

DEVELOPMENT BANK OF THE PHILIPPINES AND JANNETTE G. LAGAREJOS, PETITIONERS, VS. DIGNO ALBAO, JR., GINA ALBAO RODRIGUEZ, LUCY ANN ALBAO ACUNA, NORMAN P. ALBAO, MARLON P. ALBAO, A...

G.R. NO. 166173. April 04, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner Development Bank of the Philippines (DBP) Cabanatuan City branch, through its co-petitioner branch manager Jannette Lagarejos, granted a P39,500,000.00 loan to Digno Albao, Jr., Gina Albao Rodriguez, Lucy Ann Albao Acuna, Norman Albao, Marlon Albao, and Nona Albao Ocampo (respondents). The loan was secured by a mortgage over a titled property with improvements.

On May 16, 2000, as respondents' obligation under the loan contract had amounted to P47,313,432.22, petitioners sent them a demand letter of even date to settle the same. This was followed by another demand letter of June 29, 2000 informing them that the amount of the loan had aggregated to P87,959,454.25.[1]

The demands remained unheeded, however, drawing DBP to foreclose the mortgage.

Respondents later filed on September 5, 2000 with the Regional Trial Court (RTC) of San Jose City a petition for Injunction[2] with prayer for preliminary injunction or temporary restraining order (TRO) against petitioners and the Ex Officio Sheriff to enjoin them from selling respondents' property during the public auction scheduled on September 12, 2000. The petition was docketed as PROV. REM. CASE NO. SJC-1083.

On September 8, 2000, the trial court, after the hearing it conducted on even date, ordered the issuance of a TRO enjoining petitioners from conducting the public auction sale. Upon the filing by respondents on September 21, 2000 of a bond in the reduced amount of P500,000.00,[3] the trial court issued the TRO.

After petitioners filed their Comment to respondents' petition, the trial court ordered on October 20, 2000 the issuance of a writ of preliminary injunction and set the case for hearing on November 3, 2000 "when the Court, upon prayer of the respondents, may consider if the Writ of Preliminary Injunction now so issued needs to be resolved[,] . . . only after the parties' arguments are completely heard." Petitioners moved to reconsider the said order, invoking Section 2 of Presidential Decree (P.D.) No. 385[4] which reads:

SEC. 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings.

After hearing on January 5, 2001 the arguments of the parties on petitioners' Motion for Reconsideration, the

RTC, by Order[5] of January 12, 2001, lifted the writ of preliminary injunction, dismissed the main petition for Injunction, and directed herein petitioners to proceed with the public auction:

For resolution by this Court is the "Motion for Reconsideration and Motion to Lift Preliminary Injunction."

The said motion was set for hearing on January 5, 2001. Atty. Domingo V. Pascua, counsel for the petitioners, and Attys. Joselito Mendoza and Jose Manuel Calderon, counsels for respondent Development Bank of the Philippines (DBP), argued their respective contentions lengthily. In the absence of any clear jurisprudence to show that the provisions of P.D. 385 will not apply in this case, the Court has to agree with the point of respondent DBP that the Court should not have issued the temporary restraining order (TRO) as well as the subsequent preliminary injunction for being violative of the above-quoted law. The contentions of the petitioners, thru counsel, that said provision of law which was issued during the Martial Law years, was supposedly abandoned pursuant to numerous decisions of the Supreme Court, cannot be taken without the citation of the Supreme Court decisions as jurisprudence thereof.

In view of the foregoing, this Court is now constrained to LIFT the preliminary injunction issued against the respondents. With this order, the said respondents can now proceed with the public auction of the foreclosed mortgaged properties subject of the litigation.

The issue that can now be raised is whether the Court should also dismiss this injunction suit filed by petitioners. Obviously, with the lifting of the preliminary injunction, the prayer sought for by the petitioners is rendered moot and academic. For this reason, specifically considering the provisions of P.D. 385, this case may now be ordered dismissed.

It is noteworthy that petitioners made allegations in the body of the petition to the effect that the responsible officials of the respondent DBP acted with negligence, imprudence, haste and incompetence. However, the Court must emphasize that the petition, in its prayer, explicitly asked the Court to enjoin the respondents from proceeding with the auction sale. Nowhere was it prayed that petitioners are asking for damages. The Court, therefore, does not have jurisdiction to try such issue even if there were allegations towards this effect in the body of the petition.

WHEREFORE, the preliminary injunction issued by this Court is hereby ordered LIFTED, and this case ordered DISMISSED.[6] (Emphasis and underscoring supplied)

On March 12, 2001, respondents filed a Notice of Appeal of the RTC Order of January 12, 2001 to the Court of Appeals. In a separate move, they filed a Motion for Reconsideration of the said RTC Order of January 12, 2001, positing as follows:

ASSIGNMENT OF ERRORS COMMITTED BY THE COURT

- PRESIDENTIAL DECREE 385 WAS MISAPPLIED BY THE HONORABLE COURT AND MISREAD BY THE RESPONDENTS.
- THE INJUNCTION SUIT, BEING AN INDEPENDENT SUIT BY ITSELF SHOULD NOT HAVE BEEN DISMISSED UNTIL TRIAL ON THE MERITS WERE CONDUCTED AND THE PETITIONERS ALLOWED TO PRESENT EVIDENCE IN SUPPORT OF THE INJUNCTION SUIT.
- THE HONORABLE COURT DID NOT TAKE INTO CONSIDERATION THAT THE PETITIONERS' RIGHTS OVER THEIR PROPERTIES HAVE BEEN FLAGRANTLY INVADED BY THE RESPONDENTS AND AS ASSERTED IN THEIR PETITION THEY HAVE VERY SUBSTANTIAL RIGHTS TO PROTECT.
- THE ORDER OF THE HONORABLE COURT IF NOT REVERSED SHALL CAUSE DAMAGE AND PREJUDICE TO THE PERSONS OF THE PETITIONERS AND IRREPERABLE DAMAGE AND INJURY

TO THEIR PROPERTIES.[7] (EMPHASIS AND UNDERSCORING SUPPLIED)

The trial court, by Order of February 14, 2001, deferred resolution of respondents' Motion for Reconsideration "for compelling reasons and in the interest of justice," in that:

x x x x

Legally, the Court finds no reason to grant the motion for reconsideration filed by petitioners. The applicable law is very explicit and does not give the court any discretion in the issuance of either an injunction or preliminary injunction for the prevailing situation. Nevertheless, petitioners made allegations, which in effect, is to ask the court to give said party their day in court[.] In fact, petitioners' counsel made assertions alluding misconduct, which according to petitioners' counsel ca[n] be testified to by the petitioners and their witnesses. In the interest of justice the court will, therefore, set this case for the purpose of hearing said testimonies. It must be emphasized that the petitioners and their witnesses will be under oath and should not in the least way commit an offense by giving any false testimony or perjurious statement as this will result in the court imposing sanctions.

x x x x[8] (Emphasis and underscoring supplied)

The trial court thus set the case for hearing on February 28, 2001 at 2:00 p.m.

To the February 14, 2001 Order of the trial court, petitioners filed a Motion for Reconsideration.

When the case was called for hearing on February 28, 2001, what transpired is recorded by the trial court as follows in its Order of even date:

When the case was called, Atty. Domingo V. Pascua appeared as counsel for the petitioners.

Filed today is a "Motion for Reconsideration" by respondent Development Bank of the Philippines. There is no counsel appearing for said respondent in today's setting.

The Court asked counsel for the petitioners [herein respondents] if he is ready to present his witnesses to substantiate his allegations on the supposed misconduct since the said testimonies will be forwarded by this Court to the City Prosecutor's Office for its evaluation of any possible criminal offense committed. Atty. Pascua manifested that the proceeding to be undertaken by this Court should first be the pre-trial as this is the ordinary course. The Court explained to said counsel that there is no legal basis to grant either the injunction or preliminary injunction and the only reason why the case is being heard today is for the purpose of giving petitioners their day in Court specifically with regards [sic] to their serious allegations. Counsel for the petitioners insisted that they could not present any witness as the Court should first resolve the pending motion for reconsideration.

WHEREFORE, the Court, since it had given the petitioners their day in Court yet failed to pursue their alleged claim of misconduct, the motion for reconsideration [of herein respondents] is hereby submitted for resolution.[9] (Underscoring supplied)

On March 2, 2001, the trial court issued the following order, maintaining its order allowing herein petitioners to proceed with the foreclosure of the mortgaged property:

This Court had emphasized in the order dated February 14, 2001 that there is no legal basis for this Court to grant the motion for reconsideration filed by petitioners. It was further stated in the said order that the applicable law is very explicit and does not give the Court any discretion in the issuance of either an injunction or preliminary injunction considering the factual situation of this case. However, the Court, in the interest of justice, gave petitioners their day in Court to be able to substantiate allegations alluding misconduct. As stated in the order dated February 28, 2001, had counsel for the petitioners opted to present witnesses to substantiate their serious allegations regarding the purported misconduct, the testimony of petitioners/witnesses will be

forwarded by this Court to the City Prosecutor's Office for its evaluation of any possible criminal offense committed. It was noted by this Court that in the motion for reconsideration filed by respondents, it was alleged in paragraph 4 thereof that the respondents recognized petitioners' allegations of misconduct and are WILLING, ABLE and READY to defend themselves against those accusations, but they should be brought in the proper forum and in the proper venue. It is further alleged that if petitioners believe in their hearts and have evidence to prove that respondents did them wrong, they should file appropriate cases and PAY CORRESPONDING FILING FEES, unlike in this case where they alleged irregularities in the body of the complaint but did not include them in their prayers, presumably to evade payment of relevant fees imposed by the Rules of Court.

The Court agrees with the contention of the respondents but believes that a short delay in the resolution to help the cause of justice is not inappropriate. After all, the dictum should be that the Courts should not be strict in the implementation of the technical rules if this will result in injustice.

At any rate, considering the actuation of the petitioners in the last hearing of February 28, 2001, this Court is now indeed of the sincere belief that petitioners have proven themselves to be undeserving and unworthy of being given the opportunity to be heard. This Court is now even convinced that the petitioners are merely resorting to dilatory tactics to frustrate the lawful claim of respondents.

WHEREFORE, in view of the foregoing, the "Motion for Reconsideration[]" by the petitioners thru counsel is hereby DENIED.

This Court is now reinstating with finality the order dated January 12, 2001 lifting the preliminary injunction and dismissing this case. Furthermore, this Court is allowing the respondents to proceed with the foreclosure of the mortgaged properties.

Due to the circumstances of the case particularly the pitiful plight of petitioners in questioning the amount of the principal loan and interests, this Court is not inclined to allow the respondents to secure compensation from the bond posted by the petitioners in the amount of P500,000.00. This Court believes that there was no substantial damage capable of pecuniary estimation incurred by respondent Development Bank of the Philippines due to the issuance of the temporary restraining order (TRO).[10] (Emphasis and underscoring supplied)

On May 9, 2001, the Court of Appeals received the records of the case from the RTC.

On May 30, 2001, the public auction sale of the property covered by the mortgage pushed through.

On June 15, 2001, respondents filed before the Court of Appeals an Urgent Motion for the Issuance of a Preliminary Mandatory Injunction and/or to Declare the Public Auction Sale of Appellee's Properties Conducted on May 30, 2001 by the Ex Officio Sheriff of the Regional Trial Court, Branch 38 in San Jose City, Nueva Ecija a Nullity,[11] referring to it as an "(Undocketed PROV. REM CASE NO. SJC-1083, Branch 38, Regional Trial Court, Third Judicial Region, San Jose City, Nueva Ecija)." This Urgent Motion, which was incorporated in the appellate court's rollo of respondents' appeal from the RTC Order of January 12, 2001, docketed as CA-G.R. No. 70473, was denied by the appellate court by Resolution of August 31, 2001[12] in this wise:

The grounds stated by petitioners in their urgent motion are mere conclusions of fact not supported by proof so as to justify the grant by this Court of the injunctive relief prayed for. The trial court gave the petitioners the opportunity to prove their allegations of misconduct on the part of the respondents in the auction sale and set the case for hearing of the petitioners' evidence. (Vide, Order dated February 14, 2001, Record, p. 233). However, during the scheduled hearing, petitioners did not present evidence but instead manifested and moved that there should first be a pre-trial and that their motion for reconsideration of the order lifting the preliminary injunction and dismissing the case should first be resolved (vide, Records, p. 242)

In their motion, the petitioners likewise pray that this Court declare the public auction sale conducted by respondent Sheriff null and void. The order of the trial court dated March 2, 2001, lifting the preliminary injunction and dismissing the herein case for injunction is on appeal with this Court. Appellants-movants have not yet been required to file their brief. Resolving the issue of the validity of the auction sale would be tantamount to deciding the appeal via the instant motion for issuance of a writ of preliminary mandatory injunction, which would be premature and improper.[13] (Underscoring supplied)

The appeal of respondents from the January 12, 2001 Order of the trial court was, by Decision of April 19, 2004,[14] decided by the appellate court in their favor, it holding that "the lack of pre-trial and the premature dismissal of the main case [for injunction] violated [respondents'] right to due process as they were deprived of their day in court to have the case judiciously determined." It thus ordered the remand of the case to the trial court for it "to proceed with the pre-trial and trial on the merits," even citing Section 5 of Rule 39 which reads:

SEC. 5. Effect of reversal of executed judgment. "Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances,

Hence, petitioners' instant petition for review, they complaining that the Court of Appeals

I.

. . . DISPOSED OF THE APPEAL OF THE RESPONDENTS AND DECIDED IT IN A WAY NOT IN ACCORD WITH THE APPLICABLE LAW (P.D. NO. 385) OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

II.

. . . DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS THE COURT OF APPEALS ORDER FOR THE COURT A QUO TO CONDUCT FURTHER TRIAL TO DETERMINE THE PROPRIETY OF THE ISSUANCE OF INJUNCTION IS ALREADY MOOT AND ACADEMIC AS THE ACTION SOUGHT TO BE ENJOINED (FORECLOSURE) WAS ALREADY ACCOMPLISHED, AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION.[15] (Emphasis and underscoring supplied)

Early on, petitioners argue that for failure of respondents to remit the 20% deposit required by P.D. No. 385 which, they insist, is a jurisdictional requirement, the trial court dutifully complied with the mandate of the said decree by dismissing respondents' action for injunction.[16] Petitioners contend that supervening events occurred which significantly affected the outcome of the challenged decision of the Court of Appeals, i.e., the conduct of foreclosure sale by the Ex Officio Sheriff of the RTC of San Jose City; consolidation of the foreclosed title in favor of DBP; issuance of new TCT No. 26107 in the name of DBP; grant of writ of possession in DBP's favor; and filing and pendency of respondents' civil action for annulment of foreclosure and title and reconveyance against petitioners, docketed as Civil Case SJC No. 1136 before the RTC.[17]

The petition filed on September 5, 2000 before the trial court by respondents was one for Injunction with prayer for the issuance of a writ of preliminary injunction or TRO, to enjoin petitioners from proceeding with the foreclosure sale of the mortgaged property scheduled on September 12, 2000. Its prayer portion reads:

WHEREFORE, premises considered, it is most respectfully prayed that this INJUNCTION SUIT be given due course and a WRIT of PRELIMINARY INJUNCTION issue in the interest of the highest level of justice, fair play and equity. Moreover, a WRIT of TEMPORARY RESTRAINING ORDER be henceforth and immediately issue not only to avoid and prevent irreparable [sic] damage, injury and harm to petitioner(s) substantial rights and to their properties should the auction sale proceed as scheduled on September 12, 2000 at

10:00 o' clock in the morning at the Justice Hall in San Jose City, but also to avoid this petition moot and academic [sic]. It is prayed also that a PERMANENT INJUNCTION issue at the wisdom of the Honorable Court.[18] (Emphasis in the original and underscoring supplied)

The foreclosure sale, which was sought to be restrained, had, however, been conducted on May 30, 2001. And title to the property had already been consolidated in the name of DBP in whose name TCT No. 26107 had been issued.

It bears emphasis that the complaint filed by respondents from which the present petition arose was one for injunction as a main action, as opposed to injunction as a provisional remedy. Since the act sought to be prevented – the sale at public auction of the property subject of the mortgage – had occurred, nothing remained to be resolved by the RTC. It was thus a patent error for the appellate court to order the remand of the case for further proceedings. Section 5 of Rule 39 which, for convenience, is requested below:

SEC. 5. Effect of reversal of executed judgment. – Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances,

is self-explanatory. If the executed judgment is reversed on appeal, "the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances."

Respondents' complaint about the "tremendous increase" of their original loan of P39,500,000.00 secured on April 1, 1997 to P87,959,454.25 as of June 30, 2000, as well as the issue of the validity or nullity of the foreclosure sale and TCT No. 26107 issued in DBP's name, may be well ventilated in that above-said action they filed against petitioners before the RTC, Civil Case SJC No. 1136, for annulment of foreclosure and of title and for reconveyance.

WHEREFORE, the petition is GRANTED and the Court of Appeals Decision of April 19, 2004 is REVERSED and SET ASIDE.

Costs against respondents.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, p. 21.

[2] Records, pp. 1-13.

[3] Rollo, p. 22.

[4] REQUIRING GOVERNMENT FINANCIAL INSTITUTIONS TO FORECLOSE MANDATORILY ALL LOANS WITH ARREARAGES, INCLUDING INTEREST AND CHARGES AMOUNTING TO AT LEAST TWENTY PERCENT (20%) OF THE TOTAL OUTSTANDING OBLIGATION, *ibid*; vide also records, pp. 198-201.

[5] Rollo, pp.197-198.

[6] Records, pp. 206-207.

[7] *Id.* at 209.

[8] Id. at 233.

[9] Id. at 242.

[10] Id. at 243-244.

[11] Rollo, pp. 37-45.

[12] CA rollo, pp. 96-100.

[13] Id. at 99.

[14] Rollo, pp. 20-33.

[15] Id. at 6-7; vide also pp. 91-92.

[16] Id. at 94.

[17] Id. at 96.

[18] Records, p. 12.

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