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SECOND DIVISION

[G.R. NO. 167631, December 16, 2005]

JENETTE MARIE B. CRISOLOGO, PETITIONER, VS. GLOBE TELECOM INC. AND CESAR M. MAUREAL, VICE PRESIDENT FOR HUMAN RESOURCES, RESPONDENTS.

RESOLUTION

AUSTRIA-MARTINEZ, J.:

Petitioner was an employee of respondent company. When she was promoted as Director of Corporate Affairs and Regulatory Matters, she became entitled to an executive car, and she procured a 1997 Toyota Camry. In April 2002, she was separated from the company. Petitioner filed a complaint for illegal dismissal and reinstatement with the National Labor Relations Commission (NLRC), which later dismissed the complaint. Petitioner filed, on August 12, 2004, a petition for *certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 85679 assailing the NLRC's dismissal.

Pending said petition, respondent company filed with the Regional Trial Court of Mandaluyong (Branch 213) an action for recovery of possession of a motor vehicle with application for a writ of replevin with damages, docketed as Civil Case No. MC04-2480. Petitioner filed a motion to dismiss on the ground of *litis pendentia* and forum shopping but this was denied by the trial court. Thus, petitioner filed a petition for *certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 85927. [1] Petitioner also filed with the Court of Appeals a motion for the issuance of a writ of prohibition to enjoin proceedings in the replevin case before the trial court.

Thereafter, respondent company filed a motion to declare defendant in default in Civil Case No. MC04-2480, which was granted by the trial court. Respondent company was thus allowed to present its evidence *ex-parte.* Petitioner filed a motion for reconsideration of the order of default but it was denied by the trial court. On April 5, 2005, the trial court rendered a judgment by default, the dispositive portion of which reads:

> WHEREFORE, finding merit in all the foregoing uncontroverted facts supported by documentary exhibits, judgment is hereby rendered declaring plaintiff to have the right of possession over the subject motor vehicle and ordering defendant plaintiff to pay plaintiff the following:
>
> 1. The amount of TWO MILLION FIVE HUNDRED FIFTY SIX THOUSAND FOUR HUNDRED SIXTY PESOS (p2,556,460.00) as damages in the form of unpaid daily car rental for 730 (From 15 August 2002 until 22 June 2004) days at THREE THOUSAND FIVE HUNDRED TWO PESOS (P3,502.00) per day;

2. The sum of TWO HUNDRED THOUSAND PESOS (P200,000.00) AS AND BY WAY OF Attorney's fee;

3. The sum of TWO HUNDRED THOUSAND PESOS (P200,000.00) as exemplary damages in order to deter others from doing similar act in withholding possession of a property to another to which he/she has no right to possess; and

4. Costs of suit.

SO ORDERED.

Petitioner then filed with the Court a petition for review on *certiorari* under Rule 45 of the Rules of Court, which was denied by the Court in a Resolution dated May 16, 2005, for being the wrong remedy under the 1997 Rules of Civil Procedure, as amended.

Petitioner thus filed the present motion for reconsideration, alleging that the filing of said petition is the proper recourse, citing *Matute vs. Court of Appeals,* 26 SCRA 798 (1969), wherein it was ruled that a defendant declared in default has the remedy set forth in Section 2, paragraph 3 of Rule 41 of the old Rules of Court.[2] Petitioner then cited in her motion, "Section 2, paragraph 3 or (c) of the Rules of Civil Procedure."[3]

Evidently, petitioner misread the provision cited in the *Matute* case as that pertaining to Section 2(c), Rule 41 of the 1997 Rules of Civil Procedure, as amended, which states: "(c) *Appeal by certiorari.* - In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45." Hence, she directly filed her petition for review on *certiorari* with the Court.

Petitioner should be reminded that the *Matute* case is of 1969 vintage and pertained to the old Rules of Court. As stated in the *Matute* case, a defendant validly declared in default has the remedy set forth in Section 2, paragraph 3 of Rule 41. Note that under the old Rules, Section 2, paragraph 3 of Rule 41 governed appeals from Courts of First Instance, the Social Security Commission and the Court of Agrarian Relations TO THE COURT OF APPEALS, and reads:

> A party who has been declared in default may likewise **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 in accordance with Rule 38. (Emphasis supplied)

Had petitioner been more circumspect, she would have easily ascertained that said Section 2, paragraph 3 of Rule 41 of the old Rules of Court, as cited in the *Matute* case, had already been superseded by the 1997 Rules of Civil Procedure, as amended, and under these new rules, the different modes of appeal are clearly laid down.

The decision sought to be reviewed in this case is a judgment by default rendered by the trial court in Civil Case No. MC04-2480. As such, the applicable rule is

Section 2, Rule 41 of the 1997 Rules of Civil Procedure, as amended, which provides for the different modes of appeal from a Regional Trial Court's judgment or final order, to wit:

> Section 2. *Modes of appeal.* —
>
> **(a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.**
>
> (b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.
>
> (c) *Appeal by certiorari.* — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45. (Emphasis supplied)

In *Cerezo vs. Tuazon*,[4] the Court reiterated the remedies available to a party declared in default:

> a) The defendant in default may, at any time after discovery thereof and before judgment, file a **motion under oath to set aside the order of default** on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);
>
> b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a **motion for new trial** under Section 1 (a) of Rule 37;
>
> c) If the defendant discovered the default after the judgment has become final and executory, he may file a **petition for relief** under Section 2 [now Section 1] of Rule 38; and
>
> d) He may also **appeal** from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41).

Moreover, a petition for *certiorari* to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration.[5]

The filing of the present petition is clearly not the proper remedy to assail the default judgment rendered by the trial court. Petitioner still has the available