

JEFFREY DAYRIT, PETITIONER, VS. PHILIPPINE BANK OF COMMUNICATIONS, RESPONDENT.

G.R. No. 140316. August 01, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review seeks the reversal of the decision[1] of the Court of Appeals dated July 2, 1999 in CA-G.R. CV No. 53374, dismissing petitioner's appeal and affirming the writ of possession issued by the Regional Trial Court of Quezon City, Branch 94, in L.R.C. Case No. Q-6570 (94). It likewise seeks to annul the resolution[2] denying petitioner's motion for reconsideration.

The facts of this case, as culled from the records, are as follows:

Petitioner Jeffrey Dayrit and his wife Marina Valencia Dayrit obtained a P15 million loan from respondent Philippine Bank of Communications and posted as collateral their house and lot covered by TCT Nos. RT 14505 (364674) PR 9723 and RT 14504 (364675) PR 9724 in White Plains, Quezon City. They failed to pay the obligation. Respondent bank foreclosed the mortgage, sold the property at public auction where the bank itself was the highest bidder, and eventually was issued a certificate of sale. Upon the lapse of the period to redeem in May 1993, respondent moved to consolidate the titles. TCT Nos. 94179 and 04180 were thereafter issued in respondent bank's name.

As the Dayrits refused to turn over the possession of the property to respondent, it filed a petition for the issuance of a writ of possession with the Regional Trial Court of Quezon City. At the first hearing the Dayrits, through counsel, appeared and manifested their desire to pay the obligation. However, they failed to appear during the subsequent hearings. Consequently, the trial court allowed respondent to present its evidence *ex parte*.

On August 10, 1995, the trial court rendered its decision, disposing as follows:

WHEREFORE, premises considered, let a writ of possession be issued in favor of the petitioner against spouses Jeffrey Dayrit and Marina Valencia Dayrit.

SO ORDERED.[3]

The Dayrits received a copy of the decision on September 15, 1995. Thirty-two days after or on October 17, 1995, they moved for reconsideration of the decision on the ground that they did not receive the notices for the hearing on the merits of the case, the resolutions allowing respondent to present its evidence *ex-parte*, and the decision itself. The trial court denied the motion. The Dayrits appealed before the Court of Appeals which on July 2, 1999, promulgated its decision decreeing, thus:

WHEREFORE, the instant appeal is hereby DISMISSED for being filed late and for lack of merit. The writ of possession issued in the Decision in LRC Case No. Q-6570 (94) dated August 10, 1995 is hereby AFFIRMED.

SO ORDERED.[4]

In dismissing the appeal, the appellate court held that Section 8 (a) of the Interim Rules[5] fixes the period to appeal to fifteen (15) days from receipt of notice of the decision. The petitioner filed the appeal beyond the said period, or thirty-two (32) days after such receipt. The appellate court also said that the petition filed in the trial court was not the proper action that the Dayrits could take in order to question the mortgage contract. Citing *Vaca vs. Court of Appeals*,[6] the appellate court stated that the legality of a mortgage contract cannot be questioned in a petition for the issuance of a writ of possession because the latter is purely a ministerial act of the trial court after title on the property is consolidated in the mortgagee.

Hence, this instant petition alleging that the Court of Appeals erred in holding that:

I. ...AN EX PARTE PRESENTATION OF EVIDENCE IS ALLOWED TO OBTAIN POSSESSION OF A PROPERTY FORECLOSED EXTRA-JUDICIALLY AFTER THE PERIOD TO REDEEM THE SAME HAD LAPSED;

II. ...THE ISSUANCE OF THE WRIT OF POSSESSION IS A MINISTERIAL DUTY ON THE PART OF THE COURT A QUO;

III. ...THE DECISION OF THE COURT A QUO ACQUIRED THE CHARACTER OF FINALITY WHEN THE MOTION TO RECONSIDER THE SAME WAS FILED WITH THE COURT A QUO THIRTY-TWO DAYS AFTER RECEIPT THEREOF.[7]

The main issue for our resolution is whether or not petitioner was denied due process of law. To resolve this issue, we must also inquire whether ex-parte presentation of evidence by respondent was proper; whether the trial court had the ministerial duty to issue a writ of possession; and whether petitioner's appeal was belatedly filed.

Petitioner argues that he was denied due process of law when the trial court allowed respondent bank to present evidence ex parte in LRC Case No. Q 6570 (94) and rendered judgment thereon. He contends that there is no law allowing the issuance of the writ of possession ex-parte after the lapse of the redemption period. Petitioner also claims that the period to appeal from the decision of the trial court had not yet prescribed when he appealed to the Court of Appeals. For he states that neither he nor his counsel received a copy of the decision, and he learned of it only through a lawyer-friend. Petitioner adds that, even assuming he received a notice of the decision, his counsel did not. Thus, he concludes the reckoning date for the 15-day period to appeal remains uncertain.

Respondent counters in its motion to dismiss, treated here as a comment to the petition, that petitioner only raises factual issues, in violation of Section 1, Rule 45 of the Revised Rules of Court.[8] It contends that the petitioner's action is intended only to delay the issuance of the writ of possession in favor of respondent.

Petitioner insists that after the hearing on January 12, 1995, he was not notified of subsequent hearings. In one of these hearings, respondent was allowed to present evidence ex parte. Petitioner adds that he did not receive the order dated March 9, 1995. In said order of the trial court, after the respondent's presentation and offer of evidence, it deemed the case submitted for decision. The failure of the court to properly notify him rendered the proceedings null and void, concludes the petitioner, for failure to accord him due process.

Considering the record of this case, we note that before hearing on January 12, 1995, petitioner through counsel had actively participated in the case. In more than one occasion, petitioner had asked for postponement of hearings. Thus, it could not be denied that petitioner knew about the pendency of the proceedings in court. However, he failed to appear in court on January 12, 1995. Records clearly show, moreover, that the trial court furnished him a copy of the order resetting the hearing from January 12, 1995 to February 16, 1995.[9] He also received, on record, the order resetting the case from February 16 to March 9, 1995.[10]

Likewise, he was furnished the order which deemed the case submitted for decision.[11] All these show that he was afforded proper notices of the court's proceedings. He also had ample opportunity to be heard through counsel. The records do not support his claim that he was denied due process. What the fundamental law prohibits is total absence of opportunity to be heard. When a party has been afforded opportunity to present his side, he cannot feign denial of due process.[12]

Petitioner also assails the lower court for issuing the writ of possession on the basis of an ex-parte presentation of evidence by respondent. Principally, petitioner argues that he was not notified of the date of the hearing when respondent was supposed to present its evidence. But after going over the records, we find that petitioner has only himself to blame for failing to attend the said hearing. His neglect to show up in court is not the fault of the trial court who had no recourse but to permit respondent to present its evidence ex-parte. The records show that petitioner was notified of the date of hearing on March 9, 1995, when respondent bank presented its evidence.[13]

On the matter of the writ of possession, time and again, we have ruled that its issuance is a ministerial function. In *Ong vs. Court of Appeals*,[14] we said:

In several cases,[15] the Court has ruled that the issuance of a writ of possession is a ministerial function. "The order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. The judge issuing the order following these express provisions of law cannot be charged with having acted without jurisdiction or with grave abuse of discretion." [16] Therefore, the issuance of the writ of possession being ministerial in character, the implementation of such writ by the sheriff is likewise ministerial.

Petitioner blandly but jesuitically asserts that the period to appeal the trial court's decision granting the writ of possession had not yet lapsed since neither he nor his counsel received a copy of said decision. True, Section 3, Rule 41 of the Revised Rules of Court provides that appeal should be taken within fifteen (15) days from notice of the judgment or final order appealed from.[17] But petitioner's claim rings hollow and false. On record, the registry return card for petitioner's copy of the trial court's decision shows that petitioner received a copy of the decision on September 15, 1995.[18] But as the Court of Appeals found, petitioner allowed thirty-two (32) days from receipt of notice of Decision dated August 10, 1995 to lapse before he filed a motion for reconsideration.[19] Petitioner lamely suggests that, assuming he received a copy of the decision, still he was not properly notified. Since he was represented by a counsel, he contends that it was the latter who should have been served the notice and the decision. Records show that from the start of the case, however, notices had always been served on petitioner and his spouse. He did not protest this manner of service during the pendency of proceedings before the trial court nor in his motion for reconsideration. At this late hour, it is our view that petitioner is now estopped from raising this issue for his failure to do so earlier.[20]

Patently, the subsequent appeal taken by petitioner after denial of the motion for reconsideration by the trial court, is already beyond the 15-day reglementary period allowed for appeal. Worst, the decision of the lower court had long become final and executory at the time petitioner filed his motion for reconsideration. Thus, we find no reversible error committed by the appellate court in dismissing his belated appeal.

In sum, we hold that certain procedural rules must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review. For it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the pertinent statute or rules.[21] The perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional. The failure to seasonably perfect the appeal to a higher court renders the judgment of the lower court final and executory. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has thereafter the correlative right to enjoy the finality of the decision in the case.[22]

WHEREFORE, the petition is DENIED for lack of merit, and the assailed decision and resolution of the Court of Appeals in CA-G.R. CV No. 53374, are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Corona, JJ., concur.

[1] Rollo, pp. 60-67.

[2] Id. at 72-73.

[3] Id. at 22.

[4] Id. at 66.

[5] Id. at 64.

[6] G.R. No. 109672, 234 SCRA 146, 148 (1994).

[7] Rollo, p. 6.

[8] Section 1, Rule 45, Revised Rules of Court: Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[9] RTC Records, p. 25.

[10] Id. at 27.

[11] Id. at 58.

[12] Development Bank of the Philippines vs. Court of Appeals, G.R. No. 119712, 302 SCRA 362, 375 (1999).

[13] Records, p. 27.

[14] G.R. No. 121494, 333 SCRA 189, 197 (2000).

[15] Suico Industrial Corporation vs. CA, G.R. No. 123050, 301 SCRA 212, 221 (1999); A.G. Development Corporation vs. CA, G.R. No. 111662, 281 SCRA 155, 159 (1997); Navarra vs. CA, G.R. No. 86237, 204 SCRA 850, 858 (1991).

[16] GSIS vs. CA, G.R. No. 42278, 169 SCRA 244, 256 (1989).

[17] Section 3 Rule 41, Revised Rules of Court.

[18] Records, p. 72.

[19] Rollo, p. 64.

[20] Naguiat vs. National Labor Relations Commission, G.R. No. 116123, 269 SCRA 564, 576 (1997).

[21] Videogram Regulatory Board vs. Court of Appeals, G.R. No. 106564, 265 SCRA 50, 55-56 (1996).

[22] Id. at 56.

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