100 Phil. 964

[G. R. No. L-11425. February 27, 1957]

JOVENCIO A. REYES AND MARIA G. REYES, PETITIONERS, VS. HON. NICASIO YATCO, AS JUDGE OF BRANCH V, QUEZON CITY, RIZAL COURT OF FIRST INSTANCE, FIDEL VILLANUEVA AND MANUEL VILLANUEVA, RESPONDENTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is a.petition for certiorari seeking to set aside the orders issued by respondent Judge dated August 21 and 22, 1956 which dismissed the two cases for recovery of money instituted by petitioners against respondents Fidel Villanueva and Manuel Villanueva on the ground of lack of jurisdiction.

The background of this case, as may be gathered from the pleadings extant in the record, is as follows: Sometime in September, 1955, petitioners filed in the Court of First Instance of Rizal, Quezon City Branch, against respondent Fidel Villanueva a complaint to recover the aggregate sum of P4,000. The complaint was later amended so as to include Manuel Villanueva as party defendant (Civil Case No. Q-1553). The amount claimed is based on two promissory notes, one for P2,000 issued by Fidel Villanueva, without interest, and other for P2,000 issued by Manuel Villanueva, likewise without interest. There was no stipulation asi to the payment of damages or attorneys fees.

Because of a motion to dismiss filed by defendants on the ground that there was misjoinder of action and that the court had no jurisdiction to take cognizance of the case because the amount claimed against eaeh defendant does not exceed the sum of P2,000, the court dismissed the case “without prejudice to the filing of another action in the proper court/e No appeal was’taken by petitioners from this order. Thereupon, petitioners filed two separate actions in the same court, one against Manuel Villanueva, and another against Fidel Villanueva, wherein they claimed in each the sum of P3,5G0 itemized as follows: 92,000 as evidenced by a promissory note, Pl,000 as moral damages, and P500 as attorney’s fees (Civil Cases Nos. Q-1929 and 1930).

Defendants again filed in each case a motion to dismiss based on the same ground of lack of jurisdiction, their theory being that, inasmuch as the amount covered by each note is only P2,000, without interest, petitioners cannot now include in their complaint any additional claim for damages or attorney's fees, there being no stipulation covering them, with the only purpose of placing the cases under the jurisdiction of the court of first instance. It is their contention that the two cases come within the exclusive original jurisdiction of the municipal court of Quezon City. The motions to dismiss were granted and, accordingly, the two cases were dismissed. Their motions far reconsideration having been denied, petitioners come now before tliis Court on a petition for certiorari seeking to set aside the orders above adverted to.

It is contended that respondent Judge committed a grave abuse of discretion in dismissing the two actions instituted by petitioners against respondent-litigants on the ground of lack of jurisdiction notwithstanding the fact that the claim in each involves the sum of P3,500. On the other hand, respondents contend that the court a quo did right in dismissing said cases because petitioners had no right to include in their complaint a claim for damages and attorney's fees because nothing has been stipulated about them between the parties for, to allow them to do so, would be to place in their hands capriciously the right to choose the court that would have jurisdiction over them. This, it is claimed, cannot be the intendment of the law.

It is true that the two promissory notes on which the two cases are predicated only amount to P2,000 each and that nothing has Ibeen stipulated, about damages or attorney's fees that petitioners may recover should the matter be brought to court in case of failure on the part of respondent-litigants, to settle them, but this does not mean that the absence of such stipulation would bar. petitioners from claiming them if they can prove that they are entitled thereto under the circumstances. While, as a rule, if the obligation consists in a sum of money, the only damage a creditor may recover/if the debtor incurs in delay, is the payment of the interest agreed upon, or the legal interest, unless the contrary is stipulated (Article 2209, new Civil Code), however, the creditor may now claim other damages, under the new law, such as moral or exemplary damages, in addition to interest (Articles 2196 and 2X97, *Idem*.), the award of which is left to the discretion of the court (Article 2216, Idem.). Here petitioners deemed it proper to claim for P1,000 in each case as moral damages, and whether this is justified or not it is not now the time to determine. That will come when the cases are tried on the merits. Since this is a light which is now granted by the new Civil Code, it cannot be said at this moment that the action of petitioners is capricious or whimsical, as contended.

The same thing may be said with regard to the claim for attorney's fees. While previously a party cannot claim attorney's fees as damages unless there is an express stipulation to that effect (Tan Ti vs. Alvear, 26 Phil., 566), the new law has changed the situation. Now attorney's fees may be recovered, in the absence of stipulation to the contrary, "When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest" (Article 2208, paragraph 2, new Civil Code). Evidently, the two cases in question come under this provision of the law. It cannot therefore be pretended that petitioners claimed attorney's fees in their complaints merely to place them within the jurisdiction of the court of first instanceys

Wherefore, petition is granted. The orders of respondent Judge mentioned herein are hereby set aside, without pronouncement as to costs.

Pards, C. J., Montemayor, Labrador, Conception, Reyes, J. B. of Endeneia, and Felix, JJ., concur. Reyes, A., J., in the resultBengzon, J., dissenting:

I cannot agree to the decision, because it overlooks the fact that the respondent judge's order dismissing the complaint for lack of jurisdiction was appealable; and that petitioners' remedy was to appeal. Almost every day we dismiss certiorari petitions on that ground, with the formula: "This remedy is to appeal in due time." All in accordance with Rule 67.

"Petition for certiorari.—When any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, & 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 as the law requires, with costs." (Section 1. Italics ours.)

The existence of the remedy by appeal is a bar to the writ of certiorari. (Silvestre vs. Torres, 57 Phil, 885). It is true that in some instances we relaxed the application of the rule, entertaining petitions for certiorari, although the petitioner could appeal the order later. But they were cases where the respondent court *assumed jurisdiction* by overruling motions to dismiss based on lack of jurisdiction—cases wherein we regarded petitioner to be *prima face* correct. Then we reasoned out, if the court had really no jurisdiction, why require petitioner to go through the legal steps (answer, trial) to final judgment, only to have the whole proceedings cancelled later for lack of jurisdiction? This is an entirely different

situation: appeal was available instantly, because the lower court had dismissed the complaint. Petitioner did not have to wait for correction of tine error, if any.

What is worse, whereas petitioners for certiorari must allege and prove that the judge "acted without or in excess of his jurisdiction" the petitioners here oddly enough, allege that the respondent judge *had jurisdiction*. Certiorari lies *to curb excesses* of jurisdiction; here there *was no excess*. The respondent judge may have erred in his opinion as to the extent of his jurisdiction; yet an appeal would have corrected such error. Certiorari proceedings would be a legal incongruity, for as stated there was no excess of jurisdiction. Neither was there "abuse of discretion;" unless we hold that every error is abuse of discretion corrigible by certiorari.

Probably the remedy against a judge who mistakenly declines to take jurisdiction is mandamus, to compel him to assume jurisdiction. Yet the same objection will stand: remedy by appeal. (Section 3, Rule 67.) And no relaxation could be invoked on the rule barring mandamus where remedy by appeal lies. Furthermore there are other objections, such as "clear legal right" etc. Obviously anticipating such objections the decision *treats this case as certiorari.*

Let it not be argued that, whether mandamus, certiorari or appeal, the matter is the same: petition to review. The Rules and long established practice make the distinction, which should be observed, because it serves a fundamental procedural objective, among others: to avoid multiplicity of suits.

Perhaps petitioners have lost their remedy by appeal, and therefore they chose to institute a special civil action. If such be the case they should be told that certiorari, under the circumstances, is not proper for it is no substitute for an appeal. (Moran, Rules of Court, .Vol. 2, p. 167 siting Profeta vs. Gutierrez, 71 Phil. 582; Government of V. S. vs. Judge, 49 Phil. 495; 50 Phil. 975, 979; Check vs. Watson 90 N. C. 302; Currie vs. Clark 90 N. C. 17.)

So far on the procedural aspect. On the merits this Court apparently by-passed respondents' real .contention, to wit: the plaintiffs' demand for attorney's fees was an afterthought, a mere sham or pretense to swell the amount demanded, "to place the cases under the jurisdiction of the court of first instance" and thereby evade its previous order to petitioners to litigate in a lower court. This is the basic issue—not the right to attorney's fees. The respondent judge's finding on it was virtually a finding of fact, which we are not in a ppsition to reverse in a special civil action like this.

Padilla, J., concurs.

Date created: October 13, 2014