



REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
MANILA

THIRD DIVISION

**UNITED AMERICAN
PHARMACEUTICAL, INC.,
Petitioner,**

CA-G.R. SP NO. 132706

Members:

- versus -

**CARANDANG, R. D.,
Chairperson
BARZA, R. F. and
REYES-CARPIO, A., JJ.**

**OFFICE OF THE DIRECTOR
GENERAL, INTELLECTUAL
PROPERTY OFFICE, and
PHARMA AG, INC.,
Respondents.**

Promulgated:

FEB. 18, 2015

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DECISION

BARZA, J.:

For resolution before this Court is a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court, filed by herein petitioner United American Pharmaceutical, Inc., (hereinafter referred to as "*petitioner*") seeking to annul and set aside the *Order*² dated September 12, 2013, rendered by herein public respondent Office of the Director General, Intellectual Property Office, for allegedly having been rendered with grave abuse of discretion amounting to lack or

¹ *Rollo*, pp. 3-14.

² *Rollo*, pp. 16-17.

excess of jurisdiction.

THE FACTS

Petitioner is a domestic corporation duly existing under the laws of the Philippines. On August 9, 2001, it filed a trademark application³ for registration of the mark “ZEGEN” with the Intellectual Property Office (IPO), designated as Application Serial No. 4-2001-005795, for goods in Class 5 of the International Classification of Goods. Thereafter, it filed on February 2, 2004, a *Declaration of Actual Use*⁴ with the IPO for the same mark.

On November 25, 2008, herein private respondent Pharma Ag Inc. (*Pharma*), filed with the IPO a trademark application for the mark “CEDEN” for goods in Class 5 of the International Classification of Goods. The said trademark application was then published for opposition in the IPO E-Gazette on September 22, 2009.

Aggrieved by Pharma's actions, petitioner filed a notice of opposition to the latter's application followed by a verified opposition on December 21, 2009. A notice to answer was issued to Pharma by the IPO but the latter failed to file its verified answer. The case was thus submitted for decision on the basis of the verified opposition and documentary evidence submitted by petitioner.

On April 26, 2011, the Bureau of Legal Affairs, Intellectual Property Office (*BLA-IPO*) rendered a Decision denying petitioner's verified opposition to Pharma's application for registration of the mark “Ceden”.

³ *Rollo*, pp. 18-20.

⁴ *Rollo*, p. 22.

On June 3, 2011, petitioner filed a motion for reconsideration assailing the above-mentioned decision of the BLA-IPO which was denied by the latter in its Resolution dated March 15, 2013. The said resolution was received by petitioner on April 3, 2013.

On May 2, 2013, petitioner filed before herein public respondent Office of the Director General, Intellectual Property Office (*public respondent*) its *Appeal Memorandum* assailing the April 26, 2011 Decision of the BLA-IPO, which denied its opposition to Pharma's application for registration.

In its presently assailed Order dated September 12, 2013, public respondent dismissed the appeal filed by petitioner on the ground that it was filed out of time. The dispositive portion of the said order states:

“Wherefore, premises considered, the instant appeal is hereby dismissed.

SO ORDERED.”⁵

Petitioner then filed the present petition for *certiorari* claiming public respondent gravely abused its discretion in dismissing its appeal.

ISSUES

Petitioner raises the following ground for the petition to be granted, *to wit*:

⁵ *Rollo*, p. 17.

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THE OFFICE OF THE DIRECTOR GENERAL, INTELLECTUAL PROPERTY OFFICE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED PETITIONER'S *APPEAL MEMORANDUM* DATED 2 MAY 2013 ON THE GROUND THAT IT WAS FILED OUT OF TIME CITING SECTION 2 OF OFFICE ORDER NO. 12, SERIES OF 2009, WHICH WAS ALREADY REPEALED BY SECTION 5 OF OFFICE ORDER NO. 99, SERIES OF 2011.⁶

RULING OF THE COURT

Simply stated, the issue in the present case is whether there was grave abuse of discretion on the part of public respondent in dismissing petitioner's appeal for allegedly being filed out of time.

The petition should be dismissed.

Non-filing of motion for reconsideration before filing of petition for certiorari

We have to point out that the instant petition suffers from a fatal infirmity because of the failure of petitioner to file a motion for reconsideration of the assailed order of public respondent before filing the present petition for *certiorari* before this court.

It is a well-established rule that a motion for

⁶ *Rollo*, p. 7.

reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for *certiorari*.⁷ Under Rule 65, the remedy of filing a special civil action for *certiorari* is available only when there is no appeal; or any plain, speedy, and adequate remedy in the ordinary course of law.⁸ A motion for reconsideration, however, is such a “plain” and “adequate remedy.” Hence, petitioner should have first filed a motion for reconsideration before public respondent before filing the instant petition before this Court. Evidently, the rationale for the said requirement is that the law intends to afford the tribunal, board, or office an opportunity to rectify any actual or fancied error attributed to it before resort to the courts of justice can be had⁹.

The said rule, of course, is not absolute and exceptions have been laid down wherein the filing of a petition for *certiorari* was held to be proper notwithstanding the failure to file a motion for reconsideration, such as:

(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

(b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

(d) where under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

⁷ *Philippine National Bank v. Arcobilla*, G.R. No. 179648, August 7, 2013.

⁸ RULES OF COURT, Rule 65, Section 1.

⁹ *Novateknika Land Corporation v. Philippine National Bank*, G.R. No. 194104, March 13, 2013.

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and

(i) where the issue raised is purely of law or public interest is involved.¹⁰

Regrettably, petitioner did not allege in the present case to which of the above-mentioned exceptions his case falls. Neither did it proffer any plausible reason why the filing of a motion for reconsideration should be dispensed with.

In *Cervantes v. Court of Appeals*,¹¹ the Supreme Court held:

“It must be emphasized that a writ of *certiorari* is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of *certiorari* must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do. x x x”

Also in *Seagull Ship Management and Transport, Inc. v. NLRC*,¹² the Supreme Court stated:

¹⁰ *Abacan v. Northwestern University, Inc.*, G.R. No. 140777, April 8, 2005.

¹¹ G.R. No. 166755, November 18, 2005.

¹² G.R. No. 123619, June 08, 2000.

"xxx. The law intends to afford the tribunal, board or office, an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had. However, in the case at bar, petitioners had not only failed to explain its failure to file a motion for reconsideration before the NLRC, it has also failed to show sufficient justification for dispensing with the requirement. Certiorari cannot be resorted to as a shield from the adverse consequences of petitioners' own omission to file the required motion for reconsideration."

The filing of a motion for reconsideration has been held to be not a mere technicality of procedure but rather a jurisdictional and mandatory requirement.¹³ Consequently, for petitioner's failure to comply with said requirement, this Court is left with no recourse but to order for the dismissal of the present petition for being fatally defective.

WHEREFORE, the foregoing considered, the instant petition is hereby ordered **DISMISSED**.

SO ORDERED.

ROMEO F. BARZA
Associate Justice

¹³ *Philippine National Bank v. Arcobillas*, supra note 16.

WE CONCUR:

ROSMARI D. CARANDANG
Associate Justice & Chairperson

AGNES REYES-CARPIO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROSMARI D. CARANDANG
Associate Justice & Chairperson
Third Division