

OMICO MINING AND INDUSTRIAL CORPORATION AND FREDERICK G. WEBBER, PETITIONERS, VS. JUDGE AMADOR T. VALLEJOS, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF CAVITE, AL...*G.R. No. L-38974. March 25, 1975*

Ponente: ANTONIO, J.

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Original petition for certiorari and prohibition with writ of preliminary injunction to set aside the orders and judgment rendered by respondent Judge in Civil Case No. N-1963 (Alfredo Catolico v. Omico Mining and Industrial Corporation, et al.) as having been made without or in excess of jurisdiction, or with grave abuse of discretion.

I**FACTS**

On June 1, 1973, Alfredo Catolico (herein private respondent), then a judge of the Court of First Instance of Cavite, filed with said court a complaint, docketed as Civil Case No. N-1963 and assigned to Branch II presided by respondent Judge Amador T. Vallejos, against Omico Mining and Industrial Corporation and Frederick G. Webber, the latter in his personal capacity and as President and Chairman of the Board of Directors of said corporation, alleging two (2) causes of action. The first, for the return of ten (10) certificates of stock of the corporation borrowed from him by the defendants, and the second, for the payment of his services as legal counsel for the corporation. Under the first cause of action, plaintiff Catolico alleged among others that he is a resident of Cavite City where he is a judge of the Court of First Instance and stockholder of the defendant Omico Mining and Industrial Corporation holding thirty (30) certificates of stock duly paid up bearing Nos. 13437 to 13466, the same having been issued to him way back in August, 1969; that defendant corporation, through its co-defendant Frederick G. Webber, pleaded with him that ten (10) certificates of stock, Nos. 13437 to 13446, be allowed to remain with them under their responsibility, jointly and severally, for the specific purpose of using said certificates as part collateral for a loan in the amount of P10,000,000.00, the defendants were then negotiating with the Development Bank of the Philippines, and that both defendants, jointly and severally, promised to return said certificates of stock upon the approval or disapproval of the loan application; that when disapproval of said loan application appeared imminent, the defendants again pleaded with him for the retention of the same ten (10) certificates of stock because they were negotiating for the purchase of the Bunning and Company of Tuguegarao for P2,000,000.00, and that they needed said certificates as part collateral for the transaction; that when those two transactions failed, he demanded several times of the defendants for the return to him of the ten (10) certificates aforementioned so that he could use them, but said demands were of no avail; that in view of the failure of the defendants to comply with his demands, he is forced to file the complaint seeking the return to him of said ten (10) certificates of stock. Under the second cause of action, plaintiff after reproducing the pertinent averments in

the first cause of action, among which is the averment that he is a judge of the Court of First Instance of Cavite, further alleged that on October 13, 1968, both defendants entered into a contract of personal and professional services with him under the terms of which he was to head defendant corporation's legal department with the condition that he should render such services only after his office hours, "even into the dead wee hours of the night and wherever such services would not run in conflict with his duties as Judge"; that in consideration of such services, the defendants undertook to pay him a yearly salary of P35,000.00 from the date of the contract, but where a case shall have been settled in and out of court, and defendants shall have won or saved money because of such settlement, he shall be paid by way of commission ten percent (10%) of the amount involved in the litigation and/or settlement; that, pursuant to said contract, he has rendered legal services as head of the legal department of defendant Omico and has attended to the personal consultation of defendant Frederick G. Webber until the filing of the complaint, when, by reason thereof, their official relations were severed; that the defendants should render the corresponding accounting of his unpaid commission and salaries, taking into consideration the partial payments and advances given to him as salary; that a more detailed specification of the services rendered by him in favor of the defendants were made in a letter to the defendants, mailed on May 28, 1973 from his official residence in Cavite City; that the defendants refused and failed to render such accounting and to pay his emoluments, in spite of his repeated demands to that effect. Plaintiff, therefore, prayed that, on the first cause of action, defendants be ordered to return to him the ten (10) certificates of stock, or, in case the return thereof cannot be done, to issue in his favor the same number and amount of certificates of stock as replacement or to pay him the par value thereof; and, on the second cause of action, defendants be ordered to render the corresponding accounting of the amounts due him in accordance with the averments in the complaint, and to pay him the balance as reflected in the accounting as approved by the court; to pay him moral, exemplary, punitive and afflictive damages, in such amounts as assessed by the court; to pay him attorney's fees and costs; and to grant him such other reliefs available in the premises.[1]

Served with the corresponding summons and copies of the complaint, the petitioners, as defendants therein, on June 10, 1973 filed a motion to dismiss the complaint on two grounds, namely: (1) improper venue, in that the case was filed in Cavite where plaintiff is not a resident, the truth being that he is a resident of Quezon City where he has his permanent family home; and, as to the second cause of action, the contract of personal and professional services between plaintiff and defendants was entered into in the City of Manila, and, therefore, the case should have been filed in Manila in accordance with Section 1 of Rule 4 of the Revised Rules of Court; and (2) lack of cause of action, in that with regard to the stock certificates, the same are in the name of Vicente Resonda; and, with respect to the contract of personal and professional services wherein it was agreed that the plaintiff shall head the legal department of defendant Omico Mining & Industrial Corporation, the same is illegal, void and unenforceable, plaintiff being a judge of the Court of First Instance who is prohibited by Section 35 of Rule 138 of the Revised Rules of Court from engaging in private practice as a member of the Bar. The motion to dismiss contains the following notice of hearing:

"The Clerk of Court
Court of First Instance of Cavite City
Branch II

G r e e t i n g s:

Please include the foregoing motion in the calendar of the Honorable Court on Saturday, June 16, 1973, and have the same submitted for resolution without further arguments on the part of the defendants.

(Sgd.) JOSE F. PEREZ

COPY FURNISHED:

(By registered Mail)

Atty. Jaime B. Lumasag, Counsel for the Plaintiff, 5-C Banawe, Quezon City"

Attached to the motion is Registry Receipt No. 45297 issued by Manila Central Post Office on June 9, 1973.[2]

On June 16, 1973, the date set for the hearing of the motion to dismiss, neither the parties nor their respective counsels appeared in court. But the court, noting that there was no clear showing in the record that notice of hearing of said motion had been served upon counsel for the plaintiff, issued on June 18, 1973 an Order postponing consideration of the motion "until counsel for the defendants shall have shown to the satisfaction of the Court that a copy of his motion to dismiss has been furnished counsel for the plaintiff." The Order adds that "in said event, the Clerk of Court shall calendar anew the hearing of the motion to dismiss furnishing a copy of the date of the hearing to counsels for the plaintiff and for the defendants." [3] Copies of said Order were sent to the respective counsels of the parties on June 10, 1973 by registered mail.[4]

While the motion to dismiss was pending resolution by the court because defendants had not yet presented to the court the required proof of service, plaintiff, on January 11, 1974, filed a petition to declare the defendants in default and to allow him to present his evidence ex parte. In said petition, plaintiff alleged, in substance, that defendants had been served with summons and copies of the complaint on June 8, 1973; that as of January 11, 1974, or after a lapse of seven (7) months from the service of summons, defendants had not filed their answer to the complaint; that the defendants had filed a motion to dismiss the complaint on June 10, 1973, the hearing of which had been set to June 16, 1973 but the notice of said hearing was addressed to the Clerk of Court, not to Atty. Jaime B. Lumasag, counsel for plaintiff; that the Revised Rules of Court provides that petitions and motions should be sent to opposing parties who should be notified of the date of the hearing thereof; that the notice of hearing in defendants' motion to dismiss is fatally defective, it being addressed to the Clerk of Court; and that because of that defect, defendants' motion to dismiss is a "useless piece of paper", citing *Philippine Advertising Counselors, Inc. v. Hon. Pedro A. Revilla*, G.R. No. L-31869, promulgated on August 8, 1973.[5] By Order of January 15, 1974, the court granted the petition[6] and, consequently, it received ex parte the evidence of the plaintiff and rendered judgment thereon on January 29, 1974, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants directing the latter:

"1. To return to the plaintiff ten (10) certificates of stock corresponding to 100,000 shares of the Omico Mining and Industrial Corporation in the name of Vicente Resonda bearing Nos. 13437 up to and including 13446 or in lieu thereof, to deliver to said plaintiff new certificates of the above-named corporation of equivalent value;

"2. To pay to the plaintiff the total amount of One Million One Hundred Eighty-six Thousand Four Hundred Thirty-five Pesos and Eleven Centavos (P1,186,435.11) at the legal rate of interest until said amount is fully paid;

"3. To pay to the plaintiff by way of attorney's fees the amount of Ten Thousand Pesos (P10,000.00);

"4. To pay the costs." [7]

On March 5, 1974, defendants filed a motion for reconsideration, advancing the arguments (1) that the judgment is contrary to law and the liberal interpretation of the Revised Rules of Court, in that they have complied with the provisions of Section 10 of Rule 13, Revised Rules of Court, by stating in the motion to dismiss that a copy thereof was furnished by registered mail to Atty. Jaime B. Lumasag, counsel for the plaintiff, and attaching thereto the registry receipt therefor issued by the Manila Central Post Office; that the purpose of the notice has been served because as per certification of the post office of Quezon City, said Atty. Jaime B. Lumasag received

the copy of the Motion to Dismiss before June 16, 1973, the date set for the hearing of the motion; and that, with respect to the return card, they have not received the same, hence, they could not comply with the submission thereof; (2) that the circumstances obtaining in the case do not warrant the default order which finally paved the way for the rendering of judgment in favor of the plaintiff, because counsel for the plaintiff had received a copy of the motion to dismiss one day before the hearing thereof; that said motion should have been acted upon, considering that it contains contentious issues which when resolved would show the complaint to be "nothing but empty claims"; and that the ruling in Philippine Advertising Counselors, Inc. cannot apply, because the facts therein are at variance with those of the present case; and (3) that the defendants have a valid defense and strong evidence to rebut and/or controvert the claims of the plaintiff as shown by the affidavits of Jose F. Perez and Hilarion P. Dugenio, legal counsel and corporate secretary, respectively, of Omico Mining and Industrial Corporation. The motion contains a notice to counsel for plaintiff that the hearing thereof has been set for March 15, 1974.[8]

On March 15, 1974, plaintiff Catolico, on his own behalf, filed a motion to postpone hearing of the motion for reconsideration to April 29, 1974, to enable him to prepare an intelligible opposition thereto. The motion does not contain a notice of hearing. It merely states at the foot thereof that a copy of said motion was furnished Pio R. Marcos and Guillermo Bandonil, counsel for defendants, without stating how delivery was effected.[9] But notwithstanding absence of notice of hearing, the court, considering the absence of objection thereto on the part of the defendants, granted the motion for postponement, with the condition that the defendants be furnished with a copy of the opposition; that defendants may file their reply to the opposition within fifteen (15) days from receipt of a copy thereof; and that thereafter the matter be deemed submitted for resolution.[10]

On May 31, 1974, while defendants' motion for reconsideration was still pending before the court because the defendants had not filed yet their reply to the opposition as they had not received a copy thereof,[11] plaintiff Catolico filed a motion for immediate execution of judgment, alleging, among other things, that said judgment had already become final and executory because the defendants failed to have the order of default lifted; that the motion for reconsideration was filed out of time; that there was a "manifest attempt on the part of the defendants to delay the proceedings to afford them an opportunity to have all their assets and shares dissipated by continuous sale of the same to the prejudice" not only of respondent Catolico but also of "some forty to fifty creditors who filed complaints against the defendants for estafa and civil suits for collection amounting to hundreds of thousands of pesos"; that some 80% of defendants' assets and properties had already been sold at fantastically low prices to defraud creditors who had been deceitfully assured by the management that they are well protected; that the judgment might become ineffective "due to the notoriously deceptive movements" (sic) to which the defendants "daily and continuously expose themselves"; and that immediate execution of the judgment is the only protection that can be rendered to plaintiff under the premises.[12]

On June 18, 1974, the Court issued simultaneously two (2) Orders, one denying defendants' motion for reconsideration,[13] and the other directing the issuance of a writ of execution of its decision of January 29, 1974. In the latter Order, the court appointed the City Sheriff of Manila, herein respondent Leonardo Alcid, to execute said writ of execution.[14]

On June 19, 1974, defendants filed their notice of appeal to this Court, an appeal bond and a record on appeal. The record on appeal was approved on August 27, 1974 only because of the absence of the respondent Judge from his station, he being then a participant in the seminar of Judges of Court of First Instance in the Development Academy of the Philippines at Tagaytay City.[15]

On the same date, June 19, 1974, in the afternoon, respondent Sheriff of Manila, through his Senior Legal Assistant and Acting Executive Sheriff Dominador Q. Cacapal, served a notice of garnishment to the defendants,

together with a writ of execution issued by the respondent Judge. On July 22, Pio R. Marcos, as President and Chairman of the Board of Directors of defendant Omico Mining and Industrial Corporation, wrote a letter to respondent Sheriff asking that the defendants be given a little chance to exhaust the legal remedies available to hold in abeyance the execution and garnishment. Among the reasons presented by Marcos are that defendants were not given a chance to have their day in court in the motion for immediate execution of judgment and that they have already appealed from the lower court's decision and order of immediate execution.[16]

Because of the impending execution of the judgment by default which they believe to be illegal, defendants, on July 25, 1974, filed with this Court the instant petition praying, among other things, that respondent Judge be restrained from commanding the City Sheriff of Manila, or his duly authorized representative, to execute the decision of January 29, 1974. The petition assails mainly the Order of respondent Judge, declaring the defendants in default, the consequent reception of the evidence of the plaintiff ex parte and the judgment by default rendered thereon, as having been made without or in excess of jurisdiction, or with grave abuse of discretion because said respondent Judge failed to resolve first the defendants' motion to dismiss. In a resolution dated July 24, 1974, We required, without giving due course to the petition, respondents to comment on said petition within ten (10) days from notice thereof, and, as prayed for, issued a temporary restraining order.

Respondent Judge and private respondent Catolico filed separate comments. Per resolution dated August 20, 1974, We resolved to consider their comments as their Answer to the petition.

In his answer, respondent Judge justifies his failure to act on the aforesaid motion to dismiss the complaint in this wise:

"In insisting in their petition that it was obligatory for this respondent to grant or deny said motion to dismiss, counsels who filed this petition seem to be feigning ignorance as to reasons why this respondent chose to ignore their motion to dismiss and considered it a mere scrap of paper. It is humbly submitted that said reasons have been amply set forth and discussed in the Decision rendered in Civil Case No. N-1963 (Annex F to the petition) in accordance with the decision of this Honorable Tribunal in the case of Philippine Advertising Counselors, Inc., versus Hon. Pedro Revilla, et al., G.R. No. L-31869), to this effect:

'Finally, Section 4, Rule 15 of the Rules of Court provides that notice of a motion shall be served by the applicant to all parties concerned, at least three days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it, and Section 5 of the same rule requires the motion to be directed to the parties concerned and to state the time and place for the hearing of the motion. A motion which fails to comply with these requirements is nothing but a useless piece of paper x x x'" (Italics supplied).

"Counsels who filed the instant petition know more than anybody else that their motion to dismiss did not comply with the standards required in the decision above quoted for it was addressed to the Clerk of Court and not to the party concerned. As such, said motion to dismiss was but 'a useless piece of paper' without any legal standing, and, therefore, could neither be granted nor denied, by this respondent. x x x"

Subsequently, or on September 6, 1974, private respondent filed a motion to dismiss said petition on the ground that the remedy of certiorari and prohibition is no longer available to the herein petitioners, inasmuch as they had already perfected their appeal.[17] Petitioners opposed the motion to dismiss on the ground that their appeal is inadequate to protect their rights for, without the restraining order issued by this Court, the respondents could have executed the decision and orders in question.[18]

II

ISSUES

The first issue to be resolved here is whether the respondent Judge acted without or in excess of jurisdiction or with grave abuse of discretion in declaring the defendants in default, in receiving plaintiff's evidence ex parte and in rendering judgment thereon.

The second is whether ordinary appeal, not certiorari and prohibition, is the proper remedy available to petitioners.

III

1. With regard to the first issue, Respondents contend that the motion to dismiss the complaint is a "useless piece of paper" because the notice of hearing incorporated therein is addressed to the Clerk of Court, not to the party concerned, that is, the plaintiff or his counsel, as required by the rules. We do not agree. As copied verbatim above, the notice of hearing states the time and place of hearing, and a copy thereof was sent through registered mail seven (7) days before the date set for the hearing of the motion but actually received by plaintiff's counsel one (1) day before said date, as per certification of the Quezon City Post Office.

To Our mind, what is decisive here is that plaintiff had sufficient notice of the time and place of the hearing of the motion to dismiss. We have said in *Manila Surety and Fidelity Co., Inc. v. Bath Construction and Company*,^[19] "unless the movant sets the time and place of hearing the court would have no way to determine whether that party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition." In the *Matusa* case, We said that granting that the notice is defective for failure to specify the exact date when the motion to dismiss should be heard, the Court, in taking cognizance of the motion on the date set for the hearing thereof, cured whatever iota of defect such a pleading may have had, especially if it is taken into account that upon receipt of the motion to dismiss, plaintiff was properly notified of the existence of said pleading.^[20] Indeed, We declared that there may be cases where the attendance of certain circumstances "may be considered substantive enough to truncate the adverse literal application of the pertinent rules violated."^[21] The case at bar is such an instance, because private respondent had sufficient notice of the place, time and date when the motion to dismiss was to be heard.

It is, therefore, evident from the foregoing that the Respondent Judge acted with grave abuse of discretion when he declared the petitioners in default. The motion to dismiss was pending before the court when such declaration was made, and it is generally irregular to enter an order of default while a motion to dismiss remains pending and undisposed of.^[22] The irregularity of the order of default is evident from the fact that when the petitioners were declared in default, their time for filing an answer had not yet commenced to run anew because on said date, their counsel had not yet received any notice of the action taken by the court on their motion to dismiss. Under Section 4 of Rule 16 of the Revised Rules of Court, if the motion to dismiss is denied or if the determination thereof is deferred, the movant shall file his answer within the period prescribed by Rule 11, computed from the time he received notice of the denial or deferment, unless the court provides a different period. In other words, the period for filing responsive pleading commences to run all over again from the time the defendant receives notice of the denial or deferment of his motion to dismiss. Inasmuch as petitioners were declared in default while their motion to dismiss was still pending resolution, they were, therefore, incorrectly declared in default, and the holding of the trial of the case on the merits, in their absence, without due notice to them of the date of hearing, was a denial of due process.^[23] Consequently, the order of default, the judgment and the order of execution are patent nullities.

In connection with the foregoing, We notice the ambivalence with which the respondent Judge applied the rules. Thus, while he was unduly strict regarding the requirements of notice of hearing to the defendants, he was, at the

same time, unduly liberal with respect to the plaintiff. For instance, plaintiff's motion for postponement of the hearing of defendants' Motion for Reconsideration did not contain any notice of hearing, or proof of service of the notice thereof, or even the address of the plaintiff who signed personally said motion. Notwithstanding the absence of these data, respondent Judge readily granted the motion. Then there is plaintiff's motion for immediate execution of judgment pending appeal. Although it was apparent that a copy of said motion could not have been received by the counsel for the defendants at their office in Baguio City prior to the date of the hearing on June 3, 1974, considering that it was only on May 29, 1974 when a copy of said motion was allegedly posted by registered mail at the Manila Post Office, respondent Judge did not require, as he did with respect to defendants' motion to dismiss, proof of service of the notice thereof. Such conduct falls short of the requirement that the official conduct of a judge should not only be free from impropriety, but also from the appearance of impropriety.

2. There is, moreover, the consideration that the challenged judgment seeks to enforce a contract which is patently void because it is contrary to law and public policy. The contract of professional services entered into between private respondent and the petitioners, while the former was still a judge of the Court of First Instance, constituted private practice of law and in contravention of the express provision of Section 35 of Rule 138 of the Revised Rules of Court. The aforesaid Rule was promulgated by this Court, pursuant to its constitutional power to regulate the practice of law. It is based on sound reasons of public policy, for there is no question that the rights, duties, privileges and functions of the office of an attorney-at-law are so inherently incompatible with the high official functions, duties, powers, discretions and privileges of a judge of the Court of First Instance.[24] This inhibitory rule makes it obligatory upon the judicial officers concerned to give their full time and attention to their judicial duties, prevent them from extending special favors to their own private interests and assure the public of their impartiality in the performance of their functions. These objectives are dictated by a sense of moral decency and the desire to promote the public interest.

Private respondent should have known or ought to know, that when he was elevated to the Bench of the Court of First Instance as a judge thereof, his right to practice law as an attorney was suspended and continued to be suspended as long as he occupied the judicial position.[25]

It is evident, therefore, that the aforesaid contract is void because a contract, whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy, is considered inexistent and void from the beginning.[26]

3. On the question of the remedy availed of by petitioners, respondents maintain that where appeal is available, as it has been shown to be available to the petitioners when they perfected their appeal in Civil Case No. N-1963, the remedy of certiorari and/or prohibition cannot be resorted to. In resolving this question, We advert to Our ruling in *Matute v. Court of Appeals*, supra, where We stated:

"In opposing the instant petition, the plaintiff-respondent contends that the remedy of the defendant petitioner is not a petition for certiorari but an ordinary appeal pursuant to Rule 41, Section 2, paragraph 3 which reads:

'A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38.'

"We do not agree. The remedy provided for in the above-quoted rule is properly, though not exclusively, available to a defendant who has been validly declared in default. It does not preclude a defendant who has been illegally declared in default from pursuing a more speedy and efficacious remedy, like a petition for certiorari to have the judgment by default set aside as a nullity.

"It should be emphasized that a defendant who is properly declared in default is differently situated from one who

is improvidently declared in default. The former irreparably loses his right to participate in the trial, while the latter retains such a right and may exercise the same after having the order of default and the subsequent judgment by default annulled and the case remanded to the court of origin. Moreover the former is limited to the remedy set forth in section 2, paragraph 3 of Rule 41 by virtue of which he can contest only the judgment by default on the designated ground that it is contrary to the evidence or the law; the latter, however, has the option to avail of the same remedy or to forthwith interpose a petition for certiorari seeking the nullification of the order of default even before the promulgation of a judgment by default, or in the event that the latter has been rendered, to have both court decrees — the order of default and the judgment by default — declared void. The defendant-petitioner's choice of the latter course of action is correct for he controverts the judgment by default not on the ground that it is not supported by evidence or it is contrary to law, but on the ground that it is intrinsically void for having been rendered pursuant to a patently invalid order of default.

“Granting, however, that an appeal is open to the defendant-petitioner, the same is no longer an adequate and speedy remedy considering that the court a quo had already ordered the issuance of a writ of execution and the carrying out of such writ loomed as a great probability. This is in consonance with the doctrine enunciated in *Vda. de Saludes v. Pajarillo and Bautista* (78 Phil. 754) wherein this Court held that an ‘appeal under the circumstances was not an adequate remedy there being an order or execution issued by the municipal court.’ Hence, the rule that certiorari does not lie when there is an appeal is relaxed where, as in the instant case, the trial court had already ordered the issuance of a writ of execution.”

The above ruling applies with cogent force in the present case.

WHEREFORE, certiorari is granted and the default order, judgment and writ of execution rendered by the respondent Judge in Civil Case No. N-1963 are hereby set aside, and the respondent Judge is ordered to hear and decide the motion to dismiss the complaint, taking into account Our foregoing opinion. The temporary restraining order is made permanent, with costs against private respondent.

Makalintal, C.J., Fernando, Teehankee, Barredo, Makasiar, Esguerra, Fernandez, and Aquino, JJ., concur.

Castro, J., in the result.

Muñoz Palma, J., on official leave.

[1] Annex "A" of the Petition; Record, pp. 14-20.

[2] Annex "B" of the Petition; Record, pp. 21-24.

[3] Annex "C" of the Petition; Record, p. 26.

[4] See Annex "F" of the Petition; Record, p. 32.

[5] Annex "D" of the Petition; Record, pp. 28-30.

[6] Annex "E" of the Petition; Record, p. 31.

[7] Annex "F" of the Petition; Record, pp. 32-45.

[8] Annex "G" of the Petition; Record, pp. 46-65.

[9] Annex "H" of the Petition; Record, p. 67.

[10] Annex "I" of the Petition; Record, p. 67.

- [11] Petition, paragraphs XVI & XVII; Record, pp. 69-71.
- [12] Annex "J" of the Petition; Record, pp. 69-71.
- [13] Annex "K" of the Petition; Record, pp. 72-80.
- [14] Annex "L" of the Petition; Record, pp. 81-86.
- [15] See Motion to Dismiss (the Petition); Record, pp. 141-149. Also Opposition to Motion to Dismiss, paragraph No. (1); Record, p. 157.
- [16] Opposition to Motion to Dismiss and Annex thereto; Record, pp. 157-163.
- [17] Motion to Dismiss (the Petition); Record, pp. 141-149.
- [18] Opposition to Motion to Dismiss; Record, pp. 157-160.

[19] 14 SCRA 435.

- [20] *Sun Uy Giok v. Matusa*, 101 Phil. 727; *Borja v. Tan*, 93 Phil., 167; *Duran Embate v. Penolio*, 93 Phil., 782; *Llanto v. Ali Dimaporo*, 16 SCRA 599; *De Rapisura v. Nicolas*, 16 SCRA 798; *Cledera v. Sarmiento*, 39 SCRA 572.
- [21] *Villanueva Transportation Co. v. Moya* (42 SCRA 157), citing *Sunga v. Lacson*, 23 SCRA 393.
- [22] *Mapua v. Mendoza*, 45 Phil., 424.
- [23] *Matute v. Court of Appeals*, 26 SCRA 768, 769; *Epang v. De Leyco*, 51 O.G., 2367.
- [24] *Perry v. Bush* (1903), 46 Fla. 242; 35 So. 275; *Bassi v. Langloss*, 22 Ill. 2d 190, 174, NE 2d 682; 89 ALR 2 881.
- [25] Private respondent Alfredo Catolico retired as Judge of the Court of First Instance of Cavite on January 12, 1974.
- [26] Article 1409, Civil Code of the Philippines.

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