

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**RURAL BANK OF BUHI, INC., and
HONORABLE JUDGE CARLOS R.
BUENVIAJE,**

Petitioners,

-versus-

**G.R. No. L-61689
June 20, 1988**

**HONORABLE COURT OF APPEALS,
CENTRAL BANK OF THE PHILIPPINES
and CONSOLACION ODRA,**

Respondents.

X-----X

DECISION

PARAS, J.:

This is a Petition for Review on *Certiorari* with preliminary mandatory injunction seeking the reversal of the Orders of the Court of Appeals dated March 19, 1982 and March 24, 1982 and its Decision (HATOL) promulgated on June 17, 1982 in CA-G.R. No. 13944 entitled "Banko Central ng Pilipinas at Consolacion Odra Laban Kina Rural Bank of Buhi (Camarines Sur), Inc."**] and praying for a restraining order or a preliminary mandatory injunction to restrain respondents from enforcing aforesaid orders and decision of the respondent Court, and to give due course to the petitioners' complaint

in IR-428, pending before Hon. Judge Carlos R. Buenviaje of Branch VII, CFI, Camarines Sur.

The decretal portion of the appealed decision reads:

“DAHIL DITO, ang utos ng pinasasagot sa Hukom noong ika-9 ng Marso, 1982, ay isinasang-tabi. Kapalit nito, isang utos and ipinalabas na nag-uutos sa pinasasagot sa Hukom na itigil ang anumang pagpapatuloy o pagdidinig kaugnay sa usaping IR-428 na pinawawalang saysay din ng Hukumang ito.

SIYANG IPINAG-UUTOS.”

The antecedent facts of the case are as follows:

The petitioner Rural Bank of Buhi, Inc. (hereinafter referred to as Buhi) is a juridical entity existing under the laws of the Philippines. Buhi is a rural bank that started its operations only on December 26, 1975 (Rollo, p. 86)

In 1980, an examination of the books and affairs of Buhi was ordered conducted by the Rural Banks and Savings and Loan Association (DRBSLA), Central Bank of the Philippines, which by law, has charge of the supervision and examination of rural banks and savings and loan associations in the Philippines. However, said petitioner refused to be examined and as a result thereof, financial assistance was suspended.

On January 10, 1980, a general examination of the bank's affairs and operations was conducted and there were found by DRBSLA represented by herein respondent Consolacion V. Odra, Director of DRBSLA, among others, massive irregularities in its operations consisting of loans to unknown and fictitious borrowers, where the sum of P1,704,782.00 was past due and another sum of P1,130,000.00 was also past due in favor of the Central Bank (Rollo, p. 86). The promissory notes evidencing these loans were rediscounted with the Central Bank for cash. As a result thereof, the bank became insolvent and prejudiced in its depositors and creditors.

Respondent, Consolacion V. Odra, submitted a report recommending to the Monetary Board of the Central Bank the placing of Buhi under receivership in accordance with Section 29 of Republic Act No. 265, as amended, the designation of the Director, DRBSLA, as receiver thereof. On March 28, 1980, the Monetary Board, finding the report to be true, adopted Resolution No. 583 placing Buhi, petitioner herein, under receivership and designated respondent, Consolacion V. Odra, as Receiver, pursuant to the provisions of Section 29 of Republic Act No. 265 as amended (Rollo, p. 111).

In a letter dated April 8, 1980, respondent Consolacion V. Odra, as receiver, implemented and carried out said Monetary Board Resolution No. 583 by authorizing deputies of the receiver to take control, possession and charge of Buhi, its assets and liabilities (Rollo, p. 109).

Imelda del Rosario, Manager of herein petitioner Buhi, filed a petition for injunction with Restraining Order dated April 23, 1980, docketed as Special Proceedings IR-428 against respondent Consolacion V. Odra and DRBSLA deputies in the Court of First Instance of Camarines Sur, Branch VII, Iriga City, entitled Rural Bank of Buhi vs. Central Bank, which assailed the action of herein respondent Odra in recommending the receivership over Buhi as a violation of the provisions of Sections 28 and 29 of Republic Act No. 265 as amended, and Section 10 of Republic Act No. 720 (The Rural Banks Act) and as being ultra vires and done with grave abuse of discretion and in excess of jurisdiction (Rollo, p. 120).

Respondents filed their motion to dismiss dated May 27, 1980 alleging that the petition did not allege a cause of action and is not sufficient in form and substance and that it was filed in violation of Section 29, Republic Act No. 265 as amended by Presidential Decree No. 1007 (Rollo, p. 36).

Petitioners, through their counsel, filed an opposition to the motion to dismiss dated June 17, 1980 averring that the petition alleged a valid cause of action and that respondents have violated the due process clause of the Constitution (Rollo, p. 49).

Later, respondents filed a reply to the opposition dated July 1, 1980, claiming that the petition is not proper; that Imelda del Rosario is not the proper representative of the bank; that the petition failed to state a cause of action; and, that the provisions of Section 29 of Republic Act No. 265 had been faithfully observed (Rollo, p. 57).

On August 22, 1980, the Central Bank Monetary Board issued a Resolution No. 1514 ordering the liquidation of the Rural Bank of Buhi (Rollo, p. 108).

On September 1, 1981, the Office of the Solicitor General, in accordance with Republic Act No. 265, Section 29, filed in the same Court of First Instance of Camarines Sur, Branch VII, a petition for Assistance in the Liquidation of Buhi, which petition was docketed as SP-IR-553, pursuant to the Monetary Board Resolution No. 1514 (Rollo, pp. 89; 264).

Meanwhile, respondent Central Bank filed on September 15, 1981, in Civil Case No. IR-428 a Supplemental Motion To Dismiss on the ground that the receivership of Buhi, in view of the issuance of the Monetary Board Resolution No. 1514 had completely become moot and academic (Rollo, p. 68) and the fact that Case SP-IR-553 for the liquidation of Buhi was already pending with the same Court (Rollo, p. 69).

On October 16, 1981, petitioners herein filed their amended complaint in Civil Case No. IR-428 alleging that the issuance of Monetary Board Resolution No. 583 was plainly arbitrary and in bad faith under aforequoted Section 29 of Republic Act No. 265 as amended, among others (Rollo, p. 28). On the same day, petitioner herein filed a rejoinder to its opposition to the motion to dismiss (Rollo, p. 145).

On March 9, 1982, herein petitioner Judge Buenviaje, issued an order denying the respondents' motion to dismiss, supplemental motion to dismiss and granting a temporary restraining order enjoining respondents from further managing and administering the Rural Bank of Buhi and to deliver the possession and control thereof to the petitioner Bank under the same conditions and with the same financial status as when the same was taken over by herein respondents (defendants) on April 16, 1980 and further enjoining

petitioner to post a bond in the amount of three hundred thousand pesos (P300,000.00) (Rollo, p. 72).

The dispositive portion of said decision reads:

“WHEREFORE, premises considered, the motion to dismiss and supplemental motion to dismiss, in the light of petitioners’ opposition, for want of sufficient merit is denied. Respondents are hereby directed to file their answer within ten (10) days from receipt of a copy of this order.” (Rollo, p. 4).

On March 11, 1982, petitioner Buhi through counsel, conformably with the above-mentioned order, filed a Motion to Admit Bond in the amount of P300,220.00 (Rollo, pp. 78-80).

On March 15, 1982, herein petitioner Judge issued the order admitting the bond of P300,220.00 filed by the petitioner, and directing the respondents to surrender the possession of the Rural Bank of Buhi, together with all its equipments, accessories, etc. to the petitioners (Rollo, p. 6).

Consequently, on March 16, 1982, herein petitioner Judge issued the writ of execution directing the Acting Provincial Sheriff of Camarines Sur to implement the Court’s order of March 9, 1982 (Rollo, p. 268). Complying with the said order of the Court, the Deputy Provincial Sheriff went to the Buhi premises to implement the writ of execution but the vault of the petitioner bank was locked and no inventory was made, as evidenced by the Sheriffs Report (Rollo, pp. 83-84). Thus, the petitioner herein filed with the Court an “Urgent Ex-Parte Motion to Allow Sheriff Calope to Force Open Bank Vault” on the same day (Rollo, p. 268). Accordingly, on March 17, 1982, herein petitioner Judge granted the aforesaid Ex-Parte Motion to Force Open the Bank Vault (Rollo, p. 269).

On March 18, 1982, counsel for petitioner filed another “Urgent Ex-Parte Motion to Order Manager of City Trust to Allow Petitioner to Withdraw Rural Bank Deposits” while a separate “Urgent Ex-Parte Motion to Order Manager of Metrobank to Release Deposits of Petitioners” was filed on the same date. The motion was granted by

the Court in an order directing the Manager of Metro Bank-Naga City (Rollo, p. 269) to comply as prayed for.

In view thereof, herein respondents filed in the Court of Appeals a petition for *certiorari* and prohibition with preliminary injunction docketed as CA-G.R. No. 13944 against herein petitioners, seeking to set aside the restraining order and reiterating therein that petitioner Buhi's complaint in the lower court be dismissed (Rollo, p. 270).

On March 19, 1982, the Court of Appeals issued a Resolution (KAPASIYAHAN) in tagalog, restraining the Hon. Judge Carlos R. Buenviaje, from enforcing his order of March 9, 1982 and suspending further proceedings in Sp. Proc. No. IR-428 pending before him while giving the Central Bank counsel, Atty. Ricardo Quintos, authority to carry out personally said orders and directing the "Punong Kawani" of the Court of Appeals to send telegrams to the Office of the President and the Supreme Court (Rollo, p. 168).

Herein petitioners did not comply with the Court of Appeals' order of March 19, 1982, but filed instead on March 21, 1982 a motion for reconsideration of said order of the Court of Appeals, claiming that the lower court's order of March 9, 1982 referred only to the denial of therein respondents' motion to dismiss and supplemental motion to dismiss and that the return of Buhi to the petitioners was already an accomplished fact. The motion was denied by the respondent court in a resolution dated June 1, 1982 (Rollo, p. 301).

In view of petitioners' refusal to obey the Court of Appeals' Order of March 19, 1982, herein respondents filed with the Court of Appeals a Motion to Cite Petitioners in Contempt, dated April 22, 1982 [Rollo, p. 174).

The Court of Appeals issued on May 24, 1982 an order requiring herein petitioner Rural Bank of Buhi, Inc., through its then Acting Manager, Imelda del Rosario and herein petitioner Judge Carlos Buenviaje, as well as Manuel Genova and Rodolfo Sosa, to show cause within ten (10) days from notice why they should not be held in contempt of court, and further directing the Ministry of National Defense or its representative to cause the return of possession and

management of the Rural Bank to the respondents Central Bank and Consolacion Odra (Rollo, p. 180).

On June 9, 1982, petitioners filed their objection to respondents' motion for contempt dated June 5, 1982 claiming that the properties, subject of the order, had already been returned to the herein petitioners who are the lawful owners thereof and that the returning could no longer be undone (Rollo, p. 181).

Later, petitioners filed another motion dated June 17, 1982 for the reconsideration of the resolution of June 1, 1982 of the Court of Appeals alleging that the same contravened and departed from the rulings of the Supreme Court that consummated acts or acts already done could no longer be the subject of mandatory injunction and that the respondent Court of Appeals had no jurisdiction to issue the order unless it was in aid of its appellate jurisdiction, claiming that the case (CA-G.R. No. 13944) did not come to it on appeal (Rollo, p. 302).

As aforesaid, on June 17, 1982, respondent Court of Appeals rendered its decision (HATOL) setting aside the lower court's restraining order dated March 9, 1982 and ordering the dismissal of herein petitioners' amended complaint in Civil Case No. IR-428 (Rollo, p. 186).

On July 9, 1982, petitioners (respondents in CA-G.R. No. 13944) filed a Motion for Reconsideration of the Decision dated June 17, 1982 insofar as the complaint with the lower court (Civil Case No. IR-428 was ordered dismissed (Rollo, p. 305).

On August 23, 1982, the respondent Court of Appeals issued its Resolution denying for lack of merit, herein petitioners' motion for reconsideration of the resolution issued by the respondent Court of Appeals on June 1, 1982 and set on August 31, 1982 the hearing of the motion to cite the respondents in CA-G.R. No. SP-13944 (herein petitioner) for contempt (Rollo, p. 193).

At said hearing, counsel for Rural Bank of Buhi agreed and promised in open court to restore and return to the Central Bank the possession and control of the Bank within three (3) days from August 31, 1982.

However on September 3, 1982, Rosalia Guevara, Manager thereof, vigorously and adamantly refused to surrender the premises unless she received a written order from the Court.

In a subsequent hearing of the contempt incident, the Court of Appeals issued its Order dated October 13, 1982, but Rosalia Guevara still refused to obey, whereupon she was placed under arrest and the Court of Appeals ordered her to be detained until she decided to obey the Court's Order (Rollo, pp. 273-274).

Earlier, on September 14, 1982 petitioners had filed this petition even while a motion for reconsideration of the decision of June 17, 1982 was still pending consideration in the Court of Appeals.

In the resolution of October 20, 1982, the Second Division of this Court without giving due course to the petition required respondents to COMMENT (Rollo, p. 225).

Counsel for respondents manifested (Rollo, p. 226) that they could not file the required comment because they were not given a copy of the petition. Meanwhile, they filed an urgent motion dated October 28, 1982 with the Court of Appeals to place the bank through its representatives in possession of the Rural Bank of Buhi (Camarines Sur), Inc. (Rollo, p. 237).

On December 9, 1982, petitioners filed a Supplemental Petition with urgent motion for the issuance of a restraining order dated December 2, 1982 praying that the restraining order be issued against respondent court (Rollo, p. 229).

In the resolution of December 15, 1982, the Court resolved to require petitioners to furnish the respondents with a copy of the petition and to require the respondents to comment on both the original and the supplemental petitions (Rollo, p. 243).

In a resolution of February 21, 1983, the Court NOTED Rosalia V. Guevara's letter dated February 4, 1983 (Rollo, p. 252) addressed to Hon. Chief Justice Enrique M. Fernando, requesting that she be allowed to file a petition for the issuance of a writ of habeas corpus (Rollo, p. 256).

At the hearing of the said petition on February 23, 1983 where the counsel of both parties appeared, this Court noted the Return of the Writ of Habeas Corpus as well as the release of petitioner Rosalia V. Guevara from detention by the National Bureau of Investigation. After hearing aforesaid counsel and petitioner herself, and it appearing that the latter had resigned since January 18, 1983 as Manager of the Rural Bank of Buhi, Inc. and that the Central Bank might avail of more than adequate legal measures to take over the management, possession and control of the said bank (and not through contempt proceedings and detention and confinement of petitioner), with Assistant Solicitor General Andin manifesting that respondents were not insisting on the continued detention of petitioner, the Court Resolved to SET the petitioner at liberty and to consider the contempt incident closed (Rollo, p. 339).

On April 11, 1983, respondents filed their comment on the original and supplemental petitions.

Meanwhile, the Court of Appeals, acting on respondents' urgent motion filed on October 28, 1982 ordered on April 13, 1983 the return to the petitioners (herein respondents) or their duly authorized representatives of the possession, management and control of subject Rural Bank (Rollo, p. 319), together with its properties.

On April 28, 1983, petitioner filed an urgent motion: (1) to give due course to the petition and (2) for immediate issuance of a Restraining Order against the respondent court to prevent it from enforcing its aforesaid resolution dated April 13, 1983 and from further proceeding in CA-G.R. No. 13944-SP (Rollo, p. 315).

On May 16, 1983, this Court resolved to deny the petition for lack of merit (Rollo, p. 321). On July 25, 1983, petitioners filed their verified Motion for Reconsideration (Rollo, p. 337) praying that the HATOL dated June 17, 1982 of the Court of Appeals be set aside as null and void and that Special Proceedings No. IR-428 of CFI-Camarines Sur, Iriga City, Branch VII, be ordered remanded to the RTC of Camarines Sur, Iriga City, for further proceedings.

A Motion for Early Resolution was filed by herein petitioners on March 12, 1984 (Rollo, p. 348).

Petitioners raised the following legal issues in their motion for reconsideration:

- I. UNDER SEC. 29, R.A. 265, AS AMENDED, MAY THE MONETARY BOARD (MB) OF THE CENTRAL BANK (CB) PLACE A RURAL BANK UNDER RECEIVERSHIP WITHOUT PRIOR NOTICE TO SAID RURAL BANK TO ENABLE IT TO BE HEARD ON THE GROUND RELIED UPON FOR SUCH RECEIVERSHIP?
 - II. UNDER THE SAME SECTION OF SAID LAW, WHERE THE MONETARY BOARD (MB) OF THE CENTRAL BANK (CB) HAS PLACED A RURAL BANK UNDER RECEIVERSHIP, IS SUCH ACTION OF THE MONETARY BOARD (MB) SUBJECT TO JUDICIAL REVIEW? IF SO, WHICH COURT MAY EXERCISE SUCH POWER AND WHEN MAY IT EXERCISE THE SAME?
 - III. UNDER THE SAID SECTION OF THE LAW, SUPPOSE A CIVIL CASE IS INSTITUTED SEEKING ANNULMENT OF THE RECEIVERSHIP ON THE GROUND OF ARBITRARINESS AND BAD FAITH ON THE PART OF THE MONETARY BOARD (MB), MAY SUCH CASE BE DISMISSED BY THE IAC (THEN CA) ON THE GROUND OF INSUFFICIENCY OF EVIDENCE EVEN IF THE TRIAL COURT HAS NOT HAD A CHANCE YET TO RECEIVE EVIDENCE AND THE PARTIES HAVE NOT YET PRESENTED EVIDENCE EITHER IN THE TRIAL COURT OR IN SAID APPELLATE COURT? (Rollo, pp. 330-331).
- I. Petitioner Rural Bank's position is to the effect that due process was not observed by the Monetary Board before said bank was placed under receivership. Said Rural Bank claimed that it was not given the chance to deny and disprove such claim of insolvency and/or any other ground which the Monetary Board used in justification of its action.

Relative thereto, the provision of Republic Act No. 265 on the proceedings upon insolvency reads:

“SEC. 29. Proceedings upon insolvency. — Whenever, upon examination by the head of the appropriate supervising and examining department or his examiners or agents into the condition of any banking institution, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the department head concerned forthwith, in writing, to inform the Monetary Board of the facts, and the Board may, upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and shall designate an official of the Central Bank, or a person of recognized competence in banking, as receiver to immediately take charge of its assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefit of its creditors, exercising all the powers necessary for these purposes including, but not limited to, bringing suits and foreclosing mortgages in the name of the banking institution.

“The Monetary Board shall thereupon determine within sixty days whether the institution may be recognized or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public and shall prescribe the conditions under which such redemption of business shall take place as the time for fulfillment of such conditions. In such case, the expenses and fees in the collection and administration of the assets of the institution shall be determined by the Board and shall be paid to the Central Bank out of the assets of such banking institution.

“If the Monetary Board shall determine and confirm within the said period that the banking institution is insolvent or cannot resume business with safety to its depositors, creditors and the general public, it shall, if the public interest requires, order its liquidation, indicate the manner of its liquidation and approve a liquidation plan. The Central Bank shall, by the Solicitor General, file a petition in the Court of First Instance reciting the

proceedings which have been taken and praying the assistance of the court in the liquidation of the banking institution. The Court shall have jurisdiction in the same proceedings to adjudicate disputed claims against the bank and enforce individual liabilities of the stockholders and do all that is necessary to preserve the assets of the banking institution and to implement the liquidation plan approved by the Monetary Board. The Monetary Board shall designate an official of the Central Bank or a person of recognized competence in banking, as liquidator who shall take over the functions of the receiver previously appointed by the Monetary Board under this Section. The liquidator shall, with all convenient speed, convert the assets of the banking institution to money or sell, assign or otherwise dispose of the same to creditors and other parties for the purpose of paying the debts of such bank and he may, in the name of the banking institution, institute such actions as may be necessary in the appropriate court to collect and recover accounts and assets of the banking institution.

“The provisions of any law to the contrary notwithstanding the actions of the Monetary Board under this Section and the second paragraph of Section 34 of this Act shall be final and executory, and can be set aside by the court only if there is convincing proof that the action is plainly arbitrary and made in bad faith. No restraining order or injunction shall be issued by the court enjoining the Central Bank from implementing its actions under this Section and the second paragraph of Section 34 of this Act, unless there is convincing proof that the action of the Monetary Board is plainly arbitrary and made in bad faith and the petitioner or plaintiff files with the clerk or judge of the court in which the action is pending a bond executed in favor of the Central Bank, in an amount to be fixed by the court. The restraining order or injunction shall be refused or, if granted, shall be dissolved upon filing by the Central Bank of a bond, which shall be in the form of cash or Central Bank cashier’s check, in an amount twice the amount of the bond of the petitioner, or plaintiff conditioned that it will pay the damages which the petitioner or plaintiff may suffer by the refusal or the dissolution of the injunction. The provisions of Rule 58 of the New Rules of Court insofar as they are applicable and not

inconsistent with the provisions of this Section shall govern the issuance and dissolution of the restraining order or injunction contemplated in this Section.

“Insolvency, under this Act, shall be understood to mean the inability of a banking institution to pay its liabilities as they fall due in the usual and ordinary course of business: Provided, however, that this shall not include the inability to pay of an otherwise non-insolvent bank caused by extraordinary demands induced by financial panic commonly evidenced by a run on the banks in the banking community.

“The appointment of a conservator under Section 28-A of this Act or the appointment of receiver under this Section shall be vested exclusively with the Monetary Board, the provision of any law, general or special, to the contrary notwithstanding.”

It will be observed from the foregoing provision of law, that there is no requirement whether express or implied, that a hearing be first conducted before a banking institution may be placed under receivership. On the contrary, the law is explicit as to the conditions prerequisite to the action of the Monetary Board to forbid the institution to do business in the Philippines and to appoint a receiver to immediately take charge of the bank's assets and liabilities. They are: (a) an examination made by the examining department of the Central Bank; (b) report by said department to the Monetary Board; and (c) prima facie showing that the bank is in a condition of insolvency or so situated that its continuance in business would involve probable loss to its depositors or creditors.

Supportive of this theory is the ruling of this Court, which established the authority of the Central Bank under the foregoing circumstances, which reads:

“As will be noted, whenever it shall appear prima facie that a banking institution is in ‘a condition of insolvency’ or so situated ‘that its continuance in business would involved probable loss to its depositors or creditors,’ the Monetary Board has authority:

First, to forbid the institution to do business and appoint a receiver therefor; and

Second, to determine, within 60 days, whether or not:

- 1) the institution may be reorganized and rehabilitated to such an extent as to be permitted to resume business with safety to depositors, creditors and the general public; or
- 2) it is indeed insolvent or cannot resume business with safety to depositors, creditors and the general public, and public interest requires that it be liquidated.

In this latter case (i.e., the bank can no longer resume business with safety to depositors, creditors and the public, etc.) its liquidation will be ordered and a liquidator appointed by the Monetary Board. The Central Bank shall thereafter file a petition in the Regional Trial Court praying for the Court's assistance in the liquidation of the bank." (Salud vs. Central Bank, 143 SCRA 590 [1986]).

Petitioner further argues, that there is also that constitutional guarantee that no property shall be taken without due process of law, so that Section 29, R.A. 265, as amended, could not have intended to disregard and do away with such constitutional requirement when it conferred upon the Monetary Board the power to place Rural Banks under receivership (Rollo, p. 333).

The contention is without merit. It has long been established and recognized in this jurisdiction that the closure and liquidation of a bank may be considered as an exercise of police power. Such exercise may, however, be subject to judicial inquiry and could be set aside if found to be capricious, discriminatory, whimsical, arbitrary, unjust or a denial of the due process and equal protection clauses of the Constitution (Central Bank vs. Court of Appeals, 106 SCRA 155 [1981]).

The evident implication of the law, therefore, is that the appointment of a receiver may be made by the Monetary Board without notice and

hearing but its action is subject to judicial inquiry to insure the protection of the banking institution. Stated otherwise, due process does not necessarily require a prior hearing; a hearing or an opportunity to be heard may be subsequent to the closure. One can just imagine the dire consequences of a prior hearing: bank runs would be the order of the day, resulting in panic and hysteria. In the process, fortunes may be wiped out, and disillusionment will run the gamut of the entire banking community.

In *Mendiola vs. Court of Appeals*, (106 SCRA 130), the Supreme Court held:

“The pivotal issue raised by petitioner is whether or not the appointment of a receiver by the Court of First Instance on January 14, 1969 was in order.

Respondent Court correctly stated that the appointment of a receiver pendente lite is a matter principally addressed to and resting largely on the sound discretion of the court to which the application is made. This Tribunal has so held in a number of cases. However, receivership being admittedly a harsh remedy, it should be granted with extreme caution. Sound reasons for receivership must appear of record, and there should be a clear showing of a necessity therefor. Before granting the remedy, the court is advised to consider the consequence or effects thereof in order to avoid irreparable injustice or injury to others who are entitled to as much consideration as those seeking it.

X X X

This is not to say that a hearing is an indispensable requirement for the appointment of a receiver. As petitioner correctly contends in his first assignment of error, courts may appoint receivers without prior presentation of evidence and solely on the basis of the averments of the pleadings. Rule 59 of the Revised Rules of Court allows the appointment of a receiver upon an ex parte application.”

There is no question that the action of the Monetary Board in this regard may be subject to judicial review. Thus, it has been held that

the courts may interfere with the Central Bank's exercise of discretion in determining whether or not a distressed bank shall be supported or liquidated. Discretion has its limits and has never been held to include arbitrariness, discrimination or bad faith (*Ramos vs. Central Bank of the Philippines*, 41 SCRA 567 [1971]).

II. It has likewise been held that resolutions of the Monetary Board under Section 29 of the Central Bank Act, such as: forbidding bank institutions to do business on account of a "condition of insolvency" or because its continuance in business would involve probable loss to depositors or creditors; or appointing a receiver to take charge of the bank's assets and liabilities, or determining whether the bank may be rehabilitated or should be liquidated and appointing a liquidator for that purpose, are under the law "final and executory" and may be set aside only on one ground, that is "if there is convincing proof that the action is plainly arbitrary and made in bad faith" (*Salud vs. Central Bank*, *supra*).

There is no dispute that under the above-quoted Section 29 of the Central Bank Act, the Regional Trial Court has jurisdiction to adjudicate the question of whether or not the action of the Monetary Board directing the dissolution of the subject Rural Bank is attended by arbitrariness and bad faith. Such position has been sustained by this Court in *Salud vs. Central Bank of the Philippines* (*supra*).

In the same case, the Court ruled further that a banking institution's claim that a resolution of the Monetary Board under Section 29 of the Central Bank Act should be set aside as plainly arbitrary and made in bad faith, may be asserted as an affirmative defense (Sections 1 and 4[b], Rule 6, Rules of Court) or a counterclaim (Section 6, Rule 6, Section 2, Rule 72 of the Rules of Court) in the proceedings for assistance in liquidation or as a cause of action in a separate and distinct action where the latter was filed ahead of the petition for assistance in liquidation (*ibid*; *Central Bank vs. Court of Appeals*, 106 SCRA 143 [1981]).

III. It will be noted that in the issuance of the Order of the Court of First Instance of Camarines Sur, Branch VII, Iriga City, dated March 9, 1982 (Rollo, pp. 72-77), there was no trial on the merits. Based on the pleadings filed, the Court merely acted on the Central Bank's

Motion to Dismiss and Supplemental Motion to Dismiss, denying both for lack of sufficient merit. Evidently, the trial court merely acted on an incident and has not as yet inquired, as mandated by Section 29 of the Central Bank Act, into the merits of the claim that the Monetary Board's action is plainly arbitrary and made in bad faith. It has not appreciated certain facts which would render the remedy of liquidation proper and rehabilitation improper, involving as it does an examination of the probative value of the evidence presented by the parties properly belonging to the trial court and not properly cognizable on appeal (Central Bank vs. Court of Appeals, supra, p. 156).

Still further, without a hearing held for both parties to substantiate their allegations in their respective pleadings, there is lacking that "convincing proof" prerequisite to justify the temporary restraining order (mandatory injunction) issued by the trial court in its Order of March 9, 1982.

PREMISES CONSIDERED, the Decision of the Court of Appeals is **MODIFIED**. We hereby order the remand of this case to the Regional Trial Court for further proceedings, but We LIFT the temporary restraining order issued by the trial court in its Order dated March 9, 1982.

SO ORDERED.

Yap, C.J., (Chairman), Melencio-Herrera, Padilla and Sarmiento, JJ., concur.

[**] Penned by Justice Onofre Villaluz, concurred in by Justices Guillermo P. Villasor and Elias D. Asuncion.