

## THIRD DIVISION

[ G.R. No. 121075, July 24, 1997 ]

**DELTA MOTORS CORPORATION, PETITIONER, VS. COURT OF APPEALS, HON. ROBERTO M. LAGMAN, AND STATE INVESTMENT HOUSE, INC., RESPONDENTS.**

### D E C I S I O N

**DAVIDE, JR., J.:**

This is a Petition for *Certiorari*<sup>[1]</sup> under Rule 65 of the Revised Rules of Court seeking the reversal of the Resolutions of the Court of Appeals in CA-G.R. SP No. 29147 dated 5 January 1995<sup>[2]</sup> and 14 July 1995.<sup>[3]</sup> The former denied the Omnibus Motion filed by petitioner Delta Motors Corporation (hereinafter DELTA), while the latter amended the earlier Resolution.

The pleadings and annexes in the record of CA-G.R. SP No. 29147 disclose the following material operative facts:

Private respondent State Investment House, Inc. (hereinafter, SIHI) brought an action for a sum of money against DELTA in the Regional Trial Court (RTC) of Manila, Branch VI. The case was docketed as Civil Case No. 84-23019. DELTA was declared in default, and on 5 December 1984, the RTC, per Judge Ernesto Tengco, rendered a decision<sup>[4]</sup> the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered ordering the defendant to pay unto plaintiff the amount of P20,061,898.97 as its total outstanding obligation and to pay 25% of the total obligation as and for attorney's fees, plus cost of suit.

The decision could not be served on DELTA, either personally or by registered mail, due to its earlier dissolution. However, Delta had been taken over by the Philippine National Bank (PNB) in the meantime. This notwithstanding, SIHI moved, on 4 November 1986, for service of the decision by way of publication, which the trial court allowed in its order of 6 December 1986. The decision was published in the *Thunderer*, a weekly newspaper published in Manila. After publication, SIHI moved for execution of the judgment, which the trial court granted in its order of 11 March 1987 on the ground that no appeal had been taken by DELTA despite publication of the decision. The writ of execution was issued and pursuant thereto certain properties of DELTA in Iloilo and Bacolod City were levied upon and sold. The sheriff likewise levied on some other properties of DELTA.

DELTA then commenced a special civil action for certiorari with the Court of Appeals, which was docketed as CA-G.R. SP No. 23068, wherein DELTA insisted that: (a) the

trial court did not acquire jurisdiction over the person of the defendant (DELTA) since there was no valid/proper service of summons, thus rendering the decision null and void; and (b) the void decision never became final and executory.

In its decision of 22 January 1991<sup>[5]</sup> the Court of Appeals ruled against DELTA on the first ground, but found that the record before it "is bereft of any showing that a copy of the assailed judgment had been properly served on P.N.B. which assumed DELTA's operation upon the latter's dissolution." Accordingly the Court of Appeals ruled that:

[T]he [decision] did not become executory (*Vda. de Espiritu v. CFI*, L-30486, Oct. 31, 1972; *Tuazon v. Molina*, L-55697, Feb. 26, 1981).

It further opined that service by publication did not cure the fatal defect and thus decreed as follows:

WHEREFORE, while the assailed decision was validly rendered by the respondent court, nonetheless it has not attained finality pending service of a copy thereof on petitioner DELTA, which may appeal therefore within the reglementary period.<sup>[6]</sup>

In a motion for reconsideration, DELTA insisted that there was no valid service of summons and the decision of the RTC was not in accordance with the Rules, hence, void.<sup>[7]</sup> SIHI also filed a motion for reconsideration claiming that DELTA was not dissolved, and even if it were, its corporate personality to receive service of processes subsisted; moreover, its right to appeal had been lost.<sup>[8]</sup> These motions were denied by the Court of Appeals in its resolution of 27 May 1991.<sup>[9]</sup> Unsatisfied, DELTA filed with this Court a petition for review on certiorari (G.R. No. 100366) which was denied in the resolution of 16 September 1991 for non-compliance with Circular No. 1-88. A motion for reconsideration was denied in the resolution of 9 October 1991, a copy of which was received by DELTA on 31 October 1991.<sup>[10]</sup>

On 12 November 1991, DELTA filed a Notice of Appeal<sup>[11]</sup> with the RTC in Civil Case No. 84-23019, indicating therein that it was appealing from the 5 December 1984 decision, and prayed as follows:

WHEREFORE, it is most respectfully prayed of this Honorable Court that this Notice of Appeal be noted and the records of this case be elevated to the Court of Appeals.

SIHI filed on 2 December 1991 a motion to dismiss DELTA's appeal<sup>[12]</sup> on the ground that it was filed out of time, since DELTA obtained a certified true copy of the decision from the RTC on 21 September 1990, hence it had only fifteen days therefrom within which to appeal from the decision. Despite DELTA's opposition,<sup>[13]</sup> the trial court dismissed the Notice of Appeal.<sup>[14]</sup> DELTA moved to reconsider,<sup>[15]</sup> which SIHI opposed.<sup>[16]</sup> In its order<sup>[17]</sup> of 14 September 1992 the trial court denied Delta's motion.

DELTA then filed with the Court of Appeals a petition for certiorari under Rule 65 of the Rules of Court. The case was docketed as CA-G.R. SP NO. 29147.<sup>[18]</sup> In its

petition, Delta prayed for the: (a) annulment of the order of the trial court dated 3 June 1992 dismissing the Notice of Appeal dated 6 November 1991; (b) annulment of the order of the trial court dated 14 September 1992 denying the motion for reconsideration of the former; and (c) elevation of the original records of Civil Case No. 84-23019 to the Court of Appeals.

On 30 October 1992 the Court of Appeals issued in CA-G.R. SP No. 29147 a restraining order enjoining respondents and any and all other persons acting on their behalf "from enforcing or directing the enforcement of the Decision, subject of the petition."<sup>[19]</sup> Thereafter, in its resolution promulgated on 22 December 1992,<sup>[20]</sup> the Court of Appeals gave due course to the petition in said case, considered the comments of private respondents therein as its answer and required the parties to submit their respective memoranda.

On 17 June 1993 the Court of Appeals promulgated its decision<sup>[21]</sup> in CA-G.R. SP No. 29147, the dispositive portion providing:

WHEREFORE, the questioned order of the respondent court dated June 3, 1992, dismissing the notice of appeal dated November 6, 1991; and the order dated September 14, 1992 of the same court denying the motion for reconsideration filed by the petitioner, through counsel, are hereby SET ASIDE; and respondent court hereby ordered to ELEVATE the records of the case to the Court of Appeals, on appeal.

On 18 January 1993, the RTC elevated the record of Civil Case No. 84-23019 to the Court of Appeals.

SIHI appealed to this Court from the decision by way of a petition for review.<sup>[22]</sup> It contended that DELTA had lost the right to appeal in view of the lapse of more than 15 days from DELTA's receipt of a certified true copy of the RTC decision in Civil Case No. 84-23019. This petition for review was docketed as G.R. No. 110677.<sup>[23]</sup>

While SIHI's petition in G.R. No. 110677 was pending before this Court, DELTA filed on 14 February 1994, in CA G.R. SP No. 29147 of the Court of Appeals, an Omnibus Motion<sup>[24]</sup> to:

- 1) DECLARE AS NULL AND VOID AB INITIO AND WITHOUT ANY FORCE AND EFFECT THE ORDER OF RESPONDENT COURT DATED MARCH 11, 1987 ORDERING THE ISSUANCE OF THE WRIT OF EXECUTION;
- 2) DECLARE AS NULL AND VOID AB INITIO AND WITHOUT ANY FORCE AND EFFECT THE WRIT OF EXECUTION ISSUED PURSUANT TO THE ORDER DATED MARCH 11, 1987;
- 3) ALL OTHER PROCEEDINGS HELD, CONDUCTED AND EXECUTED BY RESPONDENT SHERIFF IMPLEMENTING THE AFORESAID WRIT OF EXECUTION.

SIHI opposed the motion<sup>[25]</sup> on grounds that: a) there was a pending appeal by certiorari with this Court, thus the Court of Appeals was without jurisdiction to entertain the Omnibus Motion; b) the Omnibus Motion was barred by res judicata; and c) the filing of the Omnibus Motion was a clear act of forum-shopping and

should then be denied outright.

In its resolution of 7 June 1994, the Court of Appeals merely noted the Omnibus Motion and stated:

It appearing that there is a pending petition for review with the Supreme Court of this Court's Decision dated June 17, 1993, it would be improper for this Court to act on the Omnibus Motion filed by petitioner Delta Motor Corporation x x x.<sup>[26]</sup>

On 18 July 1994 this Court's Second Division issued a resolution<sup>[27]</sup> in G.R. No. 110677 denying the petition therein for failure to sufficiently show that the Court of Appeals committed reversible error in the questioned judgment. SIHI's motion for reconsideration was denied in the resolution of this Court of 21 September 1994.<sup>[28]</sup>

On 26 October 1994 DELTA filed a manifestation and motion<sup>[29]</sup> to resolve its Omnibus Motion of February 10, 1994.

In its resolution of 5 January 1995,<sup>[30]</sup> the Court of Appeals denied DELTA's Omnibus Motion, holding:

[T]he matters prayed for in the Omnibus Motion of petitioner Delta Motor Corporation dated February 10, 1994 and abovequoted are matters which were not raised as issues by petitioner in the instant petition and, therefore, not within the jurisdiction and power of this Court in the instant petition to decide.<sup>[31]</sup>

On 27 January 1995 DELTA filed a motion for reconsideration and/or clarification<sup>[32]</sup> wherein it alleged that: (a) while it was true that the matters prayed for in the Omnibus Motion of petitioner were not raised in the instant petition, they were, nevertheless, included in the general prayer in the petition "for such other reliefs and remedies just and equitable in the premises;" (b) it could not file the Omnibus Motion with the RTC since the records of Civil Case No. 84-23019 had already been elevated to the Court of Appeals and upon the perfection of the appeal, the trial court lost jurisdiction over the case; and (c) the matters raised in the Omnibus Motion were incidental to and included in the appellate jurisdiction of the Court of Appeals.

On the other hand, on 2 February 1995, SIHI filed a motion for clarification<sup>[33]</sup> wherein it asked for the deletion, for being mere obiter dictum, the following paragraph in the Resolution of 5 January 1995, to wit:

While it is true that as a necessary consequence the decision of the Court of Appeals dated January 22, 1991 ruling that the decision in Civil Case No. 84-23019 "has not attained finality pending service of a copy thereof on petitioner Delta, which may appeal therefrom within the reglementary period", all proceedings and/or orders arising from the trial court's decision in Civil Case No. 84-23019 are null and void x x x .

SIHI argued that this paragraph was "not necessary to the decision of the case before it"<sup>[34]</sup> and "cannot be considered binding for the purpose of establishing