

## SECOND DIVISION

[ G.R. No. 103922, July 09, 1996 ]

**SANTIAGO LAND DEVELOPMENT COMPANY, PETITIONER, VS.  
COURT OF APPEALS AND KOMATSU INDUSTRIES (PHILS.), INC.,  
RESPONDENTS.**

### DECISION

**TORRES, JR., J.:**

Challenged in this petition for review on certiorari filed by petitioner Santiago Land Development Corporation is the decision of the Court of Appeals dated December 26, 1991, the dispositive portion of which reads:

"WHEREFORE, considering all the foregoing premises, this petition is DISMISSED.

No pronouncement as to costs."<sup>[1]</sup>

The following are the antecedent facts:

For failure of respondent Komatsu Industries (Phil.) to pay its indebtedness amounting to P27,000,000, the Philippine National Bank (PNB, for brevity) initiated the foreclosure proceedings of the 18,000 square meter mortgaged property located at 2275 Pasong Tamo Extension, Makati and covered by TCT No. 469737 (S-5697) duly registered in the name of the mortgagor, herein respondent Komatsu Industries.

On December 16, 1983, respondent Komatsu Industries filed an action with the Regional Trial Court, Branch 26, Makati, docketed as Civil Case No. 5937, seeking to prevent the foreclosure of the subject property. The trial court issued a temporary restraining order but the property was, extrajudicially foreclosed by the PNB. Thereafter, respondent Komatsu Industries filed an amended petition for the declaration of nullity of the extrajudicial foreclosure sale.

During the pendency of Civil Case No. 5937, petitioner Santiago Land Development Corporation (SLDC, for brevity) purchased the subject property for P90,000,000 and a deed of absolute sale was executed by the PNB on November 21, 1989. Consequently, petitioner SLDC filed a motion for intervention alleging that any ruling or decision adverse to PNB would necessarily bind SLDC as transferee pendente lite. Petitioner SLDC was then allowed to intervene in the case at bar.

On November 20, 1990, petitioner SLDC served written interrogatories on respondent Komatsu Industries' counsel.<sup>[2]</sup> The interrogatories were not, however, answered by the respondent by reason of which petitioner SLDC filed a motion to dismiss the action with prejudice based on Sec. 5, Rule 29 of the Rules of Court.

An opposition to the motion to dismiss was filed by respondent Komatsu Industries alleging *inter alia* that there was no valid service of the written interrogatories inasmuch as the service was made on the respondent's counsel and not directly upon any of the respondent's officers who were competent to testify in its behalf, pursuant to Sec. 1, Rule 25 of the Revised Rules of Court.

In an order dated March 14, 1991, the trial court denied the motion to dismiss.<sup>[3]</sup> Petitioner SLDC filed a motion for reconsideration but the same was denied.<sup>[4]</sup>

Petitioner SLDC filed a petition for review before this Court but it was referred to the Court of Appeals by resolution dated July 17, 1991.

In the assailed decision of the Court of Appeals dated December 26, 1991, it was held:

"In the case at bar, the private respondent itself admitted that the interrogatories were served upon its counsel of record Emerito Salva and Associates. There is, therefore, a valid service of the interrogatories upon private respondent."<sup>[5]</sup>

However, while the Court of Appeals ruled that there was a valid service and the failure of the respondent to answer the interrogatories would warrant the dismissal of the case, nevertheless, it explained, thus:

"However, while respondent court may have committed an error of judgment in denying the motion to dismiss filed by the petitioner in this case based on his interpretation of the rules, the said court may hardly be accused of grave abuse of discretion as would be tantamount to lack of or excess in jurisdiction. Certiorari, therefore, does not lie in the case at bar. As held in *GSIS vs. Court of Appeals*, 169 SCRA 244, a petition for certiorari is intended to correct defects of jurisdiction solely and not to correct errors of procedure or matters in the court a quo's findings or conclusions. (citing *Illacad vs. Court of Appeals*, 78 SCRA 310)."<sup>[6]</sup>

The Court of Appeals dismissed the petition, hence, this petition for review before us.

Petitioner SLDC now argues that the civil action should have been ordered dismissed with prejudice because of private respondent's deliberate, knowing, and continued refusal to answer the written interrogatories. The respondent court, therefore, committed grave abuse of discretion and/or disregarded the usual course of judicial proceedings when it refused to order the dismissal of the civil case. Petitioner invokes Section 5, Rule 29 of the Rules of Court, which provides, to wit:

"If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 25, after proper service of such interrogatories, the court on motion and notice, may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, and its discretion, order