RUSSEL, RIZZA, KATHERINE, LYRA, RUTH, ALL SURNAMED DE LOS SANTOS, REPRESENTED BY THEIR FATHER LEONARDO DE LOS SANTOS, PETITIONERS, CORONA, VS. COURT OF APPEALS, PASIG REALTY AND...

G.R. NO. 147912. April 26, 2006

Ponente: CORONA, J.

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CORONA, J.:

On May 18, 1987, petitioners[1] entered into a contract to sell with private respondent Pasig Realty and Development Corporation for the purchase of a parcel of land in Phase I-D of Parkwood Greens Executive Village, Maybunga, Pasig.[2] Out of the total purchase price of P189,810, a down payment of P45,506.40 was required, with the balance of P144,103.60 payable over 60 months with interest at P3,898.48 per month beginning June 18, 1987.

Upon execution of the contract, petitioners paid the down payment. On February 24, 1988, they issued ten postdated checks in the amount of P5,000 each in favor of private respondent corporation. Only one of the checks was honored while the others were dishonored by reason of insufficiency of funds.

On May 27, 1988, private respondent corporation demanded the settlement of all unpaid amortizations amounting to P46,781.76 covering the period June 18, 1987 to May 18, 1988. On June 6, 1988, petitioners paid P10,000 in cash. No further payment was made.

On January 18, 1989, private respondent corporation notified petitioners that it was exercising its option to cancel the contract to sell with forfeiture of payments made, effective 30 days from notice,[3] in accordance to Section 4 of RA 6552[4] and paragraph 6 of the contract to sell.

On May 3, 1991, private respondent corporation requested petitioners to vacate the property to enable the new buyer to take possession of the same. Instead, petitioners questioned the cancellation of the contract alleging that they stopped payment due to private respondent corporation's failure to develop the subdivision.

Subsequently, they filed an action for specific performance and damages with the Housing and Land Use Regulatory Board (HLURB).[5] Acting through arbiter Abraham Vermudez, the HLURB dismissed the complaint.[6]

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

(a) Dismissing the instant complaint for lack of cause of action;
(b) Declaring the cancellation of the Contract to Sell by respondent corporation, and the consequent forfeiture of the payments made thereunder by the complainants, valid, legal and binding between the parties, the same being in accordance with law.[7]

In a petition for review to the HLURB Board of Commissioners, the arbiter's decision was affirmed in toto.[8]

On appeal, the decision of the HLURB Board of Commissioners was affirmed by the Office of the President (OP) on October 1, 1997.[9] On October 8, 1997, a certified copy of the decision was sent to the given address of petitioners' then counsel of record, Atty. Benedicto Gonzales; this was returned to sender with the notation that the addressee was "no longer connected in (that) office."[10]

While the case was pending adjudication, private respondent corporation sold the contested property to the private respondent spouses Jose Ramirez San Buenaventura and Josephine Rediga San Buenaventura. On January 30, 1995, TCT no. PT-97285 was issued to them.

On March 6, 1998, the October 1, 1997 OP decision became final and executory.

On March 30, 1998, petitioners, through their new counsel, Atty. Cesar Turiano, filed a motion to set aside the March 6, 1998 order and/or petition for relief from judgment.[11] They argued that the order of finality should be lifted and set aside since there was no proper service of the October 1, 1997 OP decision.

The OP denied the motion and affirmed the order of finality in a resolution dated March 27, 2000.[12]

> As shown by the records of this case, proper service of this Office's decision dated October 1, 1997 upon petitioners' counsel of record, Atty. Gonzales, may be presumed for his failure to give proper notice of his change of address. This is binding upon petitioners. Thus, it would be a mere superfluity to again serve notice of said decision on petitioners themselves, considering that they are already bound by their counsel's negligence.
>
> Thus, the said decision has already become final and executory. xxx In Antonio vs. Court of Appeals, the Court categorically stated that the requirements of conclusive proof of the registry notice presupposes that the notice is sent to the correct address as indicated in the records of the court. It does not apply where, as in the case at bar, the notice was sent to the lawyer's given address but did not reach him because he had moved therefrom without informing the court of his new location. The service at the old address should be considered valid. xxx[13]

This resolution was received on April 11, 2000 by Anarose Delfin, the secretary of Atty. Turiano. However, according to petitioners, Delfin misplaced it and a copy thereof was secured by them only on July 14, 2000.

On September 8, 2000, petitioners filed a petition for certiorari in the Court of Appeals[14] imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the OP in rendering the March 27, 2000 resolution. The petition was dismissed on October 6, 2000.[15] The motion for reconsideration was denied on April 20, 2001.[16]

Hence, this recourse.

Before anything else, petitioners pursued the wrong mode of appeal in filing the present petition for certiorari under Rule 65 of the Rules of Court. As a rule, the remedy to obtain reversal or modification of a judgment is appeal. This is so even if the error, or one of the errors, ascribed to the court rendering the judgment is its grave abuse of discretion or lack of jurisdiction or the exercise of power in excess thereof.[17]

Since the allegations and the prayer in the present petition seek to reverse the October 6, 2000 and April 20, 2001 resolutions of the Court of Appeals, the proper remedy should have been a petition for review under Rule 45 of the Rules of Court. Certiorari is resorted to only when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.[18]

However, we shall treat this action as a petition for review under Rule 45 considering that it was filed within 15 days from receipt of the denial of the motion for reconsideration.[19]

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Petitioner would have us reverse the resolutions of the Court of Appeals denying their petition for certiorari. After a careful review of the records, we find no compelling reason to do so.

First, it is not disputed that the March 27, 2000 OP resolution was received by petitioners' counsel[20] on April 11, 2000. They had fifteen days therefrom to file either a motion for reconsideration or an appeal pursuant to Rule 43 of the Rules of Court. Petitioners' excuse that their counsel was not able to furnish them with the resolution because the latter's secretary misplaced it is unacceptable. They are bound by the negligence or mistake of their counsel. For all intents and purposes, the resolution was properly served.

Petitioners' resort to a petition for certiorari was to make up for the loss of their right to file an ordinary appeal. It was a "damage-control" exercise. A perusal of the petition shows that it was actually an appeal of the October 1, 1997 and March 27, 2000 resolutions of the OP.

The availability to petitioners of the remedy of a petition for review under Rule 43 of the Rules of Court to appeal the OP resolution dated March 27, 2000 effectively foreclosed their right to resort to certiorari. This special civil action is a limited form of review and cannot be used as a substitute for the lost or lapsed remedy of appeal. We reiterate: this remedy lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. [21]

Second, even if this Court, for the most persuasive of reasons and in the interest of justice, were to allow the petition for certiorari, the petition should nonetheless be dismissed on procedural grounds and for lack of merit.

Section 4 of Rule 65 prescribes a period of 60 days within which to file a petition for certiorari. The 60-day period is deemed reasonable and sufficient time for a party to mull over and to prepare a petition asserting grave abuse of discretion by a lower court. The period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of the parties to a speedy disposition of their case.[22]

The period commenced to run when petitioners received, on April 11, 2000, thru counsel a copy of the March 27, 2000 resolution. The subsequent filing of the petition on September 8, 2000 was beyond the prescribed period. We quote with approval a portion of the Court of Appeals resolution:[23]

> In the case at bench, the questioned resolution dated 27 March 2000 as earlier mentioned was received by the petitioners through their counsel, Atty. Turiano on 11 April 2000. Hence, from that time thereon, petitioners have until 10 June 2000 to file the petition. Record shows that the subject petition was filed only on 08 September 2000.

Also, petitioners' failure to attach the prescribed copies of pleadings and documents to their petition was a violation of Section 1, paragraph 2 of Rule 65. A party who seeks to avail of the extraordinary remedy of certiorari must observe the rules laid down by law and non-observance thereof may not be brushed aside as mere technicality. In the case of Sea Power Shipping Enterprises, Inc. v. Court of Appeals,[24] the petition for certiorari was not accompanied by copies of the relevant pleadings and documents. In dismissing the petition, this Court held:

> It is true that a litigation is not a game of technicalities and that the rules of procedure should not be strictly enforced at the cost of substantial justice. However, it does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.

In any case, technicalities aside, the present petition lacks merit.

Petitioners question the validity of the rescission of the contract to sell and the consequent forfeiture of the payments made. The determination of this particular issue, however, calls for a review of facts which has already been passed upon by both the HLURB and the OP. Findings of fact by administrative agencies are generally accorded respect, if not finality, by this Court because of their special knowledge and expertise over matters falling under their jurisdiction.[25]

The rescission of the contract and the consequent forfeiture of the payments made were in accordance to the contract itself and RA 6552.

Petitioners defaulted in the payment of several monthly amortizations. Out of the contract price of P189,810, only P60,506.40 [26] was paid. In effect, of the 60 monthly amortizations agreed upon, only about 15 were settled.

In cases such as this where less than two years of installments have been made, Section 4 of RA 6552 grants the vendee a grace period of not less than sixty days from the date the installment became due to pay the amortizations. If the vendee fails to pay at the end of the grace period, the vendor may cancel the contract 30 days after the receipt by the vendee of the notice of cancellation.

In the same vein, paragraph 6 of the contract to sell granted the vendor an option to cancel the contract and forfeit the payments made should the vendee fail to pay any of the monthly amortizations within 60 days from the due date. Thereafter, the vendor may dispose of the subject lot to any other person as if said contract had never been made.[27]

Here, petitioners paid P10,000 on June 6, 1988. Despite the lapse of more than 60 days as grace period, they continued to default in their obligation. On January 18, 1989, private respondent corporation opted to cancel the contract with forfeiture of payments made. Accordingly, thirty days therefrom, the contract was cancelled and payments made were forfeited.

Petitioners cannot seek protection from PD 957[28] particularly its provision providing for non-forfeiture of payments when the vendee desists from further payment due to the failure of the developer or owner to develop the subdivision. The ocular inspection report showed substantial compliance on the part of the corporation insofar as the development of the subdivision was concerned.[29] We have no reason to disturb that finding.

Based from the foregoing, we rule that the Court of Appeals was correct in dismissing the petition for certiorari. The petition was not only replete with procedural defects, it likewise failed to proffer merit in its substantive aspect.

WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit.

Costs against petitioners.

SO ORDERED.

Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.
Puno, (Chairperson), J., on leave.

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[1] Represented by their father, Leonardo de los Santos.

[2] With an aggregate area of 283 square meters, as stated in the petition for certiorari, rollo, p. 10.

[3] Since the private respondent corporation did not receive the corresponding registry receipt return card that would show the date of receipt of said notice by petitioners, a second notice was personally served upon

petitioners on February 16, 1989, rollo, p. 28.

[4] An Act to Provide Protection to Buyers of Real Estate on Installment Payments.

[5] Entitled Russel de los Santos, et al. v. Pasig Realty and Development Corporation, rollo, pp. 23-26.

[6] Penned by Atty. Abraham Vermudez, Housing and Land Use Arbiter dated November 12, 1992, Rollo, pp. 27-34.

[7] Rollo, p. 33.

[8] Penned by Commissioner Antonio Eduardo Nachura and concurred in by DOJ Undersecretary Ramon Esguerra and NEDA Deputy Dir-Gen., Aniceto Sobrepena, dated September 12, 1994, rollo, pp. 41-44.

[9] Rollo, pp. 58-59.

[10] As stated in the March 27, 2000 resolution of the Office of the President, rollo, p. 65.

[11] Rollo, pp. 60-64.

[12] Id., pp. 65-67.

[13] Id., p. 66.

[14] Rollo, pp. 69-100.

[15] Penned by Associate Justice Bienvenido Reyes and concurred in by Associate Justices Ramon Barcelona and Rodrigo Cosico of the Tenth Division of the Court of Appeals; rollo, pp. 101-102.

[16] Rollo, pp. 135-137.

[17] Sappari Sawadjaan v. Court of Appeals, Civil Service Commission and Al-Amanah Investment Bank of the Philippines, G.R. No. 141735, 8 June 2005, 459 SCRA 516.

[18] Chua Tee Dee v. Court of Appeals, G.R. No. 135721, 27 May 2004, 429 SCRA 418.

[19] Notice of denial of motion for resolution was received on May 2, 2001 while the instant petition was filed on May 17, 2001.

[20] Atty. Turiano, through his secretary, Anarose Delfin.

[21] Heirs of Lourdes Potenciano Padilla v. Court of Appeals, G.R. No. 147205, 10 March 2004, 42 SCRA 236.

[22] Yutingco v. Court of Appeals, 435 Phil. 83 (2002).

[23] Dated April 20, 2001, rollo, p. 137.

[24] 412 Phil. 603 (2001), as cited in Teoville Homeowners Association, Inc. v. Edward L. Ferreira, Ream Development Corporation and Guillermo Buenaventura, G.R. No. 140086, 8 June 2005, 459 SCRA 459.

[25] Teoville Homeowners Association, Inc. v. Edward L. Ferreira, Ream Development Corporation and Guillermo Buenaventura. G.R. No. 140086, 8 June 2005, 459 SCRA 459, citing JMM Promotions and Management, Inc. v. Court of Appeals, 439 Phil. 1 (2002); Arc-Men Food Industries Corporation v. NLRC, 436 Phil. 371 (2002); and Camacho v. Coresis, 436 Phil. 449 (2002).

[26] Downpayment of P45,506.40; P5,000 by check dated March 10, 1988; P10,000 cash payment on June 6, 1988, as stated in the decision of the HLURB dated November 12, 1992, rollo, p. 31.

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[27] Rollo, pp. 30-31.

[28] Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations thereof.

[29] HLURB decision dated November 12, 1992, rollo, p. 33.

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