



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

ERNESTO DY,

Petitioner,

G.R. No. 196200

Present:

- versus -

VELASCO, JR., *J.*, Chairperson,  
PERALTA,  
ABAD,  
MENDOZA, and  
LEONEN, *JJ.*

HON. GINA M. BIBAT-  
PALAMOS, in her capacity  
as Presiding Judge of the  
Regional Trial Court, Branch 64,  
Makati City, and ORIX METRO  
LEASING AND FINANCE  
CORPORATION,

Respondents.

Promulgated:

SEP 11 2013

X ----- X

*[Signature]*

DECISION

MENDOZA, *J.*:

This petition for *certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure questions the December 13, 2010 and March 7, 2011 Orders<sup>1</sup> of the Regional Trial Court of Makati, Branch 64 (*RTC*), in Civil Case No. 92-2311, granting the motion for execution of petitioner, but denying his prayer for the return of his cargo vessel in the condition when the possession thereof was seized from him.

<sup>1</sup> *Rollo*, pp. 18-21.

### **The Facts**

The present controversy finds its roots in the Court's decision in *Orix Metro Leasing and Finance Corporation v. M/V "Pilar-I" and Spouses Ernesto Dy and Lourdes Dy*<sup>2</sup> involving the same parties. The facts, as culled from the Court's decision in the said case and the records, are not disputed by the parties.

Petitioner Ernesto Dy (*petitioner*) and his wife, Lourdes Dy (*Lourdes*), were the proprietors of Limchia Enterprises which was engaged in the shipping business. In 1990, Limchia Enterprises, with Lourdes as co-maker, obtained a loan from Orix Metro Leasing and Finance Corporation (*respondent*) to fund its acquisition of M/V Pilar-I, a cargo vessel. As additional security for the loan, Limchia Enterprises executed the Deed of Chattel Mortgage over M/V Pilar-I.<sup>3</sup>

Due to financial losses suffered when M/V Pilar-I was attacked by pirates, Spouses Dy failed to make the scheduled payments as required in their promissory note. After receiving several demand letters from respondent, Spouses Dy applied for the restructuring of their loan. Meanwhile, Lourdes issued several checks to cover the remainder of their loan but the same were dishonored by the bank, prompting respondent to institute a criminal complaint for violation of the Bouncing Checks Law. Lourdes appealed to respondent with a new proposal to update their outstanding loan obligations.<sup>4</sup>

On August 18, 1992, respondent filed the Complaint and Petition for Extrajudicial Foreclosure of Preferred Ship Mortgage under Presidential Decree No. 1521 with Urgent Prayer for Attachment with the RTC. Following the filing of an affidavit of merit and the posting of bond by respondent, the RTC ordered the seizure of M/V Pilar-I and turned over its possession to respondent. On September 28, 1994, respondent transferred all of its rights, title to and interests, as mortgagee, in M/V Pilar-I to Colorado Shipyard Corporation (*Colorado*).<sup>5</sup>

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<sup>2</sup> G.R. No. 157901, September 11, 2009, 599 SCRA 345; penned by Associate Justice Minita V. Chico-Nazario and concurred in by Associate Justice Consuelo Ynares-Santiago, Associate Justice Presbitero J. Velasco, Jr., Associate Justice Antonio Eduardo B. Nachura and Associate Justice Diosdado M. Peralta of the Third Division.

<sup>3</sup> Id. at 347-348; *rollo*, p. 172.

<sup>4</sup> Id. at 348-351; id. at 5 and 65.

<sup>5</sup> Id. at 352-355; id. at 143 and 173.

On July 31, 1997, the RTC rendered a decision in favor of Spouses Dy, ruling that they had not yet defaulted on their loan because respondent agreed to a restructured schedule of payment. There being no default, the foreclosure of the chattel mortgage on M/V Pilar-I was premature. The RTC ordered that the vessel be returned to Spouses Dy.<sup>6</sup> This was affirmed by the Court of Appeals (CA), with the modification that Spouses Dy be ordered to reimburse the respondent for repair and drydocking expenses while the vessel was in the latter's possession.<sup>7</sup> On appeal, the Court promulgated its Decision, dated September 11, 2009, upholding the findings of the CA but deleting the order requiring Spouses Dy to reimburse respondent.<sup>8</sup>

Consequently, on August 17, 2010, petitioner filed a motion for execution of judgment with the RTC. In the intervening period, Colorado filed its Manifestation/Motion, dated July 29, 2010, informing the RTC that M/V Pilar-I, which was in its possession, had sustained severe damage and deterioration and had sunk in its shipyard because of its exposure to the elements. For this reason, it sought permission from the court to cut the sunken vessel into pieces, sell its parts and deposit the proceeds in escrow.<sup>9</sup> In his Comment/Objection, petitioner insisted that he had the right to require that the vessel be returned to him in the same condition that it had been at the time it was wrongfully seized by respondent or, should it no longer be possible, that another vessel of the same tonnage, length and beam similar to that of M/V Pilar-I be delivered.<sup>10</sup> Colorado, however, responded that the vessel had suffered severe damage and deterioration that refloating or restoring it to its former condition would be futile, impossible and very costly; and should petitioner persist in his demand that the ship be refloated, it should be done at the expense of the party adjudged by the court to pay the same.<sup>11</sup>

The RTC issued its questioned December 13, 2010 Order granting the motion for execution but denying petitioner's prayer for the return of M/V Pilar-I in the same state in which it was taken by respondent. In so resolving, the RTC ratiocinated:

First, the judgment of the Supreme Court does not require the delivery of M/V Pilar in the state the defendants wanted it to be. Secondly, said judgment has now become final and it is axiomatic that after judgment has become executory, the court cannot amend the same, except: x x x None of the three circumstances where a

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<sup>6</sup> Id. at 355; id. at 143-144.

<sup>7</sup> Id. at 358; id. at 144-145.

<sup>8</sup> Id. at 366; id. at 145.

<sup>9</sup> Id. at 22-25.

<sup>10</sup> Id. at 26-29.

<sup>11</sup> Id. at 30-33.

final and executory judgment may be amended is present in this case. And third, the present deplorable state of M/V Pilar certainly did not happen overnight, thus, defendants should have brought it to the attention of this Court, the Court of Appeals or the Supreme Court after it became apparent. Their inaction until after the judgment has become final, executory and immutable rendered whatever right they may have to remedy the situation to be nugatory. [Underlining supplied]

Petitioner moved for reconsideration but the motion was denied by the RTC in its March 7, 2011 Order.<sup>12</sup>

Hence, this petition.

### **The Issues**

Petitioner raises the following issues in its Memorandum:

- 1. Whether or not the rule on hierarchy of courts is applicable to the instant petition?**
- 2. Whether or not the honorable trial court gravely abused its discretion, amounting to lack or excess of jurisdiction, in finding that petitioner is not entitled to the return of M/V Pilar-1 in the condition that it had when it was wrongfully seized by Orix Metro, or in the alternative, to a vessel of similar tonnage, length, beam, and other particulars as M/V Pilar-1;**
- 3. Whether or not petitioner is estopped from asking for the return of the vessel in the condition it had at the time it was seized?**
- 4. Whether or not it was petitioner's duty to look out for the vessel's condition?<sup>13</sup>**

To be succinct, only two central issues need to be resolved: (1) whether petitioner was justified in resorting directly to this Court via a petition for *certiorari* under Rule 65; and (2) whether petitioner is entitled to the return of M/V Pilar-I in the same condition when it was seized by respondent.

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<sup>12</sup> Id at. 20-21.

<sup>13</sup> Id at. 175-176.

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

The Court finds the petition to be partly meritorious.

#### *Hierarchy of Courts; Direct Resort To The Supreme Court Justified*

Petitioner argues that his situation calls for the direct invocation of this Court's jurisdiction in the interest of justice. Moreover, as pointed out by the RTC, what is involved is a judgment of the Court which the lower courts cannot modify. Hence, petitioner deemed it proper to bring this case immediately to the attention of this Court. Lastly, petitioner claims that the present case involves a novel issue of law – that is, whether in an action to recover, a defendant in wrongful possession of the subject matter in litigation may be allowed to return the same in a deteriorated condition without any liability.<sup>14</sup>

Respondent, on the other hand, contends that the petition should have been filed with the CA, following the doctrine of hierarchy of courts. It pointed out that petitioner failed to state any special or important reason or any exceptional and compelling circumstance which would warrant a direct recourse to this Court.<sup>15</sup>

Under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket.<sup>16</sup> Nonetheless, the invocation of this Court's original jurisdiction to issue writs of *certiorari* has been allowed in certain instances on the ground of special and important reasons clearly stated in the petition, such as, (1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case.<sup>17</sup>

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<sup>14</sup> Id at. 176-177.

<sup>15</sup> Id. at 150.

<sup>16</sup> *Cabarles v. Judge Maceda*, 545 Phil. 210, 223 (2007).

<sup>17</sup> *Republic of the Philippines v. Caguioa*, G.R. No. 174385, February 20, 2013.

This case falls under one of the exceptions to the principle of hierarchy of courts. Justice demands that this Court take cognizance of this case to put an end to the controversy and resolve the matter which has been dragging on for more than twenty (20) years. Moreover, in light of the fact that what is involved is a final judgment promulgated by this Court, it is but proper for petitioner to call upon its original jurisdiction and seek final clarification.

*Wrong Mode of Appeal;  
Exception*

Petitioner asserts that the RTC committed grave abuse of discretion when it failed to rule in his favor despite the fact that he had been deprived by respondent of his property rights over M/V Pilar-I for the past eighteen (18) years. Moreover, the change in the situation of the parties calls for a relaxation of the rules which would make the execution of the earlier decision of this Court inequitable or unjust. According to petitioner, for the RTC to allow respondent to return the ship to him in its severely damaged and deteriorated condition without any liability would be to reward bad faith.<sup>18</sup>

Conversely, respondent submits that there was no grave abuse of discretion on the part of the RTC as the latter merely observed due process and followed the principle that an execution order may not vary or go beyond the terms of the judgment it seeks to enforce.<sup>19</sup> Respondent adds that the proper remedy should have been an ordinary appeal, where a factual review of the records can be made to determine the condition of the ship at the time it was taken from petitioner, and not a special civil action for *certiorari*.<sup>20</sup>

There are considerable differences between an ordinary appeal and a petition for *certiorari* which have been exhaustively discussed by this Court in countless cases. The remedy for errors of judgment, whether based on the law or the facts of the case or on the wisdom or legal soundness of a decision, is an ordinary appeal.<sup>21</sup> In contrast, a petition for *certiorari* under Rule 65 is an original action designed to correct errors of jurisdiction, defined to be those “in which the act complained of was issued by the court, officer, or quasi-judicial body without or in excess of jurisdiction, or with

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<sup>18</sup> *Rollo*, p. 180-182.

<sup>19</sup> *Id.* at 154 and 156.

<sup>20</sup> *Id.* at 151].

<sup>21</sup> *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 780.

grave abuse of discretion which is tantamount to lack of in excess of jurisdiction.”<sup>22</sup> A court or tribunal can only be considered to have acted with grave abuse of discretion if its exercise of judgment was so whimsical and capricious as to be equivalent to a lack of jurisdiction. The abuse must be extremely patent and gross that it would amount to an “evasion of a positive duty or to virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.”<sup>23</sup>

Therefore, a misappreciation of evidence on the part of the lower court, as asserted by petitioner, may only be reviewed by appeal and not by *certiorari* because the issue raised by the petitioner does not involve any jurisdictional ground.<sup>24</sup> It is a general rule of procedural law that when a party adopts an inappropriate mode of appeal, his petition may be dismissed outright to prevent the erring party from benefiting from his neglect and mistakes.<sup>25</sup> There are exceptions to this otherwise ironclad rule, however. One is when the strict application of procedural technicalities would hinder the expeditious disposition of this case on the merits,<sup>26</sup> such as in this case.

*Petitioner Not Barred from Demanding  
Return of the Vessel in its Former Condition*

Petitioner insists that it is respondent who should bear the responsibility for the deterioration of the vessel because the latter, despite having in its possession the vessel M/V Pilar-I during the pendency of the foreclosure proceedings, failed to inform the court and petitioner himself about the actual condition of the ship. For estoppel to take effect, there must be knowledge of the real facts by the party sought to be estopped and reliance by the party claiming estoppel on the representation made by the former. In this case, petitioner cannot be estopped from asking for the return of the vessel in the condition that it had been at the time it was seized by respondent because he had not known of the deteriorated condition of the ship.<sup>27</sup>

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<sup>22</sup> *Agrarian Reform Beneficiaries Association (ARBA) v. Nicolas*, G.R. No. 168394, October 6, 2008, 567 SCRA 540, 550.

<sup>23</sup> *Yu v. Reyes-Carpio*, G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.

<sup>24</sup> *Agrarian Reform Beneficiaries Association (ARBA) v. Nicolas*, supra note 22.

<sup>25</sup> *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 659 citing *Almelor v. RTC of Las Piñas, et al*, G.R. No. 179620, August 26, 2008, 563 SCRA 447.

<sup>26</sup> *Fortune Guarantee and Insurance Corporation v. Court of Appeals*, 428 Phil. 783, 791 (2002).

<sup>27</sup> *Rollo*, pp. 182-184.

On the contrary, respondent argues that petitioner is barred from asking for a modification of the judgment since he never prayed for the return of M/V Pilar-I in the same condition that it had been at the time it was seized.<sup>28</sup> Petitioner could have prayed for such relief in his prior pleadings and presented evidence thereon before the judgment became final and executory. During the course of the trial, and even at the appellate phase of the case, petitioner failed to ask the courts to look into the naturally foreseeable depreciation of M/V Pilar-I and to determine who should pay for the wear and tear of the vessel. Consequently, petitioner can no longer pursue such relief for the first time at this very late stage.<sup>29</sup> Moreover, respondent posits that it can only be held liable for the restoration and replacement of the vessel if it can be proven that M/V Pilar-I deteriorated through the fault of respondent. Nowhere in the prior decision of this Court, however, does it appear that respondent was found to have been negligent in its care of the vessel. In fact, respondent points out that, for a certain period, it even paid for the repair and maintenance of the vessel and engaged the services of security guards to watch over the vessel. It reasons that the vessel's deterioration was necessarily due to its exposure to sea water and the natural elements for the almost twenty years that it was docked in the Colorado shipyard.<sup>30</sup>

On this matter, the Court finds for petitioner.

This Court is not unaware of the doctrine of immutability of judgments. When a judgment becomes final and executory, it is made immutable and unalterable, meaning it can no longer be modified in any respect either by the court which rendered it or even by this Court. Its purpose is to avoid delay in the orderly administration of justice and to put an end to judicial controversies. Even at the risk of occasional errors, public policy and sound practice dictate that judgments must become final at some point.<sup>31</sup>

As with every rule, however, this admits of certain exceptions. When a supervening event renders the execution of a judgment impossible or unjust, the interested party can petition the court to modify the judgment to harmonize it with justice and the facts.<sup>32</sup> A supervening event is a fact which transpires or a new circumstance which develops after a judgment has

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<sup>28</sup> Id. at 156.

<sup>29</sup> Id. at 160.

<sup>30</sup> Id. at 166.

<sup>31</sup> *PCI Leasing and Finance, Inc. v. Milan*, G.R. No. 151215, April 5, 2010, 617 SCRA 258, 278, citing *Social Security System v. Isip*, 549 Phil. 112, 116 (2007).]

<sup>32</sup> *Sampaguita Garments Corporation v. National Labor Relations Commission*, G.R. No. 102406, June 17, 1994, 233 SCRA 260, 263.

become final and executory. This includes matters which the parties were unaware of prior to or during trial because they were not yet in existence at that time.<sup>33</sup>

In this case, the sinking of M/V Pilar-I can be considered a supervening event. Petitioner, who did not have possession of the ship, was only informed of its destruction when Colorado filed its Manifestation, dated July 29, 2010, long after the September 11, 2009 Decision of this Court in *Orix Metro Leasing and Finance Corporation v. M/V "Pilar-I" and Spouses Ernesto Dy and Lourdes Dy* attained finality on January 19, 2010. During the course of the proceedings in the RTC, the CA and this Court, petitioner could not have known of the worsened condition of the vessel because it was in the possession of Colorado.

It could be argued that petitioner and his lawyer should have had the foresight to ask for the return of the vessel in its former condition at the time respondent took possession of the same during the proceedings in the earlier case. Nonetheless, the modification of the Court's decision is warranted by the superseding circumstances, that is, the severe damage to the vessel subject of the case and the belated delivery of this information to the courts by the party in possession of the same.

Having declared that a modification of our earlier judgment is permissible in light of the exceptional incident present in this case, the Court further rules that petitioner is entitled to the return of M/V Pilar-I in the same condition in which respondent took possession of it. Considering, however, that this is no longer possible, then respondent should pay petitioner the value of the ship at such time.

This disposition is not without precedent. In the case of *Metro Manila Transit Corporation v. D.M. Consortium, Inc.*,<sup>34</sup> D.M. Consortium, Inc. (DMCI) acquired 228 buses under a lease purchase agreement with Metro Manila Transit Corporation (MMTC). MMTC later alleged that DMCI was in default of its amortization, as a result of which, MMTC took possession of all the buses. This Court upheld the right of DMCI, after having been unjustly denied of its right of possession to several buses, to have them returned by MMTC. Considering, however, that the buses could no longer be returned in their original state, the Court sustained the resolution of the CA ordering MMTC to pay DMCI the value of the buses at the time of repossession.

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<sup>33</sup> *Natalia Realty Inc. v. Court of Appeals*, 440 Phil. 1, 23 (2002).

<sup>34</sup> 546 Phil. 461 (2007).

The aforecited case finds application to the present situation of petitioner. After having been deprived of his vessel for almost two decades, through no fault of his own, it would be the height of injustice to permit the return of M/V Pilar-I to petitioner in pieces, especially after a judgment by this very same Court ordering respondent to restore possession of the vessel to petitioner. To do so would leave petitioner with nothing but a hollow and illusory victory for although the Court ruled in his favor and declared that respondent wrongfully took possession of his vessel, he could no longer enjoy the beneficial use of his extremely deteriorated vessel that it is no longer seaworthy and has no other commercial value but for the sale of its parts as scrap.

Moreover, the incongruity only becomes more palpable when consideration is taken of the fact that petitioner's obligation to respondent, for which the now practically worthless vessel serves as security, is still outstanding.<sup>35</sup> The Court cannot countenance such an absurd outcome. It could not have been the intention of this Court to perpetrate an injustice in the guise of a favorable decision. As the court of last resort, this Court is the final bastion of justice where litigants can hope to correct any error made in the lower courts.

**WHEREFORE,** the petition is **PARTIALLY GRANTED.** Respondent is ordered to pay petitioner the value of M/V Pilar-I at the time it was wrongfully seized by it. The case is hereby **REMANDED** to the Regional Trial Court, Branch 64, Makati City, for the proper determination of the value of the vessel at said time.

**SO ORDERED.**

  
**JOSE CATRAL MENDOZA**  
Associate Justice

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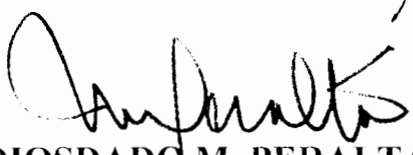
<sup>35</sup> *Rollo*, p. 176.


**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**

Associate Justice

Chairperson

  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**ROBERTO A. ABAD**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
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, 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.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice