

**NICANOR JACINTO, PETITIONER, VS. HON. RAFAEL AMPARO, AS
JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH III,
AND JOSE COJUANGCO, RESPONDENTS.**

G.R. No. L-6096. August 25, 1953

Ponente: JUGO, J.

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JUGO, J.:

On November 25, 1951, Nicanor Jacinto, petitioner herein, filed a complaint against Jose Cojuangco, respondent herein, before the Court of First Instance of Manila, presided over by Judge Rafael Amparo, co-respondent herein, in Civil Case No. 15199 of said court, praying for an accounting of the assets of a partnership organized by Nicanor Jacinto and Jose Cojuangco in 1939. Cojuangco filed an answer with a counterclaim, to which Jacinto in his turn filed an answer.

Upon motion of Jacinto, the case was set for trial on February 22, 1952.

On February 8, Jacinto served on Cojuangco a notice for the taking of the latter's deposition by oral examination on February 12, before a Deputy Clerk of the Court of First Instance of Manila.

In the morning of February 12, 1952, the date set for the taking of the deposition of Cojuangco, the latter's counsel, attorney Lorenzo Sumulong, conferred with attorney Fernando Jacinto, son and counsel of Nicanor Jacinto, regarding the possibility of an amicable settlement. In view of this, the taking of the deposition was postponed to February 15, and then to February 18, at 2:00 p.m.

At one o'clock in the afternoon of February 18 or one hour before the time set for the deposition of Cojuangco, the latter served on Jacinto notice of his motion asking the court to order that the deposition be not taken at all, setting said motion for hearing on February 22, the date fixed for the trial. At the same time, Cojuangco served on Jacinto notice that he would take Jacinto's oral deposition at one o'clock p.m. on February 22. Jacinto did not object to the taking of his deposition by Cojuangco, but moved that the hour of the taking be changed for the convenience of both parties. At the hearing of Cojuangco's motion, Jacinto's counsel argued against it. The respondent Judge dictated in open court the following resolution:

"The Court takes exception to the allegation that the taking of a deposition is a matter of absolute right after the answer is filed. See section 16 of the rules. The case is now ready for trial, why don't we proceed? The granting of the taking of a deposition is discretionary to the court under Section 16. And taking the circumstances, the court finds no necessity for the taking of the deposition. It will simply delay the proceedings. The court will deny or set aside the taking of the deposition and the counsel for the plaintiffs can test the validity of the ruling of the court in the appellate court.

* * * * *

As the court stated from the beginning, the court will issue a formal order directing that no deposition will be taken because that will not be necessary. The court finds that such taking of the deposition will delay the

proceedings in this case and will lead the parties or the court to no practical result. I will have the order made in due form.

Cojuangco moved for the reconsideration of said order, but his motion was denied.

Section 16, of Rule 18, provides that "after notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, etc." It is clear from this section that the taking of a deposition is discretionary with the trial court. We do not find that the court abused its discretion in ordering that the deposition be not taken, the reasons given by it being plausible and cogent. In certain cases, there may be sufficient grounds for taking the deposition of a party or witness, such as his impending departure from the country, or that certain pertinent facts could not be elicited except by means of a deposition. No such grounds exist in the present case. There is no showing that the respondent is fleeing from the country or that he is in possession of any data which may not be obtained from him at the trial itself, with the same coercive remedies at the disposal of the petitioner.

As there has been no excess of jurisdiction or abuse of discretion on the part of the respondent court, the remedy of certiorari does not lie; nor may the writ of mandamus be issued, for the reason that this remedy is available only to compel the performance of a mandatory and ministerial act on the part of an officer.

In the case of *Frank & Co, vs. Clemente*, (44 Phil., 30), it was held that the taking of a deposition rests largely in the sound discretion of the court. Although that decision was rendered under the provisions of the old Code of Civil Procedure (Act No. 190), it is also applicable in the present case, in view of the provisions of section 16 of Rule 18.

In view of the foregoing, the petition is denied with costs against the petitioner. It is so ordered.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes and Labrador, JJ., concur.

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