

**ORIENTAL MEDIA, INC., PETITIONER, VS. HON. COURT OF APPEALS,
HON. BENJAMIN V. PELAYO, AS PRESIDING JUDGE OF BRANCH 168,
RTC, NCJR, PASIG, METRO MANILA AND VOTRA (PHIL.), INC., R...**

G.R. No. 80127. December 06, 1995

Ponente: MELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-80127/>

MELO, J.:

Assailed and sought to be set aside in the instant petition is the decision of respondent Court of Appeals promulgated on September 28, 1987 dismissing herein petitioner Oriental Media's petition for certiorari impugning an order and a writ of execution issued by the Regional Trial Court of the National Capital Judicial Region, Branch 168 stationed in Pasig City, in its Civil Case No. 53267, entitled "Votra (Phils.) Inc. vs. Oriental Media, Inc".

The useful background facts of the case as gathered from the record are as follows:

In April, 1987, Votra filed the complaint in the aforementioned Civil Case No. 53267 of the Pasig Regional Trial Court against Oriental. Summons in said case was served upon Marlyn Lasaya, the Personnel Assistant-Receptionist of the Evening Post who refused to receive or sign for the summons. The trial court, it appearing that Oriental had failed to file any responsive pleading, entered an order of default and authorized the Acting Branch Clerk of Court to receive Votra's evidence.

On July 8, 1986, the trial court rendered a decision against Oriental, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendant, ordering:

1. Defendant to pay plaintiff the sum of P38,412.19, with interest of 20% per annum until fully paid;
2. Defendant to pay plaintiff the amount equivalent to 25% of the amount stated in No. 1, as and by way of attorney's fees.

Finally, defendant is ordered to pay the costs.

a copy of which was received by Oriental on July 25, 1986.

On August 1, 1986, Oriental filed a motion praying that the order of default and the decision be reconsidered and set aside and that Oriental be allowed to file its answer, and alleging, among other things, that it had already actually paid its obligation to Votra. Said motion for reconsideration was denied by the trial court on October 9, 1986, with Oriental receiving a copy of the denial order on October 27, 1986.

On November 4, 1986, Oriental filed a "Petition for Relief from Judgment", which was dismissed by the trial court for being premature, in its order dated February 24, 1987. A copy of this order was received by Oriental on March 7, 1987.

On March 10, 1987, Votra filed a motion for execution of judgment which was opposed by Oriental. Nonetheless, on May 13, 1987, the trial court issued an order granting the motion for execution.

On May 27, 1987, 81 days after receipt of the order dismissing its petition for relief from judgment, Oriental filed before this Court a petition for certiorari (G.R. No. 87534), asserting that :

A) Respondent Judge did not acquire jurisdiction over petitioner. Petitioner, being a private domestic corporation, the service of summons upon Marlyn Lasaya, a Personnel Assistant-Receptionist of the Evening Post, who is not among the persons to be served with summons mentioned in Section 13, Rule 14 of the Rules of Court, was insufficient. For this reason, the Order of default on May 15, 1986 stated in the Judgment of default, dated July 8, 1986 Annex A, hereto, the Order denying the motion for reconsideration thereof dated October 9, 1986, Annex B hereto, the Order denying the Petition for Relief from Judgment dated February 24, 1987, Annex D hereto, and the Order granting the motion for the execution of the judgment in the aforesaid Civil Case No. 53267 dated May 13, 1987, Annex G hereto are all null and void and should be set aside;

B) The order granting the motion for execution is premature, Annex G, because the decision complained of did not become final and executory at the time the motion for execution was filed by reason of the non-finality of the order denying the Petition for Relief from Judgment;

C) Respondent Judge should not have dismissed the Petition for Relief from Judgment but should have considered it, by its nature, as a motion for new trial under Rule 37 of the Rules of Court since pleadings should be liberally construed, and that a possible denial of substantive justice due to technicalities of form should have been avoided;

D) Petitioner was denied due process;

E) A void decision cannot be executed; and

F) A void decision can be attacked collaterally.

On September 28, 1987, the Court of Appeals, following the referral of the petition to it for proper action, promulgated its decision dismissing the petition for certiorari on the ground that since Oriental's motion for reconsideration filed in Civil Case No. 53267 not only questioned the jurisdiction of the court over its person as defendant but also prayed that the order of, and decision by, default be set aside and that it be allowed to file its answer, Oriental must be held to have thereby voluntarily submitted itself to the jurisdiction of the trial court. The motion stated that Oriental had a meritorious defense, i.e., payment of the obligation. The appellate court thus held that Oriental abandoned its special appearance to contest jurisdiction over its person and to have voluntarily submitted itself to the jurisdiction of the court, citing *Serrano vs. Pelacio* (12 SCRA 447) and *Flores vs. Zurbito* (37 Phil. 746).

Thus, the present petition.

Oriental fell into and committed serious procedural lapses which resulted not only in the decision of default becoming final and executory but also in the order dismissing the petition for relief from judgment likewise attaining the character of final and executory order, for which reason both are now beyond the reach and review of any appellate court.

The proper procedure that Oriental should have taken was an appeal from the decision of the trial court after Oriental's motion for reconsideration of the default judgment was denied. The Rules of Court expressly provide that a party who has been declared in default may appeal from the judgment rendered against him. (Section 2, Rule 41, Rules of Court).

Petitioners would seem to be under the impression that a judgment rendered in default is immediately executory.

This is not true for, said judgment is appealable, although a motion to set aside the order of default, upon the ground of fraud, accident, error, or excusable neglect, was necessary prior to 1964. Respondents' petition for relief from judgment, dated August 28, 1964, was to that effect. Since January 1, 1964, when the present Rules of Court became effective, even said motion to set aside the order of default has been dispensed with, by explicit provision of the last paragraph of Section 2, Rule 41, of said Rules.

(De Guzman vs. Cloribel, 22 SCRA 39, 44 [1968]).

Under Rule 41, section 2, paragraph 3, a party who has been declared 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.

(Antonio vs. Jacinto, 14 SCRA 364, 367 [1965])

The judgment by default being appealable, Oriental should have perfected its appeal within 15 days from receipt of copy of the order denying its motion for reconsideration of the default judgment (Sec. 29, B.P. Blg. 129; Sec. 19(a), Interim Rules of Court), minus, of course the period expended from receipt of the decision to the filing of the motion for reconsideration.

As aforesaid, petitioner received a copy of the decision on July 25, 1986, but filed on August 1, 1986, or 7 days thereafter, a motion for reconsideration. The motion was denied in an order dated October 9, 1986, a copy of which was received by petitioner on October 27, 1986. Petitioner, therefore, had until November 5, 1986 within which to perfect an appeal. However, instead of appealing, petitioner filed a petition for relief from judgment on November 4, 1986, which is within the period for appealing. Said petition, as the trial court found, was clearly premature for which reason it was properly dismissed. But more importantly, said petition being the wrong remedial recourse at the time it was filed, did not interrupt the running of the period for appealing. Inevitably, therefore, the judgment by default became final and executory on November 6, 1986.

Came then now the second fatal error of Oriental. After the rejection of its petition for relief from judgment, Oriental should have appealed the order of dismissal (Vda. de Borromeo vs. Court of Appeals and Borromeo, 110 Phil. 155 [1960]); Duran vs. Court of Appeals, 84 SCRA 61 [1978]). Despite, however, Oriental's receipt of the order of dismissal on March 7, 1987, with the period for appealing thus expiring on March 22, 1987, Oriental chose to remain immobile. Oriental began to stir only on May 27, 1987, or 81 long days after receipt of the order of dismissal of its petition for relief, when petitioner filed the instant petition.

We have reiterated in many cases that certiorari is not a substitute for appeal (Sy vs. Romero, 214 SCRA 187 [1992]; Aqualine Corporation vs. Court of Appeals, 214 SCRA 307 [1992]; Salas vs. Castro, 216 SCRA 198 [1992]), especially a lost appeal. Certiorari should not be allowed where the petitioner has — or had — other remedies available (Yap vs. Intermediate Appellate Court, 220 SCRA 245 [1993]). The remedies of appeal and certiorari are mutually exclusive and not alternative or successive (Federation of Free Workers vs. Inciong, 208 SCRA 157 [1992]).

Petitioner's resort to the instant petition for certiorari, instead of an appeal, is clearly of its own volition and resolution. There is nothing in the record to show that private respondent misled, prevented, or obstructed petitioner from pursuing an appeal.

Surely, there are cases, where certiorari was allowed although appeal was the proper remedy. The Court has in a number of cases given due course to a petition for certiorari although the proper remedy is appeal especially where the equities warrant such recourse and considering that dismissals on technicalities are viewed with disapproval (Rosario vs. Court of Appeals, 211 SCRA 384 [1992]). Where an appeal would not be an adequate

remedy under the circumstances, since it would not promptly relieve the petitioner from the injurious effects of the acts of the inferior court or tribunal, e.g., the court has authorized execution of the judgment, a resort to the special civil action of certiorari may exceptionally be allowed (*Presidential Commission on Good Government vs. Sandiganbayan*, 210 SCRA 138 [1992]), especially so if the petition is filed while the period for appeal has not expired.

In the case at bar, there was no urgency or need for Oriental to resort to the extraordinary remedy of certiorari for when it learned of the case and the judgment against it on July 25, 1986, due to its receipt of a copy of the decision by default, no execution had as yet been ordered by the trial court. As aforementioned, Oriental had still the time and the opportunity to file a motion for reconsideration, as was actually done. Upon the denial of its motion for reconsideration in the first case, or at the latest upon the denial of its petition for relief from judgment, Oriental should have appealed. Oriental should have followed the procedure set forth in the Rules of Court for —

Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to purpose that substantive law and adjective law are contradictory to each other or, as has often been suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give effect to both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive rights is equally guaranteed by due process whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court.

(*Limpot vs. Court of Appeals*, 170 SCRA 367; 369-370 [1989].)

What makes matters worse is the fact that the instant petition does not seem to limit itself to the dismissal by the Court of Appeals of Oriental's petition for certiorari contesting the dismissal of Oriental's petition for relief from judgment, but assails as well the almost decade-old judgment by default rendered in the collection case.

We cannot overstress the fact that by filing a motion for reconsideration of the decision of default, yes, by questioning the trial court's jurisdiction, but fatally, by praying for affirmative reliefs and by putting up defenses against the claim of Votra, specifically the payment of its obligation to Votra, and after the denial of the motion, by filing a petition for relief from judgment, petitioner waived the defense of lack of jurisdiction.

We find the appeal untenable. Assuming, *arguendo*, that the court below originally did not acquire jurisdiction over petitioner Soriano, the latter certainly submitted to it when he filed his first motion for reconsideration and for annulment of previous proceedings on 14 March 1960. Therefore, the denial of that motion, by the order of 19 March 1960, was binding on petitioner Soriano. His counsel, who was served copy of the order of denial On 25 March 1960 (see back of fol. 66, original record of case No. 4534), could have appealed from it. But as no appeal therefrom was perfected within the 30 days immediately following, the order denying reconsideration and annulment of the previous proceedings became final on 25 April 1960.

(*Soriano vs. Palacio*, 12 SCRA, 447, 449 [1964])

When the appearance is by motion for the purpose of objecting to the jurisdiction of the court over the person, it must be for the sole and separate purpose of objecting to said jurisdiction. If the appearance is for any other purpose, the defendant is deemed to have submitted himself to the jurisdiction of the court. Such an appearance gives the court jurisdiction over the person (*Flores v. Zurbito*, 37 Phil. 746 [1918]). We have likewise ruled that even though the defendant objects to the jurisdiction of the court, if at the same time he alleges any non-jurisdictional ground for dismissing the action, the court acquires jurisdiction over him (*Far East International*

Import and Export Corporation v. Nankai Kogyo, Co., Ltd., 6 SCRA 725 [1962]).

(Palma vs. Court of Appeals, 232 SCRA 714, 720 [1994])

The case cited in the dissent of Justice Vitug, La Naval Drug Corporation vs. Court of Appeals, (236 SCRA 78 [1994]), does not seem to find applicability in the present case.

The controlling events in La Naval transpired after the occurrence of the essential events in the present case. In the La Naval case, the appointment of the arbitrator was made on May 6, 1989, by respondent therein and on June 5, 1989 by petitioner therein, while in the case at bench, private respondent Votra filed Civil Case No. 53267 in April, 1987. The orders assailed in La Naval were issued on April 26, 1990, and on June 22, 1990, while in the present case, the decision of the trial court was rendered on July 8, 1986, and the decision of respondent Court of Appeals was promulgated on April 28, 1987. The ruling, therefore, in La Naval, which was decided on August 31, 1994 should not be applied retroactively to the present case.

Moreover, it should be noted that even if it was held in La Naval that the assertion of affirmative defenses (in a motion to dismiss or in an answer — not in a motion for reconsideration as what happened herein) shall not be construed as an estoppel or as a waiver of want of jurisdiction over the person of the defendant, there was the last intimation that a special appearance questioning jurisdiction may now be dispensed with. Stated otherwise, I understand La Naval as holding that a defendant may raise the issue of want of jurisdiction over his person together with affirmative defenses and a prayer for affirmative reliefs, as long as this done, as held in numerous previous cases, in a special appearance. Regretably, however, for petitioner, it did not file a special appearance, but filed instead a motion for reconsideration of the default decision against him.

Then too, petitioner squandered its opportunities to question and assail the decision dated July 8, 1986 of the trial court and the order dated February 24, 1987 of the trial court dismissing its petition for relief from judgment. Petitioner, as aforesaid, filed a motion for reconsideration of the decision dated February 24, 1987, which was denied by the trial court in its order dated October 9, 1986. After receiving the denial order, petitioner did not avail itself of the right to appeal; rather, a petition for relief from judgment was filed and when said petition was dismissed in the order of February 24, 1987, petitioner did not interpose an appeal therefrom which it had every right to do so. It is now much too late in the day to resort to the present petition to set aside said decision and orders which have become final and executory.

There is, thus, no question that the trial court acquired jurisdiction over the person of petitioner Oriental. Perforce, the case cannot be reopened at this late stage. Oriental may explore the feasibility of setting up the alleged discharge of the obligation at the execution stage.

WHEREFORE, the petition is hereby DENIED.

SO ORDERED.

Feliciano, (Chairman), Romero, and Panganiban, JJ., concur.
Vitug, J., dissenting opinion.

DISSENTING OPINION

VITUG, J.:

With all due respect to the opinion expressed by my colleagues, I personally see merit in the petition.

Jurisdiction over the person of the defendant in civil cases is acquired (1) by his voluntary appearance or submission to the court's jurisdiction or (2) by the coercive process issued by the court by, ordinarily, the service of summons.[1] In the latter case, Section 13, Rule 14, of the Revised Rules of Court states:

"Sec. 13. Service upon private domestic corporation or partnership. - If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent or any of its directors."[2] (Italics supplied.)

The service on persons other than those mentioned in the above rule would ostensibly be improper; through the years, it appears, jurisprudence has somewhat liberalized the rule. Hence, service has been held to be valid when made to persons who are shown to be responsible enough and could be expected to remit the papers to the right party. Included among such persons, and rationalized as "agents" in contemplation of the rule, are ordinary clerks, private secretaries of corporate executives, retained counsel,[3] and, generally, officials who have charge or control of the operations of the corporation like, for instance, an assistant general manager,[4] a chief of finance or an administrative officer.[5]

In the case at bench, the summons intended for Oriental was served on a total stranger, Marlyn Lasaya, the Personnel Assistant-Receptionist of the Evening Post, who refused to receive or sign for it. Oriental remained uninformed about the summons that eventually led to its being declared in default. It should be clear enough that summons was improperly served.

Respondents would insist, however, that jurisdiction over petitioner was deemed acquired by the trial court when Oriental had filed a motion for reconsideration of the judgment by default which was not merely confined to questioning the court's lack of jurisdiction but likewise extended to stating affirmative defenses, in particular to the payment of the obligation in favor of Votra. In *La Naval Drug Corporation vs. Court of Appeals*, 236 SCRA 78, 86-89, it was said:

"The lack of jurisdiction over the person of the defendant may be waived either expressly or impliedly. When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. If he so wishes not to waive this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court; otherwise, he shall be deemed to have submitted himself to that jurisdiction. The decisions promulgated heretofore by this Court would likewise seemingly apply estoppel to bar the defendant from pursuing that defense by alleging in his answer any other issue for dismissing the action.

"xxx xxx xxx

"The doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. It is a principle intended to avoid a clear case of injustice. The term is hardly distinguishable from a waiver of right. Estoppel, like its said counterpart, must be unequivocal and intentional for, when misapplied, it can easily become a most convenient and effective means of injustice. Estoppel is not understood to be a principle that, as a rule, should prevalently apply but, such as it concededly is, as a mere exception from the standard legal norms of general application that can be invoked only in highly exceptional and justifiable cases.

"Tested by the above criteria, the Court sees it propitious to re-examine specifically the question of whether or not the submission of other issues in a motion to dismiss, or of an affirmative defense (as distinguished from an affirmative relief) in an answer, would necessarily foreclose, and have the effect of a waiver of, the right of a defendant to set up the court's lack of jurisdiction over the person of the defendant.

"Not inevitably.

"xxx xxx xxx

"In the same manner that a plaintiff may assert two or more causes of action in a court suit, a defendant is likewise expressly allowed, under Section 2, Rule 8, of the Rules of Court, to put up his own defenses alternatively or even hypothetically. Indeed, under Section 2, Rule 9, of the Rules of Court, defenses and objections not pleaded either in a motion to dismiss or in an answer, except for the failure to state a cause of action, are deemed waived. We take this to mean that a defendant may, in fact, feel enjoined to set up, along with his objection to the court's jurisdiction over his person, all other possible defenses. It thus appears that it is not the invocation of any of such defenses, but the failure to so raise them, that can result in waiver or estoppel. By defenses, of course, we refer to the grounds provided for in Rule 16 of the Rules of Court that must be asserted in a motion to dismiss or by way of affirmative defenses in an answer.

"Mindful of the foregoing, in *Signetics Corporation vs. Court of Appeals and Freuhauf Electronics Phils., Inc.* (225 SCRA 737, 738), we lately ruled:

"This is not to say, however, that the petitioner's right to question the jurisdiction of the court over its person is now to be deemed a foreclosed matter. If it is true, as *Signetics* claims, that its only involvement in the Philippines was through a passive investment in *Sigfil*, which it even later disposed of, and that *TEAM Pacific* is not its agent, then it cannot really be said to be doing business in the Philippines. It is a defense, however, that requires the contravention of the allegations of the complaint, as well as a full ventilation, in effect, of the main merits of the case, which should not thus be within the province of a mere motion to dismiss. So, also, the issue posed by the petitioner as to whether a foreign corporation which has done business in the country, but which has ceased to do business at the time of the filing of a complaint, can still be made to answer for a cause of action which accrued while it was doing business, is another matter that would yet have to await the reception and admission of evidence. Since these points have seasonably been raised by the petitioner, there should be no real cause for what may understandably be its apprehension, i.e., that by its participation during the trial on the merits, it may, absent an invocation of separate or independent reliefs of its own, be considered to have voluntarily submitted itself to the court's jurisdiction."

It might be stressed that *Oriental* apparently was not informed of the case until 25 July 1986 when it received the default judgment. Forthwith, it filed a motion for the reconsideration of the decision assailing the court's jurisdiction. All that was, in main, being asked by petitioner was that it be given an opportunity to file its ANSWER and to prove that it had meritorious defenses.

A petition for certiorari under Rule 65 of the Rules of Court, although not a substitute for an available or lost appeal, may be invoked when the orders of the lower court are issued without or in excess of jurisdiction.^[6] I here take note that the trial court has already granted the motion for execution of the judgment by default against *Oriental* which is yet to be given an opportunity to adduce evidence in its defense and to controvert the evidence presented by *Votra* in the ex-parte reception thereof by the trial court. An appeal, to repeat the language in *Continental Leaf Tobacco Phils., Inc. vs. IAC*, "would have been futile as far as petitioner (is) concerned since its evidence would not form part of the records to be reviewed by the court."^[7] The technical rules of procedure, I might add, are intended to attain, not to defeat, the ends of justice.

Accordingly, I vote to grant the instant petition.

[1] *Aban vs. Enage*, 120 SCRA 778; *Paramount Insurance Corporation v. Japzon*, 211 SCRA 879; *Minucher v. Court of Appeals*, 214 SCRA 242.

[2] Revised Rules of Court of the Philippines.

[3] Filoil Marketing Corporation vs. Marine Development Corporation of the Philippines, 117 SCRA 86.

[4] Villa Rey Transit, Inc. vs. Far East Motor Corporation, 81 SCRA 298.

[5] Far Corporation vs. Francisco, 146 SCRA, 197.

[6] PNB vs. Florendo, 206 SCRA 582 cited in Sec. of Health, et al. vs. Court of Appeals, et al., G.R. No. 112243, 23 February 1995.

[7] 140 SCRA 269.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.