

**MARIA LUISA O. COJUANGCO, AND LEO J. PALMA, PETITIONERS, VS.  
HON. MANUEL V. ROMILLO, JR., PRESIDING JUDGE OF RTC BRANCH  
XXVII, PASAY CITY AND SPOUSES EDUARDO M. COJUANGCO, JR., ...**

*G.R. No. 69550. November 24, 1988*

Ponente: PARAS, J.

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**PARAS, J.:**

This is a petition for certiorari and prohibition with preliminary injunction seeking: (1) to annul and set aside: (a) the Order dated August 17, 1984 of the Court of First Instance of Rizal, now Regional Trial Court, Branch XXVII, Pasay City, which reconsidered and set aside its Order of July 19, 1984 dismissing Civil Case No. Pq-0401-p, an action for declaration of nullity of marriage, entitled Maria Luisa O. Cojuangco et al. v. Leo J. Palma and reinstating the same and (b) the Order dated December 10, 1984 denying the Joint Motion for Reconsideration of aforesaid resolution; and (2) to prohibit respondent Judge from proceeding with Case No. Pq-0401-P.

The decretal portion of the aforementioned order of August 17, 1984, reads:

“The Order of July 19, 1984, is hereby reconsidered and set aside and the instant case reinstated.

By reason of and pursuant to the order of the Honorable Court dated December 21, 1983, defendant is hereby granted a period of fifteen (15) days from notice hereof within which to file his answer to the complaint.

IT IS SO ORDERED.” (Annex I, p. 42, Rollo)

while the dispositive portion of the subsequent order dated December 10, 1984, reads:

"Acting on the joint motion for reconsideration dated September 4, 1984, which seeks to set aside the Order of this Court dated August 17, 1984 reinstating the instant case, and considering the arguments raised therein as well as the opposition file thereto, the court resolves to deny the aforesaid 'Joint Motion for Reconsideration' for lack of merit.

IT IS SO ORDERED.” (Annex N, p. 72, Rollo)

This case is related to and is an incident of G.R. No. 64538 entitled “Leo Palma v. Hon. Manuel V. Romillo, Jr. et al.” which was resolved by the First Division of this Court per resolution dated December 21, 1983, the pertinent portion of which reads:

"Upon consideration of the averments and arguments adduced in the petition, respondent's rejoinder and the documents annexed thereto, the Court Resolved to GRANT the petition and as prayed for, to ORDER respondent judge to conduct a new trial in the case below and to allow petitioner to file his answer, which answer should be filed within ten (10) days from finality of this Resolution. The records show that respondent judge acted with undue haste in declaring petitioner in default on the complaint filed on August 24, 1982 and in rendering his ex parte decision of November 2, 1982, as well as in refusing to give due course to the timely appeal filed by petitioner and instead ordering the execution of the judgment.

“On the disallowance of the appeal, respondent judge relied on the inappli-cable case of Strachan & Macmurray, Ltd. vs. Court of Appeals (62 SCRA 109) (re default in municipal courts under Rule 5, section 13), when under Rule 41, section 2, which is the rule applicable to default cases in courts of first instance (now regional trial courts), '(A) party who has been dec-lared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38'. But more decisively, and even though not raised in the petition but taken cognizance of by the Court since it involves a matter of jurisdiction and authority, Rule 18, section 6 expressly mandates that there can be no defaults in actions for annulments of marriage and provides that '(I)f the defendant in an action for annulment of marriage or for legal separation fails to answer, the court shall order the prosecuting attorney to investigate, and if there is no collusion, to intervene for the State in order to see to it that the evidence is not fabricated.'

“Considering further that in peti-tioner's reply, he states that in a letter of the principal plaintiff, Maria Luisa O. Cojuangco, dated Septem-ber, 1982 addressed to respondent's counsel (Annex T, petition), she expressed her desire not to take part in the case, the ends of justice will be subserved by setting aside the judgment of November 2, 1982 and the subsequent implementing orders of January 17, 1983 and June 6, 1983 and remanding the case to respondent judge's court for proper proceedings and determination.” (Rollo, G.R. No. 64538, pp. 163-164).

and the resolution of May 28, 1984 denying the motion for reconsideration of aforesaid resolution.

The antecedent facts of the case are as follows:

On August 24, 1982, an action for declaration of nullity of marriage between Leo J. Palma and Maria Luisa O. Cojuangco (hereinafter referred to as petitioners) was filed with the Court of First Instance of Rizal, now Re-gional Trial Court, Branch XXVII, Pasay City, docketed as Civil Case No. Pq-0401-P by Maria Luisa O. Cojuangco and Spouses Eduardo M. Cojuangco, Jr. and Soledad O. Cojuangco (spouses Eduardo N. Cojuangco, Jr. and Soledad O. Cojuangco). The complaint alleged that Maria Luisa O. Cojuangco is 22 years of age, single and daughter of private respondents, Eduardo M. Cojuangco, Jr. and Soledad O. Cojuangco, while defendant Leo J. Palma, is a lawyer, 35 years of age and married to Elizabeth H. Palma with whom he contracted marriage on December 19, 1971 at Cebu City and with whom he has been continuously cohabiting, thereby begetting three (3) children by her, namely: Eugene Philip, born on March 23, 1973, Elias Anton, born on February 16, 1975 and Eduardo Lorenzo, born on September 18, 1976. The complaint further alleged that Palma, who was for sometime a member of the law firm of Angara, Concepcion, Regala, and Cruz Law Office (“ACCRA”) was offered by private respondent Eduardo N. Cojuangco, Jr. to be his own personal and confidential counsel and that of his fa-mily and companies wholly owned by him, which was promptly accepted by the petitioner Palma; that he became so close with the family of the private respondents and was requested to tutor petitioner Maria Luisa O. Cojuangco, who was then a student at the Assumption College; that with grave abuse and betrayal of trust and confidence reposed in him and with his moral and intellectual ascendancy over Maria Luisa O. Cojuangco, he succeeded in courting and contracting a second marriage with her on June 22, 1982 by falsely representing to the Hongkong authorities that he is a “bachelor”. Consequently, the marriage between Leo Palma and Maria Luisa O. Cojuangco, is null and void for being bigamous and/or contrary to law, morals, good customs and public policy. Complainants (herein private respondents) prayed that judgment be rendered declaring the marriage null and void ab initio and ordering petitioner Palma to pay private respondents reasonable amounts as moral, nominal and exemplary damages, reasonable attorney's fees and expenses of litigation as may be proved in the course of the trial.

On September 27, 1982, apparently because she wanted to continue her marital union, Maria Luisa O. Cojuangco sought the immediate dismissal of the aforesaid case and wrote petitioner's counsel, seeking the dismissal of the

said case. On the same date, respondent Judge issued an order granting Leo J. Palma three (3) days ending on September 30, 1982 within which to file his answer to the complaint itself. (Rollo, G.R. No. 64538, p. 3).

On October 5, 1982, Palma was declared in default (Ibid).

On October 13, 1982, Palma prayed for reconsideration of the order declaring him in default, and a last extension of fifteen (15) days from October 10, 1982 within which to file a responsive pleading to the complaint (Ibid., p. 3).

On October 25, 1982, Maria Luisa filed a Motion to Dismiss which apparently was not acted upon by respondent Judge. Instead, an Order was issued on the same date denying Palma's motion for reconsideration (Ibid).

On November 2, 1982, the lower court issued a decision declaring the marriage of herein petitioner on June 22, 1982 as null and void ab initio, while on February 18, 1983, Palma's motion for reconsideration (of aforesaid decision) with motion to lift order of default was denied.

Hence, the petition for Certiorari, Mandamus With Preliminary Injunction, filed in G.R. No. 64538.

On December 21, 1983, the First Division of this Court issued the aforequoted resolution setting aside the judgment of November 2, 1982 of the lower court.

In the lower court, a notice of dismissal dated July 13, 1984 was filed by petitioner Maria Luisa O. Cojuangco affirming her avowal of not being a part of the case and of her desire for its dismissal with prejudice. Meanwhile, Palma filed a motion and Rejoinder to Notice of Dismissal with Reservation to File Responsive Pleading after receipt of resolution dated July 18, 1984. Accordingly, on July 19, 1984, an order was issued by the lower court dismissing Civil Case No. Pq-0401-P with prejudice.

Thereafter, on August 14, 1984, the parents of Maria Luisa filed a motion for reconsideration of the order of dismissal dated July 19, 1984 alleging among others, that the notice of dismissal of July 13, 1984 is of doubtful authenticity and/or source and that said parents had not been given a day in court; that the aforementioned order runs counter to the resolution of the court directing that a new trial be conducted.

On August 17, 1984, Palma filed an opposition to the motion for reconsideration. On the same day, August 17, 1984, an order was issued granting the motion for reconsideration, setting aside the order of July 19, 1984.

On September 5, 1984, petitioners Maria O. Cojuangco and Leo Palma, filed a Joint Motion for Reconsideration of the order of August 17, 1984 which was denied for lack of merit in the order of December 10, 1984.

Hence, this petition.

In the resolution of January 21, 1985, this Court required respondents to file their answer to the petition (Rollo, p. 33), which answer was filed on March 1, 1985 (Rollo, p. 83).

In the resolution of March 18, 1985, this Court required petitioners to file their reply (Rollo, p. 107), which was filed on May 13, 1985. In compliance with the resolution of July 10, 1985 (Rollo, p. 133), petitioners filed their memorandum on September 5, 1985 (Rollo, p. 134), while private respondents filed their memorandum on October 18, 1985 (Rollo, p. 148).

In their petition, petitioners raised the following grounds to support petition:

## I

THE HONORABLE TRIAL COURT ERRED IN NOT DISMISSING THE CASE AND THE ORDER SETTING ASIDE THE ORDER OF DISMISSAL IS CONTRARY TO LAW AND JURISPRUDENCE.

## II

THE HONORABLE COURT COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO WANT OF JURISDICTION. (p. 7, Rollo)

The main issue in this case is whether or not respondent Judge committed a grave abuse of discretion, amounting to want of jurisdiction, in refusing to dismiss the case in the lower court.

A careful perusal of the records shows that such refusal by respondent Judge was in obedience to the resolution of the First Division of this Court of December 21, 1983 in G.R. No. 64538 entitled "Leo Palma v. Hon. Manuel V. Romillo, Jr., et al.", specifically ordering respondent Judge to conduct a new trial in the case below and to allow petitioner to file his answer.

On the other hand, Palma not only failed to file an answer within ten (10) days as required in aforesaid resolution, but insisted instead on the dismissal of subject case, on grounds already considered by this Court before the issuance of said resolution. Such action of the petitioner is obviously a disobedience to, if not a blatant defiance of this Court's Order, or at the very least, it is a bid to delay the disposition of this case on the merits. Failing to achieve his objective in the lower court, Palma now elevated the matter to the Supreme Court on Certiorari and Prohibition without first complying with the requirements of aforesaid resolution of December 21, 1983.

Moreover, the Court, in general does not entertain a petition for certiorari questioning the propriety of an interlocutory order (*De Midgely v. Fernando*, 64 SCRA 230 [1975]; *Malit v. People*, 114 SCRA 349 [1982]) unless grave abuse of discretion was patently committed by the trial court (*Bernabe v. J.M. Tuason & Co., Inc.*, 78 SCRA 341 [1977]; *Villalon v. Intermediate Appellate Court*, 144 SCRA 443 [1986]) or where broader interests of justice require exception. An order denying a motion to dismiss is interlocutory, and cannot be the subject of a petition for certiorari (*Occena v. Jabson*, 73 SCRA 637 [1976]; *Gamboa v. Victoriano*, 90 SCRA 40 [1979]; *Bautista v. Sarmiento*, 138 SCRA 587 [1985]; *Cruz v. People*, 144 SCRA 677 [1986]) unless in denying the motion to dismiss or motion to quash, the court acts without or in excess of jurisdiction or with grave abuse of discretion; in which case certiorari or prohibition lies (*Newsweek, Inc. v. Intermediate Appellate Court*, 142 SCRA 17 [1986]).

Unquestionably, respondent Judge cannot be faulted for following the resolution of this Court. In the exercise of his jurisdiction, errors allegedly committed by respondent Judge may be corrected by a timely appeal and not by a special civil action of certiorari (*Santos v. C.A.*, 152 SCRA 378 [1987]).

PREMISES CONSIDERED, this petition is DISMISSED for lack of merit. The case is thus hereby REMANDED to the respondent trial court for further proceedings.

**SO ORDERED.**

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

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