

**SOCORRO G. DE CASTRO, REPRESENTED BY HER
ATTORNEY-IN-FACT RAFAEL G. DE CASTRO, PETITIONER, VS. DELTA
MOTOR SALES CORP. AND THE HONORABLE JUDGE AQUILINO P.
BONTO, DISTRICT JUDGE,...**

G.R. No. L-34971. May 31, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

This special civil action of certiorari was instituted by Doctor Socorro G. de Castro to review the interlocutory order in Civil Case No. 717 of the Court of First Instance of Sorsogon, Gubat Branch, dated December 6, 1971, denying her motion to declare in default respondent Delta Motor Sales Corporation (Delta Motor for short). The antecedents of the case as disclosed in the petition and answers are as follows:

In 1969 Delta Motor sued Doctor De Castro in the municipal court of Makati, Rizal for the recovery of P2,320.01 as the unpaid balance of the price of a Toyota car. On the theory that that action was unfounded and malicious because she had made an overpayment, Doctor de Castro retaliated by instituting in 1970 in Sorsogon, her home province, an action wherein she claimed from Delta Motor moral and actual damages aggregating P56,000. She complained that the Makati suit exposed her to ridicule and constrained her to withdraw her Congressional candidacy.

Delta Motor filed a motion to dismiss on the grounds of improper venue, pendency of another action and lack of legal capacity to sue. The motion, instead of containing the usual notice of hearing, merely directed the Clerk of Court to submit it for the consideration by the Court "immediately upon receipt" (sic).

At the trial court's instance, the motion was heard on September 27, 1971. It was denied for "being defective". Delta Motor refiled the motion. It contained a notice setting it for hearing on October 22, 1971. Doctor De Castro opposed the motion and prayed that Delta Motor be declared in default.

The trial court, in, its aforementioned order of December 6, 1971, refused, to declare Delta Motor in default. It reasoned out that, in allowing Delta Motor to refile the motion to dismiss, it thereby extended the period for filing the answer. It cited the ruling that a trial court may adopt "a basically flexible attitude in favor of the defendant in this area of our adjective law" (Naga Development Corporation vs. Court of Appeals, L-28173, September 30, 1971, 45 SCRA 105). It deferred the resolution of the motion to dismiss because the grounds invoked "do not appear to be indubitable". Petitioner's motion for the reconsideration of that order was denied on February 10, 1972. The instant certiorari petition was filed on April 18, 1972.

The petition is devoid of merit. It does not raise any genuine jurisdictional issue. Certiorari under Rule 65 of the Rules of Court is a remedy designed for the correction of errors of jurisdiction and not errors of judgment (Nocon vs. Geronimo, 101 Phil. 735). Its function is to keep an inferior court within its jurisdiction. As a rule, only jurisdictional questions may be raised in a petition for certiorari, including matters of grave abuse of discretion

which are equivalent to lack of jurisdiction (3 Moran's Comments on the Rules of Court, 1970 Edition, page 157 and cases cited therein).

"The office of the writ of certiorari has been reduced to the correction of defects of jurisdiction solely and cannot legally be used for any other purpose. It is truly an extraordinary remedy and, in this jurisdiction, its use is restricted to truly extraordinary cases — cases in which the action of the inferior court is wholly void; where any further steps in the case would result in a waste of time and money and would produce no result whatever; where the parties, or their privies, would be utterly deceived; where a final judgment or decree would be nought but a snare and delusion, deciding nothing, protecting nobody, a judicial pretension, a recorded falsehood, a standing menace. It is only to avoid such results as these that a writ of certiorari is issuable; and even here an appeal will lie if the aggrieved party prefers to prosecute it" (Herrera vs. Barretto and Joaquin, 25 Phil. 245, 273; Fernando vs. Vasquez, L-26417, January 30, 1970, 31 SCRA 288).

No grave abuse of discretion, amounting to lack of jurisdiction, was committed by respondent Judge in not declaring Delta Motor in default and in allowing it to file an answer after action was deferred on its motion to dismiss. It cannot be said that he acted capriciously, arbitrarily and whimsically (Abad Santos vs. Province of Tarlac, 67 Phil. 480).

"If every error committed by the trial court were to be a proper object of review by certiorari, the trial would never come to an end and the appellate courts' dockets would be clogged ad infinitum with the aggrieved parties-litigants filing petition after petition for writs of certiorari against every interlocutory order of the trial court" (Espiritu vs. Solidum, L-27672, July 25, 1973, 52 SCRA 131). That situation would be intolerable.

Certiorari is not a substitute for appeal. Any error imputable to the trial court in not declaring Delta Motor in default can be reviewed in an appeal from the final decision on the merits of the case.[*]

WHEREFORE, the petition is dismissed without pronouncement as to costs.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Antonio, and Fernandez, JJ., concur.
Barredo, J., concurs in a separate opinion.

[*] Petitioner Dr Castro obtained a judgment for P10,000 against Delta Motor in the Makati municipal court (p. 155, Rollo). On appeal, the Court of First Instance of Rizal on January 6, 1973 rendered in favor of Delta Motor a net judgment for P646.76. The propriety of that appeal was assailed by certiorari in this Court (L-37705, De Castro vs. Judge Revilla). The petition in that case was dismissed for lack of merit on November 29, 1973.

CONCURRING OPINION

BARREDO, J.:

I concur, but I would like to explain a few points which I feel should be clarified in order to avoid any misunderstanding as to the exact import of Our decision regarding the jurisdictional and discretionary matters referred to therein.

There can be no question that respondent Delta's first motion to dismiss the Sorsogon case is fatally defective. The request which accompanied the same, for the court to act on it upon receipt, does not comply with the rules. Under settled jurisprudence, such a motion is as bad as one having no notice of hearing at all, and for the court to

have acted on it would have been in excess of its jurisdiction. (Philippine Advertising Counselors, Inc. vs. Revilla, 52 SCRA 246.) Indeed, not being a motion at all, it did not suspend Delta's period for filing its responsive pleading.

The issue in this case, however, does not relate directly to said motion to dismiss. Rather, it refers more to the action of respondent judge of allowing Delta to file another motion to dismiss, only to defer action on it, and to give Delta, in effect, an opportunity to file a belated answer. This, I feel, was well within its discretion to do. Under Section 7 of Rule 11, "the court may — upon (such terms as may be just) allow an answer or other pleading to be filed after the time fixed by the (se) rules." This provision is, in fact, only a formulation into a rule of the doctrine of the same tenor in *Pindangan Agricultural Co. vs. Estrada*, 89 Phil. 80 and *Banares vs. Flordelisa*, 51 Phil. 786.

It may be that for purposes of permitting Delta to still insist on the grounds of dismissal alleged in its motion,[1] the fact that said motion was fatally defective should be considered as a bar preventing any favorable action of the court thereon, but in relation to the exercise of its discretion in acting unfavorably on petitioner's motion to declare Delta in default, said fault is, to my mind, insufficient to justify denial to said defendant entirely of its right to answer the complaint and to be otherwise heard. I agree, therefore, that respondent judge has not committed the grave abuse of discretion alleged by petitioner.

[1] On the basis of the facts extant on the record, it can be said that all the three grounds, namely, (1) improper venue, (2) pendency of another action and (3) lack of legal capacity to sue have hardly any chance of being sustained, considering that (a) petitioner is a resident of Sorsogon; (b) she could not have made her P56,000.00 counterclaim in the municipal court of Makati because it has no jurisdiction over such an amount, and (c) the cause of action alleged was her own.

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