

PACIFIC BANKING CORPORATION, PETITIONERS, VS. COURT OF APPEALS, (FOURTH DIVISION), WILLIAM LOK GO, FRANKLIN LOK GO, NATHALIE LOK GO-ONG AND CARL DICKSON LOK GO, REPRESENTED HERE...

G.R. No. 102553. July 18, 1994

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for certiorari and mandamus which finds its roots in Civil Case No. 53009 for annulment of foreclosure, conveyance and damages. The case was filed by private respondents against petitioner before the RTC of Pasig, Metro Manila, Br. 163. On November 15, 1990, the trial court decided in favor of private respondents, thus:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of (private respondents) and against (petitioner):

1. Declaring the foreclosure proceedings involving the properties covered by TRANSFER CERTIFICATE OF TITLE NOS. 180592 and 180593 (Now TCT Nos. 44528 and 44529) only as null and void, with the exception of the property covered by TCT No. 1322;
2. Ordering the Register of Deeds of Rizal (now San Juan, Metro Manila) to cancel TCT Nos. 44528 and 44529 and restoring TCT Nos. 180592 and 180593 in the same faith and credit prior to the foreclosure proceedings;
3. Ordering (petitioner) to pay attorney's fees in the amount of P20,000.00;
4. (Petitioner's) counterclaim is hereby Dismissed for lack of merit.

"SO ORDERED."

On November 26, 1990, petitioner bank filed a notice of appeal with the RTC. Nine months later, or on August 16, 1991, private respondents moved respondent court to dismiss the appeal for failure to prosecute. They pointed to petitioner's failure, since the filing of its notice of appeal, "to cause the lower court to transmit the records of the case to this Honorable Court within a reasonable period of time."

Petitioner opposed the motion to dismiss on August 22, 1991. Relevant portions of its opposition read as follows:

"xxx xxx xxx

"2. Contrary to (private respondents') accusations, (petitioner) had tried its very best to follow-up the transmission of the entire records of the case to this Honorable Court. However, at those moments, the stenographic reporters were not yet through transcribing the stenographic notes; that it is only now that the transcription was completed and herein (petitioner) was required to pay the transcripts to be forwarded to this Honorable Court pursuant to the new policy of the Supreme Court regarding transcript of stenographic notes

on appealed cases.

"xxx xxx xxx

"4. Furthermore, (petitioner) would like also to point out that while it is true that the rules require that party litigants should see to it that the Court is made aware of any delay in action over their cases, it also imposes upon the clerk or the Judge of the Court to whom the appeal is addressed the positive duty to transmit to the Clerk of Court to which the appeal is taken the complete records of the case. It also imposes upon the stenographers the duty to transcribe the stenographic notes of the proceedings without unnecessary delay. However, as stated earlier, the clerks failed to do their share. Clearly, therefore, (petitioner) should not be punished for this failure and the appeal should and must not be dismissed simply because of this reason. x x x."[1]

On September 17, 1991, respondent court[2] dismissed petitioner's appeal, docketed as CA-G.R. CV No. 33421, through its first impugned Resolution. It held, viz.:

"x x x (I)n *Sarmiento v. IAC*, 153 SCRA 110, the High Court ruled that while it is the duty of the clerk of the trial court to immediately transmit to the appellate court the record on appeal, it is also the duty of the appellant to see to it that the clerk acts accordingly, and he cannot simply fold his arms and sit idly by and then wash his hands and say that the delay in the transmittal of the record to the appellate court is not his fault. Following this ruling of the High Court, and in line with the efforts of all courts to expedite the disposition of cases, (private respondents) (are) right in saying that (petitioner) Bank's conduct is what the late Chief Justice Moran considered in his Comments on the Rules of Court as 'slothful' and warrants dismissal of its present appeal, especially as said Bank must have not only a house counsel but retained lawyers to attend to its court cases with diligence and dispatch." (Citations omitted.)

On November 8, 1991, respondent court issued its second impugned Resolution, as it denied petitioner's motion for reconsideration, thus:

"xxx xxx xxx

"In the instant motion, (petitioner) bank attributes fault for the delay in its prosecution of this appeal to Rhodora G. Valdez, court aide of the lower court, who stated in her affidavit attached to the bank's motion that:

(1) The transcript of the stenographic notes were either incomplete or not initialed, and that the two stenographers who took notes at the hearing of the case and who had been transferred to the RTC of Makati had allegedly initialed their TSN only in July, 1991;

(2) That another stenographer who had transferred to the RTC of Manila submitted the duplicate of her TSN only on June 19, 1991; and

(3) That upon completion of the TSN, she (Valdez) failed to forward the records of the case to this Court at once because of the numerous appeals being prepared by her.

"We do not believe the foregoing affidavit of the aide of the lower court is sufficient to excuse the clear negligence and slothfulness of (petitioner) bank's counsel resulting in the unreasonable delay in their prosecution of said bank's appeal in this case. For one thing, why should a mere court aide have the duty to complete the records of a case for purposes of appeal and to forward the same to this Court? Is this not the duty and responsibility of the branch clerk of court, or the clerk in charge of civil cases, whose attention should have been called by counsel if he or she had neglected said duty and responsibility? And for another thing, initials to or duplicates of the TSN of stenographers are minor matters that could easily have been obtained with the exercise of ordinary diligence on the part of appellant bank's counsel, especially since the stenographers concerned have been reassigned only in Metro Manila; and as revealed in (private respondents') opposition to (petitioner) bank's present motion, all the TSN in this case had already been prepared and

finished by the stenographers when said bank filed its memorandum in the trial court on June 19, 1990 or many months before said court promulgated its decision of November 26, 1990 in this case. Obviously, then, counsel for (petitioner) bank are merely hiding behind the skirt of the court aide of the lower court, so to speak, as an excuse for their obvious indifference and lack of attention to its present appeal, thus unduly delaying the administration of justice in this case.

"xxx xxx xxx."[3]

Thus, this petition for certiorari and mandamus to review the two impugned Resolutions of the Court of Appeals. Petitioner raises the following issues:

"1. Whether or not the petitioner was denied of its right to due process of law when the respondent Court of Appeals dismissed its appeal on a purely technical ground in utter disregard of the facts and admonition of this Honorable Court in the Case of Advincula vs. Intermediate Appellate Court, 147 SCRA 262.

"2. Whether or not respondent Court of Appeals committed a grave abuse of discretion amounting to lack of jurisdiction when it refused to apply to the case at bar the rulings of this Honorable Court in the cases of A-One Feeds, Inc. vs. Court of Appeals, 100 SCRA 590 and Alonzo vs. Villamor, 16 Phil. 315, and in applying instead, apparently without the benefit of serious study, the case of Sarmiento vs. Intermediate Appellate Court, 153 SCRA 110.

"3. Whether or not the respondent court committed a grave abuse of discretion amounting to lack of jurisdiction by exhibiting glaring bias in favor of respondents Lok Go, et al., and extreme prejudice against petitioner.

"4. Whether or not the respondent Court of Appeals acted without jurisdiction when it decided the petitioner's appeal on the merits by declaring that the 'lower court did not err in holding that the mortgage constituted by Lok Ying Ha on said lands in favor of the (petitioner) bank is null and void,' an issue which is foreign to the issue of failure to prosecute which was the sole ground for the motion to dismiss."

We find for the respondents.

Respondent court did not commit grave abuse of discretion when it dismissed petitioner's appeal for failure to prosecute. The undisputed facts show that petitioner did not pursue its appeal with the zeal and interest required by the rules. From November 26, 1990, when it filed its notice of appeal with the RTC, to August 16, 1991, when private respondents filed their motion to dismiss with respondent court is a period of nine (9) long months. During this period, petitioner failed to cause the transmittal of the records of the case to respondent court.

The excuse proffered by petitioner -- that the transcripts of stenographic notes had not been completed -- cannot justify the delay in the transmission of the records of the case. If the minor functionaries of the trial court were delaying the transcription and completion of the stenographic notes, petitioner could have informed the trial judge of their neglect of duty via a proper motion. The records do not show that even this elementary duty was done by petitioner. Such nonchalance negates its interest in speedily prosecuting its appeal with respondent court.

Petitioner has not taken heed of our decision in the early case of Fagtanac vs. Court of Appeals, 22 SCRA 1227 (1968), viz.:

"A rule long familiar to practitioners in this jurisdiction is that it is the duty of the appellant to prosecute his appeal with reasonable diligence. He cannot simply fold his arms and say that it is the duty of the Clerk of the Court of First Instance (now Regional Trial Court) xxx to transmit the record on appeal to the appellate court. It is appellant's duty to make the Clerk act and, if necessary, procure a court order to compel him to act. He cannot idly sit by and wait till this is done. He cannot afterwards wash his hands and say that delay in the transmittal of the record on appeal was not his fault. For, indeed, this duty imposed upon him was precisely to

spur on the slothful."

WHEREFORE, the instant petition for certiorari and mandamus is DENIED. The Resolutions of respondent Court of Appeals dated, September 17, 1991 and November 8, 1991, in CA-G.R. CV No. 33421, are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.
Mendoza, J., no part.

[1] Opposition To Motion To Dismiss; Rollo, pp. 45--47.

[2] Through its Fourth Division, composed of Associate Justices Vicente V. Mendoza, Oscar M. Herrera, and Alicia V. Sempio Diy (ponente).

[3] Court of Appeals Resolution, dated November 8, 1991, p. 3; Rollo, p. 36.

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