

**SPOUSES ALENDRY CAVILES AND FLORA POTENCIANO-CAVILES,
PETITIONERS, VS. THE HONORABLE SEVENTEENTH DIVISION,
COURT OF APPEALS, TIAONG RURAL BANK, INC., CRISPIN K.
CASTILLO, AND FE...**

G.R. NO. 126857. September 18, 2002

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Petitioners spouses Alendry Caviles and Flora Potenciano-Caviles assail the Resolutions rendered by the Court of Appeals on August 2, 1996 and October 16, 1996 in CA-G.R. SP No. 38839,[1] dismissing their appeal for failure to Prosecute and denying their motion for reconsideration, respectively.

Records show that petitioners obtained several loans from respondent Tiaong Rural Bank, Inc. The former mortgaged in favor of the latter, several of their properties located in Makati, Manila and Cabuyao, Laguna. Disputing the total amount of the loan obtained by them, petitioners filed on March 11, 1988 before the Regional Trial Court (Branch 132) of Makati City (Makati Court for brevity), a complaint for Breach of Contract with Preliminary Injunction, docketed as Civil Case No. 88-321.

Pending said action, respondents instituted separate petitions for extra-judicial foreclosure proceedings against petitioners' mortgaged properties before the offices of the Sheriffs in Makati, Manila and Laguna.[2]

The Makati Court refused to enjoin the foreclosure sale of petitioners' Laguna properties on the ground that its jurisdiction is limited only within its territorial boundaries.

Petitioners then filed another Breach of Contract case against respondents on May 18, 1988, this time, with the Regional Trial Court of Biñan, Laguna (Branch 24), docketed as Civil Case No. B-2828. The complaint sought, among others, that respondents be declared guilty of breach/violation of the loan agreement, and that they be ordered to comply with its stipulations, particularly on the 12% interest rate. The complaint also sought the issuance of a temporary restraining order, enjoining defendants from foreclosing the Cabuyao, Laguna properties. The Biñan Court, however, dismissed said case on July 28, 1988 because of the pendency of a similar action before the Makati Court (Civil Case No. 88-321). The order of dismissal was appealed to the Court of Appeals.

On November 3, 1988, petitioners filed Civil Case No. B-2969, a petition for prohibition with preliminary injunction before the Regional Trial Court of Biñan, Laguna (Assisting Court), praying, inter alia, that the defendants therein, particularly deputy sheriff Felix Marcellana, be enjoined from proceeding with the extra-judicial foreclosure sale of petitioners' mortgaged properties located in Cabuyao, Laguna.[3]

On February 15, 1993, the Biñan Assisting Court rendered its decision, dismissing the petition for prohibition on the grounds that petitioners failed to establish a clear right to entitle them to its issuance, and that they violated the principle against splitting a single cause of action, there being a pending case before the Makati Court and an appeal from the dismissal by the Biñan Court (Branch 24) of Civil Case No. B-2828.[4] Petitioners elevated their

case to the Court of Appeals[5] when their motion for reconsideration was denied by the Biñan Assisting Court on January 26, 1994.[6]

On March 23, 1995, the Clerk of Court of the Biñan Assisting Court transmitted to the appellate court the records of the case together with indices of exhibits and minutes and transcript of stenographic notes.[7] It was noted in the transmittal (Index of Exhibits) that petitioners' Exhibits "G-3" to "Q"[8] and respondents' Exhibits "7" to "17-B"[9] were not attached to the records. On March 28, 1995, the Clerk of Court notified the respective counsels of the parties that certain exhibits were not attached to the records and required them to send said exhibits immediately to the court a quo.[10]

Six (6) months later, or on September 14, 1995, it was the respondents who filed a motion to set the case for conference to enable the parties to identify copies of the missing exhibits obtained by them from the Makati Court.[11] The appellate court held their motion in abeyance pending identification by the Judicial Records Division of the missing exhibits.[12]

On January 12, 1996, the appellate court issued a Resolution directing the Clerk of Court of the Biñan Assisting Court to transmit the missing exhibits and for petitioners to comment on respondents' Manifestation on the TSNs of stenographer R. Nemes.[13] In compliance therewith, said Clerk of Court in a Manifestation dated March 8, 1996, informed the appellate court that the missing exhibits cannot be located anymore despite diligent efforts.[14]

On March 14, 1996, respondents filed another motion/manifestation, reiterating their request for a conference for the identification/admission of their copies of the missing exhibits,[15] and on May 13, 1996, respondents filed a motion praying that petitioners be required to complete the records of the case, with warning that in case of failure to do so, judgment shall be rendered dismissing the appeal.[16]

Finally, on August 2, 1996, the appellate court rendered the assailed Resolution dismissing the appeal for failure of petitioners to prosecute their appeal with reasonable diligence. The dispositive portion of the Resolution reads:

"WHEREFORE, on the basis of the foregoing considerations, the appeal is hereby DISMISSED for failure of the petitioners-appellants to prosecute their appeal.

"Let a copy of this resolution be likewise served on the petitioners-appellants themselves.

"SO ORDERED."[17]

Petitioners filed a Motion for Reconsideration but the appellate court, in its assailed Resolution dated October 16, 1996, denied the same.[18]

Hence, herein petition for certiorari under Rule 65 of the Rules of Court.[19]

The grounds set forth by petitioner in support of their petition are as follows:

"I

"THE HONORABLE COURT OF APPEALS, WITH UTMOST DUE RESPECT, COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE APPEAL ON ACCOUNT OF THE LOSS OF EXHIBITS, WHICH LOSS OCCURRED WHILE THE EXHIBITS WERE IN THE CUSTODY OF THE TRIAL COURT, AND WITHOUT GIVING THE PARTIES ANY CHANCE TO MEET AND COMPARE THE REMAINING EXHIBITS IN THEIR POSSESSION.

“II

“THE MISSING EXHIBITS ARE NOT INDISPENSABLE TO THE JUDICIOUS RESOLUTION OF THE APPEAL SINCE THE PETITIONERS WILL RAISE A PURE QUESTION OF LAW, SPECIFICALLY WHETHER OR NOT A MORTGAGOR WHOSE PROPERTIES ARE LOCATED IN TWO DIFFERENT REGIONS MAY FILE A SEPARATE INJUNCTION SUIT TO FORESTALL THE FORECLOSURE OF THE PROPERTIES LOCATED OUTSIDE OF THE REGION WHERE AN ORIGINAL SUIT FOR DAMAGES WITH PRAYER FOR INJUNCTION WAS INSTITUTED.

“III

“PETITIONERS ARE ENTITLED TO A WRIT OF PRELIMINARY INJUNCTION TO RESTRAIN THE RESPONDENTS FROM FORECLOSING THEIR PROPERTIES SITUATED IN CABUYAO, LAGUNA.”[20]

As an excuse for their failure to submit copies of the missing exhibits of the trial, petitioners’ counsel claims that their copies of the exhibits were all lost when their office was razed by fire, and because of its “extremely private and confidential nature”, they had difficulty obtaining copies from other sources. Petitioners also say that said exhibits are dispensable in the resolution of their appeal since they are raising a pure question of law.

We are not convinced.

In *Cochingyan v. Court of Appeals*,[21] we reiterated our ruling in *Fagtanac vs. Court of Appeals*,[22] that:

“x x x 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 Court of First Instance under the provisions of Section 11, Rule 41 of the Rules of Court, to transmit the record on appeal to the appellate court. It is the 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, the duty imposed upon him was precisely to spur on the slothful (italics supplied).”[23]

The facts before us readily show that petitioners have been remiss in their duty to prosecute their appeal with reasonable diligence. From the time they filed their notice of appeal on February 24, 1994, nothing was heard from petitioners anymore. Respondents were the ones who were actively pursuing the completion and reconstitution of the missing exhibits. When respondents filed their motions/manifestations requesting for a conference so that their copies of the missing exhibits may be identified, petitioners, who were duly notified,[24] did not even lift a finger to acknowledge or respond to the motions/manifestations, and instead, relegated unto respondents the duty that was theirs. Petitioners did not even comply with the appellate court’s Resolution requiring them to comment on respondents’ manifestation regarding the TSNs taken by stenographer R. Nemes.[25] Clearly, such gross inaction by petitioners to take appropriate steps with reasonable diligence to ensure that the missing exhibits were reproduced and seasonably transmitted to the appellate court warrants dismissal of their appeal.

We cannot accept petitioners’ lame excuse that they had difficulty in getting copies of the missing exhibits. Such excuse would have been plausible had respondents been unable to get copies of the missing exhibits. Records show that respondents’ counsel was able to get copies from their client as well as from the Makati Court where Civil Case No. 88-321 is pending.[26] Had petitioners been zealous and diligent enough, they would have likewise thought of getting such copies from respondents’ sources.

Moreover, petitioners could have earlier manifested during the completion of the records that the missing exhibits may be dispensed with. But they did not. Instead, they bided their time, unreasonably wasting the court’s time

and resources, not to mention the efforts exerted by respondents; and it is only now, after the lapse of two (2) years, that they thought of informing the court that such exhibits may be dispensed with.

Thus, we find that the appellate court did not commit any grave abuse of discretion when it dismissed petitioners' appeal for failure to prosecute.

“x x x failure to prosecute will not be countenanced on the consideration that delays in litigation have always been a bane in our judicial system and there is a growing tendency of “defeated suitors and their lawyers to disregard their duties under the Rules of Court in the hope that they can stall the final day of reckoning.”[27]

Nevertheless, we find it necessary to dwell on the issue of whether or not the act of petitioners in filing three civil actions - one with the RTC of Makati, another with the RTC of Biñan, Laguna (Branch 24) and the third one, with the Biñan Assisting Court, constitutes forum shopping.

The problem of petitioners is an off-shoot of the express provisions of B.P. Blg. 129, to wit:

“Sec. 21. Original jurisdiction in other cases. - Regional Trial Courts shall exercise original jurisdiction:

“(1) In the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced In any part of their respective regions; and

“xxx xxx xxx.”

and Section 3, Rule 2 of the Rules of Court which provides that a party may not institute more than one suit for a single cause of action.

We find that petitioners are guilty of forum shopping insofar as the filing of the petition for prohibition assigned to the Biñan Assisting Court is concerned considering that at the time the said petition was filed, the order of dismissal by the RTC of Biñan (Branch 24) in Civil Case No. B-2828 was pending appeal in the Court of Appeals. Both cases involved same causes of action and same parties except for the public respondents therein.

It should likewise be stressed that the Biñan Assisting Court dismissed the petition for prohibition not only on ground of forum shopping but also on the ground that petitioners failed to establish their right thereto, as correctly expressed by Presiding Judge Justo M. Sultan, thus:

“The functions of prohibition is to prevent a power from being exercised without or in excess of jurisdiction (Magallanes vs. Sarita, 18 SCRA 575); it is a remedy against proceedings that is without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy and adequate remedy in the ordinary course of law. (Commissioner of Immigration vs. Go Tieng, 28 SCRA 237)

“For grave abuse of discretion to prosper as a ground for prohibition, it must first be demonstrated that there was such a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or that the tribunal, corporation, board or person has exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility. (Solidum vs. Hernandez, 7 SCRA 320); Delfin vs. Court of Appeals, 13 SCRA 366). Absence of showing that the party against whom it is sought has acted without or in excess of his jurisdiction or with grave abuse of discretion, the writ of prohibition will not issue. (Lim vs. Sabarre, 24 SCRA 96)

“In the instant case, the acts complained of, which is the main thrust of this petition, is the extrajudicial proceedings instituted by the respondent Bank and Dr. Horacio K. Castillo before the Provincial Sheriff of Laguna. Foreclosure of mortgage is the remedy available to the mortgagee by which he subjects the mortgaged property to the satisfaction of the obligation for which the mortgage was given. The subjection of the property is only resorted to upon failure to pay the debt. It is in essence a charge on property for the purpose of security. Indeed, a mortgage is constituted to secure an obligation upon real property or rights thereon to satisfy with the

proceeds of the sale thereof such obligation when the same becomes due and has not been paid or fulfilled. It is axiomatic in a contract of mortgage that when the principal allegation becomes due, the property mortgaged cannot be appropriated by the creditor but must be sold at public auction in accordance with the procedure prescribed by law (Act. No. 3135, as amended) for the satisfaction of the obligation.

“The Court took note that the real estate mortgage executed by Roberto Caviles and John Carrol Fernandez contains a special power of attorney which confers upon the mortgagee rather the respondent Bank herein; the power to sell the mortgaged property at public auction in the event of foreclosure, conformably with the procedure prescribed in Act. No. 3135, as amended by Act. No. 4118.

“Examining respondents’ evidence on the foreclosure proceedings with respect to the mortgagees Roberto Caviles and John Carrol Fernandez, we believe that the Sheriff’s actuation can stand legal scrutiny. In fact, petitioners have not alleged specific acts and have not proven any, to show that the Sheriff, the respondent Bank and Dr. Horacio K. Castillo have committed grave abuse of discretion. By instituting extrajudicial proceeding before the Provincial Sheriff, the respondent Bank and Dr. Horacio K. Castillo can not be faulted precisely because such is the remedy afforded to them by the law. Under the circumstance, they were just exercising legal right. Moreover, the Sheriff cannot excuse himself from performing a ministerial function prescribed by Act. No. 3135, as amended. On the other hand, petitioner’s claim that no notice of foreclosure proceedings was received by them, deserves scant consideration. In an extrajudicial foreclosure proceedings, personal notice to the mortgagor is not a jurisdictional requirement.

“It must be stressed here that writs of certiorari, prohibition and mandamus are prerogative writs of equity and their granting is ordinarily within the sound discretion of the Courts to be exercised on equitable principles and said writs should only be issued when the right to the relief is clear. (Pimentel vs. Angeles, 45 SCRA 396; Aytona vs. Castillo, 4 SCRA 1) As the evidence on record stands, the preponderance of evidence tends to tilt toward the respondents, as petitioner failed to establish a clear right thereto.”[28]

WHEREFORE, the petition for certiorari is DISMISSED for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Callejo, Sr., JJ., concur.

[*] Composed of Justice Quirino D. Abad Santos, Jr. (Chairman and Ponente); Delilah Vidallon-Magtolis (Member) and Artemio G. Tuquero (Member).

[1] Entitled, Dr. Alendry Caviles, et al. v. Tiaong Rural Bank, et al.

[2] Id., p. 237.

[3] Original Records, Complaint, pp. 1-12.

[4] Id., pp. 430-441.

[5] Id., p. 465.

[6] Id., p.464.

[7] Rollo in CA-G.R. SP No. 38839, pp. 2-7.

[8] Id., p.4.

[9] Id., p. 7.

[10] Id., p. 54.

[11] Id., p. 20.

[12] Id., pp. 28-29.

[13] Id., pp. 40-44.

[14] Id., pp. 52-53.

[15] Id., pp. 49-51.

[16] Id., pp. 56-59.

[17] Id., p. 64.

[18] Id., pp. 120-121.

[19] The petition was given due course and the parties were required to submit their respective Memoranda per Minute Resolution dated July 12, 1999; Rollo, pp. 186-187.

[20] Rollo, pp. 11-12.

[21] G.R. No. 116092, June 29, 2001.

[22] 22 SCRA 1227 [1968] .

[23] Philippine National Construction Corp. vs. Court of Appeals, 272 SCRA 576, 580 [1997] .

[24] Rollo in CA-G.R. SP No. 38839, p. 23, 51.

[25] See Note no. 9, supra.

[26] Rollo of CA-G.R. No. 38839, p. 4.

[27] Philippine National Construction Corp. vs. Court of Appeals, supra.

[28] Rollo, pp. 439-440

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