

**CARMEN D. DE CRUZ, PETITIONER, VS. HON. PRIMITIVO GONZALES,
JUDGE OF THE COURT OF FIRST INSTANCE OF CAVITE AND
ARTEMIO G. BARRON, RESPONDENTS.***G.R. No. L-9708. December 27, 1956*

Ponente: BAUTISTA ANGELO, J.

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On April 20, 1955, Artemio Barron, hereinafter referred to as respondent, filed an action for injunction in the Court of First Instance of Cavite against Carmen D. de Cruz, hereinafter referred to as petitioner, together with two other persons not herein involved, to enjoin them "from operating their motorboats as a ferry service between Calapan (Mindoro) and Batangas (Batangas) via Lobo." On May 10, 1955, petitioner sought to dismiss the case on the ground, among others, of lack of jurisdiction over her person and the subject matter involved, which motion was denied on June 7, 1955. Copy of the order denying the motion was served petitioner on June 14, 1955.

Prior to the expiration of the reglementary period to answer, petitioner asked for an additional period of ten days within which to file the answer, which was granted on June 16, 1955. The ten-day period of extension expired on June 27, 1955. On this same date, petitioner filed with the Supreme Court a petition for certiorari with prohibition and preliminary injunction impugning the jurisdiction of the trial court to take cognizance of the case, serving a copy thereof on the trial court on June 28, 1955, together with a manifestation praying that the proceedings had therein be held in abeyance until the Supreme Court shall have finally determined her petition for certiorari. This petition was denied on the ground that appeal in due time was the proper remedy, as well as the motion for reconsideration filed by petitioner in connection with said denial. The resolution of the Supreme Court denying the motion was received by petitioner on July 22, 1955.

On the next day, July 23, petitioner filed her answer with a counterclaim in the main case which was served on respondent in due time. On July 30, 1955, respondent moved to strike out the answer and to declare petitioner in default on the ground that the answer was filed out of time, and after this motion was heard ex parte, in view of the inability of petitioner's counsel to appear, the same was granted, the court declaring petitioner in default. A motion to set aside the order immediately followed, but the same was denied for lack of merit, whereupon petitioner interposed the present petition for certiorari.

While this petition was pending consideration by this Court, petitioner filed an amended petition for certiorari stating, among other things that, "in order to forestall the loss of a valid cause of action", should this Court declare that appeal in due course is the proper remedy, she filed with the trial court a notice of appeal, an appeal bond, and a request to file the record on appeal after the termination of these proceedings, but the trial court denied the right of petitioner to appeal on the ground that the order appealed from has already become final and executory. Hence, she now prays that, should these proceedings fail, the trial court be ordered to approve her appeal and give due course to said appeal.

The question to be determined is whether the answer filed by petitioner in the main case can be considered as

having been filed within the reglementary period considering the different steps taken by her in an effort to impugn the jurisdiction of the trial court and the period that had transpired in relation thereto.

To determine this issue, it is important to take note of the different pleadings that had been filed by the parties as well as the dates they were received by them since the filing of the complaint to the filing of the answer of petitioner which culminated in the issuance of the order declaring her in default which is now subject of the present petition for certiorari. In this connection, we will state hereunder the recount made by petitioner in tabulated form of the sequence of pertinent events which, in our opinion, appears to be borne out by the record:

Date

Nature of Pleading/Order

Manner of
Filing/Receipt

April 27 Complaint and Summons received

Registered Mail

May 10 Motion To Dismiss

Registered Mail (Reg. Receipt Nos. 44200 & 39729-Exh. K)

June 14 Order of Denial of Motion to Dismiss received

Registered Mail

June 15 Motion and Order granting: Extension of ten (10) days to Answer

Personal

June 27 Petition for Certiorari and Prohibition with Preliminary Injunction.

June 28

Copy of the Petition for Certiorari was served on respondent court by petitioner with a Manifestation that proceedings thereon be held in abeyance pending Resolution of aforesaid Petition

Personal

July 22 Resolution of Supreme Court in G. R. No. L-9295 denying Petition

Registered Mail

July 23 Answer with Counterclaim

Registered Mail (Reg. Rec. No. 2522 and No. 2521)

July 30 Motion to Declare Defendant in Default

Registered Mail

August 5 Order of Default.....

Personal

August 16

Motion to Set Aside Order of Default.....

Personal

September 1 Order of Denial of Motion to Set Aside Order of Default".

It appears from the above that petitioner was served with summons on April 27, 1955 so that she had up to May 12 within which to answer. On May 10, 1955, she filed a motion to dismiss, which had the effect of interrupting the period, thus leaving her two more days within which to answer. This motion was denied and a copy of the order was served on petitioner on June 14. On June 16, she asked for an extension of ten days which was granted, the ten-day period expiring on June 26, but it being Sunday, it in effect expired on June 27. On this date, she filed a petition for certiorari with the Supreme Court, at the same time serving a copy thereof to the trial court praying that the proceedings be in the meantime suspended pending the determination of the certiorari case by the Supreme Court. The final denial of the petition for certiorari came late in the afternoon of July 22, and early the following morning, she filed her answer with the trial court. Considering the foregoing sequence of events, as well as the dates in which they were unfolded, we are of the opinion that the answer filed by petitioner may be deemed to have been filed within the reglementary period for which reason we consider it improper for the trial court to have declared her in default and to have denied her petition for relief.

While as a rule petitions for certiorari do not interrupt the time for appeal, for under Section 3, Rule 41, of the Rules of Court, only a motion to set aside the decision has that effect, however, the Court has deemed it proper to deviate somewhat from this stringent rule in the instant case considering the issue involved and the steps taken by petitioner to obtain her objective. It should be noted that the nature of the action of respondent concerns the operation of motorboats as a ferry service between one province and another which, according to petitioner's theory, fall under the exclusive jurisdiction of the Public Service Commission, for which reason she filed a motion

to dismiss precisely on the ground of lack of jurisdiction on the part of the trial court. The issue therefore is fundamental and has the character of a prejudicial question. Because of this belief, petitioner thought it wise and proper to come to the Supreme Court for redress when her motion to dismiss was denied, and this she did after requesting the trial court to suspend all proceedings until after the Supreme Court shall have finally passed upon the question of jurisdiction. It would therefore appear that, taking into account the time spent for this special remedy, petitioner can still be considered as having submitted her answer on time. These circumstances, in our opinion, justify a deviation from the ruling we have heretofore adhered to considering that the rules shall be liberally construed "not to hinder and delay but to facilitate and promote the administration of justice" {Manila Railroad Co. vs. Attorney-General, 20 Phil., 523, 530; section 2, Rule 1, Rules of Court).

Petition is granted. The order of the trial court declaring petitioner in default is hereby set aside. The trial court is hereby ordered to set the main case for trial on the merits. No pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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