

## SECOND DIVISION

[ G.R. No. 137264, August 01, 2002 ]

**EULOGIO O. YUTINGCO AND WONG BEE KUAN, PETITIONERS,  
VS. HON. COURT OF APPEALS, HON. SALVADOR S. TENSUAN, IN  
HIS CAPACITY AS PRESIDING JUDGE OF THE RTC, MAKATI,  
BRANCH 146 AND DEVELOPMENT BANK OF THE PHILIPPINES,  
RESPONDENTS.**

### RESOLUTION

**QUISUMBING, J.:**

This petition for review seeks the reversal of the resolutions<sup>[1]</sup> dated November 9, 1998 and January 13, 1999 of the Court of Appeals in CA-G.R. SP No. 49404, denying the petition for certiorari for having been filed beyond the reglementary period, as well as the subsequent motion for reconsideration.

The facts of this case are as follows:

Private respondent Development Bank of the Philippines (DBP) filed a complaint dated November 10, 1997, docketed as Civil Case No. 97-2653,<sup>[2]</sup> against petitioners for the collection of a sum of money with prayer for issuance of a writ of preliminary attachment, with the Regional Trial Court of Makati, Branch 146. DBP alleged that it granted a credit accommodation for One Hundred Fifty Million Pesos (P150,000,000) to Nikon Industrial Corporation (Nikon) under the terms and conditions of the Credit Line Agreement dated December 11, 1996.<sup>[3]</sup> Pertinent portion of said agreement reads:

5. The following shall constitute Events of Default under this Agreement:

a. failure to pay an installment on principal or interest on the due date hereof.

x x x

c. Death (in case of natural person), dissolution, bankruptcy, reorganization, winding-up or liquidation or any other proceedings analogous to the foregoing or proceedings for the collection of borrowed money.<sup>[4]</sup>

x x x

In consideration of the credit accommodation, petitioners, as the controlling stockholders of Nikon, bound themselves as primary obligors on any availment thereon. Nikon executed promissory notes as guarantees.<sup>[5]</sup>

The complaint alleged that Nikon defaulted on the payment of the interest.<sup>[6]</sup> It likewise alleged that on September 16, 1997, Nikon with other corporations, filed a

petition for suspension of payments with the Securities and Exchange Commission.  
[7] Among the controlling stockholders were petitioners, known together as the EYCO Group of Companies (EYCO). Also, DBP claims that the filing of the petition for suspension of payments with the SEC constituted another default as stipulated in paragraph (c) of Section 5 of the agreement. Thus, private respondent sought petitioners' payment of the obligation by virtue of the Continuing Suretyship Agreement by filing the collection suit docketed as Civil Case No. 97-2653 before the Regional Trial Court.

On January 14, 1998, respondent Judge Salvador Tensuan granted private respondent's motion and issued a writ of attachment.[8]

On March 11, 1998, petitioners filed a Motion to Dismiss[9] on the ground that (1) the complaint failed to state a cause of action; (2) a condition precedent for the filing of the claim was not complied with; and (3) the Court had no jurisdiction over the subject matter. Petitioners contended that they could not be held liable under the promissory notes and credit line agreement since EYCO had not yet defaulted on their obligations. They averred that the mere filing of the petition for suspension of payments before the SEC did not constitute default and that even assuming that Nikon was in default, there was yet no extra-judicial demand, a condition precedent to the filing of the suit before the RTC against petitioners.

On May 7, 1998, respondent Judge issued an order denying the motion to dismiss, holding thus:

This resolves defendant's motion to dismiss vis-à-vis plaintiff's opposition, reply, and rejoinder in point.

After going over the exhaustive arguments of both parties, the Court on a clear perception that the issue of default raised by the defendants is a factual one which must await trial, hereby denies said motion to dismiss and orders defendants to file its Answer in accordance with the rules.

SO ORDERED.[10]

To this, petitioners filed a *Motion for Reconsideration*[11] which was denied by the respondent Judge in an order dated June 29, 1998, as follows:

For resolution is the defendant's Motion to Reconsider the Order dated 07 May 1998 contending that the same failed to resolve the issues raised in their Motion to Dismiss. Plaintiff opposed the instant motion to which opposition defendants filed a reply and to the latter plaintiff filed a rejoinder.

After a careful reading of the arguments in support of the instant motion, the Court finds no sufficient warrant to disturb the questioned Order. Anent the issue of jurisdiction, the Court must as it hereby declares that it has jurisdiction over the subject matter of this case inasmuch as the properties attached are in the name of the defendants who are being sued here in their personal capacity as sureties.

WHEREFORE, premises considered, defendant's motion for reconsideration is hereby denied for lack of merit.

SO ORDERED.<sup>[12]</sup>

On July 7, 1998, petitioners received a copy of the aforementioned Order dated 7 May 1998. On September 7, 1998, petitioners filed before the Court of Appeals a Motion for Extension of Time to File Petition for Certiorari<sup>[13]</sup> under Rule 65 of the Rules of Court, for an additional period of fifteen (15) days, or until 22 September 1998.

On September 22, 1998, petitioners filed their Petition for Certiorari with Urgent Prayer for Issuance of a Writ of Temporary Restraining Order and Preliminary Injunction dated September 21, 1998.<sup>[14]</sup>

On November 18, 1998, petitioners received a copy of the Resolution dated November 9, 1998, denying petitioners' motion for extension of time to file petition for certiorari. It held that:

CONSIDERING that Sec. 4, Rule 65 of the 1997 Rules of Civil Procedure fixed the period for filing a petition for certiorari at sixty (60) days from notice of the judgment, order or resolution sought to be assailed, petitioners' motion for extension of time of fifteen (15) days within which to file the petition is hereby DENIED.

Consequently, it appearing that the period for filing petition for certiorari expired on September 7, 1998 and the petition at bar was filed on September 22, 1998, the petition is hereby DENIED due course and DISMISSED.

SO ORDERED.<sup>[15]</sup>

Petitioners' motion for reconsideration was also denied by the Court of Appeals in a Resolution dated January 13, 1999,<sup>[16]</sup> which held that:

x x x

In their motion for reconsideration petitioners invoked substantial justice over technical rules of procedure. Nonetheless, while it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.<sup>[17]</sup>

ACCORDINGLY, the motion for reconsideration is DENIED for lack of merit.

Now, petitioners aver before this Court that:

I. SUBSTANTIAL JUSTICE SHOULD PREVAIL OVER TECHNICAL RULES OF PROCEDURE.

II. THE PETITION FOR CERTIORARI DATED 21 SEPTEMBER 1999 (sic) IS MERITORIOUS AND RAISES THE ISSUE OF LACK OF JURISDICTION ON THE PART OF THE REGIONAL TRIAL COURT A QUO IN DENYING PETITIONERS' MOTION TO DISMISS.<sup>[18]</sup>