

## SECOND DIVISION

[ G.R. No. 232189, March 07, 2018 ]

**ALEX RAUL B. BLAY PETITIONER, V. CYNTHIA B. BAÑA,  
RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated February 23, 2017 and the Resolution<sup>[3]</sup> dated June 6, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 146138, which affirmed the Orders dated May 29, 2015<sup>[4]</sup> and March 3, 2016<sup>[5]</sup> of the Regional Trial Court of Pasay City, Branch 109 (RTC) in Civil Case No. R-PSY-14-17714-CV that: (a) granted petitioner Alex Raul B. Blay's (petitioner) Motion to Withdraw; and (b) declared respondent Cynthia B. Baña's (respondent) Counterclaim for independent adjudication.

#### The Facts

On September 17, 2014, petitioner filed before the RTC a Petition for Declaration of Nullity of Marriage,<sup>[6]</sup> seeking that his marriage to respondent be declared null and void on account of his psychological incapacity pursuant to Article 36 of the Family Code.<sup>[7]</sup> Subsequently, respondent filed her Answer with Compulsory Counterclaim<sup>[8]</sup> dated December 5, 2014.

However, petitioner later lost interest over the case, and thus, filed a Motion to Withdraw<sup>[9]</sup> his petition. In her comment/opposition<sup>[10]</sup> thereto, respondent invoked Section 2, Rule 17 of the Rules of Court (alternatively, Section 2, Rule 17), and prayed that her counterclaims be declared as remaining for the court's independent adjudication.<sup>[11]</sup> In turn, petitioner filed his reply,<sup>[12]</sup> averring that respondent's counterclaims are barred from being prosecuted in the same action due to her failure to file a manifestation therefor within fifteen (15) days from notice of the Motion to Withdraw, which - according to petitioner - was required under the same Rules of Court provision. In particular, petitioner alleged that respondent filed the required manifestation only on March 30, 2015. However, respondent's counsel received a copy of petitioner's Motion to Withdraw on March 11, 2015; hence, respondent had only until March 26, 2015 to manifest before the trial court her desire to prosecute her counterclaims in the same action.<sup>[13]</sup>

#### The RTC Ruling

In an Order<sup>[14]</sup> dated May 29, 2015, the RTC granted petitioner's Motion to Withdraw petition.<sup>[15]</sup> Further, it declared respondent's counterclaim "as remaining for independent adjudication" and as such, gave petitioner fifteen (15) days to file his answer thereto.<sup>[16]</sup>

Dissatisfied, petitioner filed a motion for reconsideration,<sup>[17]</sup> which was denied in an Order<sup>[18]</sup> dated March 3, 2016. Thus, he elevated the matter to the CA via a petition for *certiorari*,<sup>[19]</sup> praying that the RTC Orders be set aside to the extent that they allowed the counterclaim to remain for independent adjudication before the same trial court.<sup>[20]</sup>

### The CA Ruling

In a Decision<sup>[21]</sup> dated February 23, 2017, the CA dismissed the petition for lack of merit.<sup>[22]</sup> It found no grave abuse of discretion on the part of the RTC, holding that under Section 2, Rule 17 of the Rules of Court, if a counterclaim has been filed by the defendant before the service upon him of the petitioner's motion for dismissal, the dismissal shall be limited to the complaint.<sup>[23]</sup>

Aggrieved, petitioner moved for reconsideration,<sup>[24]</sup> which was denied in a Resolution<sup>[25]</sup> dated June 6, 2017; hence, this petition.

### The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the RTC Orders declaring respondent's counterclaim for independent adjudication before the same trial court.

### The Court's Ruling

The petition is meritorious.

Section 2, Rule 17 of the Rules of Court provides for the procedure relative to counterclaims in the event that a complaint is dismissed by the court at the plaintiffs instance, *viz.*:

Section 2. *Dismissal upon motion of plaintiff.* — Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. **If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action.** Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court.

As per the **second sentence** of the provision, *if a counterclaim has been pleaded by the defendant prior to the service upon him of the plaintiff's motion for the dismissal* - as in this case - the rule is that **the dismissal shall be limited to the complaint.** Commentaries on the subject elucidate that "[i]nstead of an 'action' shall not be dismissed, the present rule uses the term 'complaint'. A dismissal of an action is different from a mere dismissal of the complaint. For this reason, since only the complaint and not the action is dismissed, the defendant in spite of said dismissal may still prosecute his counterclaim in the same action.<sup>[26]</sup>