

DOROTEA BALMEO, PETITIONER AND APPELLANT, VS. CRISANTO ARAGON, JUDGE OF THE MUNICIPAL COURT OF MANILA, AND PHILIPPINE NATIONAL BANK, RESPONDENTS AND APPELLEES.*G.R. No. 21555. April 29, 1966*

Ponente: SANCHEZ, J.

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On February 12, 1963, respondent bank sued petitioner and two others in the Municipal Court of Manila (Case No. 106249) for the revival of a default judgment rendered by the said court on January 30, 1953 in Case No. 24339.[1] Petitioner and her co-defendants on March 25, 1963, moved to dismiss the complaint for revival of judgment upon the ground that the default judgment in case No. 24339 became final and executory immediately upon the date of rendition thereof on January 30, 1953 and that the 10-year limit within which to file a revival action has lapsed. Respondent bank's opposition (of March 30, 1963) to the motion to dismiss countered with the averment that in the first case, upon demand, defendants made several installment payments on account, which tolled the prescriptive period with the result that the revival suit was filed on time. Attached to the opposition are documents evidencing the demands and the payments aforesaid. On April 16, 1963, the respondent Judge issued an order denying the motion to dismiss. On motion to reconsider, respondent Judge stood firm.

Whereupon, petitioner, without the concurrence of the other defendants, went to the Court of First Instance of Manila (Case No. 54339) on certiorari, prohibition and/or injunction with prayer for a writ of preliminary injunction. On July 1, 1963, the respondent Judge declaring that the petition is so unsubstantial as to require respondents' answer, dismissed the petition *de plano*. Petitioner appealed.

Petitioner's position suffers from a number of infirmities. To entertain the petition is to sanction unnecessary delay, to encourage multiplicity of suits. The municipal court has jurisdiction. That court is vested with discretionary power to grant or deny a motion to dismiss. The discretion here was not gravely abused. Hence, the appellate court may not exercise its corrective power to annul the disputed order or direct that the inferior court dismiss the case. The court's order denying the motion to dismiss is interlocutory, not appealable. Because of this, petitioner had an efficacious remedy—to proceed with the trial and, if defeated, to appeal.[2] The view that the petition herein is utterly unsubstantial requires no extended elaboration.

In consequence, the appealed order of respondent Judge is affirmed. Costs against petitioner. So ordered.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

[1] The default judgment of January 30, 1963 in Case No. 24339, calls for the payment jointly and severally by defendants therein of "P214.08, with 9% annual interest on P206.25, from July 16, 1952, plus 10% of the amount due as attorney's fees and for costs."

[2] Nico vs. Blanco, etc., et al., 81 Phil., 213; 46 Off. Gaz. No. 1, pp. 88, 89-90; Philippine Refining Company, Inc., vs. Ponce, et al., 99 Phil., 269, 274-275.

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