

**SPS. RAMONCITO C. MANILA AND TERESITA T. MANILA,
PETITIONERS, VS. HON. NANCY RIVAS-PALMONES, IN HER
CAPACITY AS THE PRESIDING JUDGE OF RTC BRANCH 172,
VALENZUELA CITY; UCPB SAVI...**

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court with prayer for Temporary Restraining Order (TRO) and/or Preliminary Injunction seeking to set aside the Orders of the public respondent Judge dated August 18, 2011[1] (dismissing the Injunction case), October 17, 2011[2] (denying petitioners' motion for Consideration (sic)) and February 15, 2012[3] (denying petitioners' Motion for Reconsideration).

Antecedents:

This case stemmed from the real estate mortgage executed by petitioners over their family home to secure a loan obligation they obtained from UCPB Savings Bank.

In 1994, UCPB and Toyota Quezon Avenue, Inc. (TQA) executed a Memorandum of Agreement[4] whereby UCPB will extend personal loans to TQA's employees while TQA undertakes to deduct the monthly amortization from the employees' salaries and remit the amount within three days from due date of the monthly amortizations. Petitioner Ramoncito Manila was one of the employees of TQA who availed of this loan in the amount of P130,000.00. To secure said loan, he executed a Deed of Real Estate Mortgage dated November 11, 1994 over a parcel of lot covered by TCT No. V-35776[5] in favor of UCPB. Petitioners also executed a Promissory Note[6] dated November 25, 1994 where it was stated that the loan of P130,000.00 shall be payable in 60 monthly installments of P3,302.00 per month, the first installment to be paid on January 10, 1995.

Petitioners aver that TQA deducted the monthly amortizations for the said loan from petitioner Ramoncito's salaries. Believing in good faith that he had already paid his loan in full, he demanded the return of his Transfer Certificate of Title from TQA. However, he was informed by TQA that UCPB stopped collecting their payments, hence he went to UCPB's office to inquire about the status of his loan and to tender the uncollected amount. Petitioners claim that UCPB refused to accept the payment and instead, demanded the full payment of P385,600.82, inclusive of penalties, charges and surcharges. Petitioners further claim that UCPB refused to restructure the loan and instead applied to foreclose the mortgage. Thus, on September 5, 2003, petitioners filed an action for Injunction with Prayer for Temporary Restraining Order before the Regional Trial Court of Valenzuela City which was docketed as Civil Case No. 202-V-03.

In their Answer with Counterclaim,[7] respondent UCPB averred that sometime in 1994, it offered the Timeplan personal loan program to Toyota Quezon Avenue branch; that based on the result of the financial evaluation conducted,, Toyota was accredited under the Program and was granted a credit line in the principal amount of P3,000,000.00 with a minimum loanable amount of P5,000.00 and a maximum loan amount of P50,000.00; that Toyota will deduct from its employees/borrowers amounts for the latter's monthly amortization and remit the

same to respondent Bank within three (3) days from due date. Petitioner Ramoncito Manila was one of the employees who availed of the Program and was granted a loan of P130,000.00 secured by a real estate mortgage. The loan was payable in 60 monthly amortizations at P3,302.00 per month. Petitioner started paying the loan in January 1995 until February 1999 when without reasons given, the remittance stopped. At that time, the remaining balance of the loan was P62,550.58 exclusive of interest and other charges. On August 2, 2002 a demand letter was sent to petitioner together with a statement of account showing the loan balance in the amount of P325,600.82. The said loan balance was not paid, thus another demand letter was sent dated March 27, 2003 with the loan balance amounting to P384,352.44 which loan balance was not settled prompting the Bank to institute foreclosure of the real estate mortgage.

The pre-trial conference on the said case was scheduled on March 31, 2011. Petitioner Ramoncito Manila attended the scheduled pre-trial conference, however, he was informed that the Public Respondent Judge was on leave from March 21 to April 1, 2011, hence the pre-trial was reset to August 18, 2011. The notice of resetting dated March 31, 2011 was sent by registered mail to Atty. I. Roque, petitioner's counsel, UCPB's counsel Atty. J. C. Ibarra and petitioner Ramoncito Manila[8]. Petitioners as well as the defendants failed to appear on the scheduled pre-trial conference on August 18, 2011, prompting the public respondent to dismiss the case.[9] The notice of dismissal was received by petitioners on September 15, 2011, therefore they had until September 30, 2011, a Friday, within which to file a Motion for Reconsideration.[10] Petitioners filed a "Motion for Consideration"[11] on October 3, 2011 in which they claim that they did not receive the notice of the pre-trial conference set on August 18, 2011 and their counsel's copy was wrongly sent to her former address despite the fact that she had already informed the court of her change of address on September 4, 2009 when she filed a Motion for Extension to file Bond in connection with the writ of preliminary injunction granted by the trial court. The motion was denied by the Public Respondent for being filed out of time in the Order dated October 17, 2011.[12] Petitioners then filed a "Motion for Reconsideration"[13] of the Order dated October 17, 2011. In said motion, petitioners explained that they and their counsel are members of the Church of God International which held an International Thanksgiving activity on September 30 to October 2, 2011[14] in Apalit, Pampanga; petitioner Ramoncito was able to leave from Pampanga to Manila only during the afternoon break on September 30, 2011 to file the copy of the Motion for Consideration to the court, however, the court was already closed when he arrived. Despite counsel's advice to mail the same, and not knowing the legal implications of the delay, petitioner Ramoncito filed the Motion on the next business day which was on October 3, 2011, a Monday. Finding the explanation unmeritorious, the public respondent denied the second motion in an order dated February 15, 2012.[15] Hence the present petition for certiorari filed on May 08, 2012.

Petitioners submitted a copy of the Law Office's logbook for the months of April, May and June 2011 to show that on those months, they did not receive any notice with regard to the resetting of the pre-trial conference to August 18, 2011[16]. It is extant on the face of the Notice of resetting dated March 31, 2011 that copies were sent by registered mail to Atty. I. Roque, petitioner Ramoncito Manila and to Atty. J. C. Ibarra.[17]

The sole issue raised by petitioners is whether or not the public respondent committed grave abuse of discretion when she denied their "Motion for Consideration" and "Motion for Reconsideration".

We rule in the negative.

It is extant in the records of this case that petitioners already filed a "Motion for Consideration" which, though not appropriately termed, is tantamount to a Motion for Reconsideration of the order of dismissal. Thus, the subsequent "Motion for Reconsideration" filed by petitioners after their "Motion for Consideration" was denied amounted to a second Motion for Reconsideration which is not allowed by the Rules of Court.

Rule 52, Revised Rules of Court provides:

“Sec. 2. Second motion for reconsideration.- No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.”

It is clear from the foregoing provision that the second motion filed by the petitioners is proscribed.

Petitioners argue that their counsel was not notified of the pre-trial set on August 18, 2011 despite the fact that Atty. Imelda Roque already informed the trial court of her change of address when she filed a Motion for Extension to File Bond on September 4, 2009.

A review of the records would show that indeed Atty. Roque filed a Motion for Extension to File Bond on September 4, 2009[18] where her address was reflected at 907 BMPI Bldg., Philam Homes, EDSA, Quezon City. However, contrary to Atty. Roque's claim that she informed the trial court of said change of address, it does not appear from the records that she did. Atty. Roque was remiss in her duty as petitioners' counsel in her failure to formally inform the trial court of her change of address. The trial court was not at fault when it sent the notice of pre-trial at the old address of petitioners' counsel because the latter did not effectively notify the trial court of her change of address. It is not enough that petitioner's counsel indicated her new address in her Motion for Extension to File Bond. As to what constitutes effective notice to the court, the Supreme Court ruled that proper notification to the court of a litigant's change of address is done by filing a notice of change of address.[19] (Underscoring Ours)

The Supreme Court also ruled that the failure of a party litigant to properly inform the court of his change of address is fatal to his cause; that as a consequence of his failure to inform the court of his change of address, the notice sent by the court to his former address is binding on him.[20]

Most importantly, it is well to remember that under Rule 18, Section 5 of the Rules of Court, failure of a plaintiff to appear during the pre-trial is a cause for the dismissal of his complaint, thus:

Rule 18

Section 5. Effect of failure to appear. - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. xxx

Dismissal with prejudice is deemed an adjudication on the merits, and therefore appealable. Under Rule 41, Section 1 of the Rules of Court, the proper remedy from a judgment or final order that completely disposes of the case or of a particular matter shall be by appeal. In the case at bar, the petitioner should have appealed the case when their motion dated September 30, 2011 for Consideration of the order of dismissal was denied by the trial court. To reiterate, the present petition for certiorari is not the proper remedy for the petitioners, and certiorari cannot be a substitute for a lost appeal. Even on the case that We can entertain the present petition, still, certiorari will not lie because there was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent who merely adhered to the provisions of the Rules of Court.

WHEREFORE, in view of the foregoing, the instant petition for certiorari is hereby DENIED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Rollo, at 26

[2] Ibid, at 27

[3] Ibid, at 28

[4] Ibid, at 65-66

[5] Ibid, at 68-69

[6] Records, at 72

[7] Ibid, at 94-106

[8] Rollo, at 29

[9] Ibid, at 26; Order dated August 18, 2011

[10] Ibid, at 27

[11] Ibid, at 58-59

[12] Ibid, at 27

[13] Ibid, at 61-62

[14] Ibid, at 60

[15] Ibid, at 28

[16] Ibid, at 31-57

[17] Ibid, at 29

[18] Records, at 155-156

[19] Arra Realty Corp. vs. Paces Industrial Corp., GR No. 169761, December 1, 2010

[20] Najarro vs. Jarson Development Corp., et.al., GR No. 142627, January 28, 2008

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