

**D. D. COMENDADOR CON-STRUCTION CORPORATION, PETITIONER,
VS. HON. MARCELINO N. SAYO AS PRESIDING JUDGE OF THE COURT
OF FIRST INSTANCE OF CALOOCAN CITY, BRANCH XXXIII, AND KHO
ENG...**

G.R. No. 57440. November 19, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

Two orders issued by the respondent Judge in Civil Case No. C-8242 filed by herein private respondent against the petitioner are sought to be annulled in this Petition for Certiorari, Prohibition and Injunction as having been issued in excess of jurisdiction and with grave abuse of discretion amounting to lack of jurisdiction.

The petitioner is a corporation engaged in the construction business. Private respondent, on the other hand, is a supplier of construction materials and equipments. Between the period from October 1977 to July 6, 1978, petitioner purchased construction materials from the private respondent with a total value of P108,799.54. The only payment made on said purchases was a check post-dated November 22, 1977 in the amount of P24,455.00. Despite the assurance by the petitioner that the said check was as good as cash, it was dishonored when presented for encashment.

On March 13, 1980, private respondent instituted Civil Case No. C-8242 in the respondent Court. On application of the private respondent, the said Court issued a writ of preliminary attachment by virtue of which certain construction equipments owned by the petitioner were levied upon by the Sheriff.

After the petitioner filed its answer to the complaint in said civil action, the private respondent, on December 5, 1980, filed a Motion for Summary Judgment and/or Judgment on the Pleadings. Opposition to the said motion was filed by the petitioner on December 18, 1980 to which private respondent filed a Reply to Opposition. In an Order dated March 3, 1981, the trial Court granted the Motion for Judgment on the Pleadings.

On March 5, 1981, petitioner filed a "Motion To Reset Hearing" praying therein that the hearing of the Motion for Summary Judgment and/or Judgment on the Pleadings (which had already been granted earlier) be reset on April 27, 1981. On said date, the petitioner made no appearance, as a consequence of which the respondent Judge declared the case submitted for decision in an Order dated April 27, 1981. A Motion for Reconsideration filed by the petitioner on May 15, 1981, which was formally opposed in writing by the private respondent, was denied in the Order of June 19, 1981.

On June 20, 1981, the petitioner instituted the present proceeding before this Court. The burden of the petitioner's contention is that the respondent Judge acted without jurisdiction or in excess of jurisdiction and with grave abuse of discretion in denying its motion for the reconsideration of the Order dated April 17, 1981, and that the Order dated March 3, 1981 granting the Motion for Judgment on the Pleadings is irregular inasmuch as the Answer filed by the petitioner in Civil Case No. C-8242 raised a genuine and material issue, to wit, the alleged

understanding between the parties that the payment of the purchases made by the petitioner shall be dependent upon the releases by the government of the collectibles due to the petitioner and which sums are sufficient to cover up the petitioner's indebtedness with the private respondent.

In the meantime, or on July 7, 1981, the respondent Court rendered a Decision in Civil Case No. C-8242 ordering the petitioner to pay to the private respondent the sum of P108,799.54 with interest at the rate of FOURTEEN (14%) PER CENT per annum from July 1, 1980 until full payment; the further sum equivalent to TWENTY-FIVE (25%) PER CENT of the amount due as and for attorney's fees, and the costs of suit. The petitioner appealed said Decision to the Court of Appeals. The rendition of said Decision was apparently done without knowledge of the filing of the instant petition, the respondent Judge having been served with the Resolution dated July 27, 1981 requiring the respondents to comment on the same only on August 7, 1981.

The petition having been given due course, the parties filed their respective memoranda. In his Comment to the Petition, as well as in the memorandum that he filed, private respondent assailed the propriety of filing this Petition for Certiorari and Prohibition in view of the remedy of appeal which is available to the petitioner and which had been actually pursued by it in the Court of Appeals. Answering the said contention, the petitioner justifies the filing of this Petition for Certiorari and Prohibition despite the appeal that it had taken, under the authority of the ruling in the case of *St. Peter Memorial Park, Inc. vs. Campos, Jr.*, 63 SCRA 180, which held that certiorari may be availed of, although there is a remedy of appeal if appeal "would be inadequate, slow, insufficient and will not promptly re-lieve the petitioner from the injurious effects of the order complained of."

The parties had made conflicting assertions on the alleged lack of notice served on the petitioner of the Order dated March 3, 1981 which granted the Motion for Judgment on the Pleadings and of the hearing scheduled on April 27, 1981 of the petitioner's Motion to Reset Hearing of private respondent's Motion for Judgment on the Pleadings, which latter motion had already been granted in the Order dated March 3, 1981. We do not find necessity in inquiring into the truth of their conflicting allegations on this point. Petitioner may not complain that it was denied a chance to object to the Motion for Judgment on the Pleadings, the record showing that the same was granted after the petitioner had filed a written opposition to the same. If the questioned Orders of March 3, 1981 and June 19, 1981 suffer from any legal or jurisdictional infirmity, the objection to the said interlocutory orders by means of the extraordinary remedies of certiorari or prohibition is deemed foreclosed by the supervention of the rendition of the judgment on the main case and from which an appeal had been taken. The question of the validity of said orders should and can properly be raised in connection with said appeal.

What We consider appropriate, under the present stage of the action herein involved, is to rule on the propriety of rendering a judgment on the pleadings in the light of the allegations made by the petitioner in its answer to the complaint in Civil Case No. C-8242. A preliminary point to pass upon is the effect of the appeal interposed by the petitioner from the Decision rendered by the respondent Judge in Civil Case No. C-8242 on the availability of the instant proceeding for certiorari and prohibition.

It is axiomatic that the remedies of certiorari and prohibition are not available where the petitioner has the remedy of appeal or some other plain, speedy and adequate remedy in the ordinary course of law. (Sections 1 and 2, Rule 65, Rules of Court.) It is true that in the cited case of *St. Peter Memorial Park, Inc. vs. Campos, Jr.*, We have held that although "the general rule is that the extraordinary writ of certiorari is not proper when ordinary appeal is available", such writ may be granted "in case where it is shown that appeal would be inadequate, slow, insufficient and will not promptly relieve the petitioner from the injurious effects of the order complained of."

We are not convinced that the circumstances obtaining herein justify the invocation of the exception, rather than the application of the general rule disauthorizing the resort to certiorari where there exists the remedy of appeal

which had in fact been availed of. In the cited case, certiorari was allowed in spite of the fact that there was already a judgment which was actually appealed in view of the controversy over a motion for new trial which was denied by the trial Court but which denial was overturned in the petition for certiorari filed with this Court. It was also pointed out therein that the remedy of appeal would not be adequate inasmuch as there were so many lot buyers in the memorial park which were affected, and public interest was involved in view of the fact that the integrity of the torrens system was placed at stake.

The petitioner resorted to the remedy of certiorari and prohibition not because of any exceptional circumstance to justify the use of said remedy despite the existence of an appeal. This petition was filed before the judgment in Civil Case No. C-8242 was rendered. It is directed against interlocutory orders which, at the time of the filing of the petition, were not appealable. Now that a judgment in the main action had been rendered by the respondent Court, which judgment had subsequently been appealed to the Court of Appeals, the proceeding pursued by the petitioner against the two orders of the respondent may no longer be entertained. No circumstance as would justify the application of the ruling in the case of *St. Peter Memorial Park, Inc.*, supra, had been cited to warrant the grant of certiorari despite the existence of the remedy of appeal. The petitioner may not rationalize the resort to certiorari for the supposed inadequacy of the remedy of appeal on the ground that, by virtue of the writ of preliminary attachment issued by the respondent Judge, some of its equipments had been levied upon by the Sheriff thereby rendering it unable to make use of the same. While the fact of such attachment is admitted by the private respondent, it has been manifested by the latter in his Memorandum, which remained unrebutted by the petitioner, that the attached properties were taken from the custody of the attaching Sheriff by virtue of an alleged prior writ of attachment secured by the plaintiff in another case pending before Branch XXI of the Court of First Instance of Pasig, Rizal, and the same had been sold at public auction to a certain Wildredo Abueg. (Rollo, pp. 133-137.)

We can readily dismiss the petition in the light of what has been stated above. However, we feel that we shall be remiss in our bounden duty to render expeditious and substantial justice if we take such course of action. Under the facts appearing of record, We find sufficient basis to end this litigation without the need of allowing the appeal taken in the Court of Appeals to take its due course and await its disposition of the same which, under certain circumstances, may still be brought on appeal to a higher tribunal and thereby cause further delay. The case appears to Us to be simple and clear enough to warrant that a verdict be rendered thereon at this stage and in this instant proceeding. It is not far-fetched to surmise that the appeal taken to the Court of Appeals would center on the principal issue of the propriety or validity of the rendition of the judgment on the pleadings. This issue is also involved herein, despite the obvious effort of the petitioner to limit this proceeding to justifying its resort to certiorari and prohibition despite the existence of the remedy of appeal which it had actually availed of.

The complaint filed by the private respondent in Civil Case No. C-8242 alleges the sale of construction supplies and equipments in favor of the petitioner during the period comprised from October 1977 to July 5, 1978 with a total value of P108,799.54. According to the invoices evidencing such sales, the petitioner was given a period of THIRTY (30) DAYS within which to pay the same and that interest at the rate of FOURTEEN (14%) PER CENT per annum shall be charged on overdue accounts, plus an additional amount equivalent to TWENTY-FIVE (25%) PER CENT of the amounts due for and as attorney's fees and costs of collection. Upon receipt of the materials and equipments that it purchased, the petitioner paid for the same by means of a check post-dated November 22, 1977 in the amount of P24,455.00. When the said check was sought to be encashed, the same was dishonored, and petitioner has failed to make good the check and to pay for the purchases made by it despite several demands.

In its answer to the complaint, the petitioner admitted the genuineness and due execution of the documents attached to the complaint evidencing the transactions in question. The only defense put up by the petitioner was

that it has been in continuous communication with the private respondent with respect to the quick settlement of the obligation in question and that it was their understanding that the payment of the said obligation was dependent on the releases by the government of whatever sums are due in favor of the petitioner and which collectibles from the government are more than sufficient to cover the indebtedness in question.

From the face of the pleadings filed by the parties, it can readily be seen that while the indebtedness sought to be enforced by the private respondent against the petitioner is not denied, the petitioner has not put up a valid and credible defense against the same. The allegation that there was an understanding between them that the purchases shall be paid from releases made by the government is not only belied by the terms of the documents evidencing the transaction, but also by a circumstance alleged by the petitioner itself in its answer to the complaint. As has been aforementioned, the petitioner has admitted that upon receipt of the deliveries of the materials and equipments purchased from the private respondent, the petitioner issued a post-dated check for the payment of the same. Such fact effectively belies the existence of an understanding that payments will be at some future occasion when the petitioner shall have received releases of funds from the government. The issuance of the check post-dated only a month after the deliveries of the merchandise sold is an affirmation of the THIRTY (30)-DAY term for the payment of the same as stated in the invoices. In the same breath, it is a refutation in itself of the claim that the same shall be made only when government releases shall have been received by the petitioner.

In short, the pleadings have not raised any genuine issue that would necessitate a hearing for the reception of material evidence on the same. The rendition of a judgment on the pleadings may not thus be successfully assailed. It may not even be claimed that the petitioner was denied his day in court inasmuch as the respondent Court granted the motion of the private respondent for judgment on the pleadings only after proper hearing and formal written opposition to the same had been filed by the petitioner.

WHEREFORE, the Petition is hereby DISMISSED. The judgment rendered by the respondent Court in Civil Case No. C-8242 is AFFIRMED. With costs against the petitioner.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

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