

**MANUEL GUANZON, PETITIONER, VS. HON. PATERNO D. MONTESCLAROS, PRESIDING JUDGE, CITY COURT OF CEBU, FERDINAND BRIONES AND ROSARIO BRIONES, RESPONDENTS.**

*G.R. No. 59330. June 28, 1983*

Ponente: ESCOLIN, J.

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**ESCOLIN, J.:**

This Court affirms the decision of the Court of First Instance of Cebu in Civil Case No. R-19283 which dismissed the petition for certiorari filed by petitioner, and reiterates the rule that certiorari will not lie where the remedy of appeal is available.

The factual setting of this case is undisputed. On April 15, 1977, respondents Ferdinand Briones and Rosario Briones instituted against petitioner Manuel Guanzon an action for ejectment in the City Court of Cebu, docketed as Civil Case No. 19392. It was prayed that "judgment be rendered in favor of the plaintiffs and against the defendant: ordering the latter to vacate the premises; to pay accrued rentals in the amount of P2,950.00 corresponding to the months of February and March, 1977; to pay the rentals for the previous months in the total amount of P4,711.59; to pay the telephone bills for the months of July, August and September, 1966, in the amount of P435.00; to pay rentals for the current months until defendants vacate the premises; to pay interest at 12% per annum on all overdue rentals; to pay moral and compensatory damages in the amount of P2,000.00; to pay attorney's fees in the amount of P3,000.00; and to pay the costs of this suit. Plaintiffs pray for any relief which the court may deem just under the premises."

Petitioner was served with summons and copy of the complaint on April 21, 1977. At the hearing on July 7, 1977, petitioner appeared and asked for a 10-day extension within which to file his answer, which the court granted.

For failure of petitioner to file an answer, the court, on motion of private respondents, issued an order dated January 20, 1978, declaring petitioner in default. Private respondents presented their evidence ex parte and on the basis thereof, the court rendered a judgment dated February 6, 1978, as follows:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter to pay the former the following, to wit:

"(1) Ordering the defendants to pay the plaintiff jointly and severally the sum of P9,461.59 which constituted as a remaining balance of the principal obligation with interest at the rate of 12% per annum from the time of default to the time the total obligation shall have been fully paid;

"(2) Ordering the defendants to pay the plaintiff the sum of P3,000.00 in concept of attorney's fees;

"(3) Ordering the defendants to pay the amount of P2,000.00 for moral and compensatory damages and to pay the costs of this suit."

Petitioner was not furnished copy of said decision. It appears, however, that after he was served with the writ of execution, he obtained a copy of the decision from the clerk of court. Forthwith he filed a motion to lift the order

of default and to set aside the judgment, but the same was denied. Petitioner filed a motion for reconsideration of the said order and, upon denial thereof, he filed a second motion for reconsideration, which was likewise denied.

Thereafter, petitioner filed a petition for certiorari in the respondent Court of First Instance of Cebu, presided by Judge Alfredo Marigomen, seeking to quash the writ of execution and to set aside the judgment in Civil Case No. 19392. On February 25, 1981, the respondent court issued a decision dismissing the petition.

Hence, the instant petition for review.

The petition is devoid of merit. In *Luzon Rubber and Manufacturing, Co. vs. Estaris*[1], this Court set forth the remedies available to a defendant declared in default by the city or municipal court [now metropolitan trial court, municipal trial court, municipal circuit court] in order to enable him to restore his standing-in court, as follows: (1) he may ask the court within one (1) day after notice of the order of default to set aside such order by appearing and showing to the satisfaction of the court that his failure to appear was due to fraud, accident, mistake or excusable negligence under Section 13, Rule 5 of the Revised Rules of Court; or (2) he may, if he fails to avail himself of this remedy and the judgment has become final and executory, file a petition for relief in Court of First Instance under Section I of Rule 38 of the Revised Rules of Court. He may also file a motion to lift the default judgment and ask for a new trial before the judgment becomes final and executory under Section 16 of Rule 5.

Should the court order the dismissal or denial of his petition for relief or motion to lift the judgment by default, the defendant may interpose an appeal from such order. In the case at bar, petitioner failed to avail of this remedy. It is a rule consistently adhered to that where an appeal is in itself a sufficient and adequate remedy that would promptly relieve petitioner of the injurious effects of the order or judgment complained of, the existence of that appeal would bar the institution of the remedy of certiorari.[2]

Advertence has been made to the case of *Luzon Rubber and Manufacturing Co. vs. Estaris*[3] where this Court laid down the rule that a defaulted defendant who has not regained his standing in court has no right to appeal the judgment by default rendered by the city or municipal court. The authority cited does not justify petitioner's failure to appeal the order denying his motion to set aside the judgment by default, for as emphasized in the said case, "a proper motion to set aside the judgment by default under Section 13 of Rule 5, when denied, may give the defaulted defendant the right to appeal, but the appeal in that case would be from the order denying the motion and not from the judgment by default itself. The defendant can appeal from such judgment only after he has regained his standing in court." [4] In *Luzon Rubber and Manufacturing Co.* the rationale for the rule denying a defendant in default the right to appeal the default judgment issued by the city or inferior court is stated thus:

"Thus, a defendant who has been declared in default loses his standing in court, and without having regained the same, shall not be entitled to notice of subsequent proceedings, nor to take part in the trial. He shall not also be entitled to service of papers other than substantially amended or supplemental pleadings and final orders or judgments, unless he files a motion to set aside the order of default, in which event he shall be entitled to notice of all further proceedings regardless of whether the order of default is set aside or not. He cannot appeal from the judgment tendered by the court on the merits, unless he files a motion to set aside the order of default. He cannot file a notice of appeal, appeal bond and record on appeal nor claim the right to be heard or file a brief or memorandum on appeal, If he is not entitled to notice or to be heard in the suit, he cannot appeal as appellant nor appear and be heard as appellee because an appeal is a continuation of the same case or suit commenced in the lower court. A proper motion to set aside the judgment by default under Section 13 of Rule 5, when denied, may give the defaulted defendant the right to appeal, but the appeal in that case would be from the order denying [he motion and not from the judgment by default itself. The defendant can appeal from such judgment only after he has regained his standing in court."

Affirming the same principle, this Court, in *Strachan, et al. vs. Court of Appeals, et al.*[5] said that "the innovation

of the Revised Rules of Court in Section 2 of Rule 41 of the Revised Rules of Court which allows a party who has been declared in default to appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him pursuant to Rule 38, is not applicable to municipal or city courts (Sec. 19, Rule 5)."

It should be pointed out, however, for the guidance of the bench and bar, that the pronouncement in said cases denying a defaulted defendant the right to appeal from the judgment of city and municipal courts has been overruled by the provisions of Section 22 of PD 129[6] and Section 21 (a) of the Interim Rules and Guidelines[7] promulgated on January 11, 1983. The provision therein that all cases decided by metropolitan trial courts, municipal trial courts and municipal circuit trial courts may be appealed to the regional trial courts is broad and comprehensive enough to cover not only decisions of the aforementioned lower courts rendered after a full-blown trial, but also judgments by default, summary judgments and judgments on the pleadings issued by them

One last point. Even brushing aside the procedural flaw in the instant petition, We find the thesis advanced by petitioner bereft of any factual or legal basis. It is claimed that the amount awarded to private respondents in the default judgment exceeded the amount prayed for in their complaint. Petitioner invokes the rule that "a judgment entered against a party in default shall not exceed the amount or be different in kind from that prayed for." [8]

The contention overlooks the undisputed fact that private respondents in their complaint sought payment of rentals in arrears as well as those "for the current months until defendant finally vacate the premises." As aptly observed by the respondent court:

"Going over the foregoing, it is obvious that plaintiffs (herein private respondents) claim not only defendants' rentals in arrears, but also rental for the current months after the filing of the complaint until defendants finally vacate the premises. Thus, per findings by the City Court as stated in the decision, the total obligation of defendants reached the sum of P19,461.59 representing the accrued rentals, out of which the amount of P10,000.00 as partial payment was made by defendants sometime in September, 1977, thereby leaving the balance of P9,461.59 excluding attorney's fees, interest and damages. As held by the Supreme Court, 'the amount demandable and recoverable from a defendant in ejectment proceedings regardless of its denomination as rental or reasonable compensation or damages flows from the detainer or illegal occupation of the property involved and is merely incidental thereto.' [Mapua vs. Suburban Theaters, G.R. No. L-2526, September 21, 1950, cited in Francisco, Rules of Court Annotated, Vol. III, 2nd Ed., p. 855]. This means that whatever the amount recoverable as rentals or damages does not affect the jurisdiction of the Court."

WHEREFORE, the petition is hereby dismissed, with costs against petitioner.

**SO ORDERED.**

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.  
Aquino, J., in the result.

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**[1] 52 SCRA 390.**

[2] Ricafort vs. Fernan, 31 SCRA 288.

[3] supra

**[4] 52 SCRA 391, 398-99.**

**[5] 62 SCRA 109.**

[6] "SEC. 22. Appellate jurisdiction.—Regional Trial Courts shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions. Such cases shall be decided on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Courts. The decision of the Regional Trial Courts in such cases shall be appealable by petition for review to the Intermediate Appellate Court which may give it due course only when the petition shows prima facie that the lower court has committed an error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed."

[7] "21. Appeal to the regional trial courts.—

(a) All cases decided by metropolitan trial courts, municipal trial courts and municipal circuit trial courts may be appealed to the regional trial court exercising jurisdiction over the area to which they pertain." . . .

[8] Section 5, Rule 18 of the Rules of Court.

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