EMILIANA S. DELA CRUZ, PETITIONER, VS. COURT OF APPEALS AND HON. ANTONIO C. ALFANE AS JUDGE OF RTC BRANCH 9, LEGASPI CITY AND ANTONIO MIRABEL, JR., RESPONDENTS.

G.R. NO. 156878. July 31, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This Petition for Review on Certiorari assails the Resolution[1] dated January 16, 2002 of the Court of Appeals in CA-G.R. SP No. 67992 dismissing the Petition for Annulment of Judgment, and the Resolution[2] dated January 15, 2003 denying the Motion for Reconsideration.

The factual antecedents are as follows:

In October 1999, Antonio Mirabel, Jr. filed a Complaint[3] against petitioner Emiliana S. de la Cruz before the Regional Trial Court of Legazpi City praying for the declaration of nullity of the checks he issued and for damages. Summons was duly served on petitioner. After filing an Entry of Appearance, petitioner's counsel moved for an extension of time to file responsive pleading which the court granted, with warning that failure to do so shall warrant the court to declare petitioner in default.

Petitioner Emiliana failed to file an Answer within the extended period hence she was declared in default. The case was deemed submitted for judgment on the pleadings. On December 20, 1999, the trial court rendered its Judgment,[4] the dispositive portion of which states:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant and declaring DBP Check No. 316239 in the amount of P900,000.00 and DBP Check No. 316240 in the amount of P120,000.00 void from the very beginning and for the defendant to pay the plaintiff P100,000.00 for moral damages plus P50,000.00 for attorney's fees and to pay the costs of the suit.
>
> SO ORDERED.[5]

Petitioner filed an Omnibus Motion to Lift Order of Default and for Reconsideration[6] but was denied.[7]

Petitioner filed an appeal before the Court of Appeals but the same was dismissed for failure to file appellant's brief within the extended period granted by the appellate court.[8] Petitioner's motion for reconsideration was denied,[9] hence she filed a petition for review on certiorari before the Supreme Court docketed as G.R. No. 148073.

On July 18, 2001, the Supreme Court issued a Resolution denying the petition for review on certiorari, thus:

> The petition has no merit.
>
> The dismissal of petitioner's appeal in the Court of Appeals rendered the decision of the RTC final. Consequently, its merits cannot be questioned in this appeal where the only issue is the correctness of the dismissal of petitioner's appeal for failure of petitioner's counsel to file an appeal brief. Petitioner is bound by

> her counsel's negligence. The right to appeal is a mere privilege and, therefore, should be exercised only in the manner prescribed by law. (See Cabellan v. Court of Appeals, 304 SCRA 119 [1999]).
>
> In any event, we hold that petitioner was properly declared in default by the RTC because her former counsel likewise failed to seasonably answer respondent's complaint despite the fact that he had been granted an extension of time for filing the same by the trial court. Hence, upon motion of the respondent, petitioner was declared in default and the case was deemed submitted for judgment on the pleadings. Petitioner's "Omnibus Motion (to Lift Order of Default and for Reconsideration)" was likewise denied. It is, therefore, clear that petitioner cannot raise in this appeal issues that she should have raised in the Court of Appeals.
>
> WHEREFORE, the petition is DENIED for lack of showing that the Court of Appeals committed any reversible error.[10]

On September 19, 2001, petitioner's motion for reconsideration was denied with finality.[11]

Notwithstanding, petitioner filed on December 5, 2001 a Petition for Annulment of Judgment[12] before the Court of Appeals docketed as CA-G.R. SP No. 67992 on grounds that the trial court lacks jurisdiction over the subject matter of the complaint and that it gravely abused its discretion amounting to lack of jurisdiction in hastily rendering the judgment based on the pleadings.

On January 16, 2002, the Court of Appeals rendered the assailed Resolution dismissing the Petition holding that:

> No less than the Supreme Court has declared that petitioner was properly bound by the negligence of her counsel and that the dismissal of petitioner's appeal rendered the RTC decision final.
>
> The instant petition attempts to vary the form of action or adopt a different method of presenting the case. However, petitioner cannot escape the operation of the principle that one and the same cause of action shall not be twice litigated. The principle of res judicata is founded on public policy and necessity which makes it to the interest of the State that there should be an end to litigation and that a party should not be vexed twice for the same cause of action.
>
> WHEREFORE, there being no substantial merit in the petition, the same is DISMISSED pursuant to Sec. 5, Rule 47, Rules on Civil Procedure.
>
> SO ORDERED.[13]

Petitioner's motion for reconsideration was denied; hence, the instant petition for review on certiorari.

Petitioner alleges that the Court of Appeals gravely abused its discretion in dismissing the petition for annulment of judgment. She argues that the lower court has no jurisdiction over the complaint filed by respondent Mirabel and that the judgment on the pleadings was rendered hastily amounting to lack or excess of jurisdiction.

The petition lacks merit.

A petition for annulment of judgment is an equitable remedy granted only in exceptional cases. It can only be availed of where the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.[14] The annulment of judgment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.[15]

In the instant case, a petition for annulment of judgment is not the proper remedy because there are other remedies available to her, such as an appeal. Records show that after the trial court declared petitioner in default and rendered its judgment on the pleadings, petitioner's counsel filed an omnibus motion to lift order of default and for reconsideration. The counsel claimed that he missed the deadline to file the responsive pleading because he was overwhelmed by his professional work load and his church duties.[16] The trial court found petitioner's failure to

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file the answer inexcusable and consequently denied the omnibus motion for lack of merit.[17] Petitioner seasonably filed a notice of appeal before the Court of Appeals. Petitioner's counsel filed several extensions to file brief which were granted. However, no brief was filed within the extended period hence the appeal was ordered dismissed.[18] Petitioner, on her behalf, filed a motion for reconsideration praying that the order dismissing the appeal be set aside because she has allegedly a meritorious defense.[19] However, the Court of Appeals was not persuaded, ruling thus:

> [I]f indeed defendant-appellant has a good and meritorious defense, she should have attached to the instant motion, her appellant's brief or at least an affidavit of merit. This appellant failed to do. Besides, appellant-movant had not filed with this court any pleading dismissing the law firm of Atty. Herminio T. Banico, Jr., and Associates as her counsel.[20]

More importantly, it cannot be said at this point that the remedy of appeal was lost through no fault of petitioner. In the Resolution dated July 18, 2001 in G.R. No. 148073, we categorically declared that "petitioner is bound by her counsel's negligence." Moreover, we held therein that the trial court properly declared petitioner in default and that the Court of Appeals committed no reversible error in dismissing the appeal, thereby rendering the trial court's decision final. We find no reason to depart from our previous rulings.

There is likewise no merit in petitioner's claim that the decision of the trial court is void for lack of jurisdiction, hence it should be annulled. In our Resolution dated July 18, 2001 in G.R. No. 148073, we ruled that "the dismissal of petitioner's appeal in the Court of Appeals rendered the decision of the RTC final."[21] By declaring the finality of the trial court's decision, we in effect ruled that the trial court properly acquired jurisdiction over the subject matter and correctly disposed of the same. Petitioner can no longer attack said final decision by filing the instant petition for annulment of judgment.

Besides, as correctly held by the Court of Appeals in its assailed Resolution dated January 16, 2002, petitioner cannot raise in the petition for annulment of judgment the issues which should have been raised in the petition for review. The issues on the alleged lack of jurisdiction of the trial court, the insufficiency of the allegations in the complaint to prove the nullity of the negotiable instrument, and the alleged hasty resolution of the complaint, should have been raised by petitioner in the petition for review filed in the Court of Appeals. However, she failed to file appeal brief despite several extensions granted by the appellate court. In the motion for reconsideration of the dismissal of the appeal, petitioner claimed that she was unjustifiably deprived of the right to present a meritorious defense because of the negligence of her counsel.[22] As correctly observed by the Court of Appeals:

> [I]f indeed defendant-appellant has a good and meritorious defense, she should have attached to the instant motion, her appellant's brief or at least an affidavit of merit. This appellant failed to do.[23]

Petitioner admits that she raised the issue of lack of jurisdiction only when she filed the petition for review on certiorari before this Court in G.R. No. 148073,[24] and not in the petition for review before the Court of Appeals.

WHEREFORE, based on the foregoing, the petition is DENIED. The Resolution dated January 16, 2002 of the Court of Appeals in CA-G.R. SP No. 67992 dismissing petitioner's Petition for Annulment of Judgment and the Resolution dated January 15, 2003 denying petitioner's Motion for Reconsideration, are AFFIRMED.

SO ORDERED.

Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

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[1] Rollo, pp. 98-100. Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate

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Justices Eriberto U. Rosario, Jr. and Amelita G. Tolentino.

[2] Id. at 117-118. Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Amelita G. Tolentino.

[3] Id. at 33-35.

[4] Id. at 37-40. Penned by Judge Antonio C. Alfane.

[5] Id. at 40.

[6] Id. at 45-52.

[7] Id. at 56.

[8] Id. at 60; docketed as CA-G.R. CV No. 66898; penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Buenaventura J. Guerrero and Eliezer R. delos Santos.

[9] Id. at 72-74.

[10] Unsigned Resolution.

[11] Rollo, p. 96.

[12] Id. at 21-30.

[13] Id. at 100, citations omitted.

[14] RULES OF COURT, Rule 47, Sec. 1.

[15] Id., Sec. 2.

[16] Rollo, p. 46.

[17] Id. at 56.

[18] Id. at 73.

[19] Id. at 62-66.

[20] Id. at 73.

[21] Id. at 87.

[22] Id. at 63.

[23] Id. at 73.

[24] Id. at 75.

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