

HUERTA ALBA RESORT, INC., PETITIONER, VS. COURT OF APPEALS AND SYNDICATED MANAGEMENT GROUP, INC., RESPONDENTS.*G.R. No. 128567. September 01, 2000*

Ponente: PURISIMA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-128567/>**PURISIMA, J.:**

Litigation must at some time be terminated, even at the risk of occasional errors. Public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.

The Case

At bar is a petition assailing the Decision, dated November 14, 1996, and Resolution, dated March 11, 1997, of the Court of Appeals in CA-G.R. No. 38747, which set aside the Order, dated July 21, 1995, and Order, dated September 4, 1997, of the Regional Trial Court of Makati City, in Civil Case No. 89-5424. The aforesaid orders of the trial court held that petitioner had the right to redeem subject pieces of property within the one-year period prescribed by Section 78 of Republic Act No. 337 otherwise known as the General Banking Act.

Section 78 of R.A. No. 337 provides that “in case of a foreclosure of a mortgage in favor of a bank, banking or credit institution, whether judicially or extrajudicially, the mortgagor shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property.”

The Facts

The facts that matter are undisputed:

In a complaint for judicial foreclosure of mortgage with preliminary injunction filed on October 19, 1989, docketed as Civil Case No. 89-5424 before the Regional Trial Court of Makati City, the herein private respondent sought the foreclosure of four (4) parcels of land mortgaged by petitioner to Intercon Fund Resource, Inc. (“Intercon”).

Private respondent instituted Civil Case No. 89-5424 as mortgagee-assignee of a loan amounting to P8.5 million obtained by petitioner from Intercon, in whose favor petitioner mortgaged the aforesaid parcels of land as security for the said loan.

In its answer below, petitioner questioned the assignment by Intercon of its mortgage right thereover to the private respondent, on the ground that the same was ultra vires. Petitioner also questioned during the trial the correctness of the charges and interest on the mortgage debt in question.

On April 30, 1992, the trial court, through the then Judge now Court of Appeals Justice Buenaventura J. Guerrero, came out with its decision “granting herein private respondent SMGI’s complaint for judicial foreclosure of mortgage”, disposing as follows:

“WHEREFORE, judgment is hereby rendered ordering defendant to pay plaintiff the following:

- (1) P8,500,000.00 representing the principal of the amount due;
- (2) P850,000.00 as penalty charges with interest at 6% per annum, until fully paid;
- (3) 22% per annum interest on the above principal from September 6, 1998, until fully paid;
- (4) 5% of the sum total of the above amounts, as reasonable attorney’s fees; and,
- (5) Costs.

All the above must be paid within a period of not less than 150 days from receipt hereof by the defendant. In default of such payment, the four parcels of land subject matter of the suit including its improvements shall be sold to realize the mortgage debt and costs, in the manner and under the regulations that govern sales of real estate under execution.”[1]

Petitioner appealed the decision of the trial court to the Court of Appeals, the appeal docketed as CA-G.R. CV No. 39243 before the Sixth Division of the appellate court, which dismissed the case on June 29, 1993 on the ground of late payment of docket fees.

Dissatisfied with the dismissal of CA-G.R. No. 39243, petitioner came to this Court via a petition for certiorari, docketed as G.R. No. 112044, which this court resolved to dismiss on December 13, 1993, on the finding that the Court of Appeals erred not in dismissing the appeal of petitioner.

Petitioner’s motion for reconsideration of the dismissal of its petition in G.R. No. 112044 was denied with finality in this Court’s Resolution promulgated on February 16, 1994. On March 10, 1994, leave to present a second motion for reconsideration in G.R. No. 112044 or to submit the case for hearing by the Court en banc was filed, but to no avail. The Court resolved to deny the same on May 11, 1994.

On March 14, 1994, the Resolution dated December 13, 1993, in G.R. No. 112044 became final and executory and was entered in the Book of Entries of Judgment.

On July 4, 1994, private respondent filed with the trial court of origin a motion for execution of the Decision promulgated on April 30, 1992 in Civil Case No. 89-5424. The said motion was granted on July 13, 1994.

Accordingly, on July 15, 1994 a writ of execution issued and, on July 20, 1994, a Notice of Levy and Execution was issued by the Sheriff concerned, who issued on August 1, 1994 a Notice of Sheriff’s Sale for the auction of subject properties on September 6, 1994.

On August 23, 1994, petitioner filed with the same trial court an Urgent Motion to Quash and Set Aside Writ of Execution ascribing to it grave abuse of discretion in issuing the questioned Writ of Execution. To support its motion, petitioner invited attention and argued that the records of the case were still with the Court of Appeals and therefore, issuance of the writ of execution was premature since the 150-day period for petitioner to pay the judgment obligation had not yet lapsed and petitioner had not yet defaulted in the payment thereof since no demand for its payment was made by the private respondent. In petitioner’s own words, the dispute between the parties was “principally on the issue as to when the 150-day period within which Huerta Alba may exercise its equity of redemption should be counted.”

In its Order of September 2, 1994, the lower court denied petitioner’s urgent motion to quash the writ of execution in Civil Case No. 89-5424, opining that subject judgment had become final and executory and consequently, execution thereof was a matter of right and the issuance of the corresponding writ of execution became its ministerial duty.

Challenging the said order granting execution, petitioner filed once more with the Court of Appeals another petition for certiorari and prohibition with preliminary injunction, docketed as C.A.-G.R. SP No. 35086, predicated on the same grounds invoked for its Motion to Quash Writ of Execution.

On September 6, 1994, the scheduled auction sale of subject pieces of properties proceeded and the private respondent was declared the highest bidder. Thus, private respondent was awarded subject bidden pieces of property. The covering Certificate of Sale issued in its favor was registered with the Registry of Deeds on October 21, 1994.

On September 7, 1994, petitioner presented an Ex-Parte Motion for Clarification asking the trial court to “clarify” whether or not the twelve (12) month period of redemption for ordinary execution applied in the case.

On September 26, 1994, the trial court ruled that the period of redemption of subject property should be governed by the rule on the sale of judicially foreclosed property under Rule 68 of the Rules of Court.

Thereafter, petitioner then filed an Exception to the Order dated September 26, 1994 and Motion to Set Aside Said Order, contending that the said Order materially altered the Decision dated April 30, 1992 “which declared that the satisfaction of the judgment shall be in the manner and under the regulation that govern sale of real estate under execution.”

Meanwhile, in its Decision of September 30, 1994, the Court of Appeals resolved the issues raised by the petitioner in C.A.-G.R. SP No. 35086, holding that the one hundred-fifty day period within which petitioner may redeem subject properties should be computed from the date petitioner was notified of the Entry of Judgment in G.R. No. 112044; and that the 150-day period within which petitioner may exercise its equity of redemption expired on September 11, 1994. Thus:

“Petitioner must have received the resolution of the Supreme Court dated February 16, 1994 denying with finality its motion for reconsideration in G.R. No. 112044 before March 14, 1994, otherwise the Supreme Court would not have made an entry of judgment on March 14, 1994. While, computing the 150-day period, petitioner may have until September 11, 1994, within which to pay the amounts covered by the judgment, such period has already expired by this time, and therefore, this Court has no more reason to pass upon the parties’ opposing contentions, the same having become moot and academic.”[2] (Underscoring supplied).

Petitioner moved for reconsideration of the Decision of the Court of Appeals in C.A.-G.R. SP No. 35086. In its Motion for Reconsideration dated October 18, 1994, petitioner theorized that the period of one hundred fifty (150) days should not be reckoned with from Entry of Judgment but from receipt on or before July 29, 1994 by the trial court of the records of Civil Case No. 89-5424 from the Court of Appeals. So also, petitioner maintained that it may not be considered in default, even after the expiration of 150 days from July 29, 1994, because prior demand to pay was never made on it by the private respondent. According to petitioner, it was therefore, premature for the trial court to issue a writ of execution to enforce the judgment.

The trial court deferred action on the Motion for Confirmation of the Certificate of Sale in view of the pendency of petitioner’s Motion for Reconsideration in CA-G.R. SP No. 35086.

On December 23, 1994, the Court of Appeals denied petitioner’s motion for reconsideration in CA-G.R. SP No. 35086. Absent any further action with respect to the denial of the subject motion for reconsideration, private respondent presented a Second Motion for Confirmation of Certificate of Sale before the trial court.

As regards the Decision rendered on September 30, 1994 by the Court of Appeals in CA G.R. SP No. 35086 it became final and executory on January 25, 1995.

On February 10, 1995, the lower court confirmed the sale of subject properties to the private respondent. The pertinent Order declared that all pending incidents relating to the Order dated September 26, 1994 had become moot and academic. Conformably, the Transfer Certificates of Title to subject pieces of property were then issued to the private respondent.

On February 27, 1995, petitioner filed with the Court of Appeals a Motion for Clarification seeking “clarification” of the date of commencement of the one (1) year period for the redemption of the properties in question.

In its Resolution dated March 20, 1995, the Court of Appeals merely noted such Motion for Clarification since its Decision promulgated on September 30, 1994 had already become final and executory; ratiocinating thus:

“We view the motion for clarification filed by petitioner, purportedly signed by its proprietor, but which we believe was prepared by a lawyer who wishes to hide under the cloak of anonymity, as a veiled attempt to buy time and to delay further the disposition of this case.

Our decision of September 30, 1994 never dealt on the right and period of redemption of petitioner, but was merely circumscribed to the question of whether respondent judge could issue a writ of execution in its Civil Case No. 89-5424 xxx.

We further ruled that the one-hundred fifty day period within which petitioner may exercise its equity of redemption should be counted, not from the receipt of respondent court of the records of Civil Case No. 89-5424 but from the date petitioner was notified of the entry of judgment made by the appellate court.

But we never made any pronouncement on the one- year right of redemption of petitioner because, in the first place, the foreclosure in this case is judicial, and as such, the mortgagor has only the equity, not the right of redemption xxx. While it may be true that under Section 78 of R.A. 337 as amended, otherwise known as the General Banking Act, a mortgagor of a bank, banking or credit institution, whether the foreclosure was done judicially or extrajudicially, has a period of one year from the auction sale within which to redeem the foreclosed property, the question of whether the Syndicated Management Group, Inc., is a bank or credit institution was never brought before us squarely, and it is indeed odd and strange that petitioner would now sarcastically ask a rhetorical question in its motion for clarification.”[3] (Underscoring supplied).

Indeed, if petitioner did really act in good faith, it would have ventilated before the Court of Appeals in CA-G.R. No. 35086 its pretended right under Section 78 of R.A. No. 337 but it never did so.

At the earliest opportunity, when it filed its answer to the complaint for judicial foreclosure, petitioner should have averred in its pleading that it was entitled to the beneficial provisions of Section 78 of R.A. No. 337; but again, petitioner did not make any such allegation in its answer.

From the said Resolution, petitioner took no further step such that on March 31, 1995, the private respondent filed a Motion for Issuance of Writ of Possession with the trial court.

During the hearing called on April 21, 1995, the counsel of record of petitioner entered appearance and asked for time to interpose opposition to the Motion for Issuance of /Writ of Possession.

On May 2, 1995, in opposition to private respondent’s Motion for Issuance of /writ of Possession, petitioner filed a “Motion to Compel Private Respondent to Accept Redemption.” It was the first time petitioner ever asserted the right to redeem subject properties under Section 78 of R.A. No. 337, the General Banking Act; theorizing that the original mortgagee, being a credit institution, its assignment of the mortgage credit to petitioner did not remove petitioner from the coverage of Section 78 of R.A. No. 337. Therefore, it should have the right to redeem subject properties within one year from registration of the auction sale, theorized the petitioner which concluded that in

view of its “right of redemption,” the issuance of the titles over subject parcels of land to the private respondent was irregular and premature.

In its Order of July 21, 1995, the trial court, presided over by Judge Napoleon Inoturan, denied private respondent’s motion for a writ of possession, opining that Section 78 of the General Banking Act was applicable and therefore, the petitioner had until October 21, 1995 to redeem the said parcels of land, said Order ruled as follows:

“It is undisputed that Intercon is a credit institution from which defendant obtained a loan secured with a real estate mortgage over four (4) parcels of land. Assuming that the mortgage debt had not been assigned to plaintiff, there is then no question that defendant would have a right of redemption in case of foreclosure, judicially or extrajudicially, pursuant to the above quoted Section 78 of RA 337, as amended.

However, the pivotal issue here is whether or not the defendant lost its right of redemption by virtue of the assignment of its mortgage debt by Intercon to plaintiff, which is not a bank or credit institution. The issue is resolved in the negative. The right of redemption in this case is vested by law and is therefore an absolute privilege which defendant may not lose even though plaintiff-assignee is not a bank or credit institution (*Tolentino versus Court of Appeals*, 106 SCRA 513). Indeed, a contrary ruling will lead to a possible circumvention of Section 78 because all that may be needed to deprive a defaulting mortgagor of his right of redemption is to assign his mortgage debt from a bank or credit institution to one which is not. Protection of defaulting mortgagors, which is the avowed policy behind the provision, would not be achieved if the ruling were otherwise. Consequently, defendant still possesses its right of redemption which it may exercise up to October 21, 1995 only, which is one year from the date of registration of the certificate of sale of subject properties (*GSIS versus Iloilo*, 175 SCRA 19, citing *Limpin versus IAC*, 166 SCRA 87).

Since the period to exercise defendant’s right of redemption has not yet expired, the cancellation of defendant’s transfer certificates of title and the issuance of new ones in lieu thereof in favor of plaintiff are therefore illegal for being premature, thereby necessitating reconveyance (see Sec. 63 (a) PD 1529, as amended).

WHEREFORE, the Court hereby rules as follows:

- (1) The Motion for Issuance of Writ of Possession is hereby denied;
- (2) Plaintiff is directed to accept the redemption on or before October 21, 1995 in an amount computed according to the terms stated in the Writ of Execution dated July 15, 1994 plus all other related costs and expenses mentioned under Section 78, RA 337, as amended; and
- (3) The Register of Deeds of Valenzuela, Bulacan is directed (a) to reconvey to the defendant the following titles of the four (4) parcels of land, namely TCT Nos. V-38878, V-38879, V-38880, and V-38881, now in the name of plaintiff, and (b) to register the certificate of sale dated October 7, 1994 and the Order confirming the sale dated February 10, 1995 by a brief memorandum thereof upon the transfer certificates of title to be issued in the name of defendant, pursuant to Sec. 63 (a) PD 1529, as amended.

The Omnibus Motion dated June 5, 1995, together with the Opposition thereto, is now deemed resolved.

SO ORDERED.”[4]

Private respondent interposed a Motion for Reconsideration seeking the reversal of the Order but to no avail. In its Order dated September 4, 1995, the trial court denied the same.

To attack and challenge the aforesaid order of July 21, 1995 and subsequent Order of September 4, 1995 of the trial court, the private respondent filed with this court a Petition for Certiorari, Prohibition and Mandamus, docketed as G.R. No. 121893, but absent any special and cogent reason shown for entertaining the same, the

Court referred the petition to the Court of Appeals, for proper determination.

Docketed as G.R. No. 387457 on November 14, 1996, the Court of Appeals gave due course to the petition and set aside the trial court's Order dated July 21, 1995 and Order dated September 4, 1995.

In its Resolution of March 11, 1997, the Court of Appeals denied petitioner's Motion for Reconsideration of the Decision promulgated on November 14, 1996 in CA-G.R. No. 38747.

Undaunted, petitioner has come to this Court via the present petition, placing reliance on the assignment of errors, that:

I

THE RESPONDENT COURT OF APPEALS ERRED GRAVELY IN HOLDING THAT THE COURT OF APPEALS (TWELFTH DIVISION) IN CA G.R. SP NO. 35086 HAD RESOLVED "WITH FINALITY" THAT PETITIONER HUERTA ALBA HAD NO RIGHT OF REDEMPTION BUT ONLY THE EQUITY OF REDEMPTION.

II

THE RESPONDENT COURT OF APPEALS ERRED GRAVELY IN IGNORING THAT PETITIONER HUERTA ALBA POSSESSES THE ONE-YEAR RIGHT OF REDEMPTION UNDER SECTION 78, R.A. NO. 337 (THE GENERAL BANKING ACT).

III

THE RESPONDENT COURT OF APPEALS ERRED GRAVELY IN HOLDING THAT PRIVATE RESPONDENT SYNDICATED MANAGEMENT GROUP, INC. IS ENTITLED TO THE ISSUANCE OF A WRIT OF POSSESSION OVER THE SUBJECT PROPERTY.[5]

In its comment on the petition, private respondent countered that:

"A. THE HONORABLE COURT OF APPEALS CORRECTLY HELD THAT IT RESOLVED WITH FINALITY IN C.A.-G.R. SP NO. 35086 THAT PETITIONER ONLY HAD THE RIGHT OF REDEMPTION IN RESPECT OF THE SUBJECT PROPERTIES.

B. THE PETITION IS AN INSIDIOUS AND UNDERHANDED ATTEMPT TO EVADE THE FINALITY OF VARIOUS DECISIONS, RESOLUTIONS AND ORDERS WHICH HELD THAT PETITIONER ONLY POSSESSES THE EQUITY OF REDEMPTION IN RESPECT OF THE SUBJECT PROPERTIES.

C. PETITIONER IS BARRED BY ESTOPPEL FROM BELATEDLY RAISING THE ISSUE OF ITS ALLEGED 'RIGHT OF REDEMPTION.'

D. IN HOLDING THAT THE PETITIONER HAD THE 'RIGHT OF REDEMPTION' OVER THE SUBJECT PROPERTIES, THE TRIAL COURT MADE A MOCKERY OF THE 'LAW OF THE CASE.'"[6]

And by way of Reply, petitioner argued, that:

I.

THE COURT OF APPEALS IN CA G.R. SP NO. 35086 COULD NOT HAVE POSSIBLY RESOLVED THEREIN - WHETHER WITH FINALITY OR OTHERWISE - THE ISSUE OF PETITIONER HUERTA ALBA'S RIGHT OF REDEMPTION UNDER SECTION 78, R.A. NO. 337.

II.

THERE IS NO ESTOPPEL HERE. PETITIONER HUERTA ALBA INVOKED ITS RIGHT OF REDEMPTION UNDER SECTION 78, R.A. NO. 337 IN TIMELY FASHION, i.e., AFTER CONFIRMATION BY THE COURT OF THE FORECLOSURE SALE, AND WITHIN ONE (1) YEAR FROM THE DATE OF REGISTRATION OF THE CERTIFICATE OF SALE.

III.

THE PRINCIPLE OF 'THE LAW OF THE CASE' HAS ABSOLUTELY NO BEARING HERE:

(1)

THE RIGHT OF REDEMPTION UNDER SECTION 78, R.A. NO. 337 IS IN FACT PREDICATED UPON THE FINALITY AND CORRECTNESS OF THE DECISION IN CIVIL CASE NO. 89-5424.

(2)

THUS, THE RTC'S ORDER RECOGNIZING PETITIONER HUERTA ALBA'S RIGHT OF REDEMPTION UNDER SECTION 78, R.A. NO. 37 DOES NOT IN ANY WAY HAVE THE EFFECT OF AMENDING, MODIFYING, OR SETTING ASIDE THE DECISION IN CIVIL CASE NO. 89-5424.

The above arguments and counter-arguments advanced relate to the pivotal issue of whether or not the petitioner has the one-year right of redemption of subject properties under Section 78 of Republic Act No. 337 otherwise known as the General Banking Act.

The petition is not visited by merit.

Petitioner's assertion of right of redemption under Section 78 of Republic Act No. 337 is premised on the submission that the Court of Appeals did not resolve such issue in CA-G.R. SP No. 35086; contending thus:

(1)

BY NO STRETCH OF LOGIC CAN THE 20 MARCH 1995 RESOLUTION IN CA G.R. SP NO. 35086 BE INTERPRETED TO MEAN THE COURT OF APPEALS HAD RESOLVED 'WITH FINALITY' THE ISSUE OF WHETHER PETITIONER HUERTA ALBA HAD THE RIGHT OF REDEMPTION WHEN ALL THAT THE RESOLUTION DID WAS TO MERELY NOTE THE MOTION FOR CLARIFICATION.

(2)

THE 20 MARCH 1995 RESOLUTION IN CA G.R. SP NO. 35086 IS NOT A FINAL JUDGMENT, ORDER OR DECREE. IT IS NOT EVEN A JUDGMENT OR ORDER TO BEGIN WITH. IT ORDERS NOTHING; IT ADJUDICATES NOTHING.

(3)

PETITIONER HUERTA ALBA'S RIGHT OF REDEMPTION UNDER SECTION 78, R.A. NO. 37 WAS NOT AN ISSUE AND WAS NOT IN ISSUE, AND COULD NOT HAVE POSSIBLY BEEN AN ISSUE NOR IN ISSUE, IN CA G.R. SP NO. 35086.

(4)

THE 30 SEPTEMBER 1994 DECISION IN CA G.R. SP NO. 35086 HAVING ALREADY BECOME FINAL EVEN BEFORE THE FILING OF THE MOTION FOR CLARIFICATION, THE COURT OF APPEALS NO LONGER HAD ANY JURISDICTION TO ACT OF THE MOTION OR ANY OTHER MATTER IN CA G.R. SP NO. 35086, EXCEPT TO MERELY NOTE THE MOTION.

II.

IN STARK CONTRAST, THE ISSUE OF PETITIONER HUERTA ALBA'S RIGHT OF REDEMPTION UNDER SECTION 78, R.A. NO. 337 WAS DIRECTLY RAISED AND JOINED BY THE PARTIES, AND THE SAME DULY RESOLVED BY THE TRIAL COURT.

III.

THE RIGHT OF REDEMPTION UNDER SECTION 78 OF R.A. NO. 337 IS MANDATORY AND AUTOMATICALLY EXISTS BY LAW. THE COURTS ARE DUTY-BOUND TO RECOGNIZE SUCH RIGHT.

IV.

EQUITABLE CONSIDERATIONS WEIGH HEAVILY IN FAVOR OF PETITIONER HUERTA ALBA, NOT THE LEAST OF WHICH IS THE WELL-SETTLED POLICY OF THE LAW TO AID RATHER THAN DEFEAT THE RIGHT OF REDEMPTION.

V.

THEREFORE THE 21 JULY 1995 AND 04 SEPTEMBER 1995 ORDERS OF THE TRIAL COURT ARE VALID AND PROPER IN ACCORDANCE WITH THE MANDATE OF THE LAW.

From the various decisions, resolutions and orders a quo it can be gleaned that what petitioner has been adjudged to have was only the equity of redemption over subject properties. On the distinction between the equity of redemption and right of redemption, the case of Gregorio Y. Limpin vs. Intermediate Appellate Court,[7] comes to the fore. Held the Court in the said case:

“The equity of redemption is, to be sure, different from and should not be confused with the right of redemption.

The right of redemption in relation to a mortgage - understood in the sense of a prerogative to re-acquire mortgaged property after registration of the foreclosure sale - exists only in the case of the extrajudicial foreclosure of the mortgage. No such right is recognized in a judicial foreclosure except only where the mortgagee is the Philippine National Bank or a bank or banking institution.

Where a mortgage is foreclosed extrajudicially, Act 3135 grants to the mortgagor the right of redemption within one (1) year from the registration of the sheriff's certificate of foreclosure sale.

Where the foreclosure is judicially effected, however, no equivalent right of redemption exists. The law declares that a judicial foreclosure sale, ‘when confirmed by an order of the court, x x shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law.’ Such rights exceptionally ‘allowed by law’ (i.e., even after confirmation by an order of the court) are those granted by the charter of the Philippine National Bank (Acts No. 2747 and 2938), and the General Banking Act (R.A. 337). These laws confer on the mortgagor, his successors in interest or any judgment creditor of the mortgagor, the right to redeem the property sold on foreclosure - after confirmation by the court of the foreclosure sale - which right may be exercised within a period of one (1) year, counted from the date of registration of the certificate of sale in the Registry of Property.

But, to repeat, no such right of redemption exists in case of judicial foreclosure of a mortgage if the mortgagee is not the PNB or a bank or banking institution. In such a case, the foreclosure sale, ‘when confirmed by an order of the court. x x shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser.’ There then exists only what is known as the equity of redemption. This is simply the right of the defendant mortgagor to extinguish the mortgage and retain ownership of the property by paying the secured debt within the 90-day period after the judgment becomes final, in accordance with Rule 68, or even after the

foreclosure sale but prior to its confirmation.

Section 2, Rule 68 provides that -

‘ x x If upon the trial x x the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and costs, and shall render judgment for the sum so found due and order the same to be paid into court within a period of not less than ninety (90) days from the date of the service of such order, and that in default of such payment the property be sold to realize the mortgage debt and costs.’

This is the mortgagor’s equity (not right) of redemption which, as above stated, may be exercised by him even beyond the 90-day period ‘from the date of service of the order,’ and even after the foreclosure sale itself, provided it be before the order of confirmation of the sale. After such order of confirmation, no redemption can be effected any longer.”[8] (Underscoring supplied)

Petitioner failed to seasonably invoke its purported right under Section 78 of R.A. No. 337.

Petitioner avers in its petition that the Intercom, predecessor in interest of the private respondent, is a credit institution, such that Section 78 of Republic Act No. 337 should apply in this case. Stated differently, it is the submission of petitioner that it should be allowed to redeem subject properties within one year from the date of sale as a result of the foreclosure of the mortgage constituted thereon.

The pivot of inquiry here therefore, is whether the petitioner seasonably invoked its asserted right under Section 78 of R.A. No. 337 to redeem subject properties.

Petitioner theorizes that it invoked its "right" in "timely fashion", that is, after confirmation by the court of the foreclosure sale, and within one (1) year from the date of registration of the certificate of sale. Indeed, the facts show that it was only on May 2, 1995 when, in opposition to the Motion for Issuance of Writ of Possession, did petitioner file a Motion to Compel Private Respondent to Accept Redemption, invoking for the very first time its alleged right to redeem subject properties under to Section 78 of R.A. No. 337.

In light of the aforestated facts, it was too late in the day for petitioner to invoke a right to redeem under Section 78 of R.A. No. 337. Petitioner failed to assert a right to redeem in several crucial stages of the Proceedings.

For instance, on September 7, 1994, when it filed with the trial court an Ex-part Motion for Clarification, petitioner failed to allege and prove that private respondent's predecessor in interest was a credit institution and therefore, Section 78 of R.A. No. 337 was applicable. Petitioner merely asked the trial court to clarify whether the sale of subject properties was execution sale or judicial foreclosure sale.

So also, when it presented before the trial court an Exception to the Order and Motion to Set Aside Said Order dated October 13, 1994, petitioner again was silent on its alleged right under Section 78 of R.A. No. 337, even as it failed to show that private respondent's predecessor in interest is a credit institution. Petitioner just argued that the aforementioned Order materially altered the trial court's Decision of April 30, 1992.

Then, too, nothing was heard from petitioner on its alleged right under Section 78 of R.A. No. 337 and of the predecessor in interest of private respondent as a credit institution, when the trial court came out with an order on February 10, 1995, confirming the sale of subject properties in favor of private respondent and declaring that all pending incidents with respect to the Order dated September 26, 1994 had become moot and academic.

Similarly, when petitioner filed on February 27, 1995 a Motion for Clarification with the Court of Appeals, seeking "clarification" of the date of commencement of the one (1) year redemption period for the subject properties, petitioner never intimated any alleged right under Section 78 of R.A. No. 337 nor did it invite attention

to its present stance that private respondent's predecessor-in-interest was a credit institution. Consequently, in its Resolution dated March 20, 1995, the Court of Appeals ruled on the said motion thus:

“But we never made any pronouncement on the one-year right of redemption of petitioner because, in the first place, the foreclosure in this case is judicial, and as such, the mortgagor has only the equity, not the right of redemption xxx. While it may be true that under Section 78 of R.A. 337 as amended, otherwise known as the General Banking Act, a mortgagor of a bank, banking or credit institution, whether the foreclosure was done judicially or extrajudicially, has a period of one year from the auction sale within which to redeem the foreclosed property, the question of whether the Syndicated Management Group, Inc., is bank or credit institution was never brought before us squarely, and it is indeed odd and strange that petitioner would now sarcastically ask a rhetorical question in its motion for clarification.”[9] (Underscoring supplied).

If petitioner were really acting in good faith, it would have ventilated before the Court of Appeals in CA-G.R. No. 35086 its alleged right under Section 78 of R.A. No. 337; but petitioner never did do so.

Indeed, at the earliest opportunity, when it submitted its answer to the complaint for judicial foreclosure, petitioner should have alleged that it was entitled to the beneficial provisions of Section 78 of R.A. No. 337 but again, it did not make any allegation in its answer regarding any right thereunder. It bears stressing that the applicability of Section 78 of R.A. No. 337 hinges on the factual question of whether or not private respondent's predecessor in interest was a credit institution. As was held in *Limpin*, a judicial foreclosure sale, “when confirmed by an order of the court, xx shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law’,”[10] which confer on the mortgagor, his successors in interest or any judgment creditor of the mortgagor, the right to redeem the property sold on foreclosure after confirmation by the court of the judicial foreclosure sale. Thus, the claim that petitioner is entitled to the beneficial provisions of Section 78 of R.A. No. 337 - since private respondent's predecessor-in-interest is a credit institution - is in the nature of a compulsory counterclaim which should have been averred in petitioner's answer to the complaint for judicial foreclosure.

“xxx A counterclaim is, most broadly, a cause of action existing in favor of the defendant against the plaintiff. More narrowly, it is a claim which, if established, will defeat or in some way qualify a judgment or relief to which plaintiff is otherwise entitled. It is sometimes defined as any cause of action arising in contract available against any action also arising in contract and existing at the time of the commencement of such an action. It is frequently defined by the codes as a cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action.”[11] (underscoring supplied)

“The counterclaim is in itself a distinct and independent cause of action, so that when properly stated as such, the defendant becomes, in respect to the matters stated by him, an actor, and there are two simultaneous actions pending between the same parties, wherein each is at the same time both a plaintiff and a defendant. Counterclaim is an offensive as well as a defensive plea and is not necessarily confined to the justice of the plaintiff's claim. It represents the right of the defendant to have the claims of the parties counterbalanced in whole or in part, and judgment to be entered in excess, if any. A counterclaim stands on the same footing, and is to be tested by the same rules, as if it were an independent action.”[12] (underscoring supplied)

The very purpose of a counterclaim would have been served had petitioner alleged in its answer its purported right under Section 78 of R.A. No. 337:

“xxx The rules of counterclaim are designed to enable the disposition of a whole controversy of interested parties' conflicting claims, at one time and in one action, provided all parties' be brought before the court and the matter decided without prejudicing the rights of any party.”[13]

The failure of petitioner to seasonably assert its alleged right under Section 78 of R.A. No. 337 precludes it from so doing at this late stage of the case. Estoppel may be successfully invoked if the party fails to raise the question in the early stages of the proceedings.[14] Thus, “a party to a case who failed to invoke his claim in the main case, while having the opportunity to do so, will be precluded, subsequently, from invoking his claim, even if it were true, after the decision has become final, otherwise the judgment may be reduced to a mockery and the administration of justice may be placed in disrepute.”[15]

All things viewed in proper perspective, it is decisively clear that the trial court erred in still allowing petitioner to introduce evidence that private respondent’s predecessor-in-interest was a credit institution, and to thereafter rule that the petitioner was entitled to avail of the provisions of Section 78 of R.A. No. 337. In effect, the trial court permitted the petitioner to accomplish what the latter failed to do before the Court of Appeals, that is, to invoke its alleged right under Section 78 of R.A. No. 337 although the Court of Appeals in CA-G.R. no. 35086 already found that ‘the question of whether the Syndicated Management Council Group, Inc. is a bank or credit institution was never brought before (the Court of Appeals) squarely.’ The said pronouncement by the Court of Appeals unerringly signified that petitioner did not make a timely assertion of any right under Section 78 of R.A. No. 337 in all the stages of the proceedings below.

Verily, the petitioner has only itself to blame for not alleging at the outset that the predecessor-in-interest of the private respondent is a credit institution. Thus, when the trial court, and the Court of Appeals repeatedly passed upon the issue of whether or not petitioner had the right of redemption or equity of redemption over subject properties in the decisions, resolutions and orders, particularly in Civil Case no. 89-5424, CA-G.R. CV No. 39243, CA-G.R. SP No. 35086, and CA-G.R. SP No. 38747, it was unmistakable that the petitioner was adjudged to just have the equity of redemption without any qualification whatsoever, that is, without any right of redemption allowed by law.

The “law of case” holds that petitioner has the equity of redemption without any qualification.

There is, therefore, merit in private respondent’s contention that to allow petitioner to belatedly invoke its right under Section 78 of R.A. No. 337 will disturb the “law of the case.” However, private respondent’s statement of what constitutes the “law of the case” is not entirely accurate. The “law of the case” is not simply that the defendant possesses an equity of redemption. As the Court has stated, the “law of the case” holds that petitioner has the equity of the redemption without any qualification whatsoever, that is, without the right of redemption afforded by Section 78 of R.A. No. 337. Whether or not the “law of the case” is erroneous is immaterial, it still remains the “law of the case”. A contrary rule will contradict both the letter and spirit of the rulings of the Court of Appeals in CA-G.R. SP No. 35086, CA-G.R. CV No. 39243, and CA-G.R. 38747, which clearly saw through the repeated attempts of petitioner to forestall so simple a matter as making the security given for a just debt to answer for its payment.

Hence, in conformity with the ruling in *Limpin*, the sale of the subject properties, as confirmed by the Order dated February 10, 1995 of the trial court in Civil Case No. 89-5424 operated to divest the rights of all the parties to the action and to vest their rights in private respondent. There then existed only what is known as the equity of redemption, which is simply the right of the petitioner to extinguish the mortgage and retain ownership of the property by paying the secured debt within the 90-day period after the judgment became final. There being an explicit finding on the part of the Court of Appeals in its Decision of September 30, 1994 in CA-G.R. No. 35086 - that the herein petitioner failed to exercise its equity of redemption within the prescribed period, redemption can no longer be effected. The confirmation of the sale and the issuance of the transfer certificates of title covering the subject properties to private respondent was then, in order. The trial court therefore, has the ministerial duty to place private respondent in the possession of subject properties.

WHEREFORE, the petition is DENIED, and the assailed decision of the Court of Appeals, declaring null and void the Order dated 21 July 1995 and Order dated 4 September 1997 of the Regional Trial Court of Makati City in Civil Case No. 89-5424, AFFIRMED. No pronouncement as to costs.

SO ORDERED.

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

[1] Rollo, pp. 87-88.

[2] Decision, p. 5; Rollo, p. 93.

[3] Resolution, pp. 1-2; Rollo, pp. 366-367.

[4] Rollo, pp. 14-15.

[5] Rollo, p. 4.

[6] Rollo, p. 390.

[7] 166 SCRA 87.

[8] Ibid., pp. 93-95.

[9] Rollo, pp. 366-367.

[10] Limpin vs. Intermediate Appellate Court, supra, p. 94.

[11] The Revised Rules of Court in the Philippines, Volume I, Francisco, Vicente J., p. 462 citing: 47 Am. Jur. 709-710.

[12] Ibid., p. 464 citing: 47 Am. Jur., 717.

[13] Ibid., p. 463 citing: Kuenzel vs. Universal Carloading and Distributing Co., (1939) 29 F. Supp. 407.

[14] Corona vs. Court of Appeals, 214 SCRA 378, 392.

[15] Applications of Estoppel in Litigation, 216 SCRA 826, 834 citing: Tuazon vs. Arca, 23 SCRA 1308, 1312.

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