

## **SANTIAGO LAND DEVELOPMENT COMPANY, PETITIONER, VS. COURT OF APPEALS AND KOMATSU INDUSTRIES (PHILS.), INC., RESPONDENTS.**

*G.R. No. 103922. July 09, 1996*

Ponente: TORRES, JR., J.

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### **TORRES, JR., J.:**

Challenged in this petition for review on certiorari filed by petitioner Santiago Land Development Corporation is the decision of the Court of Appeals dated December 26, 1991, the dispositive portion of which reads:

"WHEREFORE, considering all the foregoing premises, this petition is DISMISSED.

No pronouncement as to costs."[1]

The following are the antecedent facts:

For failure of respondent Komatsu Industries (Phil.) to pay its indebtedness amounting to P27,000,000, the Philippine National Bank (PNB, for brevity) initiated the foreclosure proceedings of the 18,000 square meter mortgaged property located at 2275 Pasong Tamo Extension, Makati and covered by TCT No. 469737 (S-5697) duly registered in the name of the mortgagor, herein respondent Komatsu Industries.

On December 16, 1983, respondent Komatsu Industries filed an action with the Regional Trial Court, Branch 26, Makati, docketed as Civil Case No. 5937, seeking to prevent the foreclosure of the subject property. The trial court issued a temporary restraining order but the property was, extrajudicially foreclosed by the PNB. Thereafter, respondent Komatsu Industries filed an amended petition for the declaration of nullity of the extrajudicial foreclosure sale.

During the pendency of Civil Case No. 5937, petitioner Santiago Land Development Corporation (SLDC, for brevity) purchased the subject property for P90,000,000 and a deed of absolute sale was executed by the PNB on November 21, 1989. Consequently, petitioner SLDC filed a motion for intervention alleging that any ruling or decision adverse to PNB would necessarily bind SLDC as transferee pendente lite. Petitioner SLDC was then allowed to intervene in the case at bar.

On November 20, 1990, petitioner SLDC served written interrogatories on respondent Komatsu Industries' counsel.[2] The interrogatories were not, however, answered by the respondent by reason of which petitioner SLDC filed a motion to dismiss the action with prejudice based on Sec. 5, Rule 29 of the Rules of Court.

An opposition to the motion to dismiss was filed by respondent Komatsu Industries alleging inter alia that there was no valid service of the written interrogatories inasmuch as the service was made on the respondent's counsel and not directly upon any of the respondent's officers who were competent to testify in its behalf, pursuant to Sec. 1, Rule 25 of the Revised Rules of Court.

In an order dated March 14, 1991, the trial court denied the motion to dismiss.[3] Petitioner SLDC filed a motion

for reconsideration but the same was denied.[4]

Petitioner SLDC filed a petition for review before this Court but it was referred to the Court of Appeals by resolution dated July 17, 1991.

In the assailed decision of the Court of Appeals dated December 26, 1991, it was held:

"In the case at bar, the private respondent itself admitted that the interrogatories were served upon its counsel of record Emerito Salva and Associates. There is, therefore, a valid service of the interrogatories upon private respondent." [5]

However, while the Court of Appeals ruled that there was a valid service and the failure of the respondent to answer the interrogatories would warrant the dismissal of the case, nevertheless, it explained, thus:

"However, while respondent court may have committed an error of judgment in denying the motion to dismiss filed by the petitioner in this case based on his interpretation of the rules, the said court may hardly be accused of grave abuse of discretion as would be tantamount to lack of or excess in jurisdiction. Certiorari, therefore, does not lie in the case at bar. As held in *GSIS vs. Court of Appeals*, 169 SCRA 244, a petition for certiorari is intended to correct defects of jurisdiction solely and not to correct errors of procedure or matters in the court a quo's findings or conclusions. (citing *Ilacad vs. Court of Appeals*, 78 SCRA 310)." [6]

The Court of Appeals dismissed the petition, hence, this petition for review before us.

Petitioner SLDC now argues that the civil action should have been ordered dismissed with prejudice because of private respondent's deliberate, knowing, and continued refusal to answer the written interrogatories. The respondent court, therefore, committed grave abuse of discretion and/or disregarded the usual course of judicial proceedings when it refused to order the dismissal of the civil case. Petitioner invokes Section 5, Rule 29 of the Rules of Court, which provides, to wit:

"If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 25, after proper service of such interrogatories, the court on motion and notice, may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, and its discretion, order him to pay reasonable expenses incurred by the other, including attorney's fees."

The dismissal of the civil action would allegedly be the proper sanction to respondent's refusal to answer the interrogatories. Moreover, justice would allegedly be promoted considering that the civil action was purportedly without basis and was purely for harassment.

In its comment, private respondent Komatsu Industries avers that the court did not commit grave abuse of discretion in declaring that the petition for certiorari filed by the petitioner was not the proper remedy. The dismissal of the petition was proper since the interrogatories were served after private respondent had rested its case and after the presentation of evidence, hence, improperly served.

Section 5, Rule 29 of the Rules of Court warrants the dismissal of the complaint when the plaintiff fails or refuses to answer the written interrogatories. If plaintiff fails or refuses to answer the interrogatories, it may be a good basis for the dismissal of his complaint for non-suit unless he can justify such failure or refusal.[7] It should be noted that it is discretionary on the court to order the dismissal of the action.

In *Arellano vs. CFI*, [8] it was held that -

"The dismissal of an action for failure of the plaintiff to prosecute the same rests upon the sound discretion of

the trial court and will not be reversed on appeal in the absence of abuse. The burden of showing abuse of judicial discretion is upon appellant since every presumption is in favor of correctness of the court's action. (1 Moran, pp.528-529, 1970 ed.)."

We agree with the respondent court that although there was an error of judgment in denying the motion to dismiss, nevertheless, such cannot be considered as grave abuse of discretion and therefore, correctable by certiorari. Certiorari is not available to correct errors of procedure or mistakes in the judge's findings and conclusions and that certiorari will not be issued to cure errors in proceedings or to correct erroneous conclusions of law and fact.[9] Furthermore, the denial of a motion to dismiss or to quash, being interlocutory, cannot be questioned by certiorari, it cannot be subject of appeal, until final judgment or order is rendered.[10]

Considering the foregoing premises, a petition for a review by certiorari in the case at bar does not lie. In Philippine Virginia Tobacco Administration vs. Lucero,[11] it was lucidly stated that -

"For certiorari to lie, there must be a capricious, arbitrary, and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions (Panaligan vs. Adolfo, 67 SCRA 176). The abuse of discretion must be grave and patent and it must be shown that the discretion was exercised arbitrarily or despotically (Palma and Ignacio vs. Q&S, Inc., et al., 17 SCRA 97)."

Absent any arbitrary or despotic exercise of judicial power as to amount to abuse of discretion on the part of the respondent court, the instant petition cannot prosper.

ACCORDINGLY, the petition is hereby DISMISSED for lack of merit with costs against petitioner.

### **SO ORDERED.**

Regalado (Chairman), Romero, Puno, and Mendoza, JJ., concur.

[1] Decision, pp. 160-167, Records (CA G.R. SP No. 25547); Associate Justice Salome A. Montoya, Ponente and concurred by Associate Justice Fidel P. Purisima, Chairman of the Tenth Division, Court of Appeals, and Associate Justice Eduardo R. Bengzon, Senior Member.

[2] Annex "D", Petition, pp. 41-45, Records (CA G.R. SP No. 25547).

[3] Annex "A", Order of the Regional Trial, Branch 62, Makati, dated March 14, 1991, pp. 24-25, supra.

[4] Annex "B", Order of the Regional Trial, dated April 23, 1991, pp. 26-28, ibid.

[5] Decision, supra., 164.

[6] Supra.

[7] Cason vs. San Pedro, L-18928, Dec. 28, 1962.

[8] L-34897, July 15, 1975, 65 SCRA 46.

[9] De Vera vs. Pineda, G.R. 96333, Sept. 2, 1992, 213 SCRA 434.

[10] Reyes vs. Camilon, G.R. 46198, Dec. 20, 1990, 192 SCRA 445.

**[11] L-32550, 125 SCRA 337.**

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