

CORAZON ONG (A.K.A.) CORAZON ONG SO, PETITIONER, VS. HON. AFABLE E. CAJIGAL, IN HIS CAPACITY AS PRESIDING JUDGE OF RTC QUEZON CITY, BRANCH 96, SIMON JOHN T. COROCOTO, REPRESENTANTE...

Ponente: REYES, J.

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REYES, J.:

Alleged to have been rendered with grave abuse of discretion, as is contemplated under Rule 65 of the Rules of Court, are the following orders of the Regional Trial Court of Quezon City (Branch 96):

- the order dated August 17, 2005 granting the respondent's prayer for issuance of a temporary restraining order;
- the order dated August 22, 2005 declaring herein petitioner as in default and allowing private respondent to present evidence ex-parte;
- the order dated September 6, 2005 denying herein petitioner's omnibus motion, still calendared for hearing for September 8, 2005 but was already denied on September 6, 2005;
- the order dated September 23, 2005 denying the petitioner's motion for reconsideration;
- the enforcement of the writ of possession on September 27, 2005 after the appeal has been perfected on September 26, 2005. (Rollo, p. 2)

We begin with the petitioner's version of the facts:

Petitioner Corazon Ong (Ong for brevity) was the registered owner of a parcel of land measuring 78.50 sq.m., situated in Tatalon, Quezon City. Sometime in September of 1997, she mortgaged the said property to herein respondent Philippine National Bank to secure a housing loan for P800,000.00, payable by monthly installment for a period of 18 years. For failure to pay all her amortizations, the subject property was extrajudicially foreclosed on June 13, 2000, with respondent Philippine National Bank appearing as the lone bidder in the amount of P2,028,000 (ibid, p.4).

Subsequently, petitioner Ong filed a complaint for annulment of foreclosure proceedings, auction sale and certificate of sale with damages before the Regional Trial Court of Quezon City (Branch 217). Allegedly, the court directed the parties to discuss the possibility of an amicable settlement (id.).

On several occasions thereafter, the petitioner and her counsel went to the office of respondent bank in hope of a compromise (id.).

On March 14, 2005, the petitioner learned that the subject property was sold to private respondent Simon John Corocoto, represented by his brother, Simon Peter Corocoto, for one million seven hundred thousand (P1,700,000), payable for five years. On April 25, 2005, said respondent Corocoto filed a petition for issuance of a writ of possession under Act No. 3135 before the Regional Trial Court of Quezon City (Branch 96). Meanwhile,

on April 12, 2004, the case for annulment of foreclosure sale filed by the petitioner was dismissed by the trial court for failure to prosecute (id., p. 5).

Unwilling to surrender possession over the property, the petitioner on May 4, 2005 again filed a complaint for annulment of foreclosure proceeding, auction sale, certificate of sale, deed of sale, with damages against herein respondents Philippine National Bank, the ex-officio sheriff of Quezon City and Simon John Corocoto before a different court (id.).

On April 29, 2005, an order was issued by the trial court setting the hearing of the petition for issuance of a writ of possession on May 12, 2005. On said date, the petitioner filed a comment/opposition. On June 6, 2005, private respondent Corocoto filed his reply to the petitioner's comment/opposition (id.).

On June 10, 2005, an order was issued by the respondent court giving the petitioner time to file her rejoinder, thereafter, the matter will be submitted for resolution. On June 15, 2005, herein petitioner filed her rejoinder (id.).

On August 1, 2005, the petitioner filed an Urgent Motion for Issuance of Temporary Restraining Order requesting the court to set the hearing on the following day, with written notice to the petitioner but not to her counsel (id., p. 58).

On August 2, 2005, the respondent court issued an order submitting the motion for resolution (id., p. 64). On August 17, 2005, an order was issued granting a temporary restraining order. Said the trial court:

“Mortgagor-oppositor argues that she did not remove the water tanks attached to the rooftop to have it repaired. As to the permanent fixture which includes lavatory, lights, and other accessions to the foreclosed house and lot, the mortgagor-oppositor denies to have removed the same.

Petitioner however, presented evidence that mortgagor-oppositor has been removing the permanent fixtures and he himself saw that the water tanks and lavatory and other accessories affixed to the foreclosed house has been removed.

Perusal over the evidence presented shows that the right of the petitioner is material and substantial, being the assignee of mortgagee-creditor; that the right of the petitioner is clear and unmistakable; and that there is urgent and paramount necessity for the writ to prevent serious damage. Hence, in accordance with the Rules, this Court resolves this motion in upholding the right of the petitioner.

WHEREFORE, finding merit in the Urgent Motion for Issuance of Temporary Restraining Order, the same is hereby GRANTED.

Let the writ be issued executing a bond by the petitioner in the amount of ONE HUNDRED THOUSAND PESOS (Php100,000).

SO ORDERED.” (id., pp. 65-66)

Meanwhile, for failing to attend the hearings despite notice to both the petitioner and her counsel, on August 22, 2005, another order was issued declaring the petitioner as in default (id., p. 67).

On August 30, 2005, the petitioner filed an omnibus motion to declare the August 17 and 22, 2005 court orders void (id., p. 68). The said omnibus motion was set for hearing on September 8, 2005. However, on September 6, 2005, two days before the scheduled hearing, an order was issued denying the petitioner's omnibus motion. Likewise on the same date, a writ of possession was issued by the branch clerk of court directing the deputy sheriff to take possession of the subject property. The decretal text of the assailed order reads:

“WHEREFORE, the Omnibus Motion of the Mortgagor/Oppositor to nullify the orders of the Court dated 17 August 2005 and 22 August 2005 is DENIED for lack of merit.

However, finding the instant petition for the issuance of writ of possession meritorious, the same is hereby GRANTED.

Let a writ of possession over the property covered by Transfer Certificate of Title No. 91315 be issued in favor of the petitioner Simon John Corocoto represented by Simon Peter Corocoto.

SO ORDERED.” (id., pp. 77-78)

On September 8, 2005, a notice to vacate was issued by the deputy sheriff against the petitioner (id., p. 81). On even date, a copy of the order granting the issuance of a writ of possession and notice to vacate were personally delivered to petitioner’s daughter, allegedly by force and intimidation.

On September 12, 2005, the petitioner filed an urgent motion for reconsideration and/or to set aside writ of possession and notice to vacate (id., p. 82). On September 23, 2005, an order was issued denying the petitioner’s motion for reconsideration (id., p. 97). Upon receipt thereof on September 26, 2005, the petitioner filed her notice of appeal and paid the corresponding docket fee (id., p. 99).

In the morning of the following day, September 27, 2005, the writ of possession was executed. Meanwhile, in the afternoon of the same date, the records of the case was elevated to the Court of Appeals by virtue of the notice of appeal dated September 26, 2005.

Respondent Simon John Corocoto, on the other hand, countered the allegedly misleading statement of facts of the petitioner thusly:

Prior to the availment by the petitioner with the respondent Philippine National Bank of the two loans secured by the subject property, she had previous similar transactions with it, as evidenced by the contract of loan executed on April 11, 1995 and the amended Deed of Real Estate Mortgage dated April 1, 1995 (id., 114).

Subsequently, the petitioner availed of a new housing loan which superseded her earlier loan in the amount of eight hundred thousand pesos (P800,000) and a revolving credit line in the amount of seven hundred thousand pesos (P700,000) (id.).

Under the contract, the petitioner’s credit facilities with the respondent PNB was not automatic, as she still had to execute corresponding promissory notes for her to avail of the same. Thus, on August 11, 1997, in making use of her housing loan credit facility, petitioner signed Promissory Note No. 323197 for eight hundred thousand pesos (P800,000). On the other hand, in availing of her revolving credit line, the petitioner again signed Promissory Note No. 105197 for three hundred fifty thousand pesos (P350,000) on February 26, 1997 (id.).

Unfortunately, the petitioner failed to pay all the stipulated amortization payments, including the accumulated penalties and interests on both loans she availed of. Anent her Housing Loan credit facility, the petitioner’s failure to pay prompted the respondent PNB’s Loan Administration Division to send her three successive demand letters dated April 28, 1999, June 3, 1999 and July 3, 1999 respectively, asking her to settle her arrears with PNB (id., p. 115).

On the other hand, with respect to her revolving credit line, PNB- Ortigas’ Business Center sent her three successive letters dated April 19, 1999, June 17, 1999 and July 12, 1999 respectively, informing her that her revolving credit line is already on a “past due” status (id.).

Despite the numerous demands sent to her, the petitioner still failed to communicate with respondent PNB to settle her obligations. Thus, on September 24, 1999, PNB’s Legal Department notified the petitioner in writing that as of August 31, 1999, her total obligation already reached one million four hundred ninety eight thousand nine hundred eighty one pesos (P1,498,981). Said demand letter, the petitioner again ignored (id., p. 116).

The foregoing events prompted the respondent bank to file, on February 28, 2000, a petition for extrajudicial sale under Act No. 3135, as amended. On the date of the public auction, the respondent PNB emerged as the lone highest bidder for the amount of two million twenty eight thousand pesos (P2,028,000). Apparently, as of June 13, 2002, the petitioner's revolving credit line already reached five hundred ninety eight thousand two hundred ninety and thirty seven centavos (P598,290.37), while the housing loan already amounted to one million four hundred thirty four thousand three hundred eighty eight and eighty eight centavos (P1,434,388.88) (id., p. 117).

The certificate of sale dated August 9, 2000 was subsequently registered on January 21, 2002 under Entry No. 6449, annotated at the back of TCT No. 91315, covering the subject foreclosed property. Hence, on January 21, 2003, petitioner's right of redemption over the foreclosed property already expired. The one year period already having lapsed, without the mortgagor exercising her right of redemption, the consolidation of the title of the subject property in the name of the respondent bank was undergone, at the same time, the same was advertised and offered for sale to the public (id.).

On March 14, 2005, the respondent bank executed in favor of co- respondent Simon John Corocoto a deed of conditional sale. On March 21, 2005, the PNB, through its Office of the Property Management Division Asset Management Group, in an effort to help private respondent Corocoto to gain actual possession over the property, sent a notice to vacate to petitioner, giving her ten days from receipt thereof to peacefully turn over the subject property to respondent Corocoto as its successor in interest (id., p. 118).

On the same occasion that a copy of the notice from the respondent bank for her to vacate was personally delivered to her by respondent Simon John's brother and attorney-in-fact, Simon Peter Corocoto and wife Elizabeth, the petitioner allegedly reiterated her admission to the former that the reason she did not anymore redeem the subject property was that her husband was against it because he had intentions of moving the entire family to Hongkong, where he is a citizen. Furthermore, the petitioner had to postpone the plan after a year because their daughter was still in her third year in college. Allegedly, the respondent's attorney-in-fact granted the petitioner a grace period of one month within which to vacate the premises. However, the petitioner never complied with the said agreement (id.).

After the grace period expired, the respondent, through his attorney-in-fact and his counsel, filed a Petition for Writ of Possession (id., p. 119).

Before the said petition was set for hearing, herein petitioner filed on May 4, 2005 a complaint for "annulment of foreclosure proceedings, auction sale, certificate of sale, deed of sale with damages against the PNB, ex-officio Sheriff of Quezon City and private respondent Simon John Corocoto, docketed as Q-05-5310, raffled to Regional Trial Court of Quezon City (Branch 224) (id.).

Anent the case before the Regional Trial Court of Quezon City (Branch 224), both the respondent bank and herein respondent filed individual motions to dismiss. By way of an order dated September 29, 2005, the trial court dismissed the petition (id., p. 120).

On April 29, 2005, an order was issued by the respondent court setting the petition for issuance of a writ of possession for hearing on May 12, 2005 at 8:30 in the morning. On the same date, however, the petitioner came without counsel, although she filed her comment/opposition. The hearing was reset because the respondent judge had a mild stroke. During the said occasion, petitioner expressed her willingness to vacate the property, although she said she would try to consult with her lawyer. Meanwhile, Judge Bernelito Fernandez of Branch 97 took over as pairing judge for Branch 96 (id., p. 121).

On June 6, 2005, private respondent Corocoto filed his reply to herein petitioner's comment/opposition to the

petition for issuance of a writ of possession. On June 10, 2005, an order was issued directing the petitioner to file her rejoinder to the reply, after which, the matter shall be submitted for resolution. Accordingly, on June 15, 2005, the petitioner filed her rejoinder (id.).

On July 29, 2005, at about 11:30 in the morning, when the private respondent's attorney-in-fact passed by the subject property, he noticed that the big water tank installed permanently on the rooftop had been removed by the petitioner. According to the maid, the petitioner already found a new house to live in. Once allowed entry into the house, the said attorney-in-fact noticed that indeed they already packed up and had likewise removed some accessions permanently attached to the house such as lavatory and faucets. The following day, the attorney-in-fact and his wife heard sounds resembling that of objects being removed by force from the walls and floor. Out of fear that the property will be further dissipated, the attorney-in-fact filed on August 1, 2005 an Urgent Motion for Issuance of Temporary Restraining Order requesting the court to set the hearing of said motion the following day, August 02, 2005 (id., p. 122) .

Because the office of the petitioner's counsel is in Valenzuela, which, according to the Sheriff would be difficult to locate, a copy of the motion was personally served on the petitioner herself instead of her lawyer. The petitioner, in turn, undertook to inform her counsel about the motion and the hearing scheduled the following day (id.).

On August 2, 2005, private respondent and his counsel appeared, while the petitioner came without counsel, stating that he was attending another hearing. The private respondent's attorney-in-fact presented pictures showing the bathroom without the lavatory, cabinets without doors and other acts of dissipation. The petitioner claimed that the water tank was just being repaired but the same was never returned. While confirming that indeed, she found an apartment in Sampaloc, Manila, petitioner said she backed out because she and the lessor did not agree on the amount of the rental, yet still denying that she and her family were leaving the subject property. When asked by the Pairing Judge what was the purpose for renting an apartment if they were not moving out, she quickly changed her mind and said the apartment was actually for her sister (id., p. 123).

At that time, Simon Peter Corocoto expressed in open court that he was very much willing to give her further reasonable grace period, by way of accommodation, for her to completely pack up, provided she would undertake to stop removing accessions/ fixtures to the property, but petitioner denied she was leaving. Thus, seeing no possibility of amicable settlement, the respondent court issued an order submitting the motion for issuance of temporary restraining order for resolution (id., p. 124).

On August 17, 2005, the respondent court issued an order granting the temporary restraining order prayed for by the private respondent (id.) .

On August 30, 2005, petitioner filed an omnibus motion to declare the August 17 and 22, 2005 orders null and void. On September 2, 2005 private respondent seasonably filed a comment/opposition to the said omnibus motion. The omnibus motion was set for hearing on September 8, 2005 at 8:30 in the morning at which date and time, the counsel for the petitioner failed to appear, despite several calls given to him. On this date, the court issued an order dated September 6, 2005 denying the petitioner's omnibus motion, at the same time, issuing a writ of possession as prayed for by herein private respondent, commanding the sheriff to take possession of the subject property and deliver the same to the petitioner. Based on this ground that the writ of possession is dated September 6, 2005, ahead of the scheduled date of hearing on September 8, 2005, petitioner claims violation of due process (id., p.125).

On September 8, 2005, a copy of the order granting the issuance of a writ of possession and notice to vacate were personally delivered by respondent sheriff to petitioner's daughter (id., p. 126).

On September 12, 2005, the petitioner filed an urgent motion for reconsideration. To said motion, private respondent seasonably filed a vigorous opposition. On September 23, 2005, an order was issued denying herein petitioner's motion for reconsideration (id., p. 127).

On September 26, 2005, the petitioner filed a notice of appeal, copy furnished respondents sheriff and the undersigned counsel for the respondent. On September 27, 2005, while the records were not yet transmitted to the Court of Appeals, respondent sheriff implemented the writ of possession and turned-over the subject foreclosed property to the respondent's attorney-in-fact, and the undersigned counsel (id.) .

Condensed from her pleading, the following issues were raised by the petitioner:

- Whether or not the trial court committed grave abuse of discretion when it issued the order dated August 17, 2005 granting a temporary restraining order and the order dated August 22, 2005 declaring the petitioner as in default and allowing the respondent to present evidence ex parte.
- Whether or not the trial court committed grave abuse of discretion when it issued the order dated September 27, 2005 implementing the writ of possession, although an appeal has been perfected already as of September 26, 2005.
- Whether or not the trial court committed grave abuse of discretion when it issued the order dated September 6, 2005 denying the petitioner's omnibus motion, granting the issuance of a writ of preliminary injunction and writ of possession; the order dated September 23, 2005 denying the petitioner's motion for reconsideration and the order dated September 27, 2005 implementing the writ of possession.
- Whether or not the petitioner is entitled to the surplus or excess of the bid price of two million twenty eight thousand pesos (P2,028,000) inasmuch as the loan obtained only amounts to one million one hundred fifty thousand pesos (P1,150,000).
- Whether or not the private respondent has the right to file a petition for issuance of a writ of possession.

We shall address the interlaced issues jointly. First, the petitioner assails the issuance of a temporary restraining order against her on August 17, 2005 because, according to the petitioner, the motion for issuance of a temporary restraining order filed by the private respondent dated August 1, 2005 was calendared for hearing a day after its filing, in violation of the three day notice rule.

It should be stressed that the three day notice rule admits of exceptions. Sec. 4, Rule 15 of the Rules of Court states thus:

"Every written motion required to be heard and the notice of hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice."

In this case, it could not be said that whim was the only reason for hearing the assailed motion a day after its filing. Indeed, the allegation that the petitioner has begun destroying and disassembling permanent fixtures in the subject property is a good enough cause for the court to hear the case at the earliest possible opportunity, especially that the private respondent was able to produce pictures proving such defacement.

In the same vein, the lack of written notice to the petitioner's counsel is not necessarily fatal to the respondent's case. As shown by the records, when the respondent filed the urgent motion for issuance of temporary restraining order on August 1, 2005, a copy was personally served on the petitioner herself. This was because the office of the petitioner's counsel is geographically removed as to prevent a timely service of notice to him. Thus, inasmuch as the matter should be heard urgently, a copy of the motion was instead personally served on the petitioner herself, with the latter undertaking to inform her counsel about the motion and the hearing scheduled the

following day.

It bears noting that during the hearing, the petitioner came without her counsel – not because the latter was not given prior word but because the said lawyer, according to the petitioner, was going to attend a hearing in another court. This proves that the petitioner was able to talk to her lawyer and advised him about the urgent motion. Both the petitioner and her counsel, therefore, had actual notice of the scheduled hearing concerning the respondent's motion for issuance of restraining order.

Suffice it to say that even if there is a defect in the notice, the defect is cured by the court's taking cognizance thereof and the fact that the adverse party was otherwise notified of the existence of such pleading (*Sun Giok vs. Matusa*, 101 Phil. 727).

Similarly, the petitioner impugns her having been declared in default, consequently allowing the other party to present evidence ex-parte.

Indeed, the respondent court's issuance of an order declaring the petitioner as in default is not constitutive of grave abuse of discretion. To begin with, the petitioner and her counsel's repeated failure to appear before the court despite due notice is a matter of record. Surely, there is nothing despotic and arbitrary about a judge declaring in default a party whose non-appearance is causing deleterious delays in the proceedings. Be that as it may, an order of default in a proceeding for the issuance of a writ of possession would be a superfluity. Proceedings of such nature, after all, are summary and ex parte in nature.

As regards this matter, Act No. 3135 states thus:

“Sec. 7. Possession during redemption period.- In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in the form of an ex-parte motion xxx.”

Therefore, as correctly argued by the respondent, notice does not pertain to the oppositor as a matter of right, the matter of issuance of writ of possession being a ministerial function of the court.

Pertaining still to the issue of allegedly defective notice and order of default, the trial court has ratiocinated as follows:

“xxx Section 5, Rule 58 of the 1997 Rules of Civil Procedure is not absolute. In fact it provides for an exception, “No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from the facts shown by the affidavit or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction made may issue a temporary restraining order, to be effective only for a period of twenty (20) days from notice to the party or person sought to be enjoined. xxx

The law is explicit, notice is on the party or person sought to be enjoined, and since it appears during the hearing of the petition that great and irreparable injury would result to the applicant, the Court acted accordingly in issuing the writ of preliminary injunction.

During the hearing of this petition, the mortgagor/oppositor was present and even manifested that she had informed her counsel but is unable to attend the hearing because he is in Malolos, Bulacan. Anent to this, there was a previous hearing scheduled before the pairing judge of this court to which counsel for the mortgagor/oppositor also failed to attend despite due notice. (Rollo, pp. 75-77)

We come now to the issue of the propriety of implementing the writ of possession in the light of the petitioner's alleged "perfection" of her appeal. Is the trial court altogether divested of its jurisdiction to implement a writ of possession by the expediency of a losing party's filing of a notice of appeal? Apparently, as regards this query, the petitioner's counsel got the wrong end of the stick.

Sec. 9, Rule 41 of the Rules of Court states clearly that:

"In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with section 2 of Rule 39, and allow withdrawal of the appeal."

Proceeding from the abovequoted proviso, a court is possessed and may, in fact, wield residual jurisdiction over a case prior to the transmittal of the records to the appellate court. Inasmuch as in this case, when the respondent court issued the assailed order dated September 27, 2005 for the implementation by the sheriff of the writ of possession, the records were still in its custody, it still had jurisdiction to do as it did.

Anent the petitioner's argument that since his omnibus motion was set for hearing on September 8, 2005, the trial court committed grave abuse of discretion when "on September 6, 2005 or two days before the scheduled hearing (September 8, 2005) of the Omnibus Motion, an order was already issued denying her omnibus motion sans due process.

We find merit in the respondent's argument, to wit:

While on the date of the hearing on the said omnibus motion on September 8, 2005 at 8:30 in the morning, there was already a ruling dated September 6, 2005 denying the same, this fact alone cannot be considered as irregular. The said motion was filed on August 30, 2005 and herein private respondent filed his comment/opposition to the omnibus motion with urgent motion for early resolution granting writ of possession on September 2, 2005. What happened in this case was that after considering the respective positions of both parties, the court arrived at a ruling contained in said September 6, 2005 order, denying the omnibus motion, at the same time, issuing a writ of possession in favor of the respondent. While said order was prepared as early as such date, there was nothing to prevent the honorable court from changing its position, if at the hearing on September 8, 2005, the counsel for the petitioner was around, and may have argued on new matters not contained in said motion. Unfortunately, he was not around again. At any rate, there is nothing in the rules which says that the ruling on the motion should be made on the actual scheduled date of hearing on said motion, especially that this date was chosen by the movant herself. (Rollo, pp. 279-280)

In any event, it should be stressed that the court is not necessarily bound by the date of hearing proposed by the movant in his motion. Moreover, the respondent judge in this case could not be deemed to have despotically exercised his power in the light of the fact that the arguments raised in the petitioner's omnibus motion, most of which were merely rehashed to begin with, could not override the ministerial task of the court to issue the writ of possession.

Parenthetically, the petitioner is mistaken in her argument that she is still entitled to the balance with respect to her principal obligation amounting to P1,150,000 vis-à-vis the bid price of respondent bank PNB for P2,028,000. Having personally affixed her signature on the mortgage contract, the petitioner cannot feign naivete or ignorance of the onerous nature of the agreement she entered into. Surely, even at the inception of the loan, the petitioner knew that the amount she took out and borrowed from the respondent bank are subject to reasonable interests, penalties and incidental expenses, especially if she fails to comply with her end of the bargain. Indeed, the computation of the principal obligation plus the interests, penalties and fees that the petitioner has allowed to balloon show that the bid price was in fact not enough to cover her entire accumulated obligation.

Granting for the benefit of argument that the petitioner indeed was entitled to the balance from the proceeds of the sale, this does not necessarily nullify the foreclosure sale. As held by the High Court, Section 4 of Rule 68 provides that where there is a balance or residue after payment of the mortgage, the same shall be paid by the mortgagor. However, there is nothing in the said provision that suggests that a violation thereof will have the effect of nullifying the sale. The better rule is that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply gives the mortgagor a cause of action to recover such surplus (*Kleinman vs. Neubert*, 172 NW315 as cited in *Sulit vs. Court of Appeals*, 268 SCRA 441). This is likewise in harmony with the decisional rule that in suing for the return of the surplus proceeds, the mortgagor is deemed to have affirmed the validity of the sale since nothing is due if no valid sale has been made (59 CJS, *Mortgages*, Sec. 596, as cited in *Sulit*, *ibid*).

The petitioner also insists that since the private respondent Corocoto has not yet paid the bank in full for the subject property and has likewise waived in writing his right to be placed in possession of the same, he has no right to institute a petition for issuance of writ of possession.

The petitioner harps on the following provisions in the conditional sale entered into by the respondent bank and respondent Corocoto:

“1. The Vendee hereby waives his right to be placed in actual possession of the property and agrees to have been constructively placed in possession thereof upon execution thereof. The Vendee further agrees to undertake, at his expense, the ejectment of any occupants of the property;

xxx

5. The Vendor shall retain ownership of and title to the property until obligations of the Vendee under this Deed shall have been paid and complied with, to the satisfaction of the vendor. The Vendor shall then execute and deliver to the Vendee the final absolute deed of sale covering the property.” (Rollo, pp. 22-23)

We disagree.

The respondent’s waiver of his right of possession is justified precisely by the impossibility of him acquiring possession inasmuch as that time, the previous owner of the property was still in actual possession and has obstinately refused to vacate the same. Nevertheless, the intention of PNB to eventually place Corocoto in actual possession is made evident by the fact that the said respondent bank has allowed Corocoto to undertake measures to evict the unlawful possessors of the property.

Bluntly put, whether the property is yet to be paid in full by respondent Corocoto is now outside the petitioner’s concern. To state the obvious, the petitioner had already relinquished her right over the property after she has neglected to pay her mortgage and subsequently failed to redeem the property. Even respondent Corocoto does not contest that the PNB remains the absolute owner of the subject property pending the full satisfaction of the purchase price. Thus, all acts of dominion – including *jus possidendi* or right to possess – are still for the respondent bank to exclusively exercise. Incidentally, whether the respondent bank agrees subsequently to surrender possession of the property to another person is a matter that pertains to its sole discretion as the new owner. In this case, even pending full payment, respondent PNB agreed to cede possession in favor of Corocoto as its successor-in-interest on the condition that the latter will cause the eviction of previous possessors of the premises. Again, the petitioner is devoid of any personality whatsoever to question, much less dictate upon the respondent bank whether to assign its right of possession to another person or entity because whatever right the petitioner may have over the property was altogether lost upon the expiration of the period of redemption given to him by law.

Lastly, as to whether or not the trial court should have granted the writ of possession in favor of the private respondent, we are keen on sustaining its grant. After all, the order for a writ of possession issues as a matter of course upon filing of the proper motion and approval of the corresponding bond (*Camacho vs. Philippine National Bank*, 363 SCRA 352).

Indeed, a judgment obligor may redeem the property from the purchaser at any time within one (1) year from registration of the sale (*Lim, Sr. vs. Tambago*, 365 SCRA 320). After the consolidation of title in the buyer's name, for failure of the mortgagor to redeem, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function (*Manalo vs. Court of Appeals*, 366 SCRA 752). The right to redeem becomes *functus officio* on the date of its expiry (*Vda. De Urbano vs. GSIS*, 367 SCRA 672).

Withal, it should be stressed that the sole office of a writ of certiorari is the correction of errors of jurisdiction or grave abuse of discretion (Sec. 1, Rule 65 of the Rules of Court). That said, the writ sought by the petitioner would not lie precisely because, as mentioned above, the issuance of a writ of possession does not involve the exercise of discretion. Inasmuch as in the discharge of such function, the trial court is not given the right to decide how or when the duty shall be performed, but instead acts in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done, the said issuance is ministerial and hence, beyond the reach of certiorari (*Meralco Securities Corp. vs. Savellano et al.*, L-36181, October 23, 1982).

WHEREFORE, in the light of the foregoing premises, the instant petition is hereby DENIED.

SO ORDERED.

Lampas-Peralta and Dimaranan-Vidal, JJ., concur.

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