

PHILIPPINE COMMERCIAL INTERNATIONAL BANK, PETITIONER, VS. SPOUSES WILSON DY HONG PI AND LOLITA DY AND SPOUSES PRIMO CHUYACO, JR. AND LILIA CHUYACO, RESPONDENTS.

G.R. No. 171137. June 05, 2009

Ponente: PUNO, J.

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PUNO, J.:

Before the Court is a petition for review on certiorari assailing the Decision[1] dated July 18, 2005 of the Court of Appeals in CA-G.R. SP. No. 85282, and its Resolution[2] dated January 10, 2006, denying petitioner's motion for reconsideration.

Spouses Damian and Tessie Amadeo are indebted to petitioner Philippine Commercial International Bank, a domestic uni-banking corporation, as sureties for Streamline Cotton Development Corporation. The promissory notes became due and demandable, but the Amadeo spouses failed to pay their outstanding obligations despite repeated demands. As of February 15, 1994, these obligations stood at Ten Million, Six Hundred Seventy-One Thousand, Seven Hundred Twenty-Six Pesos and Sixty-One Centavos (P10,671,726.61).

Petitioner subsequently discovered that roughly a month before the due date of the promissory notes, the Amadeo spouses (i) sold three (3) or nearly all of their real properties to respondents, Spouses Wilson and Lolita Dy and Spouses Primo and Lilia Chuyaco, and (ii) immediately caused the transfer of the titles covering the parcels of land in favor of the latter. The consideration for these sales was further alleged to have been grossly insufficient or inadequate.

Believing that the transfers were done in fraud of creditors, petitioner instituted an action for rescission and damages on April 22, 1994. In its Complaint[3] in Civil Case No. 94-1585 against Spouses Amadeo, Dy and Chuyaco, petitioner asked the Regional Trial Court of Makati City for the following reliefs:

1. Annuling the Deeds of Absolute Sale both dated September 16, 1993 and thereafter, direct the Registries of Deeds of Sultan Kudarat and Davao City to cancel the Transfer Certificates of Title Nos. (sic) T-27628, T-202868, and T-202869 issued in the name of Wilson Dy Hong Pi and Lolita G. Dy AND Primo Chuyaco, Jr. and Lilia O. Chuyaco, respectively, and in lieu thereof, issue new ones under the name of Damian and Tessie Amadeo.
2. Ordering the defendants to pay the plaintiff moral damages in the sum of P200,000.00; exemplary damages in the sum of P200,000.00; and P100,000.00 as[,] and for[,] attorney's fees.[4]

The case was then raffled to Branch 133, presided over by Judge Napoleon E. Inoturan.

Upon service of summons on the Amadeo spouses, the latter filed a Motion to Dismiss[5] on the ground that the Complaint violated the explicit terms of Supreme Court Circular No. 04-94, as the Verification was executed by petitioner's legal counsel. [6] Petitioner filed its Opposition to the Motion to Dismiss,[7] where it argued that (i) the rule cited by the Amadeo spouses should not be applied literally, and (ii) at any rate, petitioner's legal counsel

was authorized by petitioner to institute the Complaint.[8] On February 4, 1995, the trial court issued an Order[9] denying the Motion to Dismiss.

The Amadeo spouses subsequently filed an Answer[10] where they alleged that petitioner failed to release the loans to Streamline Cotton Development Corporation on the agreed date, thereby constraining them to incur loans from third parties at high interest rates to keep the company afloat. These loans were covered by postdated checks which had to be funded once the obligations fell due, lest the Amadeo spouses face criminal prosecution. In order to pay the said loans, they thus had to sell the properties subject of this case. The Amadeo spouses further claimed that the purchase price for the three (3) parcels of land was the fair market value, and that they had other personal and real properties which may be availed of to answer for their obligations. In their Counterclaim, they prayed for moral damages of P200,000.00, attorney's fees and expenses of litigation.

Petitioner filed its Reply and Answer to Counterclaim[11] on March 8, 1995.

On September 13, 1995, petitioner filed an Ex Parte Motion for Leave to Serve Summons by Publication[12] on Spouses Dy and Chuyaco. However, this was denied in an Order[13] dated September 14, 1995 on the ground that summons by publication cannot be availed of in an action in personam.

Accordingly, on March 4, 1996, petitioner filed an Amended Complaint[14] to include allegations in support of, and a prayer for, a writ of preliminary attachment. Petitioner then presented evidence in relation thereto, and on February 25, 1997, the trial court issued an Order[15] for the issuance of the writ. Upon petitioner's ex-parte motion, the trial court likewise directed the Clerk of Court of the Regional Trial Court of Davao City to designate a Special Sheriff to implement the writ of preliminary attachment.[16]

In Orders[17] dated January 12, 1998 and February 20, 1998, respectively, petitioner was directed to inform the court whether it still intended to pursue the case. This appears to have been motivated by the fact that no property of the defendants had been attached as of yet. Petitioner did not comply with the said Orders; consequently, the case was dismissed without prejudice on June 26, 1998 for failure to prosecute.[18] By this time, petitioner had already caused the annotation of a notice of lis pendens at the back of the titles of the properties subject of this case (i.e., TCT Nos. T-27628, T-202868, and T-202869).

On August 3, 1998, petitioner filed a Motion for Reconsideration of the June 26, 1998 Order, alleging that its failure to notify the trial court of its intention to pursue the case was prompted solely by the difficulty of locating properties against which the writ of attachment could be enforced. In the interest of justice, the trial court granted the motion.[19]

Defendant Spouses Amadeo, Dy and Chuyaco then filed an "Omnibus Motion to Dismiss and to Annul All the Proceedings Taken Against the Defendants"[20] on December 11, 1998, in which motion they questioned the jurisdiction of the trial court over their persons. Petitioner filed its Opposition[21] thereto on February 15, 1999. Defendants filed their Reply[22] on March 10, 1999, while petitioner filed its Rejoinder[23] on June 9, 1999. Said motion, however, was merely noted without action in an August 2, 2001 Order[24] since its notice of hearing was addressed only to the Clerk of Court, viz.:

It appears from the Motion that its Notice of Hearing is not addressed to any of the parties concerned as otherwise required by Rule 15[,] Section 5 of the 1997 Rules of Civil Procedure. Such being the case, the Motion is deemed a mere scrap of paper as held in *Provident International Resources Corporation vs. Court of Appeals*, 259 SCRA 510.

In any event, the record shows that defendants Sps. Amadeo have been duly served with summons as early as November 11, 1994 per Sheriff's Return of Service dated November 14, 1994, and they are therefore within the jurisdiction of the Court. However, defendants Spouses Dy and Chuyaco have not been served with summons

as evidenced by Officer's Return dated May 24, 1994 and Return of Service dated June 10, 1994, respectively, and so the Court has not yet acquired jurisdiction over them. Since aforesaid Motion is deemed a scrap of paper, it cannot be construed to manifest a (sic) voluntary appearance on their part.

Wherefore, the Omnibus Motion is noted without action. Let alias summons be issued to defendants-spouses Dy and Chuyaco. For plaintiff's guidance, it may avail itself of Rule 14[,] Section 14 on summons by publication if it so desires, upon proper motion.

SO ORDERED. (underscoring in the original)

Spouses Dy and Chuyaco subsequently filed a "Motion to Dismiss (for Lack of Jurisdiction)"[25] on February 18, 2002, in which motion they essentially accused petitioner of not causing summons to be served upon them and losing interest in the case. Petitioner filed its Opposition[26] thereto, and in an April 23, 2002 Order,[27] the trial court denied the Motion to Dismiss on account of (i) petitioner's Compliance and Manifestation[28] that it had not lost interest in pursuing the case, and (ii) the Motion for Leave of Court to Serve Summons by Publication that petitioner filed simultaneously with its Opposition. On April 24, 2002, the Motion for Leave of Court to Serve Summons by Publication was submitted for resolution.[29]

Respondent Spouses Dy and Chuyaco next filed a "Motion to Dismiss for Failure to Prosecute"[30] on June 17, 2003. The significant portions of the motion state:

2. That based on the order of this Honorable Court dated April 23, 2003 (sic), the Motion for Leave of Court to Serve Summons by Publication was submitted for resolution, but the movants-defendants would like to remind the Honorable Court that a Motion of the same nature was already filed on September 13, 1995 and was DENIED on September 14, 1995. xxx;

3. That therefore, the order dated August 21, 2001 of this Honorable Court which advised the complainant to avail of Rule 14 Section 14 of the Rules is contrary to its order dated September 14, 1995;

4. That up to this date, the complainant has not lifted a finger to pursue this case against movants-defendants, hence, this Motion to Dismiss.

WHEREFORE, premises considered, it is most respectfully prayed that this case be dismissed against the movants-defendants and to order the deletion of the Notice of Lis Pendens at the back of the subject title (sic).

This was opposed by petitioner, arguing that it had already filed a motion for the service of summons by publication, but the trial court had yet to act on it.[31] On July 25, 2003, this Motion was submitted for resolution.[32]

On November 4, 2003, Spouses Dy and Chuyaco personally, and not through their counsel, filed a "Motion for Inhibition without submitting themselves to the jurisdiction of this Honorable Court,"[33] the relevant portions of which state:

1. That since 1998, the defendants-movants have been moving for the dismissal of this case as far as the movants are concerned and to nullify the proceedings taken against them since the Honorable Court has not yet acquired jurisdiction over their persons when the plaintiff presented its evidence against defendants (sic) Sps. Damian and Tessie Amadeo and even thereafter;

2. That, however only on (sic) August 2, 2001 or after more than three (3) years, that this Honorable Court denied the said Motion to Dismiss due to technicality (sic) and merely require (sic) the plaintiff to serve the summons either personally or thru publication;

3. That, however in the order of this Honorable Court dated September 14, 1995, it already denied the Ex-Parte Motion for Leave to Serve Summons by Publication "considering that the action herein is in personam", hence,

this order is contrary to its latest order dated August 2, 2001;

4. That another Motion to Dismiss was filed last June 11, 2003[34] on the ground of lack of interest to pursue the case but up to this date, the Honorable Court has done nothing that delays (sic) the proceedings to the prejudice of the defendants-movants;

5. That this continuous delay in the proceedings shows that the Honorable Court may not be competent enough to further hear this case.

WHEREFORE, premises considered, it is most respectfully prayed for the inhibition of this Honorable Court (sic) from further hearing this case.

This was submitted for resolution on November 13, 2003.

The motion for inhibition was adopted by their counsel on record, Clarissa Castro, through a "Motion to Adopt Motion for Inhibition and Manifestation," which was filed on February 11, 2004[35] and noted by the trial court in a February 20, 2004 Order.[36] On June 23, 2004, however, the trial court (i) denied the motion for inhibition for lack of merit, (ii) ruled that Spouses Dy and Chuyaco have voluntarily submitted themselves to the jurisdiction of the trial court, and (iii) gave them fifteen (15) days from receipt of the Order within which to file their respective answers, as follows:

Acting on the Motion for Inhibition, the Court hereby denies the same for lack of legal basis.

In any event, the fact that defendants Wilson Dy and Primo Chuyaco, Jr. signed said Motion themselves and in behalf of their respective spouses undoubtedly indicates their voluntary appearance in this case and their submission to the jurisdiction of this Court. The phrase "without submitting themselves to the jurisdiction of this Honorable Court" in the heading of said Motion can not qualify the clear import of Rule 14 section 20 which states:

Voluntary appearance. — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (23a)

It may be noted that subject Motion for Inhibition is not a Motion to Dismiss.

Wherefore, defendants-spouses Dy and Chuyaco are given fifteen (15) days from receipt hereof within which to file their respective answers.

All pending incidents are deemed resolved.[37]

Unsatisfied with the Order, respondent Spouses Dy and Chuyaco filed a Petition for Certiorari under Rule 65[38] before the CA, alleging that "the public respondent committed grave abuse of discretion when he considered the Motion to Inhibit (without submitting to the jurisdiction of the Honorable Court) which they had filed to question his impartiality and competence due to the delay in resolving the Motion to Dismiss based on lack of jurisdiction, as voluntary appearance, and wherein he required the respondents to file their Answer within the required period." The CA granted the petition in this wise:

The old provision under Section 23, Rule 14 of the Revised Rules of Court provided that:

Section 23. What is equivalent to service. The defendant's voluntary appearance in the action shall be equivalent to service.

Under Section 20, Rule 14 of the 1997 Rules of Civil Procedure, the provision now reads as follows:

Sec. 20. Voluntary Appearance. — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over

the person of the defendant shall not be deemed a voluntary appearance.

What remains the same, carry (sic) over from the old doctrine, is that the issue of jurisdiction must be raised seasonably.

But everything else changed.

What changed is that: if a motion is filed, whatever kind it is, it need no longer be for the sole and separate purpose of objecting to the jurisdiction of the court because the motion may raise myriad issues in that one motion of special appearance as long as the objection to the jurisdiction of the court is included. xxx

What necessarily changed also is that the medium of "special appearance" is no longer restricted to a motion to dismiss because one could now file any type of motion provided you included the issue of lack of jurisdiction due to defective service of summons.

Thus, in this case at bar, the "two motions to dismiss" and the "motion to inhibit" may be treated as "special appearance" since they all included the issue of lack of jurisdiction due to non-service of summons. They did not constitute as submitting the movant to the jurisdiction of the court.

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There being no proper service of summons on petitioners and there being no voluntary appearance by petitioners, the trial court did not acquire jurisdiction over the persons of the defendants, the herein petitioners. Any proceeding undertaken by the trial court against them would consequently be null and void.

WHEREFORE, premises considered, the assailed June 23, 2004 Order of the Regional Trial Court of Makati City, Branch 133, is hereby DECLARED NULL AND VOID as against herein petitioners. The April 22, 1994 complaint filed by Philippine Commercial International Bank is hereby DISMISSED as against herein petitioners DY and CHUYACO only, no jurisdiction over their persons having been acquired.

SO ORDERED.[39]

Petitioner's motion for reconsideration was denied by the appellate court.[40]

Hence this appeal, where petitioner argues that:

I.

THE COURT OF APPEALS ERRED IN DECLARING THE JUNE 23, 2004 ORDER OF THE TRIAL COURT NULL AND VOID AND IN DISMISSING THE COMPLAINT AS AGAINST RESPONDENTS DY AND CHUYACO AND RENDERING THE QUESTIONED DECISION AND RESOLUTION IN A WAY THAT IS NOT IN ACCORD WITH THE FACTS AND APPLICABLE LAWS AND JURISPRUDENCE, WHICH HOLD THAT BY THEIR SUCCESSIVE FILING OF MOTIONS WITH THE CONVENIENT CAVEAT THAT THEY ARE NOT SUBMITTING TO THE JURISDICTION OF THE COURT A QUO, THEY HAVE VOLUNTARILY SUBMITTED TO THE TRIAL COURT'S JURISDICTION.

- THE HONORABLE COURT OF APPEALS ERRED WHEN IT DISMISSED THE CASE AS AGAINST DY AND CHUYACO.

- THE SPOUSES DY AND CHUYACO HAVE LOST THEIR RIGHT TO QUESTION THE TRIAL COURT'S JURISDICTION OVER THEM WHEN THEY DID NOT RAISE THE DENIAL OF THEIR APRIL 22, 2002 MOTION TO DISMISS TO THE COURT OF APPEALS.

- THE SPOUSES DY AND CHUYACO HAVE MISERABLY FAILED TO SHOW BASIS IN SEEKING THE TRIAL COURT'S JURISDICTION.

- THE SPOUSES DY AND CHUYACO HAVE VOLUNTARILY SUBMITTED THEMSELVES TO THE TRIAL COURT'S JURISDICTION.

II.

THE COURT OF APPEALS ERRED IN A WAY THAT IS NOT IN ACCORD WITH APPLICABLE LAWS AND JURISPRUDENCE IN NOT DISMISSING THE PETITION FOR CERTIORARI NOTWITHSTANDING THAT THE DY AND CHUYACO SPOUSES FAILED TO SHOW THAT THERE IS NO APPEAL, OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AVAILABLE TO THEM.[41]

Simply stated, the issues are: (1) Was the petition for certiorari prematurely filed? (2) Has there been voluntary appearance on the part of respondent Spouses Dy and Chuyaco as to confer the trial court with jurisdiction over their persons? and (3) Did the trial court correctly deny the motion for inhibition?

We shall discuss these issues in seriatim.

First Issue: Propriety of Certiorari

Petitioner contends that respondents subverted the settled rule that a Petition for Certiorari under Rule 65 is available only when there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[42] It asserts that respondents' failure to move for reconsideration of the June 23, 2004 Order of the trial court, denying the latter's motion for inhibition, provides sufficient cause for the outright dismissal of the instant petition.

We disagree.

Petitioner is correct that a motion for reconsideration, as a general rule, must have first been filed before the tribunal, board, or officer against whom the writ of certiorari is sought.[43] This is intended to afford the latter an opportunity to correct any actual or fancied error attributed to it.[44] However, there are several exceptions where the special civil action for certiorari will lie even without the filing of a motion for reconsideration, namely:

- where the order is a patent nullity, as where the court a quo has no jurisdiction;
- where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner, or the subject matter of the action is perishable;
- where, under the circumstances, a motion for reconsideration would be useless;
- where petitioner was deprived of due process and there is extreme urgency for relief;
- where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- where the proceedings in the lower court are a nullity for lack of due process;
- where the proceedings were ex parte or in which the petitioner had no opportunity to object; and
- where the issue raised is one purely of law or where public interest is involved.[45]

Otherwise stated, a motion for reconsideration may be dispensed with only if there are concrete, compelling, and valid reasons for doing so.[46]

We find that respondents' non-filing of a motion for reconsideration is justifiable under the circumstances of this case. It is not disputed that the trial court, rightly or wrongly, considered them to have voluntarily submitted to its jurisdiction by virtue of their motion for inhibition. Thus, respondents' apprehension that the motion for reconsideration might be construed as further manifesting their voluntary appearance is certainly well-grounded. They may not, therefore, be faulted for having resorted immediately to a special civil action for certiorari.

Second Issue: Voluntary Appearance

Preliminarily, jurisdiction over the defendant in a civil case is acquired either by the coercive power of legal processes exerted over his person, or his voluntary appearance in court.[47] As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court.[48] It is by reason of this rule that we have had occasion to declare that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, is considered voluntary submission to the court's jurisdiction.[49] This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.[50]

Prescinding from the foregoing, it is thus clear that:

(1)

Special appearance operates as an exception to the general rule on voluntary appearance;

(2)

Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, i.e., set forth in an unequivocal manner; and

(3)

Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.

Measured against these standards, it is readily apparent that respondents have acquiesced to the jurisdiction of the trial court as early as June 17, 2003, when they filed their Motion to Dismiss for Failure to Prosecute. Significantly, the motion did not categorically and expressly raise the jurisdiction of the court over their persons as an issue. It merely (i) "reminded" the court of its purportedly conflicting Orders in respect of summons by publication, (ii) alleged that because petitioner "has not lifted a finger to pursue this case against movants-defendants," the case may be dismissed for failure to prosecute, and (iii) prayed additionally for the deletion of the Notice of Lis Pendens indicated at the back of the transfer certificates of title covering the subject properties. We note, furthermore, that the motion failed to qualify the capacity in which respondents were appearing and seeking recourse.[51] It is in this light that the Court's pronouncement in *Busuego v. Court of Appeals*[52] finds cogent application:

A voluntary appearance is a waiver of the necessity of a formal notice. An appearance in whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. While the formal method of entering an appearance in a cause pending in the courts is to deliver to the clerk a written direction ordering him to enter the appearance of the person who subscribes it, an appearance may be made by simply filing a formal motion, or plea or answer. This formal method of appearance is not necessary. He may appear without such formal appearance and thus submit himself to the jurisdiction of the court. He may appear by presenting a motion, for example, and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction

of the court over his person.[53] (emphasis supplied)

Besides, any lingering doubts on the issue of voluntary appearance dissipate when the respondents' motion for inhibition is considered. This motion seeks a sole relief: inhibition of Judge Napoleon Inoturan from further hearing the case. Evidently, by seeking affirmative relief other than dismissal of the case, respondents manifested their voluntary submission to the court's jurisdiction. It is well-settled that the active participation of a party in the proceedings is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court's jurisdiction.[54]

To be sure, the convenient caveat in the title of the motion for inhibition (i.e., "without submitting themselves to the jurisdiction of this Honorable Court") does not detract from this conclusion. It would suffice to say that the allegations in a pleading or motion are determinative of its nature; the designation or caption thereof is not controlling.[55] Furthermore, no amount of caveat can change the fact that respondents tellingly signed the motion to inhibit in their own behalf and not through counsel, let alone through a counsel making a special appearance.

Third Issue: Inhibition

Respondents argue that the trial court's so-called "continuous delay in the proceedings" is indicative of the fact that it is incompetent to continue hearing the case. Respondents therefore assert that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied their motion to inhibit and required them to file their Answer.

We are not convinced.

Under the first paragraph of Section 1, Rule 137 of the Rules of Court, a judge or judicial officer shall be mandatorily disqualified to sit in any case in which:

(a)

he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise; or

(b)

he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of civil law; or

(c)

he has been executor, administrator, guardian, trustee or counsel; or

(d)

he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.[56]

Paragraph two of the same provision meanwhile provides for the rule on voluntary inhibition and states: "[a] judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above." That discretion is a matter of conscience and is addressed primarily to the judge's sense of fairness and justice.[57] We have elucidated on this point in *Pimentel v. Salanga*,[58] as follows:

A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of

circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act in or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decision to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.

The present case not being covered by the rule on mandatory inhibition, the issue thus turns on whether Judge Napoleon Inoturan should have voluntarily inhibited himself.

At the outset, we underscore that while a party has the right to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case, this right must be weighed with the duty of a judge to decide cases without fear of repression.[59] Respondents consequently have no vested right to the issuance of an Order granting the motion to inhibit, given its discretionary nature.[60]

However, the second paragraph of Rule 137, Section 1 does not give judges unfettered discretion to decide whether to desist from hearing a case.[61] The inhibition must be for just and valid causes, and in this regard, we have noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis.[62] This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias or partiality.[63] Moreover, extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself.[64] The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.[65]

We do not find any abuse of discretion by the trial court in denying respondents' motion to inhibit. Our pronouncement in *Webb, et al. v. People of the Philippines, et al.*[66] is apropos:

A perusal of the records will reveal that petitioners failed to adduce any extrinsic evidence to prove that respondent judge was motivated by malice or bad faith in issuing the assailed rulings. Petitioners simply lean on the alleged series of adverse rulings of the respondent judge which they characterized as palpable errors. This is not enough. We note that respondent judge's rulings resolving the various motions filed by petitioners were all made after considering the arguments raised by all the parties. xxx

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We hasten to stress that a party aggrieved by erroneous interlocutory rulings in the course of a trial is not without remedy. The range of remedy is provided in our Rules of Court and we need not make an elongated discourse on the subject. But certainly, the remedy for erroneous rulings, absent any extrinsic evidence of malice or bad faith, is not the outright disqualification of the judge. For there is yet to come a judge with the omniscience to issue rulings that are always infallible. The courts will close shop if we disqualify judges who err for we all err. (emphasis supplied)

Truth be told, respondents are not entirely blameless for any perceived delay in the resolution of the various incidents of the case. For instance, they make much of the fact that close to three years passed before their

"Omnibus Motion to Dismiss and to Annul All the Proceedings Taken Against the Defendants," filed on December 11, 1998, was noted by the trial court. But the fact remains that the said "motion," not having a notice of hearing addressed to the adverse party, is legally a mere scrap of paper.[67] It presents no question which merits the attention and consideration of the court, and is not entitled to judicial cognizance.[68]

Considering the foregoing, we rule that respondents' accusations of delay, incompetence, and bias on the part of the trial court are unfounded. Hence, they are not entitled to the inhibition of Judge Inoturan as a relief.

IN VIEW WHEREOF, the Petition is hereby GRANTED. The Decision dated July 18, 2005 of the Court of Appeals and its Resolution dated January 10, 2006 are hereby REVERSED and SET ASIDE, and another in their stead is hereby rendered ORDERING respondent Spouses Dy and Chuyaco to answer the Complaint in Civil Case No. 94-1585 within fifteen (15) days from receipt of this Decision.

The trial court is directed to proceed hearing the case, and to resolve the same with dispatch.

No costs.

SO ORDERED.

Carpio, Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Rollo, pp. 52-63.

[2] Id., pp. 64-65.

[3] Id., pp. 87-93.

[4] Id., p. 91.

[5] Id., pp. 111-112.

[6] The Motion to Dismiss the Complaint was filed on December 1, 1994.

[7] Rollo, pp. 113-118.

[8] The Opposition to the Motion to Dismiss was filed on January 30, 1995.

[9] Rollo, p. 120.

[10] Id., pp. 121-127.

[11] Id., pp. 128-130.

[12] Id., pp. 362-364.

[13] Id., p. 365.

[14] Id., pp. 131-139.

[15] Id., p. 366.

[16] Order dated May 8, 1997; id., p. 367.

[17] Id., pp. 368-369.

[18] Id., p. 370.

[19] Order dated September 14, 1998; *id.*, p. 374.

[20] *Id.*, pp. 157-160.

[21] *Id.*, pp. 161-164.

[22] *Id.*, pp. 165-166.

[23] *Id.*, pp. 167-171.

[24] *Id.*, p. 172.

[25] *Id.*, pp. 173-174.

[26] *Id.*, pp. 175-179.

[27] *Id.*, p. 180.

[28] The Compliance and Manifestation was in fact filed by registered mail on December 28, 2001, or almost two months before the "Motion to Dismiss (for Lack of Jurisdiction)" was filed. It appears that respondents' counsel did not receive her copy thereof because she moved to a new office without notifying petitioner's counsel.

[29] Rollo, p. 224.

[30] *Id.*, pp. 181-182.

[31] *Id.*, pp. 183-187.

[32] *Id.*, p. 188.

[33] *Id.*, pp. 189-190.

[34] This should be June 17, 2003.

[35] Rollo, pp. 191-192.

[36] *Id.*, p. 299.

[37] *Id.*, pp. 193-194.

[38] *Id.*, pp. 195-224.

[39] *Id.*, pp. 17-19.

[40] *Id.*, pp. 64-65.

[41] *Id.*, pp. 34-35.

[42] Section 1, Rule 65, 1997 Rules of Court.

[43] *Pure Foods Corporation v. National Labor Relations Commission*, G.R. No. 78591, March 21, 1989, 171 SCRA 415, 424; *Tan v. Sandiganbayan*, G.R. No. 128764, July 10, 1998, 292 SCRA 452, 457; *Bernardo, et al. v. Abalos, et al.*, G.R. No. 137266, December 5, 2001, 371 SCRA 459, 464; *Flores v. Sangguniang Panlalawigan of Pampanga, et al.*, G.R. No. 159022, February 23, 2005, 452 SCRA 278, 282; *Audi AG v. Mejia, et al.*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 383.

[44] *Pure Foods Corporation v. National Labor Relations Commission, et al., id.; Interorient Maritime Enterprises, Inc., et al. v. National Labor Relations Commission, et al.*, G.R. No. 115497, September 15, 1996,

261 SCRA 757, 765; Tan v. Court of Appeals, et al., G.R. No. 108634, July 17, 1997, 275 SCRA 568, 574; Progressive Development Corporation, Inc. v. Court of Appeals, et al., G.R. No. 123555, January 22, 1999, 301 SCRA 637, 647; Yau v. The Manila Banking Corporation, G.R. No. 126731, July 11, 2002, 384 SCRA 340, 348; New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City, et al., G.R. No. 165001, January 31, 2007, 513 SCRA 601, 610.

[45] Marawi Marantao General Hospital, Inc., et al. v. Court of Appeals, et al., G.R. No. 141008, January 16, 2001, 349 SCRA 321, 333, citing Tan v. Sandiganbayan, supra note 43; Abraham v. National Labor Relations Commission, et al., G.R. No. 143823, March 6, 2001, 353 SCRA 739, 744-745; Metro Transit Organization, Inc. v. Court of Appeals, et al., G.R. No. 142133, November 19, 2002, 392 SCRA 229, 236; Diamond Builders Conglomeration, et al. v. Country Bankers Insurance Corporation, G.R. No. 171820, December 13, 2007, 540 SCRA 194, 210.

[46] Flores v. Sangguniang Panlalawigan of Pampanga, et al., supra note 43, citing Metro Transit Organization, Inc. v. Court of Appeals, et al., id.

[47] Platinum Tours and Travel, Incorporated v. Panlilio, G.R. No. 133365, September 16, 2003, 411 SCRA 142, 146.

[48] Sapugay v. Court of Appeals, G.R. No. 86792, 21 March 1990, 183 SCRA 464, 471.

[49] Galicia, et al. v. Manlquez, et al., G.R. No. 155785, April 13, 2007, 521 SCRA 85, 94; Hongkong and Shanghai Banking Corporation Limited v. Catalan, G.R. No. 159590, October 18, 2004, 440 SCRA 498, 515; Herrera-Felix v. Court of Appeals, G.R. No. 143736, August 11, 2004, 436 SCRA 87, 93.

[50] Hongkong and Shanghai Banking Corporation Limited v. Catalan, id., 516; Casimina v. Legaspi, et al., G.R. No. 147530, June 29, 2005, 462 SCRA 171, 180.

[51] The opening paragraph of the Motion to Dismiss for Failure to Prosecute stated: "COME NOW, defendants (sic) Sps. DY and Sps. CHUYACO, through counsel, unto this Honorable Court, most respectfully state: xxx. "

[52] G.R. No. L-48955, June 30, 1987 151 SCRA 376, 385.

[53] Citing Flores v. Zurbito, 37 Phil. 746, 750.

[54] Meat Packing Corporation of the Philippines v. Sandiganbayan, et al., G.R. No. 103068, June 22, 2001, 359 SCRA 409, 425.

[55] See Tan, et al. v. Commission on Elections, G.R. Nos. 148575-76, December 10, 2003, 417 SCRA 532, 546-547; Sumulong v. Court of Appeals, et al., G.R. No. 108817, May 10, 1994, 232 SCRA 372, 385-386.

[56] Section 1, Rule 137 provides as follows:

Section 1. Disqualification of Judges — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case for just or valid reasons other than those mentioned above.

[57] Gochan, et al. v. Gochan, et al., G.R. No. 143089, February 27, 2003, 398 SCRA 323, 332.

[58] G.R. No. L-27934, September 18, 1967, 21 SCRA 160, 167-168.

[59] Webb, et al. v. People of the Philippines, et al., G.R. No. 127262, July 24, 1997, 276 SCRA 243, 253.

[60] Gutang, et al. v. Court of Appeals, et al., G.R. No. 124760, July 8, 1998, 292 SCRA 76, 85.

[61] Gochan, et al. v. Gochan, et al., supra note 57, 333.

[62] Id.

[63] Id

[64] Aleria, Jr. v. Velez, et al., G.R. No. 127400, November 16, 1998, 298 SCRA 611, 620; Webb, et al. v. People of the Philippines, et al., supra note 59, 254.

[65] Webb, et al. v. People of the Philippines, et al., id.

[66] Id.

[67] Neri v. de la Peña, A.M. No. RTJ-05-1896, April 29, 2005, 457 SCRA 539, 545-546.

[68] Spouses Cui, et al. v. Judge Madayag, Adm. Matter No. RTJ-94-1150, June 5, 1995, 245 SCRA 1, 10.

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