

**ROSARIO P. ARCEO, PETITIONER, VS. HON. NARCISO A. AQUINO,
JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN,
BRANCH XIV AT ROSALES, AND ANICETO SANDOVAL,
RESPONDENTS.**

G.R. Nos. L-45121-22. January 09, 1979

Ponente: AQUINO, J.

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AQUINO, J.:

Petitioner Rosario P. Arceo filed a motion for the reconsideration of this Court's resolution dated June 16, 1978, dismissing her petitions for certiorari and prohibition in these two cases on the ground that the same have become moot and academic due to the retirement of respondent Judge as of February 23, 1978.

Mrs. Arceo had assailed Judge Aquino's order of September 24, 1976, denying her petition to disqualify the latter, on the ground of partiality, from acting in Special Proceeding No. 116-R, the intestate proceeding for the settlement of the intestate estate of her deceased husband, Honorato L. Arceo, and in Civil Case No. 283-R, entitled "Rosario P. Arceo vs. Aniceto Sandoval."

Mrs. Arceo in her motion for reconsideration invited attention to the fact that she had also assailed two other orders of respondent Judge, namely: (1) his order in Civil Case No. 283-R dated October 12, 1976 denying her motion that Sandoval's motion to dismiss be set for hearing for the reception of evidence and (2) his order of October 25, 1976 granting Sandoval's motion to dismiss.

We find Mrs. Arceo's motion for reconsideration to be meritorious. Those two orders were questioned by Mrs. Arceo on the theory that respondent Judge, whose inhibition she had vigorously sought, was partial to Sandoval because the two were members of the Lions Club and because on some occasions respondent Judge allegedly fraternized with Sandoval.

The petition for certiorari impugning the said order of October 25, 1976 (whose reconsideration was denied in the order of November 5, 1976) was filed on November 29, 1976. So, the same may be treated as a petition for review under Republic Act No. 5440. It was apparently filed within the reglementary period.

Mrs. Arceo had repeatedly asked the lower court to set the motion to dismiss for hearing so that evidence may be presented on the factual issues involved in that motion. The trial court refused to set for hearing Sandoval's motion to dismiss to which she had registered an opposition.

We hold that the trial court erred in not setting that motion to dismiss for hearing for the reception of evidence and that it acted with grave abuse of discretion in granting it. The order of dismissal was based on disputed facts such as the capacity in which Mrs. Arceo had sued Sandoval, whether the obligation had already been paid (first cause of action) and whether she had reserved the right to file a separate action for the civil liability of Sandoval in the grave coercion case (second cause of action). Evidence should have been received on these factual issues before the motion to dismiss was resolved or its determination could have been deferred until the trial is finished.

WHEREFORE, this Court's resolution of June 16, 1978 is reconsidered insofar as it dismissed Mrs. Arceo's petition assailing the two aforementioned orders of Judge Aquino in Civil Case No. 283-R. The two orders are hereby set aside. The lower court is directed to receive evidence at the hearing of Sandoval's motion to dismiss and, after such hearing, it may resolve the said motion or defer the resolution thereof according to the exercise of its sound discretion. Costs against respondent Sandoval.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

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