843 Phil. 556

FIRST DIVISION

[G.R. No. 191202, November 21, 2018]

RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS. F. FRANCO TRANSPORT, INC., REPRESENTED BY ITS PRESIDENT, MA. LIZA FRANCO-CRUZ, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

The trial court cannot dismiss the appeal taken against its own judgment or final order except on the ground that the appeal was taken out of time, or that the required docket and other lawful fees were not paid in full. Only the appellate court may dismiss the appeal upon other grounds.

The Case

The petitioner appeals the adverse ruling promulgated on August 12, 2009,[1] whereby the Court of Appeals (CA) reversed the orders issued respectively in LRC CAD REC. No. 11546 and LRC CAD REC. No. 4004 on January 8, 2008 and April 4, 2008 by the Regional Trial Court (RTC) in Manila,[2] and directed the RTC to give due course to the respondent's notice of appeal.

Antecedents

The CA stated the following factual and procedural antecedents in its assailed ruling, to wit:

> F. Franco Transport, Inc. (hereinafter petitioner) obtained loans from Rizal Commercial Banking Corporation (RCBC), (hereinafter private respondent) in the amounts of Twenty Five Million Sixty Three Thousand Seven Hundred Fifty Pesos (P25,063,750.00) and Seven Million Ninety Three Thousand and Seven Hundred Fifty Pesos (P7,093,750.00). To secure the payment of said loans, petitioner executed a real estate mortgage over the property covered by Transfer Certificate of Title No. 17652 (hereinafter the subject property). When petitioner defaulted in the payment of said loan, private respondent instituted extra-judicial foreclosure proceedings on the subject property. In the ensuing public auction, said property was sold to private respondent as the highest

bidder therein. Petitioner failed to redeem the property within the period of redemption.

On 28 May 2001, private respondent filed before the Manila RTC a petition for the issuance of a writ of possession which was heard by Branch 4 of said court, with the Hon. Socorro B. Inting presiding (hereinafter public respondent Judge). In an Order dated 07 August 2001, public respondent Judge granted the petition. On account of petitioner's failure to move for a reconsideration of said Order, public respondent Judge, in an Order dated 25 October 2001, subsequently issued the original writ of possession, directing Sheriff Cezar C. Javier to place private respondent in physical possession of the subject property.

On 12 November 2001, petitioner filed before the court *a quo* a "*Very Urgent Motion to Quash Writ of Execution*" manifesting that efforts were being exerted by petitioner to amicably settle the issue with private respondent. Petitioner, in any event, expressed its willingness to move out of the subject property within 120 days, or until 31 January 2001 (read 2002).

On 14 November 2001, public respondent Judge ordered that the execution of the writ of possession be suspended pending resolution of petitioner's motion dated 12 November 2001.

After observing that the 120-day extension prayed for by petitioner had already expired, public respondent Judge, on 8 February 2002, denied petitioner's 12 November 2001 motion for being moot and academic. Thereafter, petitioner filed a motion for reconsideration but public respondent Judge denied the same in her Order dated 1 July 2002.

Aggrieved, petitioner filed a petition for *certiorari* and prohibition before this Court assailing the order issued by public respondent. In the meantime, or on 21 August 2002, private respondent filed before the court *a quo* an *Ex-Parte Motion for the Issuance of Alias Writ of Possession* which, however, was denied by the public respondent.

On 4 August 2003, this Court denied the petition for *certiorari* and prohibition filed by petitioner. Unperturbed, petitioner elevated the matter to the Supreme Court on a petition for review on *certiorari* but the High Tribunal denied the same in its resolutions dated 14 January 2004 and 11 February 2004.

On 16 May 2005, private respondent filed before the court *a quo* an *Ex-Parte Motion for Issuance of Writ of Possession*. For its part, petitioner, on 20 May 2005, filed a *Motion for Consolidation*, contending that the case *a quo* should be consolidated with Civil Case No. Q-04-53032 which is an action for annulment of foreclosure sale that petitioner filed against private respondent before Branch 104, RTC of Quezon City.

Public respondent denied the motion for consolidation for petitioner's failure to comply with the three-day notice rule. In an Order dated 10 February 2006, however, she granted private respondent's application for an *alias* writ of possession.

On 3 March 2006, petitioner filed a Motion for Reconsideration with Prayer to Hold in Abeyance the Issuance of an Alias Writ of Possession. Thereafter, or on 21 June 2006, petitioner also filed a Motion to Recall Alias Writ of Possession.

On 7 September 2006, public respondent Judge denied petitioner's motion for consolidation. Subsequently, or or (sic) 10 October 2006, public respondent issued a writ of possession, directing public respondent anew to place private respondent in physical possession of the subject property.

On 9 November 2006, petitioner filed a *Motion to Resolve Pending Motion RE:* Motion to Recall Alias Writ of Possession dated 21 June 2006 with Motion to Hold in Abeyance the Implementation of the Alias Writ of Possession dated 10 October 2006.

In her Order dated 26 February 2007, public respondent denied petitioner's 9 November 2006 motion. Anent petitioner's motion to recall *alias* writ of possession, public respondent denied the same as there was no *alias* writ of possession to be recalled when petitioner filed its motion to recall on 22 June 2006 considering that the *alias* writ was issued only on 10 October 2006. She also denied petitioner's motion seeking to defer the implementation of the writ on the ground that the issuance of a writ of possession is a ministerial duty of the court.

On 17 April 2007, petitioner filed a Notice of Appeal from public respondent Judge's 26 February 2007 Order. However, public respondent denied the same in the challenged Order of 8 January 2008 ratiocinating that petitioner had no right to appeal inasmuch as the final order of the court which completely disposed of the case was its 7 August 2001 Order granting private respondent's petition for the issuance of a writ of possession, and not its 26 February 2007 Order. The lower court further emphasized that the 26 February 2007 Order could not be the subject of any appeal since its issuance was merely incidental to the execution of a final order.

Petitioner filed a motion for reconsideration, but this too was rejected by public respondent in her Order dated 4 April 2008.[3]

The respondent elevated the matter to the CA by petition for *certiorari* imputing grave abuse of discretion to the RTC in denying due course to its notice of appeal.

As earlier stated, the CA granted the petition for *certiorari*, and directed the RTC to give due course to the notice of appeal of the respondent. It opined that the determination of whether an appeal was proper or not was outside the province of the RTC as the trial court but pertained instead to the CA as the appellate court where the intended appeal would be taken. It decreed:

> **WHEREFORE**, premises considered, the instant petition is hereby **GRANTED**. The orders dated 8 January 2008 and 4 April 2008 issued by Branch 4, Regional Trial Court (RTC), Manila, in LRC CAD REC NOS. 11546 and 4004, entitled "*Rizal Commercial Banking Corporation v. F. Franco Transport, Inc.*" are hereby **ANNULLED** and **SET ASIDE**. Public respondent Judge is hereby **ORDERED** to give due course to petitioner's notice of appeal.
>
> **SO ORDERED.**[4]

The petitioner moved for reconsideration but the CA denied its motion on February 9, 2010.[5]

Hence, this appeal.

Issue

The petitioner raises the sole issue of whether or not the CA erred in ordering the RTC to give due course to the respondent's notice of appeal.

Ruling of the Court

The Court, while agreeing with the justifications tendered in the CA's decision, grants the petition for review on *certiorari* of the petitioner, reverses the CA's decision, dismisses the appeal of the respondent, and directs the RTC to proceed with dispatch to the implementation of the *alias* writ of possession issued in favor of the petitioner.

1.
Nature of the remedy of appeal; power to dismiss an appeal pertains to both the trial and appellate courts, but the grounds may be different

Appeal is an essential part of our judicial process. It is a statutory right that must be exercised only in the manner and in accordance with the provisions of law.[6] It is, however, not a natural right, and is not part of due process.[7] It is merely a statutory privilege and, therefore, the party appealing must comply with all the requirements provided by law. Failure to do so often leads to the loss of the right to appeal.[8] Once the requirements have been complied with, however, such right must be respected. Fairness dictates this course of action.

Section 2, Rule 41 of the *Rules of Court* stipulates three modes of appeal, *viz*.:

> 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.
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> (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. (n)

The first mode - ordinary appeal - requires, among others, the statement of the material dates showing the timeliness of the appeal,[9] and is deemed perfected, as to the party appealing, upon filing of the notice of appeal in due time.[10] The *Rules of Court* also mandates the appealing party to pay the full amount of the appellate court docket and other lawful fees to the clerk of the court rendering the judgment or final order being appealed from.[11] The compliance with the requirements by the appealing party imposes on the trial court (*i.e.*, the RTC in this case) the ministerial duty to approve and give due course to said party's notice of appeal.[12]

Although the power to dismiss an appeal exists in both the trial and the appellate courts, the only difference being in the time and the reason for the exercise of the power,[13] the CA ruled that the RTC's dismissal of the respondent's notice of appeal was tainted with jurisdictional error. We concur thereon with the CA. Section 13,[14] Rule 41 of the *Rules of Court* empowers the RTC to dismiss appeals by notice of appeal, but such dismissal is based on only two grounds, namely: (a) the appeal is taken out of time; or (b) the non-payment of the docket and other fees within the reglementary period. The competence of the RTC as the court of origin to dismiss the appeal is limited to said instances.[15] As pointed out in *Ortigas & Company Limited Partnership v. Velasco*,[16] the RTC has no power to disallow an appeal on any other ground; hence, the RTC could not anchor its disallowance of the notice of appeal on any of the grounds stated in Rule 50 of the *Rules of Court*, the determination of such grounds being addressed solely to the sound discretion of the CA as the appellate court.

The determination of whether or not a case is appealable pertains to the appellate court. If the rule were otherwise, the trial court whose own judgment or ruling is sought to be reviewed, modified or reversed may be afforded the way to forestall the review, modification or reversal of the judgment or ruling no matter how erroneous or improper it is.[17] In this connection, the dismissal of the appeal by the RTC on the ground that the judgment or order appealed from was not appealable was done in grave abuse of discretion amounting to lack or excess of jurisdiction, for it could only be made by the CA as the appellate court. Such ground has been expressly provided for in Section 1, Rule 50 of the *Rules of Court, viz*.:

> Section 1. *Grounds for dismissal of appeal*. — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
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> x x x x
>
> (i) The fact that the order or judgment appealed from is not appealable. (1a)

2.
Giving due course to the appeal may be redundant; hence, justice demands that the appeal be dismissed

Nonetheless, the Court notes that the controversy has been pending since May 2001. To simply uphold the CA's order to the RTC to give due course to the respondent's appeal could only prolong the proceedings and delay the awaited resolution of the case. Any further delay is unacceptable because no less than this Court, through the resolutions promulgated on January 14, 2004 and February 11, 2004 in G.R. No. 160925, had already sustained the RTC's directive for the implementation of the writ of possession issued by the RTC. It is high time that the petitioner be allowed to recover possession of the property covered by the writ of possession.

It is not unprecedented for the Court to take cognizance of and immediately resolve cases either when the parties deserve speedy but legally warranted relief, or when remanding the cases would be counterproductive to the cause of justice. In *Teraña v. De Sagun*,[18] a remand was not resorted to because the records and pleadings before the Court were already sufficient for rendering a judgment, and the remand would equate to further delays in the adjudication of the case filed in 1997, or 12 years prior to its ultimate resolution in 2009. In *Fulgencio v. National Labor Relations Commission*,[19] the Court went on to rule on the merits of the case to avert further delays upon seeing that the ends of justice would not be furthered by the remand of the case. In *Medline Management, Inc. v. Roslinda*,[20] the Court has observed that for purposes of expediency, it could opt not to remand the case for further proceedings but instead to take cognizance of the substance of the case in order to rule on its merits, pointing out that:

> This Court is aware that in this case, since the petition is denied, the normal

> procedure is for it to remand the case to the Labor Arbiter for further proceedings. "However, when there is enough basis on which the Court may render a proper evaluation of the merits of petitioners case, xxx **the Court may dispense with the time[-]consuming procedure in order to prevent further delays in the disposition of the case**." xxx
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> "It is an accepted precept of procedural law that the Court may resolve the dispute in a single proceeding, instead of remanding the case to the lower court for further proceedings if, based on the records, pleadings, and other evidence, the matter can readily be ruled upon." (Bold emphasis supplied)

An examination of the submissions of the parties herein clearly shows that the respondent had no valid reason to further delay the implementation of the *alias* writ of possession. This is enough to warrant the immediate authorization for such implementation.

The petitioner insists that the order that the respondent sought to be reviewed on appeal was an order of execution that, being of an interlocutory character, was not appealable. The insistence is entirely valid. The order of execution was truly interlocutory and thus not subject to appeal because it was among the orders of the RTC that are listed in Section 1, Rule 41 of the *Rules of Court* as not subject of appeal, to wit:

> Section 1. *Subject of appeal*. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
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> No appeal may be taken from:
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> (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> (b) **An interlocutory order**;
>
> (c) An order disallowing or dismissing an appeal;
>
> (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
>
> (e) **An order of execution**;
>
> (f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
>
> (g) An order dismissing an action without prejudice.

> In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.

An order is interlocutory when it does not dispose of the case completely but leaves something to be still decided by the trial court.[21] In contrast, a judgment or final order is appealable because it -

> xxx finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes 'final' or, to use the established and more distinctive term, 'final and executory.'[22]

The respondent sought to appeal the order of February 26, 2007[23] whereby the RTC denied its motion to recall the *alias* writ of possession and to hold the implementation of the *alias* writ of possession in abeyance on the ground that the *alias* writ of possession was invalid. But reviewing the validity of the *alias* writ of possession was no longer permissible for the several reasons outlined hereunder.

Firstly, the order sought to be reviewed on appeal involved the implementation of the writ of possession. It is basic that the writ of possession is a variant of the writ of execution that enforces a judgment of a court to recover the possession of land, and commands the sheriff to enter the land and give its possession to the person entitled under the judgment.[24] On the other hand, an *alias* process, like the *alias* writ of execution or *alias* writ of possession, is defined as a second writ, summons, execution or subpoena, used when the first or earlier process has for any reason failed to accomplish its purpose.[25] The order under challenge herein merely affirmed the order of execution issued in the case. In the context of Section 1, Rule 41 of the *Rules of Court*, no appeal should be allowed to assail the order of February 26, 2007. Moreover, the propriety of the issuance of the writ of possession was already affirmed in G.R. No. 160925, and the affirmance was conclusive on the parties.[26] A review would surely be redundant in a manner repulsive to the stern policy against multiplicity of suits.

Secondly, the pendency in the RTC in Quezon City of the action seeking the annulment of the contract between the parties should not hinder the progress of the foreclosure proceedings as well as the ensuing implementation of the writ of possession. Indeed, any question raised against the validity of the mortgage or its foreclosure was not a legal

ground to refuse the issuance of the writ of possession, for, regardless of whether or not there was the pending suit for annulment of the mortgage or the foreclosure itself, the purchaser of the property was entitled to the writ of possession, albeit without prejudice to the eventual outcome of the annulment case.[27]

And, thirdly, the fact that the respondent was willing to enter into a compromise agreement with the petitioner was also not a good reason to defer the implementation of the writ of possession. In civil law, compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.[28] Yet, the courts cannot compel the parties to enter into compromises. In this case, the reluctance of the petitioner to enter into the compromise with the respondent should not be ignored. The talks for settlement had started in November, 2001 but had not prospered. Although the RTC was mandated by law to endeavor to persuade the parties to agree upon some fair compromise,[29] any attempts must be made and concluded within a reasonable time. It is notable that despite their supposed efforts to settle amicably the petitioner had still requested the issuance of the writ of possession thrice, which revealed that the parties were nowhere near reaching common ground in their differences. Verily, the possibility of the compromise being reached between the parties herein should not prevent the implementation of the *alias* writ in the meantime.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **SETS ASIDE** the decision promulgated on August 12, 2009 and the resolution promulgated on February 9, 2010 in CA-G.R. SP No. 103548; **AFFIRMS** the dismissal of the appeal by the Regional Trial Court, Branch 4, in Manila through its order of January 8, 2008; **DIRECTS** the Regional Trial Court, Branch 4, in Manila to proceed to the implementation of the *alias* writ of possession with utmost dispatch, with costs of suit to be paid by the respondent.

SO ORDERED.

Del Castillo, Jardeleza, Tijam, and *Gesmundo,*[*] *JJ.*, concur.

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[*] Additional Member, per Special Order No. 2607 dated October 10, 2018.

[1] *Rollo*, pp. 49-58; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justice Jose L. Sabio, Jr. and Associate Justice Vicente S.E. Veloso.

[2] Id. at 155-156; 172-173; penned by Presiding Judge Socorro B. Inting.

[3] Id. at 49-53.

[4] Id. at 57.

[5] Id. at 61-62; penned by Associate Justice Rosario, and concurred in by Associate Justice Jose C. Reyes, Jr. (now a Member of the Court), and Associate Justice Veloso.

[6] *Republic v. Luriz*, G.R. No. 158992, January 26, 2007, 513 SCRA 140, 148.

[7] *Polintan v. People*, G.R. No. 161827, April 21, 2009, 586 SCRA 111, 116.

[8] *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010, 628 SCRA 96, 105.

[9] Section 5, Rule 41 of *Rules of Court*.

[10] Section 9, Rule 41 of *Rules of Court*.

[11] Section 4, Rule 41 of *Rules of Court*.

[12] *Oro v. Diaz*, G.R. No. 140974, July 11, 2001, 361 SCRA 108, 116.

[13] Bersamin, L. P., *Appeal and Review in the Philippines*, Second Edition, Central Book Supply, Inc., Quezon City, p. 234.

[14] Section 13. *Dismissal of appeal*. - Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may, *motu proprio* or on motion, dismiss the appeal for having been taken out of time or non-payment of the docket and other lawful fees within the reglementary period.(13a)

[15] *Salvan v. People*, G.R. No. 153845, September 11, 2003, 410 SCRA 638, 642.

[16] G.R. No. 109645, August 15, 1997, 234 SCRA 455, 493.

[17] Bersamin, supra note 13, at 248; citing *Heirs of Gavino Sabenal v. Gorospe*, 166 SCRA 145, 150; and *Republic v. Gomez*, 5 SCRA 368.

[18] G.R. No. 152131, April 29, 2009, 587 SCRA 60, 71.

[19] G.R. No. 141600, September 12, 2003, 411 SCRA 69, 78.

[20] G.R. No. 168715, September 15, 2010, 630 SCRA 471, 485-486; *Bunao v. Social Security Systems*, G.R. No. 159606, December 13, 2005, 471 SCRA 564, 571.

[21] See *Australian Professional Realty, Inc., v. Municipality of Padre Garcia, Batangas Province*, G.R. No. 183367, March 14, 2012, 668 SCRA 253, 260.

[22] *Investments, Inc. v. Court of Appeals*, No. L-60036, January 27, 1987, 147 SCRA 334, 339-341; *United Overseas Bank v. Judge Ros*, G.R. No. 171532, August 7, 2007, 529 SCRA 334, 343-344.

[23] *Rollo*, pp. 137-139.

[24] *Metropolitan Bank & Trust Company v. Abad Santos*, G.R. No. 157867, December 15, 2009, 608 SCRA 222, 232.

[25] Black's Law Dictionary, Sixth Edition, 1990, p. 71.

[26] "Under the doctrine of conclusiveness of judgment, which is also known as 'preclusion of issues' or 'collateral estoppel,' issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action." See *Tan v. Court of Appeals*, G.R. No. 142401, August 20, 2001, 363 SCRA 444, 450.

[27] *Ong v. Court of Appeals*, G.R. No. 121494, June 8, 2000, 333 SCRA 189, 198.

[28] Article 2028, *Civil Code*.

[29] Article 2029, *Civil Code*.
