

## **METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS. COURT OF APPEALS AND ALFONSO ROXAS CHUA, RESPONDENTS.**

*G.R. No. 110147. April 17, 2001*

Ponente: PANGANIBAN, J.

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### **PANGANIBAN, J.:**

If an order leaves something to be done by the trial court with respect to the merits of the case, it is interlocutory; if it does not, it is final. Once determined to be final, the order may be the subject of an appeal, as in the present case.

#### **The Case**

Filed before this Court is a Petition for Review under rule 45 of the Rules of Court, challenging the December 22, 1992 Decision[1] of the Court of appeals (CA) in CA-GR SP No. 28679. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, the petition for certiorari is DISMISSED, with costs against private respondent." [2] The CA affirmed the April 10 and the July 23, 1992 Orders [3] of the Regional Trial Court of Manila (Branch 46), which denied herein petitioner's Motion to Strike Out or Expunge from the records respondent's Notice of Appeal.

Also questioned is the May 3, 1993 CA Resolution [4] denying petitioner's Motion for Reconsideration.

#### **The Facts**

The undisputed facts are summarized by the appellate court as follows: [5]

"Petitioner Metrobank and Trust Company (Metrobank for short) brought an action for a sum of money against private respondents Pacific Multi Commercial Corporation and Alfonso Roxas Chua, Jr. on November 25, 1982. Private respondents failed to file their answer and were, for that reason, declared in default.

"On May 26, 1983, the trial court rendered judgment for Metrobank[,] ordering the private respondents jointly and severally liable to pay the following amounts:

- `1. The sum of P964,377.49 representing the unpaid balance of the loan as of the date of the filing of the complaint;
- `2. Interests on the unpaid balance at the rate of 14% per annum on the unpaid principal from August 10, 1982 until said principal is fully paid;
- `3. Penalty charges at the rate of 8% per annum on the outstanding interest, computed from the date of default up to the full payment of the obligation;
- `4. Attorney's fees equivalent to 10% of the total amount due and collectible; and
- `5. The costs of this suit.'

"After the decision had become final, Metrobank moved for the execution of the judgment in its favor. The trial court granted Metrobank's motion and, among other things, the deputy sheriff garnished the shares of stock of private respondent Alfonso Roxas Chua, Jr. in the Club Filipino.

"On July 17, 1991 the sheriff sold at public auction respondent Roxas Chua's Certificate of Ownership No. 809 in the Club Filipino to the Metrobank as the highest bidder. A certificate of sale was issued to the Metrobank. However, on August 12, 1991, respondent Alfonso Roxas Chua, Jr. filed with the respondent trial court a motion to hold in abeyance the delivery to Metrobank of the certificate of ownership and to declare the sale to Metrobank as null and void on the ground that the certificate of ownership was the conjugal property of respondent Roxas Chua, Jr. and his wife Kiang Ming Chu. Metrobank opposed the private respondent's motion.

"On September 30, 1991, the trial court issued an order denying private respondent Roxas Chua's motion to hold in abeyance the delivery of [the] certificate of ownership to Metrobank and to declare the sale as null and void. Private respondent Alfonso Roxas Chua, Jr. moved for a reconsideration, but his motion was denied by the court in its order dated February 18, 1992. Accordingly, on March 26, 1992, private respondent filed a notice of appeal from the order of the court.

"On April 6, 1992, Metrobank moved to strike out or expunge from the record the notice of appeal of respondent Roxas Chua, Jr. on the ground that private respondent, having been declared in default, ha[d] no standing to file the notice. However, the court, in its order dated April 10, 1992 denied the petitioner's motion.

"Metrobank moved for reconsideration but again [its] motion was denied by the court in another order dated July 23, 1992. Hence, this petition for certiorari to set aside these orders of April 10, 1992 and July 23, 1992 [issued by] the respondent court."

### Ruling of the Court of Appeals

Relying on Section 2, Rule 41 of the pre-1997 Rules of Court, the CA ruled that a defendant may appeal a judgment of default without need to set aside the order declaring him in default.

The CA also disallowed the new grounds raised before it by petitioner. More important, the appellate court held that those grounds were not proper in a petition for certiorari, because they did not involve grave abuse of discretion or jurisdiction. Ruled that CA:

"It is next contended by the petitioner (1) that on the assumption that the certificate of ownership which the sheriff had levied upon execution is conjugal property of private respondent and his wife Kian Ming Chu, nonetheless private respondent would not have the requisite standing to question the validity of the sale insofar as his wife's ownership is concerned because only the latter can question the sale and (2) that the order of February 18, 1992, denying private respondent's motion to set aside the sale of a certificate of ownership, is not appealable. These grounds are being raised for the first time in the present petition. The trial court has had no opportunity to pass on them and it is unfair to find that it committed a grave abuse of discretion for something it has not done. Moreover, these grounds are not proper for a petition for certiorari. If at all they should be raised in defense in the pending appeal brought by the private respondent. It is hardly necessary to state that the function of the writ of certiorari is to keep a lower court within its jurisdiction and that, therefore, only jurisdictional questions may be raised. Mere errors of judgment may be corrected by appeal. If, as petitioner contends, private respondent Alfonso Roxas Chua, Jr. has no standing to question the sale of the certificate of ownership insofar as the sale of his wife's share is concerned, and that at any rate the order denying private respondent's motion to set aside the sheriff's sale is not appealable, these questions should be raised either in petitioner's brief on appeal or in a motion to dismiss the appeal of private respondent." [6] Hence, this recourse. [7] [Issues]

Petitioner submits, for the consideration of this Court, the following issues:

"a)

The finding and holding of the Former Special Third Division of the respondent Court of Appeals - that the private respondent may appeal the judgment [by] default, rendered against him by the lower Court - is contrary to the facts of the case as set out in the said questioned Decision, Annex `A' hereof;

b)

The Former Special Third Division of the respondent Court of Appeals completely evaded [confrontation of], and thus failed to rule on, the issue raised by petitioner on the continuous loss of standing of the private respondent throughout the entire execution stage of the judgment by default;

c)

The petitioner duly raised before the lower Court the issue that the February 18, 1992 Order of the lower Court, Annex `FF' hereof, which is the subject of the private respondent's appeal, cannot be the subject of an appeal as the same is merely interlocutory in nature and not appealable, so much so that the said lower Court has had the opportunity to pass upon that issue, contrary to the finding and holding of the former Special Third Division of the respondent Court of Appeals that said issue was allegedly raised before it for the first time by the petitioner; and

d)

The said issue - that the February 18, 1992 Order, which is the subject of the private respondent's appeal, cannot be the subject of an appeal as the same is merely interlocutory in nature and not appealable - can properly be raised as a ground in a petition for certiorari." [8] In the main, the Court will resolve the propriety of respondent's appeal to the CA of the RTC Orders.

## The Court's Ruling

The Petition is not meritorious.

Main Issue:

Propriety of Appeal

Petitioner avers that the Court of Appeals erred in sustaining the trial court's Orders allowing private respondent's appeal. Petitioner further contends that respondent had already been declared in default, and that such status subsisted because the default order was not lifted. It adds that the appeal should have been disallowed, since the trial court Decision had long become final and executory. What was being appealed was a mere order of execution, which was interlocutory in nature and not subject to appeal.

For easier understanding, let us briefly restate the pertinent facts of the present case. On May 3, 1983, private respondent was declared in default in Civil Case No. 82-14134.[9] On May 26, 1983, the trial court rendered a Decision[10] ordering him to pay petitioner the amounts mentioned therein. The Decision became final and executory.

After executing on the various properties owned by private respondent, the trial court directed the sheriff to sell at public auction the Club Filipino share owned by private respondent.[11] On July 17, 1991, a Certificate of Sale was issued in favor of petitioner as purchaser of that share.[12] Private respondent then filed a Motion to hold in abeyance the delivery of the Certificate of Sale and to declare the sale void.[13] On September 30, 1991, the trial court issued an Order denying the Motion of private respondent.[14] The latter then filed a Motion for Reconsideration which was denied. Hence, he filed a notice of appeal questioning the trial court's Order denying the Motion to hold in abeyance the delivery of the Club Filipino share and to declare the auction sale void.[15]

The subject matter of this case, therefore, is whether private respondent can appeal from the denial of the Motion to hold in abeyance the delivery of the Certificate of Sale and to declare the sale void.

In its Decision, the CA stated that parties in default did not need to have the order of default against them lifted before they could appeal. In other words, a party in default is not precluded from filing an appeal, as provided in Section 2, Rule 41 of the pre-1997 Rules of Court (in effect at the time), which states:

"Sec. 2. Judgements or orders subject to appeal. -- Only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other.

A judgment denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that it is not supported by the evidence or it is contrary to law.

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." [16]

The above provision, particularly its third paragraph, clearly states that one who has been declared in default may appeal, without need of an order lifting the default. [17] Hence, the mere fact that the trial court has not lifted its default order does not bar herein respondent from filing an appeal.

If at all, petitioner ought to have challenged the default status of private respondent when he filed his Motion to hold in abeyance the delivery of the Certificate of Sale. However, the denial of that Motion being final in character as we shall now show, he is allowed by the Rules to appeal therefrom.

Paragraph 1 of the above-quoted Rule provides that decisions and final orders are appealable. Because the RTC Orders were final, not merely interlocutory, the CA did not err in allowing respondent's appeal.

It has been held that "[a]n interlocutory order does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits." [18] It "refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision on the whole controversy." [19] Conversely, a final order is one which leaves to the court nothing more to do to resolve the case. The test to ascertain whether an order is interlocutory or final is: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final." [20]

In the present case, the April 10, 1992 Order denied private respondent's Motion to hold in abeyance the delivery of the Certificate of Sale of his Club Filipino share and to declare the sale void. After rendering the Order, the trial court did not need to do anything more to settle the rights of the parties. Upon the affirmation of the validity of the sale, the Certificate of Sale was to be delivered to petitioner as the new owner. Indeed, while appeal does not lie against the execution of a judgment, it is available in case of an irregular implementation of a writ of execution. [21] This was the factual scenario in the present case.

WHEREFORE, the Petition is hereby DISMISSED and the assailed Decision and Resolution AFFIRMED. Costs against petitioner.

**SO ORDERED.**

Melo (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

- [1] Rollo, pp. 40-46; penned by Justice Vicente V. Mendoza (Division chairman and now a member of this Court) with the concurrence of Justices Cezar D. Francisco and Salome A. Montoya.
- [2] CA Decision, p. 7; rollo, p. 46.
- [3] Rollo, pp. 112 and 130; written by then Judge Teresita Dy-Liaco Flores.
- [4] Rollo, p. 47.
- [5] CA Decision, pp. 2-3; rollo, pp. 41-42.
- [6] CA Decision, pp. 6-7; rollo, pp. 45-46.
- [7] To eradicate its backlog, the Court on February 27, 2001 resolved to redistribute long-pending cases to justices who had none, and who were thus tasked to prioritize these old cases. Consequently, this case was raffled to the ponente for study and report.
- [8] Petition, pp. 18-19; rollo, pp. 20-21.
- [9] Rollo, p. 57.
- [10] *Id.*, pp. 52-53.
- [11] *Id.*, p. 82.
- [12] *Id.*, p. 88.
- [13] *Id.*, pp. 89-90.
- [14] *Id.*, pp. 96-97. <sup>14</sup> *Id.*, p. 108.
- [15] *Id.*, p. 108.
- [16] Under the 1997 Rules of Civil Procedure, the above-quoted provision may be found in §3, Rule 19 (default) and §1, Rule 41 (subject of appeal).
- [17] *Oriental Media v. Court of Appeals*, 250 SCRA 647, December 6, 1995; *Jao & Company v. Court of Appeals*, 251 SCRA 391, December 19, 1995; *Antonio v. Jacinto*, 14 SCRA 364, June 22, 1964.
- [18] *Philgreen Trading Construction Corp. v. Court of Appeals*, 271 SCRA 719, 726-727, April 18, 1997, per Puno, J. See also *Banares v. Balising*, GR No. 132624, March 13, 2000.
- [19] *Bitong v. Court of Appeals*, 292 SCRA 503, 521, July 13, 1998, per Bellosillo, J. An example of an interlocutory order is one dismissing a motion to dismiss. The court must still conduct a trial before it can resolve the merits of such a case. *Españó Sr. v. Court of Appeals*, 268 SCRA 511, February 17, 1997; *Casil v. Court of Appeals*, 285 SCRA 264, January 28, 1998.
- [20] *Gavina Maglucot-Aw et al. v. Leopoldo Maglucot et al.*, GR No. 132518, March 28, 2000, per Kapunan, J. See also *Miranda v. Court of Appeals*, 71 SCRA 325, June 18, 1976.
- [21] See *Canlas v. Court of Appeals*, 164 SCRA 160, August 8, 1988; *De Guzman v. Court of Appeals*, 137 SCRA 730, July 23, 1985.

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