

VICTOR B. CUÑADA AND HEDY V. CUÑADA, PETITIONERS, VS. HON. RAY ALAN T. DRILON AS PRESIDING JUDGE OF THE RTC, BR. 41, BACOLOD CITY, AND PLANTERS PRODUCTS, INC., RESPONDENTS.

G.R. No. 159118. June 28, 2004

Ponente: TINGA, J.

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TINGA, J.:

In a verified Request for Correction addressed to the Clerk of Court of the Second Division and the Deputy Clerk/Chief, Judicial Records Office, dated April 2, 2004, petitioner spouses Victor B. Cuñada and Hedy V. Cuñada requested the addressees to “check the records to make the necessary correction in order that we may avoid a manifest failure or a serious miscarriage of justice in this case.” According to them, on November 11, 2003, or one (1) day before the expiration of the prescribed fifteen (15)-day period, they filed a Motion for Reconsideration, with an attached Amended Petition, of this Court’s Resolution dated September 17, 2003, dismissing the petitioners’ Petition for Certiorari dated June 11, 2003, and noting without action their Motion to Admit Supplemental Pleading dated July 16, 2003. From the record, it appears that the Motion for Reconsideration was posted with the Bacolod City Post Office on November 11, 2003 but it was received by the Court only on March 15, 2004.

It appearing that petitioners seasonably filed the Motion for Reconsideration, the Resolution of September 17, 2003 dismissing petitioners’ Petition for Certiorari has never attained finality. Consequently, the Entry of Judgment made on November 12, 2003 should be recalled.

The Motion for Reconsideration, however, should be denied, there being neither cogent reason nor substantial argument to warrant reconsideration.

We dismissed the Petition for Certiorari on September 17, 2003 for failure of petitioners to submit a verified statement of the material dates, for being a wrong remedy evidently used, as it was, in place of the lost remedy of appeal, and for disregard of judicial hierarchy.

The material date requirement is found in Section 4, Rule 65[1] in relation to the second paragraph of Section 3, Rule 46[2] of the Rules of Court. The last paragraph of Section 3, Rule 46 further provides that “(t)he failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.” The Court reiterated in SC Circular No. 1-88,[3] in particular No. 4 thereof, that “(a) petition shall, in all cases contain a verified statement of the date when notice of the judgment, order or resolution subject thereof was received, when a motion for reconsideration, if any, was filed, and when notice of the denial thereof was received; otherwise, the petition may be dismissed.” Petitioners’ failure to state the required material dates constitutes sufficient ground for outright dismissal of the petition.

Petitioners sought to cure the defect in their petition by filing an Amended Petition containing the pertinent dates. Subsequent compliance, however, does not warrant reconsideration.[4] So, the Amended Petition cannot be acted upon and must only be noted without action.

The Petition for Certiorari was dismissed for being a wrong remedy. Petitioners should have appealed the decision of the trial court before the Court of Appeals, since the assailed decision constitutes a final determination of the rights of the parties. Section 1 of Rule 65 explicitly lays down the rule that a special civil action for certiorari is proper only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Certiorari is not available where the proper remedy is an appeal in due course.[5] There is no reason for the Court to depart from the foregoing principle and sanction petitioners' wrong choice.

Petitioners also violated the doctrine of judicial hierarchy in filing the petition before this Court. The Supreme Court's original jurisdiction to issue writs of certiorari is not exclusive, as it is shared with the Regional Trial Courts and the Court of Appeals. This concurrence of jurisdiction does not mean, however, that litigants have free reign as to the choice of court to which the petition for certiorari may be filed. Petitions for the issuance of a writ of certiorari against a first level court should be filed with the Regional Trial Court, and those against the latter, before the Court of Appeals. A direct resort to the Supreme Court for the issuance of the writ is allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.[6] In the petition before us, there are no exceptional and compelling circumstances which would justify a disregard of this rule.

These considerations are more than sufficient cause for the dismissal of the petition at bar. Even assuming that a petition for certiorari is the proper remedy, the facts as established by the trial court do not show any grave abuse of discretion on its part in its assessment of the case at hand.

The case had its inception on February 11, 1981. Private respondent Planters Products, Inc. filed an action before the Regional Trial Court, Branch 41, Bacolod City for the recovery of the deficiency on the proceeds of the extrajudicial foreclosure of the mortgage executed by the petitioners in favor of private respondent. Petitioner Victor Cuñada represented himself and his wife in the case.

Pre-trial was terminated on March 29, 1982. Plaintiff rested its case on February 10, 1986. In their defense, petitioner Victor Cuñada testified on direct examination on October 29, 1991 and November 4, 1991. With his testimony on direct examination not yet concluded, no further hearing was held. The lower court set the case for resumption of hearing on February 12, 1992, April 29, 1992, June 8, 1992, July 23, 1992, September 17, 1992 and December 7, 1992. Petitioner Victor Cuñada's secretary refused to receive the notice of hearing on February 12, 1992, informing the process server that petitioners were out of the country and their return was uncertain. The subsequent notices of hearing were likewise not served as petitioners had not yet returned from the United States.[7]

On December 7, 1992, the trial court issued an Order to strike out from the record the testimony of petitioner Victor Cuñada because he never completed his testimony. The trial court considered petitioner spouses to have waived further presentation of evidence and the case was deemed submitted for decision.[8] By then, several judges had presided over the case.

On October 15, 2001, the trial court rendered judgment in favor of respondent Planters Products.[9] Petitioners moved for new trial or reconsideration but this was denied in the Order of April 23, 2003.[10]

The trial court rendered its decision on the basis only of the evidence presented by the plaintiff, as petitioner Victor Cuñada failed to complete his testimony, and the same was properly stricken off by the lower court.[11] Petitioner Victor Cuñada failed to appear at the subsequent hearings during which he could have finished his testimony and the prosecution allowed to cross-examine him. But the direct examination could not be completed as petitioners remained overseas and the notices of hearing could not be properly served upon them. Petitioner Victor Cuñada had the duty to complete his testimony and make himself available for cross examination in

accordance with fair play and due process. As his oral testimony remained incomplete, the same could not be the subject of cross-examination. It was therefore rendered incompetent and inadmissible in evidence and as such properly stricken off.[12]

Petitioners claim there was a denial of due process when the trial court issued the order striking off petitioner Victor Cuñada's testimony and rendering the assailed decision because it allegedly did so despite absence of valid service of the notices of hearing and other processes upon petitioners. The Court cannot sustain this proposition.

It is not disputed that trial commenced with the full participation of petitioners and they were given the opportunity to present evidence in their defense. Far from being denied the right to be heard, petitioners were given the opportunity to present their evidence but they squandered the opportunity as they failed to complete their evidence. Moreover, the case had been pending before the same trial court for ten (10) years, during which time it was presided by several judges. As petitioners themselves eviscerated their right to present evidence, their invocation of due process appears to be nothing but a desperate maneuver to postpone the execution of the judgment which is in favor of the private respondent, as it should be, under the facts on record and the applicable law.

Indeed, even if petitioners were to complete their evidence, still they could not legitimately expect a change in the decision of the trial court. Petitioners' only defense is that the law does not allow deficiency judgment in extrajudicial foreclosure of mortgage. This argument must fail, as the lower court correctly held, since it is now well-settled that the creditor is allowed to recover the deficiency from the sale of the property. In a number of cases, this Court held that where the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of mortgage, the mortgagee is entitled to claim the deficiency from the debtor.[13] While Act No. 3135, as amended, does not discuss the mortgagee's right to recover the deficiency, neither does it contain any provision expressly or impliedly prohibiting recovery. If the legislature had intended to deny the creditor the right to sue for any deficiency resulting from the foreclosure of a security given to guarantee an obligation, the law would expressly so provide. Absent such a provision in Act. No. 3135, as amended, the creditor is not precluded from taking action to recover any unpaid balance on the principal obligation simply because he chose to extrajudicially foreclose the real estate mortgage.[14]

WHEREFORE, in view of the foregoing, the Entry of Judgment on November 12, 2003 is RECALLED. However, the Motion for Reconsideration is DENIED with FINALITY, no compelling reason and no substantial argument having been adduced to warrant the reconsideration sought. Accordingly, the Amended Petition is NOTED WITHOUT ACTION.

Let Entry of Judgment be made in the ordinary course.

SO ORDERED.

Puno, (Chairman), Quisumbing, and Callejo, Sr., JJ., concur.
Austria-Martinez, J., on leave.

[1] "Sec. 4. When and where petition filed.—The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. x x x"

[2] "Sec. 3. Contents and filing of petition; effect of non-compliance with requirements.—x x x In actions filed

under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received. x x x”

[3] November 8, 1988.

[4] Ibid.

[5] Government Service Insurance System v. Olisa, G.R No. 126874, March 10, 1999, 304 SCRA 421.

[6] Yared v. Ilarde, G.R. No. 114732, August 1, 2000, 337 SCRA 53.

[7] The official return of the server contained the notation “returned unserved;” Annexes “D-1,” “F-1,” “G-1,” “H-1” and “I-1,” Rollo, pp. 64-68.

[8] Order of December 7, 1992, Rollo, p. 159; Decision of October 15, 2001, Rollo, p. 40.

[9] Rollo, pp. 33-50.

[10] Rollo, pp. 52-55.

[11] Order of December 7, 1992, Rollo, p. 159; Decision of October 15, 2001, Rollo, pp. 39-40.

[12] People v. Monje, G.R. No. 146689, September 27, 2002, 390 SCRA 160, 171; Union Motor Corp. v. Court of Appeals, G.R. No. 117187, July 20, 2001, 361 SCRA 506; People v. Seneris, No. L-48883, August 6, 1980, 99 SCRA 92; Ortigas, Jr. v. Lufthansa German Airlines, No. L-28773, June 30, 1975, 64 SCRA 610.

[13] State Investment House, Inc. v. Court of Appeals, G.R. No. 101163, January 11, 1993, 217 SCRA 32, 39, citing Philippine Bank of Commerce v. de Vera, No. L-18816, December 29, 1962, 6 SCRA 1029; also Development Bank of the Philippines v. Zaragosa, No. L-23493, August 23, 1978, 84 SCRA 668; and Development Bank of the Philippines v. Vda. De Moll, No. L-25802, January 31, 1972, 43 SCRA 82.

[14] State Investment House, Inc. v. Court of Appeals, *ibid* at 40-41.

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