ATTY. RAMON B. CENIZA, PETITIONER, VS. DANIEL WISTEHUFF, SR., DANIEL WISTEHUFF III, MARITES GONZALES-WISTEHUFF, BRYAN K. WISTEHUFF, ATTY. FRANCIS M. ZOSA, AND GEMALYN PETEROS, R...

G.R. NO. 165734. June 16, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45, Rules of Court, of the Order[1] dated April 15, 2004 of the Regional Trial Court (RTC) of Cebu City, in Civil Case No. CEB-29783 dismissing the Petition for Indirect Contempt of petitioner Atty. Ramon B. Ceniza against respondents Daniel Wistehuff, Sr., Daniel Wistehuff III, Marites Gonzales-Wistehuff, Bryan K. Wistehuff, Atty. Francis M. Zosa, and Gemalyn Peteros. Also assailed in this petition is the Order[2] denying the motion for reconsideration of said decision. Petitioner prays, inter alia, that the court enjoin the Court of Appeals (CA) from enforcing its Resolution in CA-G.R. SP No. 85301 granting the plea of Inmark Marketing Philippines, Inc. (IMPI) for a temporary restraining order, as well as the Resolution dated October 14, 2004 which granted IMPI's plea for a writ of preliminary injunction on a P50,000.00 bond.

Petitioner and his client Daniel Wistehuff, Sr. organized and established IMPI.[3] Petitioner owns 5% of the shares of stocks of the IMPI, and the other stockholders are respondents Daniel Wistehuff III, Marites Gonzales-Wistehuff, and Bryan K. Wistehuff.[4]

Petitioner, as plaintiff, filed a Complaint against IMPI and the Wistehuffs with the RTC of Cebu City for accounting, declaration of dividends, specific performance, damages and attorney's fees with a plea for a writ of preliminary mandatory injunction. The case was raffled to Branch 11 of the court and docketed as Civil Case No. CEB-26274-SRC. The complaint contained the following prayer:

> x x x [That a] writ of preliminary mandatory injunction be issued ordering defendant corporation, its President Daniel Wistehuff III and its former President Daniel Wistehuff, Sr. to: a) produce all financial documents of the corporation from 1996 up to the present and deposit the same with the Court; b) faithfully comply with the terms of the Retainership Contract to pay his retainer fee of P35,000.00 per month and the extra legal services rendered; a Management Committee of a Receiver be constituted; ordering defendants to make full accounting; ordering the declaration of stock and cash dividends; ordering the individual defendants to whom legal services were rendered to pay attorney's fees of not less than P200,000.00; ordering defendants Daniel Wistehuff III and Daniel Wistehuff, Sr., jointly and severally, to pay plaintiff not less than P500,000.00 in moral damages and not less than P250,000.00 in exemplary damages, attorney's fees of not less than P100,000.00 and litigation expenses of not less than P10,000.00, plus appearance fees amounting to P2,000.00 per hour. x x x[5]

Petitioner thereafter amended his complaint, alleging therein that it had been filed by way of a derivative suit against the defendants. He prayed for an accounting of income and expenses of the IMPI, declaration of dividends, enforcement of his right to financial statements, attorney's fees, and damages.[6] In the course of the proceedings, the RTC issued an Order on October 10, 2001 denying his plea for the appointment of a receiver or management committee pendente lite.[7]

On March 27, 2003, however, the court rendered judgment in favor of petitioner. The fallo of the decision reads:

> WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the latter as follows:
>
> - to make a true and correct accounting of the earnings of the corporation which will be the basis of the declaration of dividends;
>
> - to enjoin defendant Inmark Marketing Philippines, Inc. and the individual defendants to comply with the terms and conditions of plaintiff Ceniza's Retainer Contract;
>
> - to order the individual defendants to whom services were rendered to pay attorney's fees of P200,000.00;
>
> - to order defendants Daniel Wistehuff III and Daniel Wistehuff, Sr., jointly and severally, to pay plaintiff the sum of P500,000.00 in moral damages and P25,000.00 in exemplary damages;
>
> - to order defendants Daniel Wistehuff III and Daniel Wistehuff, Sr. to pay, jointly and severally, attorney's fees of P100,000.00 and litigation expenses of P10,000.00.
>
> SO ORDERED.[8]

Petitioner moved for the execution of the decision pending appeal. On August 14, 2003, the RTC issued an Omnibus Order,[9] partially granting the motion. The dispositive portion of the Order reads:

> WHEREFORE, in view of [the] foregoing premises, the Court hereby does the following:
>
> (a) Orders the issuance of a writ of execution to enforce the portion of the judgment rendered in this case on March 27, 2003 ordering the defendants to make a true and correct accounting of the earnings of Inmark Marketing Philippines, Inc. which will be the basis of declaration of dividends;
>
> (b) Denies the plaintiff's motion for immediate execution of the portions of the judgment relating to awards for damages, attorney's fees, and expenses of litigation; and
>
> (c) Orders the release to Judge Jose P. Burgos of the receiver's cash bond in the sum of P25,000.00.
>
> SO ORDERED.[10]

Consequently, a Writ of Execution[11] was issued by the court on September 11, 2003, a copy of which was served on the defendants on the same day. On September 15, 2003, the IMPI, through Atty. Francis M. Zosa of the law firm of Zosa and Quijano, submitted the following documents to the sheriff in compliance with the writ issued by the court: (a) Report of Sta. Ana Rivera & Co.; (b) Balance Sheet; (3) Statements of Operation; (4) Statements of Changes in Equity; (5) Statements of Cash Flows; and (6) Notes to Financial Statements pertaining to the corporation.[12]

Believing that the defendants-stockholders and their counsel acted in conspiracy with each other and willfully and deliberately refused to comply with the writ of execution issued by the court, petitioner filed against them a petition for indirect contempt under Rule 39, Section 11, in relation to Rule 71, Section 3(d) of the Rules of Court, in the RTC of Cebu City. Petitioner alleged therein that:

> - Following the willful, deliberate and contumacious refusal of respondents, this time with the participation of, and in collusion with, respondent Atty. Francis M. Zosa, their counsel in the intracorporate case before Branch 23, when said counsel acting for and in behalf of respondents willfully, deliberately, insultingly and contumaciously submitted the 2002 Financial Statement of Inmark (Annexes "E", "F", and "F-1" hereto attached) which he very well knew fraudulently and incorrectly reported a loss and, having been marked and presented by him in evidence, is not, and cannot possibly be, in compliance with the Writ of Execution served

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upon him and his client, which directed "the defendants to make a true and correct accounting of the earnings of Inmark Marketing Philippines, Inc. which shall be the basis of declaration of dividends."

Plaintiff (now petitioner) then moved the Court for a show cause order against the same respondents herein but the Honorable Court, thru Judge Generosa A. Labra, in its Order dated 10 December 2003 ruled that indirect contempt must be initiated by a verified petition with supporting particulars and certified true copies of documents or papers involved in accordance with the provisions of Sec. 4, Rule 71 of the 1997 Rules, hence, the instant petition;

- Pursuant to the above-cited Sec. 4 of Rule 71, it is within the discretion of the Honorable Presiding Judge of Branch 23 to order the consolidation of the present petition which is a Special Civil Action and Civil Case No. CEB-26274-SRC which is the principal action pending before Branch 23 for joint hearing and resolution/decision.

- The 2002 Financial Statement is incorrect and fraudulent based on the judgment of this Honorable Court in Civil Case No. CEB-26274-SRC which found that:

1) P28,000,000.00 was paid for the residential lot and building occupied by defendant Daniel Wistehuff, Sr. located at Northtown Homes (Decision, p. 6);

2) P14,000,000.00 was paid for the residential lot and building occupied by defendant Daniel Wistehuff III located at Ma. Luisa Subdivision (Ibid);

- Other hidden or misappropriated earnings of defendant corporation were:

1) Dollar deposits of Inmark's fund deposited with UCPB, Makati Branch, under Dollar Account No. 01-317-300307-0 from which are sourced funds transferred to 317-000429-1 UCPB, Banilad Branch, which is an Inmark account, per CPA Celso Inocente's report dated July 5, 2002 (Annex "E", etc. Urgent Omnibus Motion) who at one time was engaged as a member of the staff of the former Receiver;

2) $75,000.00 deposited by defendant Daniel Wistehuff III with a bank designated by the Philippine Retirement Authority in support of his application for retiree's visa;

3) The amounts used for the purchases of several cars/motor vehicles of the individual defendants with the collective value conservatively estimated at P3,000,000.00;

4) Funds utilized for the purchase of furnitures and fixtures of the residences located at Northtown Homes and at the Ma. Luisa Subdivision;

5) And other hidden earnings/funds which are yet to be discovered.

- The present contempt charges arose out of or are related to Civil Case No. CEB-26274-SRC before Branch 23 of this Honorable Court which rendered the judgment which[,] being in a nature of special judgment[,] may be enforced by contempt proceedings if the same should be disobeyed pursuant to Sec. 11, Rule 39 of the 1997 Rules.[13]

Petitioner prayed that judgment be rendered against respondents, as follows:

- To require the respondents to comment on the petition within such period as may be fixed by the Court (Sec. 3, Rule 71) and thereafter to set the date for hearing on the contempt charge requiring all respondents to appear in person at such hearing. (But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.) [Sec. 3];

- If the hearing is not ordered to be had forthwith, to allow the release of the respondents from custody upon filing bonds in amounts fixed by the Court for their appearance at the next hearing of the charge (Sec. 6);

- When respondents, released on bail, fail to appear on the date set under item 2 of the reliefs herein prayed, for this Honorable Court to issue another order of arrest as well as to declare the bonds of respondents to be forfeited and confiscated, or both, such bonds being understood to answer for the measure of damages to the extent of the loss or injury sustained by petitioner by reason of misconduct for which the contempt charge was prosecuted, with costs of the proceedings and that such recovery shall be ordered by the Court for the benefit of the petitioner (Sec. 9);

- After hearing, to SENTENCE to the maximum, in view of aggravating circumstances attendant to the commission of the offenses, the respondents guilty of indirect contempt according to the penalties prescribed in Sec. 7, Rule 71 which consists of a fine not exceeding P30,000.00 or imprisonment not exceeding 6 months or both, without prejudice to the provisions of Sec. 8 which calls for an indefinite imprisonment should respondents refuse or omit to do an act which are yet in their power to perform.

Petitioner prays for such other reliefs and remedies just and equitable in the premises.[14]

The case was docketed as CEB-29783 and raffled to Branch 23 of the RTC of Cebu. However, the case was re-raffled to Branch 16 of said court.

In their answer to the petition, respondents averred that only the dispositive portion of the decision on the subject execution may be enforced by the sheriff, and that they complied with the writ issued by the court and submitted a true and correct accounting of the earnings of the IMPI which will be the basis of the computation of dividends.[15]

On April 15, 2004, the RTC issued an Order[16] dismissing the petition for indirect contempt proceedings based on the Answer of the respondents. The court ruled that the petition for indirect contempt was criminal in nature; hence, Ceniza, as petitioner, had to prove the guilt of the respondents beyond reasonable doubt. It declared that petitioner had not overcome the presumption of innocence in favor of respondents, who had sufficiently complied with the writ of execution by submitting the 2002 Financial Statement containing all the data required of an accounting.[17]

On May 3, 2004, petitioner filed a Motion for Reconsideration of the RTC Order on the ground that his petition for indirect contempt was civil in nature; he adduced the requisite quantum of evidence to prove respondents' guilt for indirect contempt; and that they failed to present the auditor who prepared the 1992 Financial Statement of IMPI. He also alleged that he was denied his right to due process when the court dismissed his petition without conducting any hearing. He pointed out that the auditor who prepared the 2002 Financial Statement of IMPI was not presented and consequently could not be cross-examined by him. He cited the ruling of this Court in Slade Perkins v. Director of Prisons,[18] as precedent, and prayed:

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court (preferably through another Presiding Judge in view of the requested voluntary inhibition of Hon. Agapito L. Hontanosas, Jr.), to RECONSIDER and SET ASIDE the order of this Honorable Court thru Judge Hontanosas dated 15 April 2004 and for this Honorable Court (preferably through another Presiding Judge) to ACT on petitioner's OMNIBUS MOTION (dated 15 January 2004):

1) TO SET CONTEMPT CHARGE FOR HEARING AND TO REQUIRE RESPONDENTS TO APPEAR IN PERSON;

2) FOR THE ISSUANCE OF A HOLD DEPARTURE ORDER;

3) TO EXPUNGE COUNTERCLAIM.[19]

On May 19, 2004, petitioner also filed a Motion for the appointment of a commissioner.

On July 7, 2004, the RTC issued an Order[20] denying his Motion for Reconsideration of the Order of the Court on the ground that respondents' acquittal is not appealable, or cannot be the subject of a motion for reconsideration as such a motion amounted to an appeal. The court ruled that, as in criminal proceedings, an appeal would not lie from the order of dismissal of, or exoneration from, a charge of contempt of court.[21] The registry return receipt showed that petitioner received a copy of the Order on July 13, 2004.

On July 15, 2004, the court issued an Order[22] in Civil Case No. CEB-26274-SRC granting petitioner's Motion for the Appointment of Atty. Bayani Atup as Commissioner to receive and report evidence to the court on the following issue of fact - the true and correct accounting of the earnings of IMPI since the start of its operations in 1996 up to the present. The Commissioner was ordered to file a report within ten (10) days after completion of proceedings, and to attach all exhibits, affidavits, depositions, papers and transcripts of the testimonial evidence presented before him.

Petitioner filed a "Notice of Appeal with Alternative Motion to Squarely Rule"[23] on July 19, 2004. In his alternative motion, he prayed that the court resolve the issues raised in his motion for reconsideration premised on the following grounds: (1) this being a case for civil indirect contempt, an appeal lies from the order finding respondents guilty or absolving them of the charge; and (2) even in criminal proceedings, an appeal lies in instances where there has been lack of due process or lack of jurisdiction.

During the hearing of the motion, the petitioner offered in evidence Exhibits "A" to "F" and their sub-markings in support of his motion.[24]

On September 30, 2004, the RTC issued an Order[25] denying the Alternative Motion of petitioner and declining to give due course to his Notice of Appeal. It ruled that, as gleaned from the relief prayed for in the Petition for Indirect Contempt, petitioner's purpose was primarily punishment and, only incidentally, compensatory or remedial. The acquittal of the respondents was not subject to a motion for reconsideration or appeal.

Petitioner received a copy of the September 30, 2004 Order on October 5, 2004. On November 10, 2004, he filed with this Court a Motion for Extension of time to file a petition for review under Rule 45 of the Rules of Court. On December 1, 2004, the Court issued a Resolution[26] granting the motion and gave him an extension of 30 days counted from the expiration of the reglementary period and conditioned upon the timeliness of the motion.

The IMPI filed a petition for certiorari, prohibition and mandamus with the Court of Appeals for the nullification of the July 14, 2004 Order of the trial court in Civil Case No. CEB-26274-SRC (which granted petitioner's Motion for the Appointment of a Commissioner to receive evidence of the parties, and report on the true and correct accounting of the earnings of IMPI from 1996 up to the present). The case was docketed in the appellate court as CA-G.R. SP No. 85301. On August 4, 2004, the CA issued a Resolution[27] granting the motion of IMPI for a temporary restraining order, and thereafter, a Resolution[28] dated October 14, 2004 granting the plea of IMPI for a writ of preliminary prohibitory injunction.

Petitioner then filed a petition for review on certiorari with this Court, seeking to nullify the April 15, 2004 and September 30, 2004 Orders of the RTC in Case No. CEB-29783, as well as the August 4, 2004 and October 14, 2004 Resolutions of the appellate court in CA-G.R. SP No. 85301. He alleged the following therein:

> - The Court a quo seriously erred in not holding that Civil Case No. CEB-29783 for Indirect Contempt being civil in nature, a Motion for Reconsideration and an appeal from a judgment exonerating the respondents is not barred by double jeopardy.
>
> - The Court a quo seriously erred in not finding respondents-appellees guilty as a matter of law of Indirect Civil Contempt and sentencing them accordingly.[29]

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Petitioner avers that contempt proceedings may actually be either civil or criminal: it is criminal when the purpose is to vindicate the authority of the court and protect its outraged dignity; it is civil when there is failure to do something ordered by a court to be done for the benefit of a party. He asserts that his petition for indirect contempt below is civil in nature for the reason that the accounting ordered by the trial court was for the benefit of one party and the purpose of the contempt proceeding below was not to vindicate the authority of the court and to protect its outraged dignity. He maintains that while criminal contempt proceedings should be conducted according to the principles and rules applicable to criminal cases, this is not so in civil contempt proceedings. Accordingly, an appeal from the decision dismissing the same is not barred by double jeopardy.[30]

Petitioner further posits that respondents should be found guilty of indirect contempt for willfully and deliberately refusing to submit a full and correct accounting of the earnings of the corporation. He posits that the 2001 Financial Statements submitted by the corporation do not constitute compliance with the Order to render a true and correct accounting as they do not merit faith and credence but show documented fraud, wrongdoing and deception.[31] Petitioner prays that:

> - The challenged order of the Court a quo dated 15 April 2004 issued by ex-judge Agapito Hontanosas, Jr. (formerly of Branch 16 of the Regional Trial Court of Cebu) dismissing on the merits the petition for contempt in Civil Case No. CEB-29783 and the other challenged order of the Court a quo issued by Judge Simeon P. Dumdum, Jr. of Branch 7 of the same Regional Trial Court of Cebu, denying petitioner's Motion for Reconsideration on grounds of double jeopardy, be REVERSED and SET ASIDE;
>
> - Pending final outcome of this petition, and in view of the continued, deliberate, willful and intransigent refusal of respondents to render a true and correct, full and complete accounting of the earnings of the corporation for over 1 year and 6 months now since the judgment dated 27 March 2003 in Civil Case No. CEB-26274-SRC, to HOLD respondents in the CUSTODY of the Court (Sec. 6, Rule 71) to be released only upon their filing the commensurate bonds the amounts of which shall be fixed corresponding to the measure of damages which shall be to the extent of the loss or injury sustained, and [continues] to be sustained, by petitioner Ramon B. Ceniza (Sec. 9);
>
> - To render a judgment FINDING respondents Daniel Wistehuff, Sr., Daniel Wistehuff, Jr., Bryan K. Wistehuff, Atty. Francis M. Zosa and Gemalyn Peteros (except respondent Marites Gonzales-Wistehuff) guilty of civil contempt in said case and SENTENCING them accordingly by ordering the continued detention of respondents (Sec. 8, Rule 71) until they shall have fully complied with the true and correct, full and complete accounting of the earnings of Inmark Marketing Phils., Inc. which shall be the basis of the declaration of dividends as decreed by the Court a quo in its judgment dated 27 March 2003 in Civil Case No. CEB-26274-SRC;
>
> - In the interest of justice and equity, and on account of extreme urgency, pending final outcome of this petition, that the Special 18th Division of the Court of Appeals in CA-G.R. [SP] No. 85301, be TEMPORARILY RESTRAINED, and later PERMANENTLY RESTRAINED, from enforcing its October 14, 2004 Resolution and the writ of preliminary injunction issued pursuant thereto stopping the implementation of the July 15, 2004 Order of Judge Simeon P. Dumdum, Jr. in Civil Case No. CEB-26274-SRC appointing a commissioner tasked to conduct an accounting of the true and correct earnings of Inmark Marketing Phils., Inc. which shall be the basis for the declaration of dividends;
>
> - Pending final action on this Petition, to further ISSUE a Hold-[D]eparture Order to the Commissioner of Immigration to prevent the respondents from avoiding the jurisdiction of this Honorable Court and thereby preserve its authority and dignity which should be respected even by foreigners, especially in the light of the fact that respondent Daniel Wistehuff, Sr. has already fled from the jurisdiction of Philippine Courts; and
>
> - In regard to respondent Atty. Francis M. Zosa, to require him to EXPLAIN why he should not be disbarred.

> Petitioner prays for such other reliefs and remedies just and equitable in the premises.[32]

For their part, respondents aver that the proper remedy of petitioner to question an order denying due course to a notice of appeal is a petition for certiorari under Rule 65 of the Rules of Court and not a petition for review under Rule 45. They assert that the RTC correctly denied the Notice of Appeal of petitioner since the Petition for Indirect Contempt filed by him below was criminal in nature; hence, the decision of the trial court dismissing the charge was not appealable. Moreover, the RTC correctly dismissed petitioner's contempt charge because they submitted the report of the independent auditor together with the other documents, which, according to them, serve as a true and correct accounting of the earnings of the corporation.[33]

The issues for resolution are: (1) whether the petition states a cause of action for the nullification of the assailed Resolutions in CA-G.R. SP No. 85301; (b) whether the petition for indirect contempt filed by the petitioner below is criminal in nature; (c) whether the assailed Orders of the RTC in Civil Case No. CEB-29783 are appealable; and (d) whether a petition for certiorari under Rule 65 of the Rules of Court is the proper remedy in seeking to nullify the assailed Orders of the RTC.

On the first issue, we find that the petition fails to state a cause of action for petition for review on certiorari. The assailed Resolutions of the CA are interlocutory in nature and not appealable; to nullify the same, the proper remedy of the petitioner was to file a petition for certiorari under Rule 65, on the allegation that the CA acted with grave abuse of its discretion amounting to excess or lack of jurisdiction. Consequently, the petition for review on certiorari of the petitioner for the nullification of the assailed resolutions of the appellate court should be as it is hereby denied. It must be stressed that a petition for review on certiorari under Rule 45 of the Rules of Court is a mode of appealing a judgment or final order of the CA.

Considering that the rest of the issues are interrelated, the Court shall delve into and resolve them simultaneously.

The pertinent provision of the Rules of Court is Section 3, Rule 71, which provides:

> SEC. 3. Indirect contempt to be punished after charge and hearing. - After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
>
> (b) Disobedience of, or resistance to, a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
>
> (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;
>
> (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
>
> (e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
>
> (f) Failure to obey a subpoena duly served;
>
> (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

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But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.

Section 7 of the same Rule provides for the punishment of indirect contempt, thus:

> SEC. 7. Punishment for indirect contempt.- If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand (P30,000) pesos or imprisonment not exceeding six (6) months, or both. If he is adjudged guilty of contempt committed against a lower court, he may be punished by a fine not exceeding five thousand (P5,000) pesos or imprisonment not exceeding one (1) month, or both. If the contempt consists in the violation of a writ of injunction, temporary restraining order or status quo order, he may also be ordered to make complete restitution to the party injured by such violation of the property involved or such amount as may be alleged and proved.
>
> The writ of execution as in ordinary civil action shall issue for the enforcement of a judgment imposing a fine, unless the court otherwise provides.

Section 8 of the same Rule further states:

> SEC. 8 Imprisonment until order obeyed.-When the contempt consists in the refusal or omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the court concerned until he performs it.

In the recent case of Montenegro v. Montenegro,[34] the Court distinguished criminal contempt from civil contempt, as follows:

> Contempt, whether direct or indirect, may be civil or criminal depending on the nature and effect of the contemptuous act. Criminal contempt is "conduct directed against the authority and dignity of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court to disrepute or disrespect." On the other hand, civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein and is therefore, an offense against the party in whose behalf the violated order was made. If the purpose is to punish, then it is criminal in nature; but if to compensate, then it is civil.[35]

Thus, contempt proceedings has a dual function: (1) vindication of public interest by punishment of contemptuous conduct; (2) coercion to compel the contemnor to do what the law requires him to uphold the power of the Court, and also to secure the rights of the parties to a suit awarded by the Court.[36]

Contempt proceedings are neither wholly civil nor altogether criminal. It may not always be easy to classify a particular act as belonging to one of those two classes. It may partake of the characteristics of both.[37] If it is remedial and coercive in nature, it is civil; the parties are the individuals whose private rights and remedies they were instituted to protect or enforce. The absence of willfulness does not release one from civil contempt.[38] It is civil if it is instituted to preserve and enforce the rights and administer the remedies of the parties to which the court has to force them to obey.

Proceedings for contempt are criminal in nature if presented to preserve the power of the courts and to punish for disobedience to their orders. Criminal contempt involves no element of personal injury; it is directed against the power and dignity of the court and the private parties have little, if any interest in the proceedings for its punishment.[39]

The Rules of Court provides for the following punishment for the contemnor: fine or imprisonment, or both.

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two classes of contempt. If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court. But if the contempt consists in the refusal of a party or a person to do an act which the court has ordered him to do for the benefit or the advantage of a party to a suit or action pending before it, and he is committed until he complies with the order, the commitment is in the nature of an execution to enforce the judgment of the court, and the party in whose favor that judgment was rendered is the real party-in-interest in the proceedings.[40]

It is true that punishment by imprisonment may be remedial as well as punitive, and many civil contempt proceedings have resulted not only in the imposition of a fine, payable to the complainant, but also in committing the defendant to prison. But imprisonment for civil contempt is ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, either in form or substance, is mandatory in its character. Imprisonment in such cases is not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he had refused to do. The order in such cases is that the defendant stand committed unless and until he performs the affirmative act required by the court's order.[41] The defendant can end his imprisonment and discharge himself at any moment by doing what he had previously refused to do. In fine, the defendant carries the keys of his prison in his own pocket.[42]

It may happen that, in proceedings for criminal contempt, where the imprisonment is solely punitive to vindicate the authority of the courts, the complainant may also derive some incidental benefits from the fact that such punishment tends to prevent a repetition of the disobedience. However, such indirect consequences will not change imprisonment which is merely coercive and remedial into that which is solely punitive in character or vice- versa.[43]

We agree with the contention of petitioner that, as gleaned from the averments of his petition and the relief prayed for, the indirect contempt charge filed by him below was civil in nature. He submits that respondents willfully and deliberately refused to comply with the decision of the court requiring them to submit a true and correct accounting of the earnings of IMPI which could be the basis of the declaration of dividends and that the 2002 Financial Statement submitted by them did not comply with such decision. Petitioner maintains that said financial statement is fraudulent, and the purpose of the petition was to have the respondents punished for their alleged recalcitrance and to compel them to comply with the court's decision. Indeed, the petitioner's prayer, that respondents be incarcerated and remain in detention until they comply with the decision of the court conformably with Rule 71, Section 8 of the Rules of Court, is in the nature of an execution to enforce the judgment. Thus, the punishment sought by petitioner for the respondents is not punitive in nature, but designed for his own benefit and advantage, and not for the purpose of vindicating the dignity of the court and preserving its power.

Since the proceedings below is civil in nature, petitioner had the right to file a motion for reconsideration of the RTCï¿½s April 15, 2004 Order and to appeal therefrom within the period therefor after its denial.[44] However, the RTC disallowed the appeal on its perception that the petition for indirect contempt was criminal in nature and that, therefore, no motion for reconsideration or appeal could be filed, since respondents would thereby be placed in double jeopardy. Such disallowance by the trial court of petitioner's appeal cannot be the subject of an appeal as provided for in Section 1(d) of Rule 41 of the Rules of Court. Under Section 3, Rule 65, the remedy from an Order disallowing an appeal is to file a petition for mandamus with the CA.[45] However, petitioner filed with this Court a petition for review on certiorari under Rule 45; patently then, the remedy resorted to by petitioner is inappropriate.

Anent the issue of whether or not respondents are liable for indirect contempt, we need not resolve the same in this case for the reason that the trial court had already granted petitioner's plea for the appointment of a commissioner to receive the evidence of the parties. The Order of the trial court appointing a commissioner is

now the subject of the petition filed by respondents in CA-G.R. SP No. 85301.

IN LIGHT OF THE FOREGOING, the petition is DENIED. No pronouncement as to costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Presiding Judge Agapito L. Hontanosas, Jr., rollo, pp. 83-90.

[2] Rollo, p. 59.

[3] Id. at 62-63.

[4] Id. at 54.

[5] Id. at 59.

[6] Id.

[7] Id. at 60.

[8] Id. at 64-65.

[9] Id. at 66-67.

[10] Id. at 67.

[11] Id. at 68-69.

[12] Id. at 72-79.

[13] Id. at 56-57.

[14] Id. at 57.

[15] Id. at 80-82.

[16] Id. at 83-90.

[17] Id. at 87-90.

[18] 58 Phil. 271 (1933).

[19] Rollo, p. 14.

[20] Penned by Judge Simeon P. Dumdum, Jr.; records, pp. 111-112.

[21] Records, p. 112.

[22] Rollo, pp. 95-98.

[23] Records, pp. 114-117.

[24] Id. at 134.

[25] Rollo, pp. 91-94.

[26] Id. at 7.

[27] Id. at 99-100.

[28] Id. at 101-102.

[29] Id. at 27-28.

[30] Id. at 249-254.

[31] Id. at 261.

[32] Id. at 37-38.

[33] Id. at 231-234.

[34] G.R. No. 156829, June 8, 2004, 431 SCRA 415.

[35] Id. at 424-425.

[36] Penfield Company of California v. Securities and Exchange Commission, 330 U.S. 585; 67 S.Ct. 918 (1947).

[37] People v. Godoy, 312 Phil. 977, 998 (1995).

[38] McComb v. Jacksonville Paper Co., 336 U.S. 187, 69 S.Ct. 497 (1949).

[39] Philippe v. Window Glass Cutters League of America, 99 F. Supp.369 (1951).

[40] Bessette v. W.B.Conkey Co. 194 U.S. 324, 24 S.Ct. 665, 48 L.Ed. 997 (1904).

[41] Gompers v. Buck's Stove & Range Company, 221 U.S. 418, 31 S. Ct. 492 (1911).

[42] In re Nevitt, 117 F. 448 (1902).

[43] Gompers v. Buck's Stove & Range Company, supra note 41.

[44] See Converse Rubber Corporation v. Jacinto Rubber & Plastics Co., Inc., G.R. Nos. L-27425 & L-30505, April 28, 1980, 97 SCRA 158, 183.

[45] Herrera, COMMENTS ON THE 1997 RULES OF CIVIL PROCEDURE, Vol. 7, 1997 ed., 413.

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