

ROMEO F. VELOSO, DELIA M. VELOSO AND GLOBE ENGINEERING CORPORATION, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT AND STATE INVESTMENT HOUSE, INC., RESPONDENTS.

G.R. No. 73338. January 21, 1992

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

It is axiomatic that a mortgagee who effects the extrajudicial foreclosure of the mortgage is entitled under the law to a writ of possession over the property foreclosed, it being the ministerial duty of the proper Regional Trial Court to issue said writ upon the mortgagee's ex parte application, even before the expiration of the period of redemption provided by the law and the Rules of Court.

Upon this axiom and the undisputed facts shortly to be narrated, this Court will deny the petition.

The property involved was a house and lot belonging to the petitioner spouses, Romeo F. Veloso and Delia M. Veloso. Their ownership was evidenced by Transfer Certificate of Title No. 136559 of the Registry of Deeds for Quezon City. By deeds executed on October 3, and 16, 1978, they constituted a mortgage over the property as security for a loan in the sum of P200,000.00 given by State Investment House, Inc. (SIHI) to Globe Engineering Corporation, a firm of which Romeo F. Veloso was the President and General Manager.

About four months later, Globe Engineering Corporation asked SIHI for an additional loan. The request was turned down. Instead SIHI demanded that the former pay its original loan in accordance with the terms of the contract and its current statement of accounts.

No payment having been made, SIHI caused the extrajudicial foreclosure of the mortgage by the Sheriff of Quezon City pursuant to the mortgage deeds. The public auction sale was held on December 4, 1980, after due publication and notice. The highest bid for the property, P303,069.79, was submitted by SIHI. Consequently, the Sheriff executed a certificate of sale in SIHI's favor, conveying the property to it. After the expiry of the redemption period, ownership over the property was consolidated in SIHI and a new title, No. 285806, was issued to it.

The one-year period for redemption of the foreclosed property lapsed, as aforesaid, with neither the Velosos nor Globe Engineering Corporation making any attempt to redeem the property. All that was done, as the record shows, was the transmission by Globe Engineering Corporation, prior to foreclosure, of a request for review and correction of SIHI's statement of account, and when the request was rejected and it became evident that foreclosure was forthcoming, the institution by the Velosos on December 2, 1980,[1] of an action in the Regional Trial Court of Manila, docketed as Civil Case No. 136559,[2] praying for the nullification or reformation of the mortgage contracts. The complaint was amended within a month to implead Globe Engineering Corporation as additional co-plaintiff and to include a prayer for the annulment of the sheriff's extrajudicial foreclosure sale.

Answer was filed by SIHI in due course. The Trial Court issued an order to maintain the status quo pending

negotiations by the parties for the amicable settlement of the case. The plaintiffs filed a motion for preliminary injunction in August of 1982, but it appears that no action thereon was taken by the Court.

On January 13, 1983 SIHI filed with the Quezon City Regional Trial Court (in LRC Case No. Q-2438 [83]), a petition for the issuance ex parte of a writ of possession in its favor in accordance with Act 3135, on the strength of the facts just related. The Quezon City Court refused to conduct proceedings ex parte, however. It required SIHI to serve copy of the motion for writ of possession on the plaintiffs so that the latter could file an opposition thereto, if so minded. On October 28, 1983 the Trial Court promulgated an order disposing of the matter as follows:

"Premises considered, the court has no alternative but to grant the petition. Let writ of possession be issued and the sheriff of this court and/or his deputies are directed to implement the same."

The writ of possession was accordingly issued by the Branch Clerk of Court on November 14, 1983; and on November 19, 1983 the Quezon City Sheriff gave the plaintiffs notice to vacate the premises. On November 21, 1983 the plaintiffs moved for reconsideration of the Order of October 28, 1983, followed by an "urgent motion to allow oppositors (plaintiffs) to present evidence," to show why the writ of possession should not issue ex parte because SIHI had violated the terms of the loan and mortgage contracts. In the same urgent motion, said plaintiffs asserted that fire had destroyed the mortgaged building sometime on May 31, 1983, that the building had been insured against fire with the Pioneer Insurance & Surety Corporation and the proceeds made payable directly to SIHI and hence, said proceeds should be applied in extinguishment pro tanto of their obligation. The plaintiffs also stated that irregularity attended the issuance of the writ of possession in SIHI's favor in connection with which the Register of Deeds of Quezon City had been charged before the Tanodbayan. SIHI filed an opposition to which the plaintiffs filed a reply. Thereafter, the Trial Court promulgated an Order dated May 31, 1984 denying the plaintiffs' motion for reconsideration of November 21, 1983 and their urgent motion to allow them to introduce evidence.

On June 1, 1984, an alias writ of possession issued; and on June 8, 1984 the Deputy Sheriff of Quezon City gave the plaintiffs another notice to vacate the premises. Said plaintiffs (Velosos and Globe Engineering Corp.) filed a "Very Urgent Motion to Stay Alias Writ of Possession" on the ground that they had filed notice of appeal on the same day. But on June 14, 1984 the Trial Court rendered an Order (1) denying due course to the appeal because the Orders of October 28, 1983 and May 31, 1984 had already been partly executed, and (2) granting SIHI's earlier motion to break open the padlocks of the main gate and the main door of the foreclosed residential house. And so, on June 19, 1984, the Deputy Sheriff of Quezon City finally ejected the Velosos from the house which was thereafter placed in SIHI's possession.

The Velosos betook themselves to the Intermediate Appellate Court. They filed on June 22, 1984 a petition for certiorari and mandamus in that Court which, on June 22, 1984, issued a temporary restraining order "enjoining the City Sheriff of Quezon City and/or his deputies from enforcing the alias writ of possession * *." And it appears that on the same day Romeo Veloso, with the aid of some persons, was able to take back possession of the property.

The Velosos' success, such as it was, was however short-lived; for slightly more than a year later, or more precisely on September 24, 1985, the Intermediate Appellate Court rendered a decision adverse to them, dismissing their petition for want of merit and lifting the restraining order or preliminary injunction.[3] The Velosos' motion for reconsideration was denied by Resolution dated December 27, 1984. The Velosos and Globe Engineering Corporation then appealed to this Court which, after requiring the filing of various pleadings by the parties and in the meantime issuing a temporary restraining order against the writ of possession, considered the case submitted for decision by Resolution dated April 2, 1990.

The petitioners contend that -

- 1) they were denied due process because not allowed to present evidence in support of their opposition to the motion for writ of possession; and the Regional Trial Court of Quezon City was not the court of correct venue to issue said writ because the mortgage contract stipulated that litigation concerning the same should be conducted in the courts of Manila;
- 2) Civil Case No. 136559 of the Manila Regional Trial Court -- commenced by the petitioners for annulment of the mortgage -- was a "prejudicial question which lay athwart any succeeding proceeding while the case is pending;" and
- 3) the payment made to SIHI by Pioneer Insurance and Surety Corporation on account of damage to the foreclosed building insured against fire should have been deemed full settlement of the mortgage obligation.

The crucial question is whether or not the Quezon City Regional Trial Court had authority to accept and act on SIHI's motion for writ of possession of property in Quezon City which it had acquired at an extrajudicial foreclosure sale, a question to which, as stated in this opinion's opening paragraph, an affirmative answer must be given, in light of applicable legal principle and the undisputed facts. Section 7 of Act 3135 makes clear that in any sale made under its provisions, "the purchaser may petition the Court * * of the province of place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of ** (the) Act. **. Such petition shall be made under oath and filed in form of an ex parte motion * * ." A fortiori, after the expiration of the redemption period without redemption having been effected, the writ must issue to place the mortgagee or highest bidder at the mortgage sale in possession of the foreclosed property. Thus this Court cites with approval, as being in accord with the law and the facts, the relevant conclusions set out by the Intermediate Appellate Court in its challenged decision of September 24, 1985, to wit:

"Undoubtedly, respondent court has the power and jurisdiction to take cognizance of and grant private respondent's petition for writ of possession, pursuant to the explicit provision of Section 7 of Act 3135, as amended. And there was nothing arbitrary, abusive or despotic in the issuance of the orders of October 28, 1983 and May 31, 1984. Instead of proceeding ex-parte on the matter, the respondent court even gave petitioners a chance to be heard thereon. Only after all the pertinent pleadings were in and the issue amply discussed, did it order the issuance of the writ of possession, to which private respondent is entitled, as purchaser in the foreclosure sale. It was ministerial upon the court to issue the writ in question. In fact, the mortgagee may ask for a writ of possession over the foreclosed property during the period of redemption. In the case of the petitioners, their period of redemption had expired and title to the mortgaged properties was already consolidated in favor of the private respondent to which TCT No. 285806 was issued. The conveyance to it of subject properties vested in private respondent the right to take possession thereof, and it was thus the inescapable duty of the sheriff to place it in such possession.

The pendency of Civil Case No. 136559, for the annulment of the auction sale and/or reformation of the mortgage contract, was of no moment. It was not a sufficient ground for the denial of the petition for writ of possession or even for the suspension of resolution or action thereon."

Worthy of note that the petitioners do not impugn the validity of the mortgage at its inception. Their assault on it is founded on events allegedly transpiring after its execution. The tenability of their challenge to the mortgage may well be determined in the civil action (No. 136559) instituted by them in the Manila Regional Trial Court. But clearly, the pendency of that action does not and cannot bar the issuance of a writ of possession to the mortgagee who has, in the meantime, extrajudicially foreclosed the mortgaged property and acquired it as highest bidder in the subsequent public auction sale. The law is quite explicit on this point, and the right of the mortgagee

thereunder unquestionable. And decisions abound applying the law and declaring it to be the court's ministerial duty to uphold the mortgagee's right to possession even during the redemption period.[4] The petitioners have simply failed to demonstrate with any degree of persuasiveness why the clear provisions of law and the jurisprudence in application thereof should not be equally controlling in the case at bar.

WHEREFORE, the petition is DENIED, and the restraining order issued on February 17, 1986 is LIFTED AND SET ASIDE, with costs against the petitioners.

SO ORDERED.

Cruz, Griño-Aquino, and Medialde, JJ., concur.

[1] The complaint was amended within a month to implead Globe Engineering Corporation as additional co-plaintiff.

[2] Assigned to Branch 27.

[3] The Decision was written for the Division of the Court by Purisima, J., with whom concurred Griño-Aquino and Racela, JJ.

[4] SEE, e.g., *Barican v. IAC*, 162 SCRA 358(1988).

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