

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**NELIA ATILLO,
*Petitioner,***

-versus-

**G.R. No. 136096
February 7, 2001**

**BUENAVENTURA BOMBAY,
*Respondent.***

X-----X

DECISION

GONZAGA-REYES, J.:

Before us is a Petition for Review under Rule 45 of the 1997 Rules of Court that assails the Resolutions^[1] of the Court of Appeals dated April 14, 1998 and October 16, 1998 in CA-GR SP No. 47351, entitled “Nelia Atillo vs. Buenaventura Bombay”. The resolutions respectively dismissed the petition of herein petitioner Nelia Atillo (petitioner) and denied her motion for reconsideration.

The pertinent facts that led to the filing of this petition are as follows:

Petitioner entered into a Lease Agreement with Buenaventura Bombay (private respondent) alleged owner of the Alto Commercial Building, in Mayamot, Antipolo, Rizal. The Lease Agreement provided that the period of lease was for one (1) year, starting May 1,

1988, and renewable upon the mutual consent of the parties. Petitioner failed to pay the rentals starting January 1995, a ground for terminating the Lease Agreement. Despite the written demand dated August 15, 1994 of private respondent to petitioner to pay the monthly rental and vacate the premises; the latter failed to do so. Private respondent then filed an ejectment case against petitioner with the Municipal Trial Court (MTC) of Antipolo, Rizal, Branch I.

In her Answer, petitioner alleged that the Alto Commercial Building was actually owned by the heirs of a certain Tomas Escaraman, to whom ownership of the building was transferred by Nide Marie Bombay under a ten-year lease agreement or “Kasunduan”. Petitioner contended that at the time private respondent demanded that she vacates the leased unit, private respondent allegedly no longer had any rights over the same and was already guilty of illegal detainer. Petitioner pointed out that a suit was in fact brought by the heirs of Tomas Escaraman against private respondent for unlawful detainer, docketed as Civil Case No. 2563 before the Municipal Trial Court of Antipolo, Rizal. Upon discovery of these developments, petitioner entered into a Contract of Lease with the heirs of Tomas Escaraman for the same unit already covered by her Lease Agreement with private respondent. With the new contract, petitioner paid rentals for the leased unit to the heirs of Tomas Escaraman and this was the basis of her refusal to comply with the demand of private respondent for her to vacate the leased unit.

On November 24, 1995 the MTC issued its Decision dismissing the ejectment case on the ground that plaintiff therein (herein private respondent) was not the proper party in interest based on the “Kasunduan” and had therefore no right to eject defendant (herein petitioner).

Private respondent appealed the decision to the Regional Trial Court (RTC) of Antipolo, Rizal, Branch 72.

On February 24, 1997, the RTC rendered the assailed Order reversing the Decision of the MTC and ruling in favor private respondent. The same Order awarded back rentals to private respondent and ordered petitioner to vacate the leased premises.

Aggrieved by the RTC Order, petitioner filed a petition for review with the Court of Appeals (CA).

On April 14, 1998, the CA issued a Resolution dismissing the petition of petitioner on the ground that petitioner failed to attach the pleadings and other material portions of the record of the case in violation of Rule 42, Section 2 (d) of the Rules of Court. In justifying the dismissal of the petition, the CA reasoned that:

“Section 2 (d), rule 42, 1997 Rules of Civil Procedure requires that the petition shall —

(d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

While petitioner has attached original/certified machine copies of the decisions of both lower courts, as well as the RTC order denying her motion for reconsideration, the writ of execution and notice to vacate, she has not annexed to her petition copies of the pleadings and other material portions of the record such as the complaint, answer and position papers filed with the lower court, in violation of the above-cited ruled.

WHEREFORE, on the authority of Section 3, Rule 42 of the 1997 Rules of Civil Procedure, the petition is hereby dismissed.

SO ORDERED.”^[2] (Emphasis supplied.)

On October 16, 1998, the CA denied the motion for reconsideration filed by petitioner. The Resolution reads:

“Instead of simply complying with the Rules by submitting the additional annexes cited in our Resolution of dismissal, petitioner in her Motion for Reconsideration has insisted that the requirement contained in Section 2 (d) of Rule 42 is not mandatory but merely directory and that it is within her

discretion or that of her counsel to determine what pleading should be attached to the position paper.

We find petitioner's position to be without basis. A cursory reading of the said provision would reveal that the documents or annexes therein mentioned are required to be appended to the petition and the mandatory character of such requirement may be inferred from Section 3 of Rule 42 which states that the "failure of the petitioner to comply with any of the foregoing requirements regarding the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Petitioner's suggestion that the deficiency may be cured by directing the court a quo to elevate the original record of the case is not well-taken. Precisely, the annexes mentioned in Section 2 (d) of Rule 42 are required to be appended to the petition in order to enable this Court to determine even without consulting the record if the petition is patently without merit or the issues raised therein are too insubstantial to require reconsideration, in which case the petition should be dismissed outright, or whether there is a need to require the respondent to comment on the petition. In short, the mere fact that a petition for review is filed does not call for the elevation of the record, which means that until this Court finds that the elevation of the record is necessary, such record should remain with the trial court during the pendency of the appeal in accordance with Section 2 of Rule 39, let alone the fact that in ejectment cases the decision of the RTC is immediately executory pursuant to Section 21 of the Revised Rule on Summary Procedure. Thus, more often than not, this Court has resolved petitions for review under Rule 42 without unnecessary movement of the original record of the case which could entail not only undue delay but also the possibility of the record being lost in transit.

WHEREFORE, the motion for reconsideration is DENIED for evident want of merit.

SO ORDERED."^[3]

Hence, this petition. Petitioner submits that the CA committed the following errors:

“FIRSTLY, the portion of Rule 42, Section 2 (d) relied upon by the Court of Appeal is directory and not mandatory, and clearly vests the party and/or counsel with discretion to determine which pleadings if any to attach to the petition;

SECONDLY, because the pleadings which must be attached were not enumerated in the aforestated rule, a failure to include a pleading which the Court of Appeals may require should not have resulted in dismissal of the petition; and

THIRDLY, the decision below awarding back rentals to respondent has no basis, and should not be countenance (sic).”^[4]

Petitioner urges this Court to liberally construe Section 2 (d), Rule 42 of the Rules of Court. She maintains that the mandatory requirement in the questioned provision pertains only to the requirement that judgment or final orders of both lower courts from which the appeal is made must be attached to the petition. In contrast, the portion of the provision that requires the attachment of “pleadings and other material portions of the record as would support the allegations of the petition” allegedly suggests the mere exercise of discretion. Thus, petitioner rationalizes that the records which in her counsel’s judgment were not of great importance or critical relevance to support her contentions were no longer included in the attachment. Petitioner argues that the deficiency in the attachment could be cured since the CA could direct the trial court clerk to elevate the original records of the case.

Petitioner bewails the alleged whimsical and capricious dismissal of her petition by the CA. She claims that the CA has not taken a single definitive stand on the matter of disposition of petitions where no pleadings were attached. The disparity in the treatment of appeals is allegedly evident in view of the favorable treatment given to the petition in the case of “Sofia Caccan vs. Buenaventura Bombay”, docketed as CA GR No. SP-46193. Said case is allegedly similar to the case at bar in the sense that it involves the same respondent in the

person of Buenaventura Bombay, that both cases involve the same causes of action as well as issues, that said case raised also exactly the same arguments raised in this case, and that the petition in said case also did not include any pleading or records. However, unlike the case at bar, the petition in the case of Caccan vs. Bombay was allegedly not dismissed despite the non-attachment of the pleadings and records. The Fifth Division of the CA in said case issued a Resolution dated December 19, 1997,^[5] requiring private respondent to file his Comment therein. Petitioner in this case deplors the alleged disparity of treatment in that her petition suffered a dismissal where another petition identical to it was treated with more considerate and reasonable latitude. It is allegedly “unfair that petitioner would now lose her recourse because of the accident of fate that her petition was raffled to the Honorable Sixth Division, instead of the Fourth (sic) or other divisions which would have acted in a less precipitate manner.”^[6]

Private respondent counters that there is no reason to justify a liberal application of the rules. He points out that petitioner did not attach to her petition for review before the CA the pleadings and other material portions of the record such as the complaint, answer and position papers filed with the lower court. Said attachments, private respondent claims, are necessary in order to enable the Court of Appeals to determine if the petition is patently without merit or the issues raised therein are too insubstantial to require consideration.

The petition is devoid of merit.

Petitioner limits the main issue in this case to whether or not the requirement to attach the pleadings and other material portions of the record as provided for by Section 2 (d), Rule 42 of the Rules of Court is mandatory such that non-compliance would warrant the outright dismissal of the petition. Section 2, Rule 42 of the Rules of Court provides as follows:

“SECTION 2. Form and Contents. — The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as

petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.” (Emphasis ours)

Non-compliance with any of the foregoing requisites is a ground for the dismissal of a petition based on Section 3 of the same Rule, viz:

“SECTION 3. Effect of failure to comply with requirements. — The failure of petitioner to comply with any of the foregoing requisites regarding the payment of, the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.”

The mandatory tenor of Section 2 (d), Rule 42 with respect to the requirement of attaching clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts is discernible and well settled. In this case, the mandatory or directory nature of the requirement with respect to the attachment of pleadings and other material portions of the record is put in question.

The phrase “of the pleadings and other material portions of the record” in Section 2 (d), Rule 42 is followed by the phrase “as would support the allegations of the petition” clearly contemplates the exercise of discretion on the part of the petitioner in the selection of documents that are deemed to be relevant to the petition. However, while it is true that it is petitioner who initially exercises the discretion in selecting the relevant supporting documents that will be appended to the petition, it is the CA that will ultimately determine if the supporting documents are sufficient to even make out a prima facie case. It can be fairly assumed that the CA took pains in the case

at bar to examine the documents attached to the petition so that it could discern whether on the basis of what have been submitted it could already judiciously determine the merits of the petition. The crucial issue to consider then is whether or not the documents accompanying the petition before the CA sufficiently supported the allegations therein.

In the recent case of Cusi-Hernandez vs. Diaz,^[7] the CA dismissed the petition of therein petitioner for failure to attach the certified true copies of such material portions of the record as would support the allegations in the petition. We ruled that based on the case of Cadayona vs. CA,^[8] not all of the supporting papers accompanying the petition should be certified. The documents attached by therein petitioner consisted only of the original duplicate copies of the assailed decisions and orders of the lower court but the Contract to Sell, a document central to the dispute, was not annexed. Nonetheless, we declared that there was substantial compliance with Section 2, Rule 42 since the MTC Decision attached to the petition reproduced verbatim the Contract to Sell. Moreover, we noted that therein petitioner annexed in the Motion for Reconsideration of the CA Decision copies of the Contract to Sell, the Original Certificate of Title, the Tax Declaration of the land in dispute, and the notarized rescission of the Contract to Sell. The efforts of therein petitioner to substantiate her allegations in her petition were clearly evident, thereby warranting reasonable leniency. Thus, we remanded the case to the CA so that it could decide the case on the merits.

In the case at bar, petitioner did not even come close to substantially complying with the requirements of Section 2 (d) of Rule 42. In fact, the CA had no factual basis upon which it could actually and completely dispose of the case. Aside from questioning the appeal of private respondent to the RTC, the petition filed by petitioner before the CA also objected to the award of back rentals by the RTC to private respondent. Petitioner disputed the award of back rentals in this manner:

“A cursory perusal of the pleadings and documents submitted in the court a quo would show that at the time that petitioner was in possession of subject premises, her rental was only P1,500.00 per month. This is evident in the lease agreement

which she entered into with respondent. It is just as easily established that the amount of P4,000.00 as claimed by respondent was merely based on his mere speculations. Moreover, no evidence was ever submitted by respondent to show that such amount was indeed justified as rental for the subject premises.

In addition, the Reversal Order failed to consider that as of the date of the filing of the instant case, petitioner still had a credit of P3,000.00 with respondent representing the balance on her deposit. This deposit has been duly acknowledged by respondent and in fact documented in his communications with petitioner. At the very least, this should have been credited in favor of petitioner.

All told, therefore, the court a quo in ruling in favor of respondent despite the absence of facts and evidence in support of his claims, erred in rendering the assailed Orders. In the case at bar, the amounts awarded by the court a quo were without any basis and to uphold the same would in fact be prejudicial to the property rights of petitioner.”^[9]

Petitioner urged the CA to examine the documents and pleadings submitted to the RTC but what petitioner appended to her petition before the CA merely consisted of the MTC Decision, the assailed RTC Order, and RTC Writ of Execution. The two other documents submitted, the Notice to Vacate and Writ of Execution pertain to the case of Salome Escaraman vs. Nadie Bombay docketed as Civil Case No. 95-3745. None of the foregoing documents set out the factual milieu of her claims. Petitioner did not annex the “Kasunduan” or Agreement, the Lease Contract between her and private respondent, the letters evidencing the alleged credit that she still has with private respondent and the other documentary evidence vital and indispensable to the disposition of her petition before the CA. Without the necessary documents to support the petition, the allegations therein were reduced to nothing more but bare allegations and the dismissal of the petition in this case was therefore forthcoming.

Petitioner characterizes the outright dismissal of her petition as whimsical. We do not agree. The case of Cusi-Hernandez vs. Diaz does recognize the fact that Section 3 (d), Rule 3 of the Revised Internal Rules of the CA^[10] empowers the CA to require the parties to submit additional documents as may be necessary in the interest of substantial justice.^[11] However, in this case, the exercise of this power under the foregoing rule would have been an exercise in futility. Petitioner remained obstinate in her stand not to submit the additional pleadings and other material portions of the record as shown in her Motion for Reconsideration of the CA Resolution. Petitioner insistently stated that “it is not mandatory upon petitioner to annex to the instant petition copies of the pleadings and other material portions of the records of the instant case, specially if in the opinion of counsel, no pleadings or portions of the records ‘would’ support the allegations of the petition. It is up to counsel to make a determination of which documents are material to the petition and would support the allegations therein.”^[12]

Instead of manifesting that petitioner would submit the additional documentary evidence, petitioner maintained that what she has submitted based on her discretion, are all that are necessary to support her allegations in her petition. As mentioned earlier, the accompanying documents were simply insufficient to support the petition. Also, petitioner could have easily ended her debacle by merely attaching the supplemental documents in her Motion for Reconsideration of the CA Resolution. Instead, petitioner stubbornly chose to insist that the CA direct the elevation of the records of the case if it deems that the relevant attachments were not appended to the petition. Petitioner’s unreasonable stance in the case at bar leaves no room for us to extend the same leniency that we accorded the petitioner in Cusi-Hernandez vs. Diaz.

As mentioned earlier, it is not disputed that it is petitioner who knows best what pleadings or material portions of the record of the case would support the allegations in the petition. Petitioner’s discretion in choosing the documents to be attached to the petition is however not unbridled. The CA has the duty to check the exercise of this discretion, to see to it that the submission of supporting documents is not merely perfunctory. The practical aspect of this duty is to enable the CA to determine at the earliest possible time the existence of

prima facie merit in the petition. Moreover, Section 3 of Rule 42 of the Rules of Court provides that if petitioner fails to comply with the submission of “documents which should accompany the petition”, it “shall be sufficient ground for the dismissal thereof”. In this case, the insufficiency of the supporting documents combined with the unjustified refusal of petitioner to even attempt to substantially comply with the attachment requirement justified the dismissal of her petition.

WHEREFORE, the petition is **DENIED**. The assailed Resolutions dated April 14, 1998 and October 16, 1998 issued by the Court of Appeals in Ca-GR SP No. 46193 are **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Melo, Vitug, Panganiban and Sandoval-Gutierrez, JJ., concur.

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- [1] Sixth Division, per Associate Justice Godardo A. Jacinto and concurred in by Associate Justices Artemon D. Luna and Roberto A. Barrios.
- [2] Rollo, p. 41.
- [3] Ibid., pp. 43-44.
- [4] Ibid., p. 21.
- [5] Fifth Division per Associate Justice Demetrio G. Demetria, concurred in by Associate Justices Minerva P. Gonzaga-Reyes and Ramon A. Barcelona; Rollo, p. 139.
- [6] Ibid., p. 33.
- [7] GR No. 140436, July 18, 2000.
- [8] GR No. 128772, February 3, 2000.
- [9] Records, p. 24.
- [10] “d. When a petition does not have the complete annexes or the required number of copies, the Chief of the Judicial Records Division shall require the petitioner to complete the annexes or file the necessary number of copies of the petition before docketing the case. Pleadings improperly filed in court shall be returned to the sender by the Chief of the Judicial Records Division.”
- [11] Cusi-Hernandez vs. Diaz, supra.
- [12] Records, p. 49.
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