

SPOUSES JUAN J. DIAZ AND ELIZABETH L. DIAZ, PETITIONERS, VS. JOSE DIAZ AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 135885. April 28, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

This case stems from the action for a sum of money filed before the Regional Trial Court of Mandaluyong City, Branch 214[1] by private respondent Jose Diaz against petitioners Juan and Elizabeth Diaz. In the instant Petition for Review on Certiorari, petitioners assail the Decision[2] dated July 14, 1998 and Resolution[3] dated October 8, 1998 of the Court of Appeals,[4] affirming the trial court's denial of their Motion to Dismiss. In their Supplemental Petition, petitioners question the trial court's Order[5] dated January 8, 1999, denying their Motion to Set Aside Order of Default and to Admit Attached Answer, and the Order[6] dated January 12, 1999, correcting certain paragraphs of the Order dated January 8, 1999.

The relevant facts are:

In his Complaint, private respondent alleged that:

3

Plaintiff and defendant Juan J. Diaz are brothers, and together with their recently widowed sister, Marita D. Papa, owned in common, as co-heirs (sic), a parcel of land, with improvements thereon, situated in the Municipality of Mandaluyong (now Mandaluyong City), hereinafter referred to as the Mandaluyong property, in the following proportions:

Defendant Juan J. Diaz - 6/8

Plaintiff Jose Diaz - 1/8

Marita D. Papa - 1/8

4

On May 17, 1968, the above-mentioned co-owners sold their Mandaluyong property to PHILAMGEN for P125,000.00. Thus, the corresponding amounts pertaining to each co-owner from the sale were as follows:

Juan J. Diaz - P90,000.00

Jose Diaz - 15,000.00

Marita D. Papa - 15,000.00

5

Immediately after the sale of the Mandaluyong property, defendant Juan J. Diaz, purchased a 1,000 sq. meter lot in Greenhills Subdivision, San Juan, for P140,000.00 (hereinafter referred to as the Greenhills lot), using as part of the purchase price plaintiff's P15,000.00 share of the sale of the Mandaluyong property, and thereafter caused

title thereto to be issued in his name, all with the knowledge and without objection of the plaintiff;

x x x

11

Defendant spouses have recently sold the Greenhills lot, together with their Greenhills home, for P54,000,000.00.

12

Considering that defendant Juan J. Diaz, in buying the Greenhills lot, used as part of the purchase price plaintiff's afore-mentioned P15,000.00 share of the sale of the Mandaluyong property, and caused the title to said lot to be issued in his name, all with the knowledge and without the objection on the part of the plaintiff, an implied trust was created by force of law, between plaintiff and defendants, in favor of the former, in proportion to his interest in said Greenhills lot, pursuant to Article 1452 of the Civil Code of the Philippines;

13

On June 18, 1997, plaintiff wrote defendant spouses a letter demanding from them an amount of at least P2 million as his share of the actual value of the Greenhills lot which can reasonably be placed at P30 million but defendant spouses, however, refused to honor plaintiff's demand in a letter to him dated August 28, 1997 x x x.[7]

On September 19, 1997, private respondent filed an action for sum of money with the Regional Trial Court of Mandaluyong City. On October 7, 1997, petitioners filed a Motion to Dismiss[8] on the ground that private respondent's Complaint failed to state a cause of action, and assuming that private respondent had a cause of action against them, it was already barred by prescription and laches. Private respondent filed his Opposition to the Motion to Dismiss, to which petitioners responded by filing a Reply.

In its Order dated November 27, 1997, the trial court denied petitioners' Motion to Dismiss as the "points invoked and the arguments advanced were contentious and evidentiary in nature which could not be established by mere allegations in the pleadings but must be proved during the trial on the merits." [9] The trial court denied the Motion for Reconsideration of petitioners in its Order dated January 14, 1998.

On February 6, 1998, petitioners filed a Petition for Certiorari and Prohibition[10] with the Court of Appeals. In its Resolution dated February 12, 1998, the Second Division of the Court of Appeals dismissed the petition for failure to comply with Section 11, Rule 13 of the 1997 Rules of Civil Procedure (the "Rules"). [11]

On February 23, 1998, petitioners filed another Petition for Certiorari and Prohibition with the Court of Appeals. On July 14, 1998, the appellate court denied the petition. Petitioners' Motion for Reconsideration was denied on October 8, 1998.

Dissatisfied, on October 29, 1998, petitioners filed a Petition for Certiorari and Prohibition with this Court. In our Resolution[12] dated November 25, 1998, we treated said petition as a petition for review on certiorari under Rule 45.

In the meantime, during the pendency of petitioners' first Petition for Certiorari before the Court of Appeals, private respondent filed with the trial court a motion dated February 16, 1998 to declare petitioners in default for failure to file an answer on or before January 27, 1998, allegedly the last day for filing the same. Petitioners filed their Opposition thereto on February 25, 1998. In its Order dated March 2, 1998, the trial court granted the motion of private respondent and set the date for the ex-parte presentation of evidence on March 30, 1998. On March 20, 1998, petitioners moved for reconsideration of the order of default. Before the trial court could act upon said motion, on March 27, 1998, the Court of Appeals granted petitioners' March 17, 1998 motion for issuance of a temporary restraining order thereby enjoining the trial court from proceeding with the scheduled hearing on

March 30, 1998 or on any future date until ordered by the appellate court.[13]

With the denial by the Court of Appeals of petitioners' second Petition for Certiorari, private respondent filed with the trial court a motion dated July 27, 1998, praying that he be allowed to proceed with the ex-parte presentation of evidence. The trial court granted said motion in its Order dated August 7, 1998,.

On August 13, 1998, petitioners filed a Motion for Reconsideration of the Order dated August 7, 1998, contending that their Motion for Reconsideration dated March 20, 1998 had not yet been resolved. In the interim, petitioners filed their Answer on October 21, 1998.

In its Order dated October 28, 1998, the trial court denied petitioners' Motions for Reconsideration dated March 20, 1998 and August 13, 1998 and expunged their Answer from the records. Subsequently, in its Order dated November 6, 1998, the trial court allowed private respondent to present his evidence ex-parte.

On November 9, 1998, petitioners filed a Motion to Set Aside the Order of Default and to Admit Attached Answer. Petitioners filed a supplement thereto on November 17, 1998. On January 8, 1999, the trial court denied the motion on the ground that:

It is clear from the records that after the denial of defendants' Motion to Dismiss and Motion for Reconsideration, they failed to file any answer or pleading within the remaining period provided under Section 4, Rule 16 of the Rules and opted instead to file a petition for certiorari with the Court of Appeals. It was only upon receipt of the adverse decision of the Court of Appeals that defendants partially sought to set things right.

The foregoing simply demonstrate defendants' obstinate refusal or inordinate neglect of the rules of procedure which deserves no compassion from the court. Therefore, the default order should be maintained.[14]

In an Order dated January 12, 1999, the trial court corrected certain paragraphs[15] in its Order dated January 8, 1998 which "had been inadvertently and/or erroneously typed and/or omitted." [16]

On February 3, 1999, petitioners filed, with leave from this Court, a Supplemental Petition,[17] assailing the trial court's Orders dated January 8, 1999 and January 12, 1999 for having been issued without or in excess of jurisdiction, and/or with grave abuse of discretion amounting to lack of jurisdiction.

Parenthetically, on March 11, 1999, the trial court rendered judgment in favor of private respondent. On March 30, 1999, petitioners filed a Notice of Appeal to the Court of Appeals, which was given due course by the trial court in its Order dated March 31, 1999. Sometime thereafter, the appellate court granted private respondent's Motion for Execution Pending Appeal. Petitioners posted a supersedeas bond with the trial court. Petitioners manifested that while they were preparing their Appellants' Brief, they also filed with the Court of Appeals a Motion for Deferment of Any Proceeding Relative to the Appeal in light of this Court's Resolution dated October 4, 1999, giving due course to their petition. On December 6, 1999, the appellate court promulgated a Resolution: (1) reversing its prior decision allowing petitioners to file a supersedeas bond and thereby ordering them to comply with the writ of execution of the trial court, (b) declaring petitioners guilty of forum-shopping, and (c) denying petitioners' second motion for an extension of forty-five (45) days within which to file their Appellant's Brief. Claiming that they would suffer grave injustice from the enforcement of said Resolution, petitioners filed an urgent motion with this Court on December 10, 1999, praying for issuance of a status quo or temporary restraining order.[18] On December 13, 1999, we granted petitioners' prayer.

In their petition for review, petitioners assign the following errors:

I. THE COURT OF APPEALS ERRED IN NOT FINDING THAT, ON ITS FACE, THE COMPLAINT FAILED TO STATE A CAUSE OF ACTION.

II. THE COURT OF APPEALS LIKEWISE ERRED IN NOT DISMISSING THE COMPLAINT DUE TO PRIVATE RESPONDENT'S VACILLATING CAUSE OF ACTION, WHICH SHOWS HIS INABILITY TO ALLEGE AN ACTIONABLE CAUSE IN HIS COMPLAINT.

III. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE COMPLAINT DID STATE A CAUSE OF ACTION, THE COURT OF APPEALS STILL ERRED IN FINDING THAT PRESCRIPTION HAD NOT SET IN WHEN THE CASE WAS FILED ON SEPTEMBER 19, 1997.

IV. ASSUMING FOR THE SAKE OF ARGUMENT THAT PRESCRIPTION HAD NOT SET IN WHEN THIS CASE WAS FILED, THE COURT OF APPEALS ALSO ERRED IN FINDING THAT PETITIONERS' ARGUMENT ON LACHES IS UNSUSTAINABLE.

V. THE COURT OF APPEALS ERRED IN RULING THAT A SPECIAL CIVIL ACTION FOR CERTIORARI IS NOT THE APPROPRIATE REMEDY FOR THE PETITIONERS.

VI. THE COURT OF APPEALS FURTHER ERRED IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION BECAUSE OF THE ALLEGED LACK OF COMPELLING REASON TO MODIFY, REVERSE OR RECONSIDER THE DECISION, AND THE ARGUMENTS RAISED THEREIN WERE PURPORTEDLY ALREADY CONSIDERED AND PASSED UPON IN THE DECISION.

On the other hand, petitioners' Supplemental Petition hinges upon the resolution of the following issues:

I. WHETHER OR NOT THE TRIAL JUDGE ERRED AND/OR ACTED WITHOUT JURISDICTION AND/OR GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN DECLARING PETITIONERS IN DEFAULT AND ORDERING THEIR ANSWER EXPUGNED FROM THE RECORDS OF THE CASE.

II. ASSUMING THAT PETITIONERS WERE PROPERLY DECLARED IN DEFAULT, WHETHER OR NOT THE TRIAL JUDGE STILL ERRED AND/OR ACTED WITHOUT JURISDICTION IN NOT SETTING ASIDE THE ORDER OF DEFAULT AND ADMITTING PETITIONERS' ANSWER.

III. IN ISSUING THE ASSAILED ORDERS AND CATEGORICALLY DECLARING THAT HE WOULD PROCEED TO RESOLVE THE MAIN CASE "UNLESS ENJOINED BY [THE] SUPREME COURT," THE TRIAL JUDGE ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION.

I. Denial of Petitioners' Motion to Dismiss

Petitioners maintain that private respondent's Complaint failed to state a cause of action as it contained mere averments of facts and conclusions of law that neither establish any right or claim on the part of private respondent nor constitute wrongful acts or omissions violative of his right. Petitioners specifically draw this Court's attention to paragraphs 5 and 12 upon which private respondent allegedly anchors his cause of action. Citing *Remitere v. Vda. de Yulo*[19] as the case in point, petitioners contend that the allegations in paragraph 5 failed to state private respondent's claim to the P15,000.00, the Greenhills property, or the manner by which his rights or interests were prejudiced by the alleged use of his P15,000.00 by petitioners while paragraph 12 is a mere reiteration of paragraph 5.

We disagree with petitioners. It has been our consistent ruling that a complaint states a cause of action when it contains the following elements: (1) the legal right of plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right.[20] Accordingly, in *Remitere*, we found that the complaint failed to allege any connection between the plaintiffs and the deceased Gregorio Remitere, their claim to the properties, the manner by which their rights or interests were affected by the sale of said properties as well as facts and circumstances upon which the nullity of the public auction was predicated. In the case at bar, the connection which petitioners seek can readily be found by an examination of the Complaint in its entirety. In his

Complaint, private respondent alleged that he was entitled to receive P15,000.00 as his share in the sales proceeds of the Mandaluyong property. He thereafter claimed that, with his knowledge and without his objection, the same P15,000.00 was used by his brother in paying for the Greenhills property. Having allowed his brother to use his money, private respondent demanded the return of the present equivalent of his contribution following the sale of the Greenhills property but said demand was rejected. Hypothetically admitting these allegations, private respondent's Complaint satisfies all the elements of a cause of action.

Petitioners argue that private respondent's invocation of Article 1452 of the Civil Code is a mere conclusion of law which is not allowed to be alleged in the Complaint. Petitioners also dispute the applicability of Article 1452 as there was never any agreement between the parties for the purchase of the Greenhills property and for registration of the title in their name. We agree with petitioners that private respondent's invocation of Article 1452 is a conclusion of law. However, the inclusion thereof does not render the Complaint infirm since statements of law made by parties to a case are not binding on the courts. Similarly, doubtful veracity of the allegations in the Complaint is not a ground for granting a motion to dismiss. The existence or non-existence of an agreement between petitioners and private respondent is a matter that should be threshed out during the trial of the case.

Petitioners further contend that private respondent's vacillating cause of action indicated an inability to allege an actionable cause which should have impelled the Court of Appeals to grant their Motion to Dismiss. Petitioners ask this Court to take notice of the fact that private respondent first cited the implied trust provisions of Article 1452 of the Civil Code in his Complaint then shifted to implied trust under Article 1455 in his Opposition to the Motion to Dismiss, and finally, co-ownership in his Comment before the Court of Appeals. Petitioners correctly pointed out that in determining the existence of a cause of action, only the statements in a complaint may properly be considered, and that it is error for the courts to take cognizance of external facts or hold preliminary hearings to determine its existence.[21] Petitioners will, however, concede that private respondent's Opposition to the Motion to Dismiss and Comment are extraneous matters which we are proscribed from considering for purposes of determining the sufficiency of private respondent's Complaint. Whether or not the provision of law cited by private respondent is applicable to the case at bar is immaterial. Under the rules of pleading, a party is not required to specify the provisions of law or contract relied upon by the pleader.[22] If he does so, and is mistaken, this will not preclude him from obtaining relief under a different conception of the case, provided always that the facts stated and proved justify such relief.[23]

Assuming that the Complaint did state a cause of action, petitioners claim that the Court of Appeals failed to consider that private respondent's cause of action accrued in 1968 with the sale of the Mandaluyong property. Thus, when private respondent filed his Complaint twenty-nine (29) year later, prescription and laches had already set in. The points raised by petitioners are contentious in nature and should be resolved after considering evidence other than mere allegations in pleadings.

As to petitioners' argument that the Court of Appeals erred in ruling that a special civil action for certiorari is not the appropriate remedy to question the denial of their motion to dismiss, it need not be gainsaid that a special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment.[24] To justify the grant of such extraordinary remedy, the abuse of discretion must be grave and patent, and it must be shown that discretion was exercised arbitrarily or despotically.[25] In this case, no such circumstances attended the denial of petitioners' Motion to Dismiss.

II. Propriety of the Order of Default

Petitioners submit that Section 4, Rule 16 of the Rules, respecting the period within which a defendant is allowed to file an answer following the denial of his motion to dismiss, must be harmoniously construed with Rule 65. Petitioners try to convince this Court that they could not be expected to file an answer because they intended to

file a petition for certiorari with the Court of Appeals. Petitioners further submit that the notice of denial provided in Section 4 referred to a decision or resolution of the Court of Appeals or the Supreme Court, denying a petition for certiorari with finality. Until resolved, petitioners contend that the period provided for in said section does not apply to them.

We are not convinced. Petitioners received on January 22, 1998 a copy of the trial court's Order dated October 8, 1997, denying reconsideration of its ruling on their Motion to Dismiss. Petitioners had only five (5) days from receipt of said Order, or until January 27, 1998, within which to file an answer. When petitioners filed their first Petition for Certiorari with the Court of Appeals on February 6, 1998, they were already in default. Hence, the filing of said Petition for Certiorari cannot be considered as having interrupted the reglementary period for filing an answer. More importantly, Section 7, Rule 65 of the Rules provides that:

SEC. 7. Expediting proceedings; injunctive relief. The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or writ of preliminary injunction has been issued against the public respondent from further proceeding in the case. (Emphasis Ours)

In *Santiago v. Vasquez*,^[26] we explained that:

The original and special civil action filed with this Court is, for all intents and purposes, an invocation for the exercise of its supervisory powers over lower courts. It does not have the effect of divesting the inferior courts of jurisdiction validly acquired over the case pending before them. It is elementary that the mere pendency of a special civil action for certiorari commenced in relation to a case pending before a lower court, does not even interrupt the course of the latter when there is no writ of injunction restraining it. The inevitable conclusion is that for so long as no writ of injunction or restraining order is issued in the special civil action for certiorari, no impediment exists and there is nothing to prevent the lower court from exercising its jurisdiction and proceeding with the case pending before it. And even if such injunctive writ or order is issued, the lower court nevertheless continues to retain its jurisdiction.^[27] (Emphasis Ours)

This rule was reiterated in the later cases of *United States of America v. Reyes*,^[28] *Reyes v. Commission on Elections*^[29] and *Yasay, Jr. v. Desierto*.^[30] In *United States of America*, therefore, we held that although petitioner Maxine Bradford questioned the denial of her motion to dismiss before this Court, she was nonetheless properly declared in default for failure to file her answer within the reglementary period. In that case, we issued a temporary restraining order against the trial court three (3) months after rendering a default judgment against petitioner. It is clear from the foregoing that proceedings in the court of origin are not automatically suspended by filing of a petition for certiorari, much less by a mere intent to file the same. It will be noted in the case at bar that the Court of Appeals issued a temporary restraining order against the trial court two (2) months after the latter denied petitioners' motion seeking reconsideration of its Order dated October 18, 1998. We need not stress that petitioners cannot assume that the Court of Appeals or this Court will readily grant prayers for a writ of preliminary injunction or temporary restraining order.

Petitioners also contend that to require them to file an answer before resolution of their Petition for Certiorari would render nugatory their right to question the denial of their Motion to Dismiss and result in taking inconsistent positions by compelling them to admit the existence of a cause of action. As early as *Palomares v. Jimenez*,^[31] we stated that an application for certiorari is an independent action which is not part or a continuation of the trial which resulted in the rendition of the judgment complained of. Impliedly, a petition for certiorari pending before a higher court does not necessarily become moot and academic by a continuation of the proceedings in the court of origin. We also find that petitioners' fear of taking inconsistent positions is more apparent than real. The grounds relied upon by petitioners in their Motion to Dismiss may validly be raised in

their Answer and invoked in moving for the dismissal of the action should said grounds become evident during the trial.

Petitioners argue that they should not have been declared in default because the trial judge could have easily considered their Motion to Dismiss as their Answer as in the case of *Matute v. Court of Appeals*.^[32] Petitioners overlook the fact that in *Matute*, petitioners were prematurely declared in default because the period for filing their answer had not commenced to run anew as counsel for petitioners had not yet received a copy of the order denying their motion to dismiss. This is our rationale for setting aside the order of default. In this case, notwithstanding receipt of the Orders denying their Motion to Dismiss and Motion for Reconsideration thereof, petitioners did not file an answer within the reglementary period.

III. Propriety of the Denial of Petitioners' Motion to Lift Order of Default

Petitioners submit that the import of Section 4 of Rule 16 involved a difficult question of law which may be considered as a mistake of fact, excusing them from the legal consequences of their act. Moreover, they honestly and firmly believed that Section 7 of Rule 65 did not render useless the doctrine of hierarchical courtesy among courts. If not persuaded, petitioners argue that their actuation and that of their counsel should at least be considered as excusable negligence. Petitioners' submission is without merit. Our pronouncements in *Santiago, United States of America, Reyes and Yasay, Jr.* sufficiently explain the import of the term "notice of denial" and indicate that Section 7 is intended as an exception to the observance of hierarchical courtesy among courts. Petitioners' own admissions likewise militate against their claim of mistake and excusable negligence. In their second Petition for Certiorari before the Court of Appeals, petitioners alleged the following in support of their prayer for a writ of injunction or temporary restraining order:

6.3. Unless inhibited by the Honorable Court of Appeals, the Regional Trial Court of Mandaluyong City, Branch 214, being presided by Respondent Judge Edwin D. Sorongon will and should set for continuation of the proceedings of said Civil Case No. 15-MD of your Petitioners considering that the assailed ORDERS DENIED the Motion to Dismiss and Motion for Reconsideration and further found that said civil case necessitates trial on the merits and presentation of evidence. This would cause great injustice to Petitioners considering that they are clearly entitled to the issuance of a writ of preliminary injunction or at least temporary restraining order and their need for relief is extremely urgent.^[33] (Emphasis Ours)

Similarly, in their motion dated March 12, 1998, seeking, among others, reconsideration of the trial court's ruling on their Motion to Set Aside Order of Default and to Admit Attached Answer, petitioners stated:

3. While it is true that without a temporary restraining order from the Court of Appeals, the proceedings before this Honorable Court may proceed, the decision of whether to proceed or not is still discretionary with the trial court.^[34] (Emphasis Ours)

These statements show that petitioners were fully aware of the rule that a petition for certiorari does not stay the proceedings in the court of origin in the absence of a writ of injunction or temporary restraining order.

This notwithstanding, we note that the emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Hence, in *Genite v. Court of Appeals*,^[35] we stressed that:

The Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. As applied to [the] instant case, in the language of

Justice Makalintal, technicalities "should give way to the realities of the situation." [36]

Suits should as much as possible be decided on the merits and not on technicalities. [37] In this regard, we have often admonished courts to be liberal in setting aside orders of default as default judgments are frowned upon and not looked upon with favor for they may amount to a positive and considerable injustice to the defendant and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside. [38] Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that this Court is empowered to suspend its operation, or except a particular case from its operation, when the rigid application thereof tends to frustrate rather than promote the ends of justice. [39] We are not unmindful of the fact that during the pendency of the instant petition, the trial court has rendered judgment against petitioners. However, being the court of last resort, we deem it in the best interest that liberality and relaxation of the Rules be extended to petitioners by setting aside the order of default issued by the trial court and the consequent default judgment; otherwise, great injustice would result if petitioners are not afforded an opportunity to prove their claims.

WHEREFORE, the decision of the Court of Appeals affirming the denial of petitioners' Motion to Dismiss is **AFFIRMED**. The Motion to Set Aside Order of Default and to Admit Attached Answer is hereby **GRANTED**; and the default judgment rendered by the trial court on March 11, 1999 is **SET ASIDE**. The trial court is directed to proceed with the trial of the case, and to resolve the same with dispatch. The Court of Appeals is hereby ordered to remand the records of the case to the trial court within fifteen (15) days from notice hereof. Both the trial court and the appellate court are ordered to immediately inform this Court of their compliance with these orders.

Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Presided by Judge Edwin D. Sorongon.

[2] Annex "A" of the Petition, Rollo, pp. 62-72; Penned by Court of Appeals Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Quirino D. Abad Santos and Teodoro P. Regino.

[3] Annex "B" of the Petition, Rollo, p. 73-74.

[4] Tenth Division.

[5] Annex "A" of the Supplemental Petition, Rollo, pp. 324-325.

[6] Annex "B" of the Supplemental Petition, Rollo, p. 326.

[7] Annex "C" of the Petition, Rollo, pp. 75-78.

[8] Annex "D" of the Petition, Rollo, pp. 83-88.

[9] Annex "G" of the Petition, Rollo, p. 109.

[10] A copy of this petition was not attached as an annex.

[11] Annex "L" of the Petition, Rollo, p. 130.

[12] Rollo, p. 236.

[13] Annex "I" of the Supplemental Petition, Rollo, pp. 354-357.

[14] Annex "A" of the Supplemental Petition, Rollo, pp. 324-325.

[15] Paragraphs 3, 5 and 6 of the Order dated January 8, 1998 were corrected to read as follows:

Paragraph 3

"x x x was due to their firm belief that their period to answer has not yet expired because the validity of the order denying their motion to dismiss has not yet attained finality since the same was brought via certiorari to the Court of Appeals x x x."

Paragraph 5

"x x x It was only upon receipt of the adverse decision of the Court of Appeals that defendants frantically sought to set things right x x x."

Paragraph 6

"x x x defendants' obstinate refusal or inordinate neglect of the Rules of Procedure."

[16] Annex "B" of the Supplemental Petition, Rollo, p. 326.

[17] Rollo, pp. 280-323.

[18] Rollo, pp. 738-746.

[19] 16 SCRA 251 (1966)

[20] San Lorenzo Village Association, Inc. v. Court of Appeals, 288 SCRA 115 (1998)

[21] Rava Development Corporation v. Court of Appeals, 211 SCRA 144 (1992)

[22] Sea-Land Service, Inc. v. Court of Appeals, 223 SCRA 316 (1993)

[23] La Insular Cigar & Cigarette Factory, Inc. v. Jao One, 42 Phil. 366 (1921)

[24] BF Corporation v. Court of Appeals, 288 SCRA 267 (1998)

[25] Santiago Land Development Company v. Court of Appeals, 258 SCRA 535 (1996), citing Palma v. Q&S, Inc., 17 SCRA 97 (1966)

[26] 217 SCRA 633 (1993)

[27] Ibid.

[28] 219 SCRA 192 (1993)

[29] 254 SCRA 514 (1996)

[30] 300 SCRA 494 (1998)

[31] 90 Phil. 773 (1952)

[32] 26 SCRA 768 (1969)

[33] Annex "M" of the Petition, Rollo, p. 156.

[34] Annex "H" of the Supplemental Petition, Rollo, p. 346.

[35] 296 SCRA 38 (1998)

[36] Id. at 52.

[37] Gerales v. Court of Appeals, 218 SCRA 638 (1993)

[38] Montinola, Jr. v. Republic Planters Bank, 161 SCRA 45 (1988)

[39] Ramos v. Court of Appeals, 269 SCRA 34 (1997)

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