NILO H. RAYMUNDO, PETITIONER, VS. COURT OF APPEALS, SIXTH DIVISION, HON. APOLINARIO B. SANTOS, + PRESIDING JUDGE, RTC, BR. 67, PASIG CITY, AND JUAN MARCOS ARELLANO, RESPONDENTS.

G.R. No. 137793. September 29, 1999

Ponente: PARDO, J.

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PARDO, J.:

The petition for review on certiorari before the Court assails the resolution[1] of the Court of Appeals dismissing the petition for certiorari filed by petitioner Nilo H. Raymundo to nullify the decision of the Regional Trial Court, Branch 67, Pasig City.[2]

The facts are as follows:

On October 22, 1996, private respondent Juan Marcos Arellano, Jr. filed with the Regional Trial Court, Pasig City, a complaint[3] against petitioner for collection of a sum of money.

On November 12, 1996, petitioner filed with the trial court his answer with counterclaim to the complaint.[4]

On January 7, 1997, at 9:00 a.m., the trial court scheduled a pre-trial conference. It was nonetheless postponed in view of petitioner's motion for leave to file an amended answer.

On January 9, 1997, petitioner filed with the trial court his amended answer with counterclaim[5] together with a manifestation.[6] In time, private respondent filed an opposition[7] to the admission of the amended answer, to which petitioner filed a reply.[8]

On February 24, 1997, the trial court issued an order[9] striking out petitioner's manifestation and amended answer with counterclaim for failure to comply with the provisions of Section 3, Rule 10 of the Rules of Court.

Meanwhile, the trial court scheduled the pre-trial conference on March 5, 1997, at 8:30 a.m., conditioned on whether or not petitioner's amended answer with counterclaim would be admitted.

As his motion to admit amended answer was not yet resolved, petitioner did not attend the pre-trial conference scheduled on March 5, 1997. Later that day, petitioner learned that the trial court declared him in default for non-appearance at the pre-trial conference and allowed respondent to present his evidence ex-parte the following day, March 6, 1997.

On March 6, 1997, petitioner filed with the trial court an urgent motion to set aside default order.[10] Despite the motion, the trial court proceeded to receive private respondent's evidence ex-parte.

On March 7, 1997, petitioner filed with the trial court a motion to set aside respondent's ex-parte evidence.[11]

On September 3, 1997, the trial court, without resolving petitioner's motion to set aside default order and motion to set aside plaintiff's ex-parte evidence, rendered a decision,[12] the decretal portion of which reads:

> "WHEREFORE, judgment is hereby rendered in favor of plaintiff Juan Marco Arellano, Jr. and against defendant Nilo Raymundo who is hereby ordered to pay the following:
>
> "1. to pay plaintiff the amount of P3,625,000.00 representing the principal obligation and to pay the legal interest from October 1, 1996 until fully paid;
>
> "2. to pay P15,000.00 by way of moral damages;
>
> "3. to pay P10,000.00 by way of exemplary damages;
>
> "4. to pay 25% of the amount recovered by way of attorney's fees; and
>
> "5. to pay the cost of suit.
>
> "SO ORDERED.
>
> "Pasig City, September 3, 1997.
>
> "(s/t) APOLINARIO B. SANTOS
> "Judge"

On October 15, 1997, petitioner filed with the trial court a motion for reconsideration[13] of the decision, to which private respondent filed an opposition.[14]

On November 14, 1997, petitioner filed with the trial court an "ad cautelam" omnibus petition for relief from judgment, order or other proceedings.[15]

On May 12, 1998, the trial court issued an order[16] denying petitioner's motion for reconsideration and "ad cautelam" omnibus petition.

On May 28, 1998, petitioner filed with the trial court a notice of appeal[17] to the Court of Appeals[18] from the trial court's decision dated September 3, 1997, and its order dated May 12, 1998, which the trial court approved in an order dated June 9, 1998.[19]

On July 16, 1998, petitioner filed with the Court of Appeals a special civil action for certiorari challenging the validity of the trial court's decision and other proceedings as having been rendered with grave abuse of discretion.[20]

On February 19, 1999, the court of Appeals promulgated its decision dismissing the petition outright ruling that certiorari lies only when there is no appeal or any other plain, speedy or adequate remedy available to petitioner. Also, certiorari will not issue to cure errors in proceedings or erroneous conclusions of law or fact. The Court of Appeals added that where appeal is the proper remedy, certiorari would not lie. The failure of the trial court to resolve petitioner's motion to set aside default order and motion to set aside private respondent's ex-parte evidence before rendering judgment is "purely errors/oversight in the proceedings, not necessarily an error of jurisdiction."[21]

Hence, this petition.[22]

On June 14, 1999, the Court required respondents to comment on the petition, not to file a motion to dismiss, within ten (10) days from notice.[23]

On July 20, 1999, private respondent filed his comment.[24]

We give due course to the petition, which we find meritorious.

The basic issue is whether the Court of Appeals erred in denying the issuance of a writ of certiorari because of the

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availability of appeal. It ruled that the right to appeal is antithetical to a special civil action of certiorari. Petitioner submits that certiorari is proper even where appeal is available where the orders complained of were issued in excess or without jurisdiction and the appeal is not adequate or equally beneficial, speedy and sufficient.

We agree.

An ordinary appeal is the proper remedy in questioning a judgment by default; appeal is also the proper remedy from an order denying a petition for relief of judgment.[25] Hence, in the normal course of events, the Court of Appeals correctly denied the petition for certiorari before it, assailing the trial court's decision by default and denial of the petition for relief, in view of the availability of appeal therefrom. However, in the exceptional circumstances presented in this case, appeal seems to be inadequate; consequently, even if petitioner interposed an appeal, certiorari lies to correct such a despotic exercise of discretion.[26]

The failure of the trial court to act on the twin motions of petitioner to set aside the order of default and to set aside the evidence ex-parte, can not be lightly dismissed as a mere error or oversight. It seriously affected the discretion of the trial court, for such omission amounted to grave abuse of discretion depriving petitioner of the opportunity to be heard on the two crucial motions which, if granted, would have allowed petitioner to regain his standing in court and to present his evidence.

Purportedly, the trial court declared petitioner as in default when he failed to attend the scheduled March 5, 1997 pre-trial conference. Petitioner, however, explained that he did not attend because he was awaiting resolution of his motion to admit amended answer filed as early as January 9, 1997. Thus, petitioner need not attend the March 5, 1997 pre-trial conference because the resolution of his motion to admit amended answer takes precedence over the pre-trial conference. The trial court gravely abused its discretion in declaring petitioner as in default when it was itself remiss in not resolving petitioner's pending motions.

Worse, the trial court acted despotically in allowing respondent to present evidence ex-parte even if petitioner could not be lawfully declared in default for non-appearance due to the trial court's own failure to rule on the admission of his amended answer because the original answer was on record. More, in deciding the case without resolving petitioner's motion to set aside default and motion to set aside ex-parte evidence, the trial court exercised its discretion capriciously, arbitrarily and whimsically.[27] Thus, the trial court gravely abused its discretion amounting to lack or excess of jurisdiction.

We have time and again allowed recourse to the extraordinary remedy of certiorari where an appeal is not adequate, or equally beneficial, speedy and sufficient.[28]

WHEREFORE, the petition is hereby GRANTED. The Resolution of the Court of Appeals in CA-G. R. SP No. 48017, promulgated on February 19, 1999 is REVERSED and SET ASIDE.

In lieu thereof, judgment is hereby rendered setting aside the trial court's decision dated September 3, 1997 and order dated May 12, 1998, in Civil Case No. 65956. This renders petitioner's appeal in CA-G. R. CV No. 60459 of the Court of Appeals functus officio.

Let the case be remanded to the trial court for further proceedings.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In CA-G.R. SP No. 48017, promulgated on February 19, 1999, Justice Bernardo LL. Salas, ponente, Justices Quirino D. Abad Santos, Jr. and Candido V. Rivera, concurring; Petition, Annex “A”, Rollo, pp. 27-30.

[2] In Civil Case No. 65956, dated September 3, 1997, Judge Apolinario B. Santos [deceased], Rollo, pp. 95-97.

[3] Rollo, pp. 47-50.

[4] Rollo, pp. 55-59.

[5] Rollo, pp. 63-69.

[6] Rollo, pp. 61-62.

[7] Rollo, pp. 70-72.

[8] Rollo, pp. 73-74.

[9] Rollo, p. 75.

[10] Rollo, pp. 86-91.

[11] Rollo, pp. 92-94.

[12] Rollo, pp. 95-97.

[13] Rollo, pp. 98-106.

[14] Rollo, pp. 107-110.

[15] Rollo, pp. 111-121.

[16] Rollo, p. 124.

[17] Rollo, pp. 125-126.

[18] Docketed as CA-G. R. CV No. 60459.

[19] Rollo, p. 129.

[20] Docketed as CA-G. R. SP No. 48017, Rollo, pp. 31-46.

[21] CA Decision, Rollo, pp. 27-30, at p. 30.

[22] Petition, filed on April 23, 1999.

[23] Rollo, p. 130.

[24] Rollo, pp. 131-133.

[25] Rule 41, Section 2, 1964 Revised Rules of Court, now Rule 41, Section 1, 1997 Rules of Civil Procedure, as amended. Under this rule, an order denying a petition for relief of judgment is no longer appealable; however, an aggrieved party may file an appropriate action of certiorari under Rule 65 (Ibid.).

[26] Matute vs. Court of Appeals, 26 SCRA 768 [1969]; Omico Mining & Ind. Corp. vs. Vallejos, 63 SCRA 285 [1975]; Zenith Ins. Corp. vs. Purisima, 114 SCRA 62 [1982]; Dimayacyac vs. Court of Appeals, 93 SCRA 265 [1979]; Pioneer Insurance & Surety Corporation vs. Hontanosas, 78 SCRA 447 [1977]; Ramnani vs. Court of Appeals, 221 SCRA 582 [1993].

[27] Salas vs. Castro, 216 SCRA 198, 207 [1992]; Francisco vs. Mandi, 152 SCRA 711 [1987].

[28] PNB vs. Sayo, 292 SCRA 202, 231 [1998]; Africa vs. Sandiganbayan, 287 SCRA 408, 417 [1998]; Rodriguez vs. Court of Appeals, 245 SCRA 150, 152 [1995]; Ruiz vs. Court of Appeals, 220 SCRA 490, 500 [1993]; Hualam Construction and Development Corp. vs. Court of Appeals, 214 SCRA 612, 628 [1992].

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