

## FIRST DIVISION

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

**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.**

### D E C I S I O N

**PARDO, J.:**

The petition for review on certiorari before the Court assails the resolution<sup>[1]</sup> 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.<sup>[2]</sup>

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<sup>[3]</sup> 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.<sup>[4]</sup>

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<sup>[5]</sup> together with a manifestation.<sup>[6]</sup> In time, private respondent filed an opposition<sup>[7]</sup> to the admission of the amended answer, to which petitioner filed a reply.<sup>[8]</sup>

On February 24, 1997, the trial court issued an order<sup>[9]</sup> 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.<sup>[10]</sup> 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.<sup>[11]</sup>

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,<sup>[12]</sup> 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<sup>[13]</sup> of the decision, to which private respondent filed an opposition.<sup>[14]</sup>

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

On May 12, 1998, the trial court issued an order<sup>[16]</sup> 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<sup>[17]</sup> to the Court of Appeals<sup>[18]</sup> 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.<sup>[19]</sup>

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.<sup>[20]</sup>

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."<sup>[21]</sup>

Hence, this petition.<sup>[22]</sup>

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.<sup>[23]</sup>

On July 20, 1999, private respondent filed his comment.<sup>[24]</sup>

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 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.<sup>[25]</sup> 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.<sup>[26]</sup>

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