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3. Certiorari

1. Requisites

- (1) A tribunal, board or officer exercises judicial or quasi-judicial function;
- (2) It or s/he acts without or in excess of jurisdiction or with grave abuse of discretion; and
- (3) There is no appeal nor plain, speedy and adequate remedy in the ordinary cause of law.

2. Terminology

- (1) Without jurisdiction – absence of a legal power to determine a case.
- (2) Excess of jurisdiction – the court has jurisdiction but fails to comply with the conditions prescribed for its exercise.⁴¹¹
- (3) Grave abuse of discretion – judicial power is exercised capriciously, arbitrarily or despotically due to passion or personal hostility.⁴¹²

3. Certiorari is not a proper remedy if appeal is available or it is lost through the fault of the petitioner,⁴¹³ except:

- (1) appeal is not a speedy and adequate remedy;⁴¹⁴
- (2) order is issued without or in excess of jurisdiction;⁴¹⁵
- (3) in consideration of public welfare and for the advancement of public policy;⁴¹⁶
- (4) order is a patent nullity;⁴¹⁷
- (5) to avoid future litigation;⁴¹⁸
- (6) to avoid a miscarriage of justice;⁴¹⁹
- (7) in furtherance of the broader interest of justice and equities.⁴²⁰

4. Before certiorari can be availed of, petitioner should first file a motion for reconsideration of the challenged order, resolution or decision,⁴²¹ except in the following cases:

- (1) in the interest of justice and public welfare and advancement of public policy;⁴²²
- (2) order was issued without or in excess of jurisdiction;⁴²³
- (3) order is a patent nullity⁴²⁴ as when petitioner's right to due process was denied in the lower court⁴²⁵ or petitioner has been unlawfully deprived of his right to appeal;⁴²⁶

(4) when relief is extremely urgent, there is no more need to wait for the resolution of a motion for reconsideration;⁴²⁷

(5) when the questions raised and passed upon in the lower court are the same as those to be passed upon in the certiorari case;⁴²⁸ and

(6) question is purely of law.⁴²⁹

5. Requirements Regarding the Extrinsic Sufficiency of the Petition

(1) it must be verified;⁴³⁰

(2) accompanied by a certificate of non-forum shopping;⁴³¹

(3) accompanied with certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto;⁴³²

(4) proof of service pursuant to Rule 13, Section 1; and

(5) if not filed and served personally, then, it should be accompanied by a written explanation why personal service was not resorted to.⁴³³

6. Time to File

Within sixty (60) days from notice of decision, resolution or order sought to be assailed, or from the denial of petitioner's motion for reconsideration or new trial filed in due time after judgment.⁴³⁴

7. Decisions

7.1 As a general rule, certiorari is not a proper remedy to assail the order of the trial court denying a demurrer to evidence in a civil case.⁴³⁵ Motion for reconsideration and, in case of denial, appeal, are the proper remedy.

411 *Leung Ben v. O'Brien*, 38 Phil. 182 [1918]; *Tengco v. Jocson*, 43 Phil. 715 [1922].

412 *Gamboa v. Cruz*, No. L-56291, June 27, 1988, 162 SCRA 642; *Filinvest Credit Corporation v. Intermediate Appellate Court*, No. L-65935, September 30, 1988, 166 SCRA 155.

413 *Dillena v. Court of Appeals*, No. L-77660, July 28, 1988, 163 SCRA 630; *Velasco Vda. De Caldito v. Segundo*, No. L-58187, September 30, 1982, 117 SCRA 573.

414 *Saludes v. Pajarillo*, 78 Phil. 754 [1947].

415 *Philippine National Bank v. Florendo*, G. R. No. 62082, February 26, 1992, 206 SCRA 582.

416 *Jose v. Zulueta*, No. L-16598, May 31, 1961, 2 SCRA 574.

417 *Marcelo v. De Guzman*, No. L-29077, June 29, 1982, 114 SCRA 657.

418 *St. Peter Memorial Park, Inc. v. Campos, Jr.*, No. L-38280, March 21, 1975, 63 SCRA 180.

419 *Escudero v. Dulay*, No. L-60578, February 23, 1988, 158 SCRA 69.

420 *Marahay v. Melicor*, G. R. No. 44980, February 6, 1990, 181 SCRA 811.

421 *Butuan Bay Wood Export Corporation v. Court of Appeals*, No. L-45473, April 28, 1980, 97 SCRA 297.

422 *Jose v. Zulueta*, *supra*, note 416.

423 Philippine Consumers Foundation, Inc. v. National Telecommunications Commission, No. L-63318, November 25, 1983, 125 SCRA 845.

424 Aquino v. National Labor Relations Commission, G. R. No. 98108, September 3, 1993, 226 SCRA 76.

425 Bache and Co. (Phil.), Inc. v. Ruiz, No. L-32409, February 27, 1971, 37 SCRA 823.

426 National Electrification Administration v. Court of Appeals, No. L-32490, December 29, 1983, 126 SCRA 394.

427 Vda. de Sayman v. Court of Appeals, No. L-25596, April 28, 1983, 121 SCRA 650.

428 Peroxide Philippines Corporation v. Court of Appeals, G. R. No. 92813, July 31, 1991, 199 SCRA 882.

429 Central Bank v. Cloribel, No. L-26971, April 11, 1972, 44 SCRA 307.

430 Rules of Court, Rule 65, Sec. 1.

431 Ibid.

432 Ibid.

433 Rules of Court, Rule 13, Sec. 11.

434 Rules of Court, Rule 65, Sec. 4.

435 Asian Trading Corporation v. Court of Appeals, G. R. No. 76276, February 15, 1999, 303 SCRA 152.

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