule in this light:

“When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original civil action of certiorari.”^[35]

The supervisory jurisdiction of a court over the issuance of a writ of certiorari cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court -- on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision.^[36] Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari.^[37] Where the error is not one of jurisdiction, but of an error of law or fact -- a mistake of judgment -- appeal is the remedy.^[38]

As to the Manner of Filing. Over an appeal, the CA exercises its appellate jurisdiction and power of review. Over a certiorari, the higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts.^[39] An appeal is thus a continuation of the original suit, while a petition for certiorari is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of.^[40] The parties to an appeal are the original parties to the action. In contrast, the parties to a petition for certiorari are the aggrieved party (who thereby becomes the petitioner) against the lower court or quasi-judicial agency, and the prevailing parties (the public and the private respondents, respectively).^[41]

As to the Subject Matter. Only judgments or final orders and those that the Rules of Court so declare are appealable.^[42] Since the issue is jurisdiction, an original action for certiorari may be directed against an interlocutory order of the lower court prior to an appeal from the

judgment; or where there is no appeal or any plain, speedy or adequate remedy.^[43]

As to the Period of Filing. Ordinary appeals should be filed within fifteen days from the notice of judgment or final order appealed from.^[44] Where a record on appeal is required, the appellant must file a notice of appeal and a record on appeal within thirty days from the said notice of judgment or final order.^[45] A petition for review should be filed and served within fifteen days from the notice of denial of the decision, or of the petitioner's timely filed motion for new trial or motion for reconsideration.^[46] In an appeal by certiorari, the petition should be filed also within fifteen days from the notice of judgment or final order, or of the denial of the petitioner's motion for new trial or motion for reconsideration.^[47]

On the other hand, a petition for certiorari should be filed not later than sixty days from the notice of judgment, order, or resolution.^[48] If a motion for new trial or motion for reconsideration was timely filed, the period shall be counted from the denial of the motion.^[49]

As to the Need for a Motion for Reconsideration. A motion for reconsideration is generally required prior to the filing of a petition for certiorari, in order to afford the tribunal an opportunity to correct the alleged errors. Note also that this motion is a plain and adequate remedy expressly available under the law.^[50] Such motion is not required before appealing a judgment or final order.^[51]

Certiorari Not the Proper Remedy if Appeal Is Available

Where appeal is available to the aggrieved party, the action for certiorari will not be entertained. Remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive.^[52] Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.^[53] One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy.^[54] Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.

Second Issue:

CA Jurisdiction

Petitioner was ascribing errors of judgment, not jurisdiction, in its Petition for Certiorari filed with the Court of Appeals. The issue raised there was the trial court's alleged error in dismissing the Complaint for lack of cause of action. Petitioner argues that it could still institute the Complaint, even if it had filed a Petition for Insolvency earlier.^[55] As petitioner was challenging the trial court's interpretation of the law -- posing a question of law -- the issue involved an error of judgment, not of jurisdiction. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not necessarily equivalent to "grave abuse of discretion."^[56]

The instant case falls squarely with *Barangay Blue Ridge "A" of QC vs. Court of Appeals*.^[57] In that case, the trial court granted the Motion to Dismiss on the ground of failure to state a cause of action. After the Motion for Reconsideration was denied, petitioner filed a Petition for Certiorari with the CA. The appellate court denied the Petition on the ground that the proper remedy was appeal. Holding that an error of judgment should be reviewed through an ordinary appeal, this Court upheld the CA.

The Dismissal -- a Final Order

An order of dismissal, whether correct or not, is a final order.^[58] It is not interlocutory because the proceedings are terminated; it leaves nothing more to be done by the lower court. Therefore the remedy of the plaintiff is to appeal the order.^[59]

Petitioner avers that Section 5 of Rule 16^[60] bars the filing of an appeal when the dismissal is based on lack of cause of action. It adds that Section 5 limits the remedy of appeal only to dismissals grounded on prior judgments or on the statute of limitations, or to claims that have been extinguished or are unenforceable. We find this interpretation absurd.

The provision is clear. Dismissals on the aforesaid grounds constitute res judicata. However, such dismissals are still subject to a timely appeal. For those based on other grounds, the complaint can be refiled. Section 5, therefore, confirms that an appeal is the remedy for the dismissal of an action.

Citing Sections 1(a) and 1(h), Rule 41,^[61] petitioner further claims that it was prohibited from filing an appeal. Section 1(a) of the said Rule prohibits the filing of an appeal from an order denying a motion for reconsideration, because the remedy is to appeal the main decision as petitioner could have done. In fact, under Section 9, Rule 37, the remedy against an order denying a motion for reconsideration is to appeal the judgment or final order. Section 1(h) does not apply, because the trial court's Order did not dismiss the action without prejudice.^[62]

Exception to the Rule Not Established by Petitioner

We are not unaware of instances when this Court has granted certiorari despite the availability of appeal.^[63] Where the exigencies of the case are such that the ordinary methods of appeal may not prove adequate -- either in point of promptness or completeness, so that a partial if not a total failure of justice could result -- a writ of certiorari may still be issued.^[64] Petitioner cites some of these exceptions to justify the remedy it has undertaken with the appellate court,^[65] but these are not applicable to the present factual milieu.

Even assuming that the Order of the RTC was erroneous, its error did not constitute grave abuse of discretion. Petitioner asserts that the trial court should not have dismissed the Complaint or should have at least allowed the substitution of the assignee in petitioner's stead.^[66] These alleged errors of judgment, however, do not constitute a despotic, capricious, or whimsical exercise of power. On the contrary, petitioner availed of certiorari because the 15-day period within which to file an appeal had already lapsed. Basic is the rule that certiorari is not a substitute for the lapsed remedy of appeal.

As previously stressed, appeal -- not certiorari -- was the correct remedy to elevate the RTC's Order granting the Motion to Dismiss. The appeal, which would have involved a pure question of law, should

have been filed with the Supreme Court pursuant to Section 2 (c) of Rule 41 and Section 2 of Rule 50,^[67] Rules of Court.

WHEREFORE, this Petition is **DENIED**, and the challenged Decision and Resolution **AFFIRMED**.

Costs against petitioner.

SO ORDERED.

Corona and Carpio-Morales, JJ., concur.
Sandoval-Gutierrez, J., on leave.

- [1] Rollo, pp. 3-30.
- [2] *Id.*, pp. 32-39. First Division. Penned by Justice Bienvenido L. Reyes, with the concurrence of Presiding Justice Ma. Alicia Austria-Martinez (Division chair and now a member of this Court) and Justice Roberto A. Barrios (member).
- [3] *Id.*, pp. 41-42.
- [4] Assailed Decision, p. 8; rollo, p. 39.
- [5] RTC Order dated December 16, 1998, p. 3; rollo, p. 104.
- [6] *Ibid.*
- [7] RTC Order dated December 16, 1998, p. 1; rollo, p. 102.
- [8] *Ibid.*
- [9] Petitioner's Memorandum, p. 6 (rollo, p. 247); Respondent Macondray's Memorandum, p. 5 (rollo, p. 270).
- [10] Petitioner's Memorandum, p. 7 (rollo, p. 248); Respondent Macondray's Memorandum, *id.*; Respondent Lapanday and Lorenzo's Memorandum, p. 7 (rollo, p. 216).
- [11] Act No. 1956.
- [12] RTC Order dated December 16, 1998, pp. 3-5; rollo, pp. 104-106.
- [13] RTC Order dated July 26, 1999, p. 1; rollo, p. 122.
- [14] *Ibid.*
- [15] Assailed Decision, p. 2; rollo, p. 33.
- [16] *Id.*, pp. 3 & 34.
- [17] *Ibid.*
- [18] *Id.*, pp. 4 & 35.
- [19] *Ibid.*
- [20] *Ibid.*
- [21] *Id.*, pp. 7 & 38.
- [22] *Ibid.*
- [23] This case was deemed submitted for resolution on September 10, 2003, upon this Court's receipt of Respondent Macondray's Memorandum, signed

by Attys. Armando M. Marcelo, Jesse H.T. Andres, and Elvin Michael L. Cruz. Petitioner's Memorandum, signed by Attys. Mylene T. Marcia-Creencia and Gilbert V. Santos, was received by this Court on September 8, 2003. Respondents Lapanday and Lorenzo's Memorandum, signed by Attys. Menardo I. Guevarra, Maria Celina P. Fado and Stephanie A. Cabriles, was received by the Court on September 5, 2003.

- [24] Petitioner's Memorandum, pp. 8-9; rollo, pp. 249-250.
- [25] §1, Rule 41 of the Rules of Court. This Rule refers to appeals from the regional trial court. Rule 40, Rules of Court, governs appeals from the municipal trial courts to the regional trial courts.
- [26] Rule 41, Rules of Court.
- [27] Diesel Construction Company, Inc. vs. Jollibee Foods Corp., 380 Phil. 813, 824, January 28, 2000; Lilia vs. Fanuñal, 423 Phil. 443, 450, December 13, 2001; De Ocampo vs. Republic, 118 Phil. 1276, 1280, October 31, 1963.
- [28] Rule 65, Rules of Court.
- [29] Land Bank of the Philippines vs. Court of Appeals, GR No. 129368, August 25, 2003; Barangay Blue Ridge "A" of QC vs. Court of Appeals, 377 Phil. 49, 53, November 24, 1999; Silverio vs. Court of Appeals, 141 SCRA 527, 539, March 17, 1986.
- [30] Land Bank of the Philippines vs. Court of Appeals, supra.; Sanchez vs. Court of Appeals, 345 Phil. 155, 179, September 29, 1997.
- [31] Alafriz vs. Nable, 72 Phil 278, 280, June 10, 1941. See also Land Bank of the Philippines vs. Court of Appeals, supra.
- [32] Ibid.
- [33] Cuison vs. Court of Appeals, 351 Phil. 1089, 1102, April 15, 1998; Lalican vs. Vergara, 342 Phil. 485, 495, July 31, 1997; Pure Foods Corp. vs. NLRC, 171 SCRA 415, 426, March 21, 1989; Palma vs. Q & S Inc., 123 Phil. 958, 960, May 19, 1966.
- [34] Land Bank of the Philippines vs. Court of Appeals, supra, per Callejo Sr., J.; Microsoft Corporation vs. Best Deal Computer Center Corporation, 389 SCRA 615, 620, September 24, 2002; Bimeda vs. Perez, 93 Phil. 636, 639, August 26, 1953.
- [35] Pure Foods Corp. vs. NLRC, supra, pp. 426-427, per Regalado, J.
- [36] Land Bank of the Philippines vs. Court of Appeals, supra.
- [37] Ala-Martin vs. Sultan, 418 Phil. 597, 604, October 2, 2001; Lalican vs. Vergara, supra; Bimeda vs. Pineda, supra.
- [38] Spouses Rempson vs. Lenjul Realty Corporation, GR No. 154355, May 20, 2004; Fortich vs. Corona, 352 Phil. 461, 477, April 24, 1998; Nocon vs. Geronimo, 101 Phil. 735, 739, May 1, 1957; Bimeda vs. Perez, supra.
- [39] Atty. Paa vs. Court of Appeals, 347 Phil. 122, 136, December 4, 1997 (citing Florenz D. Regalado, Remedial Law Compendium [6th ed. 1997], pp. 543-544, comparing an appeal by certiorari under Rule 45 with a petition for certiorari; such comparison is also applicable here).
- [40] Sy vs. Commission on Settlement of Land Problems, 417 Phil. 378, 393, September 12, 2001.
- [41] Atty. Paa vs. Court of Appeals, supra; Yasuda vs. Court of Appeals, 386 Phil. 594, 602, April 12, 2000.

- [42] §1, Rule 41 of the Rules of Court.
- [43] Atty. Paa vs. Court of Appeals, supra.
- [44] §3, Rule 41 of the Rules of Court.
- [45] Ibid.
- [46] §1, Rule 42 of the Rules of Court. The same section allows an additional period of fifteen (15) days to file the petition for review. Further extension may be granted for the most compelling reason, but not to exceed fifteen (15) days.
- [47] §2, Rule 45 of the Rules of Court. The Supreme Court may grant an extension of thirty (30) days to file the petition if there are justifiable reasons.
- [48] §1, Rule 65 of the Rules of Court.
- [49] Ibid. Extension of time to file the petition can be granted for compelling reasons, but not to exceed fifteen (15) days (AM No. 00-2-03-SC, effective September 1, 2000).
- [50] Spouses Samson vs. Lenjul Realty Corporation, supra; Interorient Maritime Enterprises, Inc., vs. NLRC, 330 Phil. 493, 502, September 16, 1996; Butuan Bay Wood Export Corp. vs. Court of Appeals, 97 SCRA 297, 305, April 28, 1980. See exceptions to this rule in Gonzales Jr. vs. Intermediate Appellate Court, 216 Phil. 438, 444, August 28, 1984.
- [51] Atty. Paa vs. Court of Appeals, supra.
- [52] Land Bank of the Philippines vs. Court of Appeals, supra; Banco Filipino vs. Court of Appeals, 389 Phil. 644, 655, June 23, 2000; Ligon vs. Court of Appeals, 355 Phil. 503, 516, August 7, 1998.
- [53] Banco Filipino vs. Court of Appeals, supra; Republic vs. Court of Appeals, 379 Phil. 92, 97, January 18, 2000; Jose vs. Zulueta, 112 Phil. 470, 474, May 31, 1961.
- [54] §1, Rule 65 of the Rules of Court.
- [55] Assailed Decision, p. 7; rollo, p. 38.
- [56] Soriano vs. Atienza, 171 SCRA 284, 290, March 16, 1989.
- [57] Barangay Blue Ridge “A” of QC vs. Court of Appeals, supra.
- [58] Heirs of Placido Miranda vs. Court of Appeals, 325 Phil. 674, 685, March 29, 1996; Marahay vs. Melicor, 181 SCRA 811, 814, February 6, 1990; Santos vs. Pecson, 79 Phil. 261, 263, September 17, 1947.
- [59] Ricardo J. Francisco, Civil Procedure (1st ed., 2001), Vol. I, p. 571. As opposed to an order denying a motion to dismiss, which is deemed interlocutory. The remedy of the aggrieved party in a denied motion to dismiss is to file an answer and to interpose, as defenses, the objections raised by him or her in the said motion; proceed to trial; and in case of an adverse decision, to elevate the entire case by appeal in due course. However, if the denial of the motion to dismiss constitutes grave abuse of discretion or was issued without or in excess of jurisdiction, this error is correctable by certiorari. (Far East Bank and Trust Company vs. Court of Appeals, 341 SCRA 485, 491, September 29, 2000; Cojuangco vs. Romillo Jr., 167 SCRA 751, 757, November 24, 1988; Occeña vs. Jabson, 73 SCRA 637, 641, October 29, 1976)

- [60] “Sec. 5. Effect of dismissal. -- Subject to the right of appeal, an order granting a motion to dismiss based on prior judgment or the statute of limitations, holding that the claim has been extinguished, or that the claim is unenforceable under the statute of frauds], shall bar the refiling of the same action or claim.”
- [61] “Section 1. Subject of appeal. -- An appeal may be taken from a judgment or a final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
No appeal may be taken from:
(a) An order denying a motion for new trial or reconsideration;
X X X
(h) An order dismissing an action without prejudice.
In all the above instances, where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.”
- [62] The trial court’s order disposed as follows: “In the light of the foregoing, the motions to dismiss filed by [respondents] Lapanday/Lorenzo Jr. and Macondray are hereby granted and the case at bar is ordered dismissed.” (RTC Order dated December 16, 1998, p. 5; rollo, p. 106).
- [63] See Sanchez vs. Court of Appeals, supra, p. 178, where we noted the exceptions compiled by Justice Regalado. See also Co Chuan Seng vs. Court of Appeals (128 SCRA 308, March 21, 1984), where we allowed certiorari -- since appeal was not a plain, speedy, and adequate remedy; and the questioned Order was an oppressive exercise of judicial authority amounting to excess of jurisdiction. And also SMI Development Corporation vs. Republic (323 SCRA 862, January 28, 2000), where we held that the determination of what exactly constituted a plain, speedy and adequate remedy rested on judicial discretion and depended on the particular circumstances of each case.
- [64] Land Bank of the Philippines vs. Court of Appeals, supra.
- [65] Petitioner’s Memorandum, p. 21; rollo, p. 242.
- [66] Id., pp. 17 & 238.
- [67] “Section 2. Dismissal of improper appeal to the Court of Appeals. -- An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a regional trial court shall be dismissed.”