

REPUBLIC PLANTERS BANK AND THE PROVINCIAL SHERIFF OF PAMPANGA, PETITIONERS, VS. THE INTERMEDIATE APPELLATE COURT, HON. MARIANO CASTAÑEDA, JR., IN HIS CAPACITY AS PRESIDING JUDGE...

G.R. No. 63805. August 31, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari of the decision of the Intermediate Appellate Court, which dismissed the petition filed by the Republic Planter Bank and the Provincial Sheriff of Pampanga on a finding that the issues raised therein have become moot and academic.

On March 30, 1980, private respondent spouses Nestor Dizon and Providencia Valencia, through their attomey-in-fact, respondent Percival Briñas obtained a loan from petitioner Republic Planters Bank in the amount of P1,000,000.00 which was secured Dy a mortgage on real properties of the respondent spouses.

For failure of the respondents to pay, on December 27, 1980, the petitioner Bank applied for the extrajudicial foreclosure of the mortgage. The provincial sheriff of Pampanga scheduled the public auction sale for February 23, 1981.

On February 19, 1981, the spouses Dizon commenced Civil Case No. 6000 against Briñas and the petitioner Bank, alleging that Briñas misappropriated the proceeds of the loan which was borrowed from the petitioner Bank. They prayed that Briñas be ordered to pay the loan and that a restraining order be issued against the extrajudicial foreclosure by the Bank of their properties pending payment by Briñas.

On February 20, 1981, the respondent Court of First Instance issued ex-parte the restraining order prayed for. The petitioner Bank filed a motion to dismiss on the ground that the complaint did not state a cause of action against the Bank and since the spouses are not entitled to the main relief prayed for neither are they entitled to a writ of preliminary injunction or restraining order.

On November 23, 1981, the respondent Court of First Instance granted the above motion and dismissed Civil Case No. 6000. The private respondents on December 10, 1981 filed the following pleadings:

- (a) Motion for Reconsideration of the Order of Dismissal.
- (b) Motion for Admission of Amended Complaint.
- (c) Amended Complaint.

However, the petitioner was furnished with copy of the said pleadings only on January 21, 1982 through registered mail.

On January 28, 1982, the petitioner Bank filed a motion to strike out the above pleadings and for entry of finality

of the order of dismissal dated November 23, 1981, on the grounds that the motions filed by the spouses were mere scraps of paper because they were not accompanied by a notice of hearing and that the order sought to be reconsidered had already become final.

On February 19, 1982, the respondent Court of First Instance issued ex-parte another restraining order against the provincial sheriff, ordering the latter to refrain from proceeding with the auction sale. Petitioner Bank moved to set aside the restraining order but the same was denied. Instead, on July 5, 1982, the respondent Court of First Instance issued another order admitting the amended complaint of the spouses Dizon.

A petition for certiorari was filed by the petitioners before the Court of Appeals questioning the jurisdiction of the respondent judge in issuing the restraining order and in taking cognizance of the case after the same had become final.

On August 4, 1982, the appellate court, issued a resolution directing the respondents to desist from enforcing the questioned order and from further proceeding with Civil Case No. 6000, pending the determination of the merits of the petition.

This notwithstanding, on August 12, 1982, the respondent spouses filed a notice for the dismissal of Civil Case No. 6000 before the respondent CFI basing it on Section 1 of Rule 17 of the Rules of Court. The respondent CFI dismissed the case without prejudice, on the following day. The appellate court was informed of this development through a manifestation filed on August 16, 1982.

The petitioners before the appellate court filed a Supplemental Petition alleging that the respondent judge acted without or in excess of his jurisdiction and/or with grave abuse of discretion in converting the dismissal of the civil case which was with prejudice long after said order of dismissal lapsed into finality into a dismissal without prejudice. It also alleged that such dismissal as in violation of the restraining order issued by the appellate court.

Meanwhile, the provincial sheriff reset the extrajudicial foreclosure of the mortgage on October 14, 1982 at 10:00 a.m.

However, on October 13, 1982, only one day before the scheduled auction sale, the respondent spouses refiled the complaint which they had earlier asked to be dismissed, as a fresh suit-docketed as Civil Case No. 6603. On the same date, the respondent CFI issued ex-parte a restraining order against the extrajudicial foreclosure which was scheduled the next day.

On October 18, 1982, the petitioners filed a motion for contempt alleging that the private respondents abused legal processes in voluntarily moving for the dismissal of Civil Case No. 6000 and in refiled the dismissed complaint in a new case for the purpose of frustrating the statutory right of the petitioner to foreclose the mortgage.

The appellate court, however, in its decision dated November 16, 1982, passed only upon the issues raised in the first petition. Thus, it dismissed the latter, stating:

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"In view of the foregoing development in the case at bar, the instant petition for certiorari, assailing two (2) orders of the respondent Judge in Civil Case No. 6000 became moot and academic by the dismissal of the same."

The petitioner seasonably filed a motion for reconsideration but the same was denied.

In this petition, the following issues are raised:

- THE TRIAL COURT ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION IN ISSUING A RESTRAINING ORDER AND IN ADMITTING AN AMENDED COMPLAINT IN A CASE WHICH HAS ALREADY BEEN DISMISSED, THE ORDER OF DISMISSAL BEING FINAL AND DEFINITIVE, AND BASED ON THE GROUND THAT THE COMPLAINT HAS NO CAUSE OF ACTION AGAINST PETITIONER BANK.
- RESPONDENT JUDGE ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION IN DISMISSING CIVIL CASE NO. 6000 WITH OUT PREJUDICE AFTER THE ORDER OF DISMISSAL THEREIN BECAME FINAL AND DEFINITIVE.
- RESPONDENT JUDGE ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION IN ISSUING A RESTRAINING ORDER THAT INTERFERES AND NULLIFIES A RESTRAINING ORDER OF THE APPELLATE COURT.
- BY THE FAILURE OF THE RESPONDENT INTERMEDIATE APPELLATE COURT TO RENDER A CATEGORICAL RULING ON THE FIRST THREE ISSUES PROPOUNDED ABOVE, SAID COURT SANCTIONED A DEPARTURE BY THE TRIAL COURT AND BY RESPONDENT JUDGE FROM THE ACCEPTED AND USUAL JUDICIAL PROCEDURE AND DEPRIVED PETITIONERS OF THEIR RIGHT TO DUE PROCESS.

With regard to the first assignment of error, we agree with the contention of the petitioner that the dismissal of the first complaint become final and executory after the period within which to appeal from such dismissal had expired without a motion for reconsideration being properly filed. While it is true that the private respondents may have filed their December 10, 1981 motion for reconsideration on time, such did not suspend the running of the period to appeal because the date in the notice of hearing was fatally defective, such that the motion became nothing but a useless piece of paper. (See *Andrada v. Court of Appeals*, 60 SCRA 382). As we have held in *Sacalan v. Bautista* (56 SCRA 179)

"Finally, Section 4, Rule 15 of the Rules of Court provides that notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it; and Section 5 of the same Rule requires the notice to be directed to the parties concerned and to state the time and place for the hearing of the motion. A motion which fails to comply with these requirements is nothing but a useless piece of paper, x x x"

The date set for the hearing was Swxvmvwe (sic) 28, 1981. Copies of the motion were sent by registered mail to the counsel for the respondent spouses on January 21, 1982 more than one month after it was filed. Counsel received it on January 28, 1982.

The respondent Court of First Instance, therefore, erred in considering the motion for reconsideration and in issuing a temporary restraining order on the basis thereof. Such order only caused indefinite injurious effects to the petitioner Bank when as far as the court was concerned, it had already lost its jurisdiction to issue the same.

As regards the amended complaint, although it was still a matter of right on the part of the private respondents to file the same and no grave abuse of discretion can be imputed on the respondent Court of First Instance in admitting such complaint, the latter should have dismissed the amended complaint just the same because on its face the reason for its earlier dismissal still existed. It still did not state a cause of action against the petitioner Bank.

The only change that was effected in the refiled complaint was one additional allegation that the petitioner Bank was "guilty of negligence amounting to fraud by not making the plaintiffs aware of the approval and release of the

loan so that in effect (sic) cooperated in the perpetration of a fraud Percival Briñas committed against the plaintiffs." However, in the first part of said complaint as in the amended complaint earlier dismissed, the following facts were alleged:

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"14. The plaintiffs facing the prospect of an impending foreclosure of their property readily agreed to defendant's proposal and in order for said defendant Percival Briñas to obtain a loan from the Republic Planter Bank the plaintiffs on October 11, 1979 in the City of Manila executed a power of Attorney in favor of said defendant a xerox copy of the same is hereto attached as Annex "C" and made an integral part of this complaint;

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"16. In the ensuing transaction between the plaintiffs and the defendant Percival Briñas it is to be noted that the proceeds of the loan be obtained from the Republic Planters Bank should first be applied to the payment of plaintiffs debt with Unity Savings & Loan Association Inc. and the residue be applied to the payment of plaintiffs' Caterpillar Straight Dozer D-7; the defendant Percival Briñas in bad faith and with evident intention to defraud the plaintiffs violated the covenants of the trust plaintiffs bestowed upon him by paying only plaintiffs obligation with Unity Savings & Loan Association Inc. and the excess of the amount of the Loan supposed to be applied to the payment of the Caterpillar Straight Dozer D-7 and its unpaid rentals were retained and appropriated by the defendant for his own personal use and benefit to the damage and prejudice of the herein plaintiff',

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It is thus clear that the private respondents' cause of action lies only against defendant Percival Briñas and not against the petitioner Bank because in their own words, said respondents have admitted that they authorized Briñas, through a special power of attorney, to obtain a loan from petitioner Bank. A cause of action has three elements, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff. It is only when the last element occurs or takes place that it can be said in law that a cause of action has arisen (*Cole v. Vda. de Gregorio*, 116 SCRA 680-681).

The fact that Briñas may have misapplied the proceeds of such loan is of no concern to the petitioner Bank and can in no way be its responsibility. Nor can private respondents make said misapplication as the basis for the issuance of a restraining order, much less an action for injunction to prevent the petitioner Bank from enforcing its lien against the mortgaged property of the respondents. There was no basis for the order enjoining the Bank from enforcing its lien while the spouse were trying to collect the money allegedly misappropriated by their own attorney.

Anent the second and third assignments of errors, we find that the respondent Court of First Instance committed grave abuse of discretion when it dismissed the amended complaint not only because said dismissal was made "without prejudice" but because the same was done notwithstanding the appellate court's resolution directing the respondents "to desist from enforcing the restraining order dated February 19, 1982 (Annex L) and from further proceedings in Civil Case No. 6000 of the Court of First Instance of Pampanga, Branch III, until further orders from this Court."

The failure of the lower court to respect the orders issued by a superior court constitutes grave abuse of discretion for only the latter court has jurisdiction to recall such orders and until then, it is the duty of the lower court and the

parties to the case to comply with the same.

In the case at bar, not only did the respondent CFI dismiss Civil Case No. 6000 notwithstanding the restraining order issued by the appellate court while said restraining order was still in force and effect, but the trial court also admitted the same complaint upon its being refiled as a new case after it had been withdrawn by the private respondents for no reason at all. These facts clearly indicate grave abuse of discretion by the trial court. The situation was further aggravated by the latter's issuance of another restraining order based on the refiled complaint which was identical with the withdrawn complaint.

Under the above circumstances, it can be readily seen that the sole purpose of the private respondent in withdrawing the amended complaint and in subsequently re-filing the same was to delay and frustrate the right of the petitioner Bank to enforce its over their property.

No other conclusion can be drawn from the acts of the respondent spouses who withdrew their amended complaint without any ground when the very reasons they gave in their motion to admit that amended complaint were to avoid multiplicity of suit and to prevent delay in the termination of the case; only to refile the same complaint one day before the scheduled public auction. The respondent trial court should not have admitted and entertained the third complaint not only because there was a restraining order issued by the appellate court, but also because the complaint was obviously and patently for dilatory purposes only. For the same reasons an ex-parte restraining order should not have been issued. While it is true that the issuance of such an order is within the discretion of the court, the discretion so exercised must not only be sound, but it must also be just. As we have ruled in *Commissioner of Customs v. Claribel, et al.* (19 SCRA 246):

"We concede that the issuance of preliminary injunctions rests upon the sound discretion of the court. Nevertheless, as this Court pointed out in a recent case, (*Vivo, etc; v. Cloribel, etc., et al.*, L-23239, November 23, 1966) "[s]ound judicial discretion, however, is no license to undo the law by defeating its objectives. A clear case of abuse of discretion is here present."

As to the fourth assignment of error, we sustain the contentions of the petitioner Bank on the basis of the same grounds upon which the first three assigned errors have been sustained. There was indeed a departure from accepted and usual procedure tantamount to a denial of due process.

WHEREFORE, the petition is GRANTED and the restraining order issued by the Court of First Instance of Pampanga, Branch III, dated October 13, 1982 is hereby DISSOLVED and SET ASIDE. The trial court's order dated November 23, 1981 is declared FINAL and EXECUTORY. The decision of the Court of Appeals dated November 16, 1982 and its resolution dated April 6, 1983 are likewise REVERSED and SET ASIDE. The temporary restraining order issued by this Court dated May 9, 1983 is hereby made PERMANENT.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Relova, and de la Fuente, JJ., concur.

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