

BUTUAN BAY WOOD EXPORT CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS AND DIAMOND MACHINERY CO., INC. RESPONDENTS.

G.R. No. L-45473. April 28, 1980

Ponente: GUERRERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6e0da2595569/>

GUERRERO, J.:

This is an appeal by certiorari pursuant to Section 1, Rule 45 of the Rules of Court, of the decision promulgated by the Court of Appeals[1] in Special Civil Action for Certiorari With Prayer for Issuance of Preliminary Injunction, docketed as CA-G.R. No. SP-05622, entitled "Butuan Bay Wood Export Corporation, Petitioner, vs. Hon. Buenaventura J. Guerrero, in his capacity as Judge of the Court of First Instance of Rizal, Branch XXIV, and Diamond Machinery Co., Inc., Respondents," denying the petition for certiorari and setting aside the restraining order issued by the court as well as the Resolution of December 27, 1976 denying petitioner's Motion for Reconsideration of said decision.

This case finds its genesis in Civil Case No. 23226 for replevin before the Court of First Instance of Rizal presided by the Honorable Buenaventura J. Guerrero, instituted by private respondent praying the court that, pending trial, an order be issued directing the sheriff to take into his custody and to dispose of in accordance with the Rules of Court the following personal properties which petitioner allegedly bought from defendant Diamond Machinery Co., Inc., now the private respondent herein, on installment basis, but defaulted in the installment payments due thereon:

(1)

One (1) Unit TREE FARMER MODEL CSA Log Skidder powered by Cummins V-504C diesel engine, complete with gearmatic 190 winch assy., 24, 5x32-12 ply tires, canopy and standard accessories, S.N. 8412-031; and

(2)

One (1) Unit TREE FARMER MODEL C6D Log Skidder powered by GM 4-53 diesel engine, complete with CanCar 20 winch 23.1 x 26 - 16 PR United Tires, canopy and standard accessories, Serial No. 6402-056.

The following indisputable facts appear on record:

"On April 1, 1976, private respondent Diamond Machinery Co., Inc. filed a verified complaint for replevin against petitioner, docketed as Civil Case No. 23226 of the Court of First Instance of Rizal, Branch XXIV, presided over by respondent Judge Buenaventura J. Guerrero. On the same day, private respondent filed its "Bond for Manual Delivery of Personal Property" in the amount of P898,440.28, and on April 2, 1976, respondent Judge issued a writ of seizure.

On April 8, 1976, petitioner filed a Motion to Dismiss and Set Aside the Order of Seizure.

On April 19, 1976, private respondent filed its Opposition to the Motion to Dismiss and to Set Aside Order of

Seizure, to which petitioner filed its Reply on April 26, 1976.

On April 27, 1976, petitioner filed an Ampliatory Prayer for Issuance of Temporary Restraining Order. On the same day, Judge Reynaldo P. Honrado, temporarily presiding over Branch XXIV of the Court of First Instance of Rizal, issued an order, temporarily restraining the Provincial Sheriff of Agusan del Sur from further enforcing and implementing the writ of seizure, dated April 2, 1976, and to maintain the status quo of the parties.

On May 4, 1976, private respondent filed a motion for reconsideration of the order of April 27, 1976, to which petitioner filed its opposition on May 7, 1976. On the same day, private respondent filed its Rejoinder to petitioner's reply to the opposition to dismiss, to which petitioner filed its Sur-Rejoinder on May 10, 1976. On that day, May 10, 1976, petitioner presented evidence in support of its motion to dismiss and set aside order of seizure in the course of which, it presented as witness Roberto S. Aquino, the President and General Manager of petitioner. Private respondent's motion for reconsideration dated May 4, 1976 was likewise submitted for resolution.

On June 1, 1976, respondent Judge issued an order which reconsidered and set aside the order of April 27, 1976, and held in abeyance the resolution of petitioner's motion to dismiss and to set aside order of seizure until after resolution of the motion to dismiss filed by private respondent, as defendant, in Civil Case No. 1844, Court of First Instance of Agusan del Norte and Butuan City, Branch I, and in Civil Case No. 143, Court of First Instance of Agusan del Sur.

On June 11, 1976, petitioner filed its motion for reconsideration of the order of June 1, 1976.

On June 18, 1976, private respondent filed its opposition to the motion for reconsideration. Earlier on June 16, 1976, petitioner filed a Manifestation and Supplement to Motion for Reconsideration.

On June 22, 1976, when respondent Judge was attending a seminar for Judges at the Development Academy of the Philippines, petitioner filed an urgent motion, praying that the motion for reconsideration and supplement to motion for reconsideration be resolved, or that an order be issued reiterating the order of April 27, 1976.

On June 23, 1976, Judge Reynaldo P. Honrado, who was temporarily Presiding Judge of Branch XXIV of the Court of First Instance of Rizal issued an order disqualifying himself from sitting in the case, and forwarding to Judge Leo D. Medialdea, 1st Assistant Executive Judge, the records of the case.

On June 28, 1976, an order was issued by Judge Leo D. Medialdea, denying petitioner's urgent motion, dated June 22, 1976, "in the interest of the orderly administration of justice."^[2]

On July 1, 1976, petitioner filed with the Court of Appeals a Petition for Certiorari with prayer for the issuance of preliminary injunction, docketed as CA-G.R. No. SP-05622-R.

On July 7, 1976, the Court of Appeals issued a temporary restraining order enjoining the trial Judge from enforcing his order dated June 1, 1976 until further orders from said Court.

On November 22, 1976, the Honorable Court of Appeals rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the petition for certiorari is denied, and the restraining order issued by this court is recalled and set aside. This case is dismissed with costs against petitioners."^[3]

On December 27, 1976, the Court of Appeals denied petitioner's Motion for Reconsideration. Hence, this petition for review on certiorari.

It will be noted that petitioner filed three (3) civil cases relative to the properties subject of replevin in Civil Case

No. 23226.

The first of these cases is Civil Case No. 1844 for Damages filed on March 26, 1976 with the Court of First Instance of Agusan del Norte and Butuan City. Upon the plaintiffs' (Roberto S. Aquino and Butuan Bay Wood Export Corporation) manifestation that the cause of action had been rendered moot and academic as the machineries desired to be restrained had been given back to plaintiffs and already being used in their logging operations by virtue of a restraining order issued by the Court of Appeals in G.R. No. CA-G.R. No. SP-05622-R, this case was dismissed with prejudice on September 6, 1976 (See p. 92, Records of Case).

The second case is Civil Case No. 143 for Injunction with preliminary injunction and annulment of contract filed on March 29, 1976 with the Court of First Instance of Agusan del Sur which was dismissed on October 18, 1976 due to improper venue. This case is now on appeal with the Court of Appeals.

The third case is Civil Case No. SP-326 for Injunction with preliminary injunction and damages filed on May 26, 1976 with the Court of First Instance of Agusan del Norte and Butuan City. On May 27, 1976, the Presiding Judge issued a temporary restraining order enjoining private respondent and all acting in its behalf from disturbing or depriving petitioner's possession of the skidders or machineries being used for its logging operations until further orders from the court. This case was dismissed without prejudice on May 3, 1977.

The issues raised in this petition are:

- Whether or not the disputed order of June 1, 1976 was issued by the trial Judge without, or in excess of jurisdiction or with grave abuse of discretion; and
- Whether or not the filing of the petition for certiorari with prayer for issuance of preliminary injunction with respondent Court of Appeals (CA-G.R. No. SP-05622-R) was premature.

Petitioner seeks to impress upon this Court that the disputed order of June 1, 1976 issued by Presiding Judge Buenaventura J. Guerrero of the Court of First Instance of Rizal, Branch XXIV, was issued without or in excess of jurisdiction or with grave abuse of discretion. Petitioner further asserts that the restraining order issued by the Presiding Judge of the Court of First Instance of Agusan del Norte and Butuan City in Civil Case No. SP-326 on May 27, 1976 was still valid and subsisting as of June 1, 1976 when Judge Guerrero issued the questioned order. This same issue was raised in the court below and respondent Court of Appeals found petitioner's claim unmeritorious. It is not disputed that the Court of First Instance of Rizal, Branch XXIV has jurisdiction over the replevin case. Even assuming for the sake of argument that respondent Judge erred in reconsidering and setting aside the order of April 27, 1976 and held in abeyance the resolution of petitioner's motion to dismiss and to set aside the order of seizure until after the resolution of the motion to dismiss filed by private respondent as defendant in Civil Case No. 1844 of the Court of First Instance of Agusan del Norte and Butuan City, Branch I, and in Civil Case No. 143, Court of First Instance of Agusan del Sur, said error is not an error of jurisdiction which may be reviewed in certiorari proceedings. Said error would at most be an error of judgment or of procedure. The rule is well-settled that errors of judgment or of procedure not relating to the court's jurisdiction or amounting to grave abuse of discretion, are not reviewable by certiorari. The order complained of by petitioner is merely interlocutory or peremptory in character which is addressed to the sound discretion of the court.[4] This Court has, likewise, held that where the issue or question involved affects the wisdom or soundness of the decision, not the jurisdiction of the court to render said decision or its validity, the same is beyond the province of the special civil action for certiorari.[5]

Petitioner's allegation that respondent Judge committed grave abuse of discretion or had acted without or in excess of jurisdiction is without merit. As pointed out by petitioner himself, there is a grave abuse of discretion

justifying the issuance of a writ of certiorari where there is a capricious and whimsical exercise of judgment or where the power is exercised in an arbitrary and despotic manner by reason of passion, prejudice or personal hostility amounting to an evasion of positive duty or to virtual refusal to perform the duty enjoined, or to act at all in contemplation of law. The case at bar evinces no proof demonstrating that respondent Judge capriciously and whimsically exercised his judgment or that he exercised his power in an arbitrary and despotic manner by reason of passion, prejudice or personal animosity. A sedulous perusal of the questioned order brings to the fore the lack of factual and legal basis of petitioner's assertion. Pertinent excerpt of Judge Guerrero's disputed order reads thus:

"The controversy centers on the alleged operation of the rule on *pendente lite* to the case at bar. It is claimed by the defendant (petitioner herein) that there is another action pending between the same parties and involving the same properties and cause of action before the Court of First Instance of Agusan del Norte and Butuan City, specifically Civil Case No. 1844, filed in said Court on March 26, 1976 where summons was served upon the defendant therein, plaintiff herein, on March 29, 1976. By way of reply to this assertion, plaintiff alleges, *inter alia*, that it has filed a motion to dismiss said Civil Case 1844 on the ground that under the contract which gave rise to their jural relations, "any legal action arising out of this transaction may only be filed in the Courts of the Province of Rizal." As an alternative to plaintiff's prayer to dismiss the instant motion to dismiss, it submitted the proposition "that it would be better that resolution on the same (meaning instant defendant's motion to dismiss) be held in abeyance until after the motions to dismiss the Agusan cases shall have been finally resolved.

"The Court finds this suggestion well-taken to achieve an orderly administration of justice. It is, however, suggested that the parties notify the Court as soon as resolution is handed on the motion to dismiss the Agusan cases.

"Coming now to the restraining order of April 27, 1976 issued upon motion of defendant, plaintiff's motion for reconsideration of its issuance is meritorious. To each kind of action or actions a proper provisional remedy is provided for by law. The Rules of Court clearly specify the case in which they may be properly granted (*Calo and San Jose vs. Roldan*, 76 Phil. 452). The provisional remedy prayed for in the case at bar is for delivery of personal property under Rule 60, Rules of Court. Hence, this rule alone must apply to the operative facts, to the exclusion of the other rules; more so, that there was compliance with the provisions of Rule 60 by the party invoking it, the plaintiff herein. Application for relief by the party adversely affected should be had pursuant to the procedure decreed under this rule; otherwise it would be a departure from the pronouncement that "to each kind of action or actions, a proper provisional remedy is provided for by law." Specifically, under Section 5, Rule 60, defendant has the remedy to maintain and continue its possession on the personal property in question by putting up a counterbond if he had not objected to the sufficiency of the plaintiff's bond. The record does not show that he has availed of the provisions of this section; hence, he cannot defeat the application of the plaintiff for replevin made in compliance with the requisites provided by law, by resort to a restraining order. Indeed, if defendant suffers damages by reason of plaintiff's application for replevin, plaintiff's bond in double the value of the property stands to answer for it thru judgment of the Court, under Section 9, Rule 60." [6]

Apropos the second issue, petitioner contends that the Petition for Certiorari with prayer for the issuance of preliminary injunction which he filed with the Court of Appeals is not premature. Petitioner argues that as Civil Case No. 23226 of the Court of First Instance of Rizal now stands, his motion to dismiss and set aside order of seizure is held in abeyance pending resolution of private respondent's motion to dismiss the Agusan cases and that if the temporary restraining order is not restored, or if the order of June 1, 1976 is not reconsidered, he will be deprived of the use of the machineries in question and his logging operations seriously crippled such that he might not be able to meet his contractual obligations and settle his outstanding accounts with private respondent. We find respondent Court of Appeals' ruling that petitioner's recourse to certiorari is prematurely filed to be correct as petitioner still has an adequate and more expeditious remedy than the present petition for certiorari, and that is

the resolution of his motion for reconsideration.

In the case of *Maritime Company of the Philippines, et al. vs. Paredes*,^[7] We held that:

"Where the petitioners filed their petition for certiorari without waiting for the resolution of their motion for reconsideration in the lower court, the writ cannot be granted. If there is an appeal or other adequate remedy, like a motion for reconsideration, which is still pending in the court below, the petition for certiorari should be denied."

Indeed, before a petition for certiorari can be brought against an order of a lower court, all available remedies must be exhausted.^[8] Likewise, in a host of cases^[9] We ruled that before filing a petition for certiorari in a higher court, the attention of the lower court should first be called to its supposed error and its correction should be sought. If this is not done, the petition for certiorari should be denied. The reason for this rule is that issues which Courts of First Instance are bound to decide should not summarily be taken from them and submitted to an appellate court without first giving such lower courts the opportunity to dispose of the same with due deliberation.

WHEREFORE, the decision appealed from is **AFFIRMED** with costs against the petitioner.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Melencio-Herrera, JJ., concur.
De Castro, J., took no part.

[1] Sixth Division, Reyes, L.B., J. ponente, De Castro, Ericta, JJ., concurring.

[2] Decision, CA, pp. 24-26, Records.

[3] Petition, pp. 10-11, Records.

[4] See *Bimeda v. Perez*, No. L-5588, 93 Phil. 639 (1953).

[5] See *Phil. Surety and Insurance Co., Inc. v. Jacala, et al.*, No. L-12766, 108 Phil. 179 (1960).

[6] pp. 202-204, Records of case.

[7] No. L-23811, March 3, 1967, 19 SCRA 569.

[8] *Plaza v. Mencias*, No. L-18253, October 31, 1962, 6 SCRA 563.

[9] *Aquino v. Estenzo*, L-20791, May 19, 1965, citing *Herrera v. Barretto*, 25 Phil. 345; *Uy Chu v. Imperial*, 44 Phil. 27; *Amante v. Sison*, 60 Phil. 949; *Manzanares v. Court of First Instance*, 61 Phil. 850; *Vicencio v. Sison*, 62 Phil. 300, 306; *Manila Post Publishing Co. v. Sanchez*, 81 Phil. 614; *Alvarez v. Ibañez*, 83 Phil. 104; *Nicolas v. Castillo*, 97 Phil. 336; *Collector of Internal Revenue v. Reyes*, 100 Phil. 822; *Ricafort v. Fernan*, 101 Phil. 575; *Cueto v. Ortiz*, L-11555, May 31, 1960; *Pagkakaisa Samahang Manggagawa sa San Miguel Brewery v. Enriquez*, L-12999, July 26, 1960; *Santos v. Cardenola*, L-18412, July 31, 1962; *Sy It v. Tiangco*, L-18376, Feb. 27, 1962; *Plaza v. Mencias*, L-18253, Oct. 31, 1962.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.