

HEIRS OF LUIS BACUS, NAMELY: CLARA RESMA BACUS, ROQUE R. BACUS, SR., SATURNINO R. BACUS, PRISCILA VDA. DE CABANERO, CARMELITA B. SUQUIB, BERNARDITA B. CARDENAS, RAUL R. BACUS, M...

G.R. No. 127695. December 03, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition assails the decision dated November 29, 1996, of the Court of Appeals in CA-G.R. CV No. 37566, affirming the decision dated August 3, 1991, of the Regional Trial Court of Cebu City, Branch 6, in Civil Case No. CEB-8935.

The facts, as culled from the records, are as follows:

On June 1, 1984, Luis Bacus leased to private respondent Faustino Duray a parcel of agricultural land in Bulacao, Talisay, Cebu. Designated as Lot No. 3661-A-3-B-2, it had an area of 3,002 square meters, covered by Transfer Certificate of Title No. 48866. The lease was for six years, ending May 31, 1990. The contract contained an option to buy clause. Under said option, the lessee had the exclusive and irrevocable right to buy 2,000 square meters of the property within five years from a year after the effectivity of the contract, at P200 per square meter. That rate shall be proportionately adjusted depending on the peso rate against the US dollar, which at the time of the execution of the contract was fourteen pesos.[1]

Close to the expiration of the contract, Luis Bacus died on October 10, 1989. Thereafter, on March 15, 1990, the Duray spouses informed Roque Bacus, one of the heirs of Luis Bacus, that they were willing and ready to purchase the property under the option to buy clause. They requested Roque Bacus to prepare the necessary documents, such as a Special Power of Attorney authorizing him to enter into a contract of sale,[2] on behalf of his sisters who were then abroad.

On March 30, 1990, due to the refusal of petitioners to sell the property, Faustino Duray's adverse claim was annotated by the Register of Deeds of Cebu, at the back of TCT No. 63269, covering the segregated 2,000 square meter portion of Lot No. 3661-A-3-B-2-A.[3]

Subsequently, on April 5, 1990, Duray filed a complaint for specific performance against the heirs of Luis Bacus with the Lupon Tagapamayapa of Barangay Bulacao, asking that he be allowed to purchase the lot specifically referred to in the lease contract with option to buy. At the hearing, Duray presented a certification[4] from the manager of Standard Chartered Bank, Cebu City, addressed to Luis Bacus, stating that at the request of Mr. Lawrence Glauber, a bank client, arrangements were being made to allow Faustino Duray to borrow funds of approximately P700,000 to enable him to meet his obligations under the contract with Luis Bacus.[5]

Having failed to reach an agreement before the Lupon, on April 27, 1990, private respondents filed a complaint for specific performance with damages against petitioners before the Regional Trial Court, praying that the latter,

(a) execute a deed of sale over the subject property in favor of private respondents; (b) receive the payment of the purchase price; and (c) pay the damages.

On the other hand, petitioners alleged that before Luis Bacus' death, private respondents conveyed to them the former's lack of interest to exercise their option because of insufficiency of funds, but they were surprised to learn of private respondents' demand. In turn, they requested private respondents to pay the purchase price in full but the latter refused. They further alleged that private respondents did not deposit the money as required by the Lupon and instead presented a bank certification which cannot be deemed legal tender.

On October 30, 1990, private respondents manifested in court that they caused the issuance of a cashier's check in the amount of P650,000[6] payable to petitioners at anytime upon demand.

On August 3, 1991, the Regional Trial Court ruled in favor of private respondents, the dispositive portion of which reads:

Premises considered, the court finds for the plaintiffs and orders the defendants to specifically perform their obligation in the option to buy and to execute a document of sale over the property covered by Transfer Certificate of Title # T-63269 upon payment by the plaintiffs to them in the amount of Six Hundred Seventy-Five Thousand Six Hundred Seventy-Five (P675,675.00) Pesos within a period of thirty (30) days from the date this decision becomes final.

SO ORDERED.[7]

Unsatisfied, petitioners appealed to the respondent Court of Appeals which denied the appeal on November 29, 1996, on the ground that the private respondents exercised their option to buy the leased property before the expiration of the contract of lease. It held:

... After a careful review of the entire records of this case, we are convinced that the plaintiffs-appellees validly and effectively exercised their option to buy the subject property. As opined by the lower court, "the readiness and preparedness of the plaintiff on his part, is manifested by his cautionary letters, the prepared bank certification long before the date of May 31, 1990, the final day of the option, and his filing of this suit before said date. If the plaintiff-appellee Francisco Duray had no intention to purchase the property, he would not have bothered to write those letters to the defendant-appellants (which were all received by them) and neither would he be interested in having his adverse claim annotated at the back of the T.C.T. of the subject property, two (2) months before the expiration of the lease. Moreover, he even went to the extent of seeking the help of the Lupon Tagapamayapa to compel the defendants-appellants to recognize his right to purchase the property and for them to perform their corresponding obligation.[8]

x x x

We therefore find no merit in this appeal.

WHEREFORE, the decision appealed from is hereby AFFIRMED.[9]

Hence, this petition where petitioners aver that the Court of Appeals gravely erred and abused its discretion in:

- ...UPHOLDING THE TRIAL COURT'S RULING IN THE SPECIFIC PERFORMANCE CASE BY ORDERING PETITIONERS (DEFENDANTS THEREIN) TO EXECUTE A DOCUMENT OF SALE OVER THE PROPERTY IN QUESTION (WITH TCT NO. T-63269) TO THEM IN THE AMOUNT OF P675,675.00 WITHIN THIRTY (30) DAYS FROM THE DATE THE DECISION BECOMES FINAL;
- ...DISREGARDING LEGAL PRINCIPLES, SPECIFIC PROVISIONS OF LAW AND JURISPRUDENCE IN UPHOLDING THE DECISION OF THE TRIAL COURT TO THE EFFECT THAT PRIVATE RESPONDENTS

HAD EXERCISED THEIR RIGHT OF OPTION TO BUY ON TIME; THUS THE PRESENTATION OF THE CERTIFICATION OF THE BANK MANAGER OF A BANK DEPOSIT IN THE NAME OF ANOTHER PERSON FOR LOAN TO RESPONDENTS WAS EQUIVALENT TO A VALID TENDER OF PAYMENT AND A SUFFICIENT COMPLAINT (SIC) OF A CONDITION FOR THE EXERCISE OF THE OPTION TO BUY; AND

- ... UPHOLDING THE TRIAL COURT'S RULING THAT THE PRESENTATION OF A CASHIER'S (SIC) CHECK BY THE RESPONDENTS IN THE AMOUNT OF P625,000.00 EVEN AFTER THE TERMINATION OF THE TRIAL ON THE MERITS WITH BOTH PARTIES ALREADY HAVING RESTED THEIR CASE, WAS STILL VALID COMPLIANCE OF THE CONDITION FOR THE PRIVATE RESPONDENTS' (PLAINTIFFS THEREIN) EXERCISE OF RIGHT OF OPTION TO BUY AND HAD A FORCE OF VALID AND FULL TENDER OF PAYMENT WITHIN THE AGREED PERIOD.[10]

Petitioners insist that they cannot be compelled to sell the disputed property by virtue of the nonfulfillment of the obligation under the option contract of the private respondents.

Private respondents first aver that petitioners are unclear if Rule 65 or Rule 45 of the Rules of Court govern their petition, and that petitioners only raised questions of facts which this Court cannot properly entertain in a petition for review. They claim that even assuming that the instant petition is one under Rule 45, the same must be denied for the Court of Appeals has correctly determined that they had validly exercised their option to buy the leased property before the contract expired.

In response, petitioners state that private respondents erred in initially classifying the instant petition as one under Rule 65 of the Rules of Court. They argue that the petition is one under Rule 45 where errors of the Court of Appeals, whether evidentiary or legal in nature, may be reviewed.

We agree with private respondents that in a petition for review under Rule 45, only questions of law may be raised.[11] However, a close reading of petitioners' arguments reveal the following legal issues which may properly be entertained in the instant petition:

a)

When private respondents opted to buy the property covered by the lease contract with option to buy, were they already required to deliver the money or consign it in court before petitioner executes a deed of transfer?

b)

Did private respondents incur in delay when they did not deliver the purchase price or consign it in court on or before the expiration of the contract?

On the first issue, petitioners contend that private respondents failed to comply with their obligation because there was neither actual delivery to them nor consignment in court or with the Municipal, City or Provincial Treasurer of the purchase price before the contract expired. Private respondents' bank certificate stating that arrangements were being made by the bank to release P700,000 as a loan to private respondents cannot be considered as legal tender that may substitute for delivery of payment to petitioners nor was it a consignment.

Obligations under an option to buy are reciprocal obligations.[12] The performance of one obligation is conditioned on the simultaneous fulfillment of the other obligation.[13] In other words, in an option to buy, the payment of the purchase price by the creditor is contingent upon the execution and delivery of a deed of sale by the debtor. In this case, when private respondents opted to buy the property, their obligation was to advise petitioners of their decision and their readiness to pay the price. They were not yet obliged to make actual

payment. Only upon petitioners' actual execution and delivery of the deed of sale were they required to pay. As earlier stated, the latter was contingent upon the former. In *Nietes vs. Court of Appeals*, 46 SCRA 654 (1972), we held that notice of the creditor's decision to exercise his option to buy need not be coupled with actual payment of the price, so long as this is delivered to the owner of the property upon performance of his part of the agreement. Consequently, since the obligation was not yet due, consignation in court of the purchase price was not yet required.

Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and it generally requires a prior tender of payment. In instances, where no debt is due and owing, consignation is not proper.^[14] Therefore, petitioners' contention that private respondents failed to comply with their obligation under the option to buy because they failed to actually deliver the purchase price or consign it in court before the contract expired and before they execute a deed, has no leg to stand on.

Corollary, private respondents did not incur in delay when they did not yet deliver payment nor make a consignation before the expiration of the contract. In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. Only from the moment one of the parties fulfills his obligation, does delay by the other begin.^[15]

In this case, private respondents, as early as March 15, 1990, communicated to petitioners their intention to buy the property and they were at that time undertaking to meet their obligation before the expiration of the contract on May 31, 1990. However, petitioners refused to execute the deed of sale and it was their demand to private respondents to first deliver the money before they would execute the same which prompted private respondents to institute a case for specific performance in the *Lupong Tagapamayapa* and then in the RTC. On October 30, 1990, after the case had been submitted for decision but before the trial court rendered its decision, private respondents issued a cashier's check in petitioners' favor purportedly to bolster their claim that they were ready to pay the purchase price. The trial court considered this in private respondents' favor and we believe that it rightly did so, because at the time the check was issued, petitioners had not yet executed a deed of sale nor expressed readiness to do so. Accordingly, as there was no compliance yet with what was incumbent upon petitioners under the option to buy, private respondents had not incurred in delay when the cashier's check was issued even after the contract expired.

WHEREFORE, the instant petition is DENIED. The decision dated November 29, 1996 of the Court of Appeals is hereby AFFIRMED.

Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Buena, J., on official leave.

[1] Records, p. 7.

[2] *Id.* at 41.

[3] *Id.* at 39.

[4] *Id.* at 12.

[5] Ibid.

[6] Stated as P625,000 in the assigned error. See p. 5 of this Decision.

[7] Rollo, pp. 39-43.

[8] Id. at 35.

[9] Id. at 37.

[10] Id. at 16-17.

[11] Medel vs. People, G.R. No. 137143, December 8, 2000, p. 7.

[12] Nietes vs. Court of Appeals, G.R. No. L-32873, 46 SCRA 654, 662, (1972).

[13] Vermen Realty Development Corporation vs. Court of Appeals, G.R. No. 101762, 224 SCRA 549, 554 (1993).

[14] Legaspi vs. Court of Appeals, G.R. No. L-45510, 142 SCRA 82, 88 (1986).

[15] Last paragraph of Art. 1169, Civil Code of the Philippines.

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