JERRY ONG, PETITIONER, VS. PHILIPPINE DEPOSIT INSURANCE CORP., RESPONDENT.

G.R. No. 175116. August 18, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is a petition for review on certiorari filed by petitioner Jerry Ong seeking to annul and set aside the Decision[1] dated July 31, 2006 and the Resolution[2] dated October 5, 2006 issued by the Court of Appeals (CA) in CA-G.R. SP No. 93441.

Sometime in 1982 and 1983, petitioner Jerry Ong made some money market placements with Omnibus Finance Inc. (OFI), which later on suffered serious financial difficulties. As petitioner's money market placements matured, he demanded from OFI the return of the same. However, OFI's checks issued thereby were dishonored by the drawee bank. It was alleged that OFI sought the assistance of its sister companies which included the Rural Bank of Olongapo (RBO). On December 29, 1983, Jose Ma. Carballo, OFI President, and Cynthia Gonzales, Chairperson of the Board of Directors of RBO, executed in favor of petitioner a Deed of Real Estate Mortgage[3] over two parcels of land located in Tagaytay City covered by Transfer Certificates of Title Nos. T-13769 and T-13770, which are both registered in RBO's name, as collateral to guarantee the payment of OFI's money market obligations to petitioner in the amount of P863,517.02. The mortgage was executed by Gonzales by virtue of a Secretary's Certificate[4] issued by Atty. Efren L. Legaspi, RBO's alleged Assistant Corporate Secretary, showing that Gonzales was authorized by the RBO Board to execute such mortgage. The deed of mortgage was annotated on TCT Nos. T-13769 and T-13770 of the Register of Deeds of Tagaytay City on January 13, 1984.

As OFI failed to pay petitioner the obligation secured by the real estate mortgage, petitioner foreclosed the mortgage on March 18, 1984. A Certificate of Sale was correspondingly issued which was registered with the Register of Deeds of Tagaytay City on July 16, 1985. Petitioner alleged that representatives of the Central Bank of the Philippines (Central Bank) had approached him and borrowed TCT Nos. T-13769 and T-13770 for the on-going audit and inventory of the assets of the RBO; however, these titles were not returned despite petitioner's demand. Petitioner filed with the RTC of Tagaytay City, Branch 18, a case for the surrender of said titles, docketed as TC-803. The case was subsequently dismissed for being premature as the one year redemption period had not yet expired.

On May 22, 1984, RBO's Corporate Secretary and Acting Manager, Atty. Rodolfo C. Soriano, filed with the RTC of Tagaytay City, an action for the annulment of real estate mortgage, extrajudicial foreclosure of mortgage proceedings, sheriff's certificate of sale with damages against petitioner, OFI, Cynthia Gonzales, the Sheriff and the Register of Deeds of Tagaytay City, raffled off to Branch 18, and was docketed as Civil Case No. TG-805. However, the case was later suspended due to OFI's pending application for rehabilitation with the Securities and Exchange Commission.

On May 9, 1985, the Central Bank, as petitioner, which was later substituted by respondent Philippine Deposit

Insurance Corporation[5] (PDIC) filed with the RTC of Olongapo City a petition for assistance in the liquidation of RBO, docketed as Sp. Proc. No. 170-0-85 and was raffled off to Branch 73. Later, upon respondent's motion, Civil Case No. TG-805, i.e., for annulment of mortgage, was consolidated with RBO's liquidation proceedings.

On February 5, 1991, petitioner filed with Branch 79 of the RTC of Quezon City[6] a petition for the surrender of the titles of the Tagaytay properties against RBO, which petition was eventually ordered dismissed by the CA after finding that the RTC lacked jurisdiction to try the case, but without prejudice to petitioner's right to file his claim in RBO's liquidation proceedings pending before Branch 73 of the RTC of Olongapo City.

Consequently, on February 16, 1996, petitioner filed in Sp. Proc. No. 170-0-85 a Motion to Admit Claim against RBO's assets as a secured creditor and the winning bidder and/or purchaser of the Tagaytay properties in the foreclosure sale. Respondent filed its Comment/Opposition to the motion. Trial, thereafter, ensued on petitioner's claim.

On June 25, 2001, Acting Presiding Judge Philbert I. Iturralde issued an Order[7] declaring petitioner's claim against RBO valid and legitimate, the dispositive portion of which reads:

> WHEREFORE, under the foregoing circumstance, the claim of Jerry Ong is hereby declared valid and legitimate and therefore GRANTED. As prayed for, the two (2) parcels of land covered under TCT Nos. 13769 and 13770, with all its improvements be awarded to Claimant Jerry Ong. The titles subject matter of this claim allegedly in possession of the Central Bank or its appointed liquidator, or any person presently in possession of said Transfer Certificate of Title is directed and ordered to immediately surrender the same to the Claimant. Should the same be lost and/or upon proof of its loss the Register of Deeds is ordered to issue in the claimant's name new titles pursuant to the consolidation of property earlier made by the claimant over the property.
>
> SO ORDERED.[8]

Respondent filed its motion for reconsideration. In a Resolution[9] dated June 27, 2002, Judge Renato J. Dilag reversed the June 25, 2001 Decision. The decretal portion of the Resolution reads:

> WHEREFORE, foregoing considered, the Order of this Court dated June 25, 2001 is hereby reconsidered and set aside. The real estate mortgage executed on December 29, 1983 by and between Cynthia Gonzales representing RBO and Jose Ma. Carballo, representing OFI is hereby declared null and void. The Extrajudicial Proceedings conducted in March 1984 and the Sheriff's Certificate of Sale dated March 23, 1984 issued in the name of Jerry Ong are, likewise, declared null and void. And, for failure to substantiate his claim against RBO, Jerry Ong's claim is hereby denied.
>
> SO ORDERED.[10]

Petitioner's motion for reconsideration was denied in an Order[11] dated May 26, 2003, a copy of which was received by petitioner on June 16, 2003.

On June 17, 2003, petitioner, thru counsel, filed a Notice of Appeal[12] which the RTC gave due course in an Order[13] dated July 14, 2004, after finding that the appeal had been filed within the reglementary period. The RTC also ordered the elevation of the entire records to the CA for further proceedings.

Respondent sought reconsideration of the Order giving due course to petitioner's appeal as the latter failed to file a record on appeal within the reglementary period; thus, the appeal was not perfected. Petitioner filed his Comment/Opposition to such motion and at the same time attaching the Record on Appeal dated August 25, 2004.

On May 31, 2005, the RTC issued an Order, [14] the dispositive portion of which reads:

> FOREGOING CONSIDERED, the Order of this Court dated July 14, 2004 is hereby reconsidered and set

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> aside. Consequently, as provided under Rule 41, Sec. 13 of the Revised Rules of Court, the appeal is hereby dismissed for having been taken out of time.
>
> SO ORDERED.

Petitioner's motion for reconsideration was denied in an Order dated December 7, 2005.[15]

Petitioner then filed with the CA a petition for certiorari with prayer for the issuance of a writ of preliminary injunction assailing the RTC Orders dated May 31, 2005 and December 7, 2005 for having been issued with grave abuse of discretion.

After the parties submitted their respective pleadings, the CA issued its assailed Decision on July 31, 2006, dismissing the petition.

In so ruling, the CA found that since Sp. Proc. No. 170-0-85 was for the liquidation of RBO, it was a special proceeding and not an ordinary action; that liquidation proceedings are considered special proceedings as held in Pacific Banking Corporation Employees Organization v. Court of Appeals;[16] that since multiple appeals are allowed in proceedings for liquidation of an insolvent corporation, a record on appeal was necessary in petitioner's case for the perfection of his appeal.

The CA found unpersuasive petitioner's plea to consider his failure to submit a record on appeal on time as excusable neglect saying that petitioner was fully aware that Sp. Proc No. 170-0-85 was a petition for liquidation, because he filed his claim as a preferred creditor of RBO, he participated in the trial thereof and filed the notice of appeal under the title of the said liquidation case; that petitioner's feigned ignorance and miscalculation cannot justify an exception to the strict rule on perfection of appeal within the reglementary period; that petitioner filed the record on appeal 426 days after the lapse of the reglementary period, and certiorari cannot be a substitute for a lost remedy of appeal. The CA ruled that petitioner's failure to perfect his appeal within the prescribed period rendered the RTC decision final and executory which deprived the appellate court of jurisdiction to alter the final judgment, much less entertain the appeal.

On petitioner's claim that there was a grave abuse of discretion committed by the RTC in giving credence to the testimonies of respondent's witnesses, the CA ruled that such matter was beyond the jurisdictional parameter of a special civil action of certiorari as such issue dwelt into questions of facts and evaluation of evidence.

Petitioner's motion for reconsideration was denied in a Resolution dated October 5, 2006.

Hence, the present petition on the following grounds:

> THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR CERTIORARI BASED SOLELY ON TECHNICAL RULES OF PROCEDURE.
>
> THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR CERTIORARI WITHOUT PASSING UPON THE MERIT OF PETITIONER'S APPEAL.[17]

Petitioner reiterates his argument raised before the CA that his counsel's failure to submit a record on appeal on time is an excusable neglect as the failure was due to the serious complications surrounding the case that led her to commit an error of judgment; that petitioner's counsel honestly believed that their claim filed against RBO in the special proceedings and the civil case filed by RBO against petitioner for the annulment of mortgage under Civil Case No. TG-805, which was eventually consolidated with the special proceedings, were ordinary civil actions since they sought the enforcement or protection of a right or prevention or redress of a wrong; thus, a mere

notice of appeal would be sufficient to perfect petitioner's appeal. Petitioner argues that we have liberalized in some instances the rule on perfection of appeals and cites Gregorio v. CA[18] and Gonzales-Orense v. Court of Appeals,[19] thus, he asks for the same leniency in the interest of substantial justice so as to give him the chance to ventilate his appeal on the merit.

Petitioner claims that the issue on the admissibility of the testimonies of respondent's witnesses is a question of law as its resolution calls for the application of the law on hearsay evidence and not the evaluation of evidence; that respondent's witnesses came only upon RBO's liquidation process and were not even connected with RBO at the time of the execution of the real estate mortgage among RBO, OFI and petitioner; thus, their testimonies are inadmissible for being hearsay evidence, and a special civil action of certiorari is the proper remedy to assail the admission of the same; that it would serve the ends of justice if the CA had taken a second look on the facts and evidence of the case to determine the merit of petitioner's appeal.

In its Comment, respondent avers that while the petition was denominated as a petition for review under Rule 45, the same imputes lack or excess of jurisdiction on the part of the CA in issuing its assailed decision; thus, petitioner availed of the wrong remedy. Petitioner filed his Reply thereto.

We first resolve the issue raised by respondent anent the mode of appeal availed of by petitioner. Petitioner filed a petition for review on certiorari assailing the Decision and Resolution of the CA which were final dispositions of the case on the merits, thus, a petition under Rule 45 of the Rules of Court is proper. Rule 45 provides that an appeal by certiorari from the judgments or final orders or resolutions of the appellate court is by a verified petition for review on certiorari. Contrary to respondent's claim that petitioner in this petition merely alleges that the CA abused its discretion in dismissing his appeal, we find that petitioner also imputes grave error committed by the CA in rendering its assailed decision finding that the appeal was not perfected.

As to the main issues raised by petitioner, we find the same unmeritorious.

Sections 2 (a) and 3 of Rule 41 of the Rules of Court provide:

> SEC. 2. Modes of Appeal - x x x
>
> (a) Ordinary appeal. -- The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.
>
> x x x x

SEC. 3. Period of ordinary appeal. â€- The appeal shall be taken within fifteen (15) days from the notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from the notice of judgment or final order.

The period to appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

It has been held that a petition for liquidation of an insolvent corporation is classified as a special proceeding.[20] The RTC decision, which petitioner sought to appeal from, was rendered in the special proceeding for the liquidation of RBO's assets; thus, applying the above-quoted provisions, an appeal in a special proceeding requires both the filing of a notice of appeal and the record on appeal within thirty days from receipt of the notice of judgment or final order.

In this case, petitioner filed his Notice of Appeal on June 17, 2003, and the RTC gave due course to the appeal after it found that the notice of appeal was filed within the reglementary period. However, upon respondent's motion for reconsideration, where it argued that petitioner failed to file a record on appeal, considering that the decision was rendered in a petition for liquidation of RBO which was a special proceeding, the RTC reversed itself as no record on appeal was filed, and dismissed petitioner's appeal for having been taken out of time. The RTC did not commit a grave abuse of discretion in dismissing petitioner's appeal, since it is clearly stated under the Rules that filing of the notice of appeal must be accompanied by a record on appeal to perfect one's appeal in a special proceeding. In fact, the RTC's dismissal of petitioner's appeal was expressly allowed under Section 13 of Rule 41 of the Rules of Court which states:

> SECTION 13. Dismissal of appeal. - Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may motu propio or on motion to dismiss the appeal for having been taken out of time.

Thus, we find no error committed by the CA when it sustained the RTC's dismissal of petitioner's appeal for failure to comply with the Rules.

In In the Matter of the Heirship (Intestate Estates) of the Late Hermogenes Rodriguez, et al. v. Jaime M. Robles,[21] we nullified the CA decision for lack of jurisdiction in taking cognizance of an appeal from the RTC decision which had already lapsed into finality for failure of the party to file a record on appeal within the reglementary period, and said:

> This Court has invariably ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirement of the rules. Failing to do so, the right to appeal is lost. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice. Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite date fixed by law. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions. Thus, we have held that the failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. There are exceptions to this rule, unfortunately respondents did not present any circumstances that would justify the relaxation of said rule.

The rules of procedure must be faithfully followed, except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply within the prescribed procedure.[22] Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[23]

Petitioner's argument that his counsel's honest belief that their claim against the RBO assets and the civil case filed by RBO against petitioner for the annulment of mortgage were ordinary civil actions and a mere notice of appeal would be sufficient to perfect his appeal is not a satisfactory reason to warrant a relaxation of the mandatory rule on the filing of a record on appeal. We find apropros the CA's disposition on the matter in this wise:

> Withal, petitioner's ratiocinations that he failed to submit a Record on Appeal on time could be taken as

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> excusable neglect due to serious complications surrounding the case leading him to an error of judgment where "an ordinary human being, courts, not excepted, is susceptible to commit, is highly unsustainable. Petitioner counsel's honest belief that the claim of petitioner Ong and the civil case for annulment of mortgage under TG-085 were ordinary actions and, as such, mere filing of a notice of appeal would be sufficient, is far from being persuasive. This is not the excusable neglect as envisioned by the rules in order to sidestep on the strict compliance with the rules on appeal. Petitioner was fully aware that Sp. Proc. No. 170-0-85 is a petition for liquidation because they filed their claim in the case claiming to be a preferred creditor, participated in the trial thereof in every step of the way, and filed the disputed Notice of Appeal under the title of the said case. We cannot find any reason to accept petitioner's feigned ignorance that the case they were appealing is a liquidation petition. In fine, such miscalculation of the petitioner cannot justify an exception to the rules, and to apply the liberal construction rule.[24]

Thus, the erroneous assumption of petitioner's counsel could not excuse her from complying with the Rules. If we are to accept such reason and grant petitioner's petition would be putting a premium on his counsel's ignorance or lack of knowledge of existing Rules.[25] An erroneous application of the law or rules is not excusable error."[26] Petitioner is bound by the mistake of his counsel.

The cases of Gregorio v. CA and Gonzales-Orense v. Court of Appeals, cited by petitioner to support his plea for the relaxation of the rules on the application of the reglementary periods of appeal, find no application in his case.

Gregorio v. CA involved the failure of therein petitioner to file appellant's brief within the extended period on the basis of which the CA dismissed the appeal. We reinstated the appeal saying that the CA may allow the extension of time to file brief as long as good and sufficient cause was shown and the motion was filed before the expiration of the time sought to be extended; that expiration of time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal was not a jurisdictional matter and may be waived by the parties. The case before us deals with the matter of the non-filing of the record on appeal within the reglementary period prescribed by law which is not only mandatory but jurisdictional.

Gonzales Orense v. CA though involving the issue of the non-filing of a record on appeal, the factual mileu of that case was different. In that case, petitioner filed his notice of appeal from the order of the probate court awarding the amount of P20,000.00 for his services in the probate of the will of the husband of his client. The probate court transmitted the records to the CA, and later petitioner submitted his appellants' brief and respondent her appellee's brief. However, the CA dismissed the appeal as petitioner failed to submit a record on appeal. In a petition filed with us, we reinstated the appeal since we found that the question presented to us, i.e., whether or not a record on appeal was necessary when an award of attorney's fees by the probate court was elevated to the CA, was one of first impression; that petitioner acted in honest, if mistaken interpretation of the applicable law; that the probate itself believed that the record on appeal was unnecessary and respondent herself apparently thought so too for she did not move to dismiss the appeal and instead impliedly recognized its validity by filing the appellee's brief. In the present case, petitioner filed in Sp. Proc. No. 170-0-85 his claim against the assets of RBO as a secured creditor by virtue of the real estate mortgage; that a petition for liquidation is in the nature of a special proceeding was already settled in Pacific Banking Corporation Employees Organization v. Court of Appeals,[27] decided in 1995, thus, no longer a novel issue when petitioner's appeal was filed in 2003. Moreover, unlike in Gonzales-Orense, where therein respondent did not move for the dismissal of the appeal and even filed her appellee's brief, herein respondent had moved in the RTC for the dismissal of the appeal for failure of petitioner to file the record on appeal.

Petitioner's claim that the issue on the admissibility of testimonies of respondent's witnesses does not call for an evaluation of evidence but a question of law as it calls for the application of the law on hearsay evidence; thus, within the remedy of a petition for certiorari is not meritorious. We find no error committed by the CA when it

held that such issue was beyond the jurisdictional parameter of a special civil action of certiorari as such issue dwelt into questions of facts and evaluation of evidence. The sole office of a writ of certiorari is the correction of errors of jurisdiction and does not include a review of public respondent's evaluation of the evidence and factual findings.[28] In a special civil action for certiorari under Rule 65 of the Rules of Court, questions of fact are generally not permitted, the inquiry being limited to whether the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion.[29]

WHEREFORE, the petition is hereby DENIED. The Decision dated July 31, 2006 and the Resolution dated October 5, 2006 of the Court of Appeals in CA-G.R. SP. No. 93441 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

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[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso, concurring; rollo, pp. 73-83.

[2] Id. at 71.

[3] Id. at 151-155

[4] Id. at 98.

[5] Pursuant to Monetary Board Resolution No. 261 dated September 15, 1993, PDIC was designated as the Liquidator of the Rural Bank of Olongapo vice the Central Bank of the Philippines.

[6] Docketed as Civil Case No. 91-8019

[7] Rollo, pp. 180-183.

[8] Id. at 182-183.

[9] Id. at 184-188.

[10] Id. at 188.

[11] Id. at 200-201.

[12] Id. at 202-203.

[13] Id. at 204.

[14] Id. at 255-257.

[15] Id. at 258.

[16] 312 Phil. 578, 593 (1995).

[17] Id. at 38.

[18] G..R. No. L-43511, July 28, 1976, 72 SCRA 120.

[19] G.R. No. L-80526, July 18, 1988, 163, SCRA 477

[20] Pacific Banking Corporation Employees Organization v. Court of Appeals, supra note 16.

[21] G.R No. 182645, December 4, 2009.

[22] Duremdes v. Duremdes, 461 Phil. 388, 400 (2003).

[23] Id.

[24] Rollo, pp. 81-82.

[25] See Enriquez v. Enriquez, G.R. No. 139305, August 25, 2005, 468 SCRA 77, 86.

[26] See Ditching v. Court of Appeals, 331 Phil. 665, 678 (1996), citing Jocson v. Baguio, 179 SCRA 550 (1989).

[27] Supra note 16.

[28] Oro v. Diaz, 413 Phil. 416, 427 (2001), citing Building Care Corporation v. National Labor Relations Commission, 268 SCRA 666 (1997).

[29] Id. at 428, citing Buñag v. Court of Appeals, 303 SCRA 591 (1999).

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