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the now defunct Court of Industrial Relations still possessed jurisdiction over labor disputes.

WHEREFORE, the petition is dismissed for being moot and academic.

Antonio (Actg. Chairman), Aquino, Santos, and *Abad Santos, JJ.*, concur.

Barredo and *Concepcion Jr., JJ.*, are on leave.

SECOND DIVISION

[G.R. No. L-48948. June 19, 1979]

FLORENTINO ENRIQUEZ, *ET AL.*, *petitioners-appellants, vs.* HON. NESTOR C. RIVERA, *ET AL.*, *respondents-appellees.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NATURE THEREOF.— *Certiorari* is a special civil action by which questions of jurisdiction may be determined. The extraordinary writ of *certiorari* offers a limited form of review, for its principal function is to keep inferior tribunals within their jurisdiction. It is a remedy of last resort; for when another remedy is present, the law provides that *certiorari* is not available. The writ is available only to keep an inferior court within the bounds of its jurisdiction, or to prevent it from committing a grave abuse of discretion amounting to excess of jurisdiction.

2. ID.; ID.; ID.; NOT A SUBSTITUTE FOR APPEAL.— The general rule is that *certiorari* will not lie as a substitute for an appeal, for relief through a special action like *certiorari* may only be established when no remedy by appeal lies. None of the

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exceptional circumstances have been shown to be present in this case; hence the general rule applies in its entirety. Appeal renders superfluous a pending petition for *certiorari*, and mandates its dismissal. In the light of the clear language of Rule 65 (1), this is the only reasonable reconciliation that can be effected between the two concurrent actions: the appeal has to be prosecuted, but at the cost of the petition for *certiorari*, for the petition has lost its *raison d'etre*. To persevere in the pursuit of the writ would be to engage in an enterprise which *is unnecessary, tautological, and frowned upon by the law.*

3. ID.; ID.; ID.; ID.; EXCEPTION.— The exception to this rule is conceded only "where public welfare and the advancement of public policy so dictate, and the broader interests of justice so require, or where the orders complained of were found to be completely null and void, or that appeal was not considered the appropriate remedy, such as in appeals from orders of preliminary attachment or appointments of receiver." For example, *certiorari* may be available where appeal is inadequate and ineffectual.

APPEARANCES OF COUNSEL

Ramon V. Sison for petitioners-appellants.
Jose R. Imbong for respondents-appellees.

D E C I S I O N

ABAD SANTOS, *J.*:

This is a petition for *certiorari* on appeal. Petitioners-appellants filed in the Court of First Instance, Branch XXVI of Rizal, Civil Case No. 23625, a petition for *certiorari*, prohibition with preliminary injunction. The court dismissed the petition on the ground "that the special remedy of *certiorari* may be resorted to only where ordinary appeal may not be adequate, which circumstance is certainly not present in the instant case." Petitioners-appellants then filed in the Court of Appeals, C.A.-G.R. No. 06498-Sp to contest the order of dismissal. Since this appeal dealt with a question of law, the Court of Appeals certified the case to the Supreme Court.

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Petitioners-appellants, the spouses Florentino and Adelina Enriquez, are lessees of a residential house with a small store situated at Lawaan St., Aurora Subdivision, Angono, Rizal, owned by respondents-appellees, the spouses Nestor and Estrella Mijares. For failure of Enriquez to pay the monthly rentals from November 1975 to February 1976, Mijares sent various communications, culminating in a letter demanding that Enriquez pay the back rentals and vacate the premises.

The efforts at collection proved unavailing and in time, Mijares filed in the Municipal Court of Angono, Rizal, Civil Case No. 117 against Enriquez for ejectment. The court required Enriquez to file an answer within the period specified; instead of filing an answer, he filed a motion to dismiss the original complaint and, later, he further filed an amended motion to dismiss the amended complaint. The municipal court denied both motions. Enriquez then filed his answer with compulsory counterclaim. In response, Mijares filed a motion to declare Enriquez in default, and the court granted it, ordering the reception *ex parte* of Mijares' evidence. On the same day, Enriquez filed a motion for reconsideration, but the municipal court denied it.

Subsequently, Enriquez filed in the Court of First Instance, Branch XXVI of Rizal, Civil Case No. 23625, a petition for *certiorari*, prohibition with preliminary injunction. Enriquez claimed that the court acted without jurisdiction: in ordering the amendment of the complaint; in denying his motion to dismiss the amended complaint; and in declaring him in default. The court issued a restraining order enjoining the respondent municipal judge from proceeding with the hearing of the ejectment case, and directing the respondents to maintain the *status quo*. The court also required Mijares to file his answer, and he did so.

While the petition for *certiorari* was pending in the court of first instance, the municipal court rendered a decision in the ejectment case in favor of Mijares. The court ordered Enriquez and all persons under him to vacate the premises involved in the case, to pay plaintiffs the total amount of ₱1,850.00 rentals in arrears; ₱250.00 every month thereafter until defendants shall have vacated the premises; ₱2,000.00 as liquidated damages;

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and ₱500.00 for and as attorney's fees, in addition to costs. The court later issued the corresponding writ of execution.

Whereupon, Enriquez appealed the decision of the municipal court by filing Civil Case No. 24135 in the same Court of First Instance, Branch XXVI of Rizal, where his petition for *certiorari* was pending. Hence, the court dismissed the petition for *certiorari*, saying "that the perfection of the appeal of the mentioned Civil Case No. 117 to this court (Branch XXVI) has rendered the instant case moot and academic." It is from this order of dismissal that Enriquez now appeals.

Since the petition for *certiorari* was dismissed, Mijares applied in Civil Case No. 24135 for a writ of execution, which the court granted. Later, the court dismissed the appeal from the judgment in the ejectment case, on the ground that Enriquez had been declared in default, and had appealed the case without asking for the lifting or setting aside of the order of default, as required by the Rules of Court. But the court set aside the writ of execution.

In his petition for injunction filed with the Court of Appeals, Enriquez argued "that the basis of the dismissal of said *certiorari* case No. 23625 of the court *a quo* is the appeal made in Civil Case No. 117 of the municipal court of Angono, Rizal, which appeal was however dismissed on motion of herein petitioners as defendants in said appealed case." True, the appeal has been dismissed; nonetheless, we find that the issue is whether a petition for *certiorari* is rendered moot and academic by an appeal taken in the same case.

The issue is resolved by application to the Rules of Court. Rule 65, Section 1 provides, *inter alia*, that when any tribunal, exercising judicial functions, has acted without or in excess of its jurisdiction, or with grave abuse of discretion, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition for *certiorari*. Thus, there are two conditions that militate against the grant of a petition for *certiorari*: *firstly*, when there is an appeal; or *secondly*, when there is a plain, speedy, and adequate remedy available under

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law. Since in this case there was an appeal, by the plain terms of Rule 65 (1), *certiorari* cannot be granted.

Certiorari is a special civil action by which questions of jurisdiction may be determined. The extraordinary writ of *certiorari* offers a limited form of review, for its principal function is to keep inferior tribunals within their jurisdiction (See *Albert v. CFI of Manila*, L-26364, 29 May 1968; 23 SCRA 948). It is a remedy of last resort; for when another remedy is present, the law provides that *certiorari* is not available. The writ is available only to keep an inferior court within the bounds of its jurisdiction, or to prevent it from committing a grave abuse of discretion amounting to excess of jurisdiction.

In a long line of cases, this Court has held that the writ is not available to correct errors of procedure, or mistakes in the judge's findings or conclusion. It has been held that whether the court decides the question wrongly is utterly immaterial to the question of its jurisdiction (*Estrada v. Sto. Domingo*, L-30570, 29 July 1969; 28 SCRA 890). It is a rule well-settled in our jurisprudence that a petition for *certiorari* will not be allowed when there is a remedy by appeal. This Court has firmly established that the only circumstance when *certiorari* may lie even though an appeal is available, is when such appeal does not prove to be a more speedy and adequate remedy. In a more recent case, this Court held that questions of errors of law should be taken up in an appeal, for they do not involve jurisdictional errors which may properly be raised and corrected by *certiorari*. (*Guevarra v. Hermoso*, L-28241, 6 August 1971; 40 SCRA 335).

The general rule is that *certiorari* will not lie as a substitute for an appeal, for relief through a special action like *certiorari* may only be established when no remedy by appeal lies. The exception to this rule is conceded only "where public welfare and the advancement of public policy so dictate, and the broader interests of justice so require, or where the orders complained of were found to be completely null and void, or that appeal was not considered the appropriate remedy, such as in appeals from orders of preliminary attachment or appointments of

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receiver." (*Fernando v. Vasquez*, L-26417, 30 January 1970; 31 SCRA 288). For example, *certiorari* maybe available where appeal is inadequate and ineffectual (*Romero Sr. v. Court of Appeals*, L-29659, 30 July 1971; 40 SCRA 172).

None of the exceptional circumstances have been shown to be present in this case; hence the general rule applies in its entirety. Appeal renders superfluous a pending petition for *certiorari*, and mandates its dismissal. In the light of the clear language of Rule 65 (1), this is the only reasonable reconciliation that can be effected between the two concurrent actions: the appeal has to be prosecuted, but at the cost of the petition for *certiorari*, for the petition has lost its *raison d'etre*. To persevere in the pursuit of the writ would be to engage in an enterprise which is unnecessary, tautological, and frowned upon by the law.

WHEREFORE, the order dismissing the petition for *certiorari* is hereby affirmed. Without costs.

SO ORDERED.

Antonio (Actg. Chairman), Santos, and *De Castro,** *JJ.*, concur.

Aquino, J., see concurring opinion below.

Barredo, J., is on leave.

AQUINO, *J.*, *concurring*:

I concur. Since the Enriquez spouses had filed an answer to the ejectment complaint, the municipal court of Angono, Rizal, erred in declaring them in default.

On the other hand, the Enriquez spouses should have moved to set aside the order of default and the judgment by default (Sec. 13, Rule 5 and Sec. 3, Rule 18, Rules of Court). In case of denial of that motion, they should have appealed to the Court of First Instance of Rizal.

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* Justice Hermogenes Concepcion Jr. is on leave; Justice Pacifico de Castro has been designated to sit with the Second Division.

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Instead of resorting to that remedy, they improperly filed a petition for *certiorari* and prohibition in the Court of First Instance, Civil Case No. 23625.

The record shows that, although the Enriquez spouses did not move to set aside the order of default, they were able to appeal from the adverse judgment of the municipal court. The appeal was docketed in the Court of First Instance as Civil Case No. 24135.

The Court of First Instance erroneously disposed of that appeal by dismissing it. The Court of First Instance should have set aside the municipal court's decision and required it to try the case anew by giving the Enriquez spouses a chance to present their evidence.

However, nothing more can be done about that dismissal of the appeal. It is now final and the municipal court's decision is already executory. That erroneous dismissal of the appeal could have been assailed by means of *certiorari* in this Court.

The Court of First Instance correctly disposed of the *certiorari* and prohibition case, Civil Case No. 23625, by dismissing it since appeal, not *certiorari*, was the remedy of the Enriquez spouses. The Enriquez spouses improperly appealed by record on appeal from the dismissal order.

It is that appeal from the dismissal of their *certiorari* petition which the Court of Appeals had certified to this Court. We have no choice but to affirm the order of dismissal.