

STATE INVESTMENT HOUSE, INC., PETITIONER, VS. COURT OF APPEALS AND SABINA VDA. DE CUENCA, RESPONDENTS.

G.R. No. 99308. November 13, 1992

Ponente: MELO, J.

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MELO, J.:

The Decision and Amended Decision of the Court of Appeals in CA-G.R. CV No. 24339, both reversing and affirming in part the Decision of Branch 90 of the Regional Trial Court of Quezon City in “Sabina Vda. de Cuenca vs. State Investment House, Inc.” (Civil Case No. Q-42552), for declaration of nullity of the foreclosure sale with an alternative prayer for redemption of the foreclosed property, are assailed in the instant petition on questions of law.

As may be gleaned from the pleadings of the parties, the antecedent facts are as follows:

On February 13, 1979, private respondent Sabina Vda. de Cuenca (Cuenca) obtained a loan from petitioner State Investment House, Inc. (SIHI) under a promissory note for P160,000.00, secured by a mortgage on Cuenca’s property at Tandang Sora, Quezon City.

On November 15, 1979, Cuenca obtained another loan of P500,000.00. This loan was secured by a real estate mortgage executed by Cuenca on another property located along Timog, Quezon City, with paragraph 6 of the contract expressly giving SIHI the option of extra-judicially foreclosing the mortgaged property in the event of Cuenca’s default in the payment of her indebtedness. Cuenca’s unpaid balance of P120,000.00 under the first loan was deducted from the proceeds of the second loan. The mortgage on her property at Tandang Sora, Quezon City was cancelled.

Because of Cuenca’s failure to pay on the maturity date of the loan, her account was restructured and rolled over twelve times through the execution of various promissory notes. On November 29, 1982, the maturity date of the twelfth promissory note, SIHI claimed that Cuenca’s obligations, inclusive of interest, service charges, and penalties, reached a total of P621,483.57. The loan was not anymore restructured and SIHI, on December 2 and 15, 1982, made written demands on Cuenca for the payment of her outstanding obligation.

Cuenca did not heed SIHI’s demands for payment. SIHI thus initiated extra-judicial foreclosure of Cuenca’s mortgaged property for which the corresponding notice of sheriff’s sale was issued on February 23, 1983, setting the auction sale on March 22, 1983. The scheduled foreclosure sale was, however, deferred by SIHI on account of Cuenca’s request to be given time to pay the loan. Although Cuenca did make some payments, these were not enough to fully pay her outstanding obligation and as of July 28, 1983, SIHI claimed that Cuenca’s outstanding loan amounted to P637,793.86. Consequently, SIHI proceeded with the auction sale on August 8, 1983 where it as declared the highest bidder for P742,181.55, Cuenca’s outstanding debt at that time per SIHI’s computation.

The certificate of sale was registered with the Register of Deeds of Quezon City on August 24, 1983.

On July 10, 1984, SIHI received a letter (Exhibit 54, p. 18, Vol. I, Record) from Cuenca requesting that she be

furnished a Statement of Account “before and after the foreclosure/auction sale” for her to be able to redeem the foreclosed property from SIHI. This was followed by another letter (Exhibit 54-A; also Exhibit J, p. 20, Vol. I, Record) from Cuenca on July 17, 1984 wherein she signified her intention to redeem the property for P500,000.00, payable in the following manner:

“1. P100,000.00 payable within thirty (30) days upon receipt of (SIHI’s) approval of this proposal.

“2. The balance of P400,000.00 shall be paid in eight (8) monthly installments. Each installment payment shall be due on the 30th day of each month, the first monthly payment to be reckoned from the date the amount stated in No. 1 has been paid.”

In a letter dated August 16, 1984 (Exhibit K, p. 22, Vol. I, Record), SIHI rejected Cuenca’s offer to redeem, reasoning that she should pay her total outstanding obligation amounting at that time to P870,739.36.

On August 23, 1984, Cuenca, through counsel, sent another letter to SIHI (Exhibit 54-B; also Exhibit L, pp. 23-24, Vol. I, Record) and reiterated her offer to redeem the property by stating:

“... we are now finally offering and tendering to you the full sum of P426,874.72 as the redemption price of the property. This sum of P426,874.72 is the difference between the redemption price of P870,739.36 which you fixed in your letter of 16 August 1984, and the sum of P441,312.76 which is the aggregate of the payment which our client made to you on account of her loan of P500,000.00”

Without, however, waiting for SIHI’s reply, Cuenca, on August 24, 1984, filed a complaint with the Regional Trial Court of Quezon City seeking annulment of the foreclosure sale on the ground that she had not defaulted in the payment of her loan to SIHI. Alternatively, Cuenca prayed that the trial court fix the redemption price in the event it is found that she is still indebted to SIHI.

After the expiration of the one-year redemption period, the Register of Deeds issued a new title on the foreclosed property in SIHI’s name.

On October 19, 1989, Judge Abraham P. Vera, presiding judge of Branch 90 of the Regional Trial Court of the National Capital Judicial Region stationed in Quezon City, promulgated his decision declaring the foreclosure sale, as well as SIHI’s title obtained in such sale, null and void.

In its decision, the trial court made the following essential findings: (a) that the filing of the petition for extrajudicial foreclosure was valid because as of the date of the filing thereof, Cuenca was still indebted to SIHI in the sum of P222,890.41 based on the trial court’s own computation; and (b) that the foreclosure sale held on August 8, 1983 was not valid because at that time, Cuenca no longer owed any amount to SIHI, as in fact from the computations made by the trial court, Cuenca had made an overpayment to SIHI in the amount of P27,054.14.

The dispositive portion of the trial court’s decision stated:

“ACCORDINGLY, judgment is hereby rendered:

(a) Declaring plaintiff to have fully paid her obligations under the promissory notes, marked Exhs. 1 and 4, and all of those deriving their being from Exh. 4;

(b) Declaring the sale of the mortgaged property of plaintiff under the foreclosure proceedings and of the resultant Certificate of Sale executed and issued by the foreclosing Sheriff by reason of such foreclosure to be null and void;

(c) Directing the Register of Deeds of Quezon City to cancel Transfer Certificate of Title No. 325372 (Exh. N) in the name of SIHI, and to reinstate Transfer Certificate of Title No. T-12678 (Exh. B) in the name of plaintiff;

(d) Directing defendant SIHI to refund to plaintiff the sum of P27,054.14, which was the overpayment she made on account of her loans with SIHI, with interest at 12% per annum from the date of the filing of the complaint until the same is fully paid;

(e) Directing the defendant SIHI to pay to plaintiff the sums of: P50,000.00 as moral damages; P50,000.00 as exemplary damages; and P50,000.00, as attorney's fees;

(f) Directing defendant SIHI to pay plaintiff the sum of P62,903.18, as a refund of the penalties which it had collected from plaintiff, with interest thereon at 6% per annum from date of this decision until the same is fully paid;

(g) Directing plaintiff to pay to defendant SIHI the sum P14,645.00, in reimbursement of SIHI's expenses in the foreclosure of the mortgaged property, which includes attorney's fees, with interest thereon at 6% per annum from date of the decision until it is fully paid, which amount shall, however, be offset by an equivalent amount from the amounts due from SIHI to plaintiff; and

(h) Directing defendant SIHI to pay the costs of this suit.

All other claims which the parties may have against each other are hereby denied and dismissed.

SO ORDERED." (pp. 681-682, Vol. II, Record.)

SIHI appealed the decision to the Court of Appeals in CA-G.R. CV No. 24339. In its Original Decision, the Court of Appeals (Campos [P], Lantin, Sempio-Diy, JJ) rectified several errors committed by the trial court in its computation of Cuenca's account with SIHI, but nevertheless affirmed the trial court's finding that at the time of the foreclosure sale, Cuenca had already paid in full her indebtedness so that the foreclosure sale and the transmission of title to SIHI were null and void.

Both parties asked for a reconsideration of the appellate Court's ruling.

SIHI's Motion for Reconsideration contended that on the basis of the computations made by the trial court and as corrected by the Court of Appeals in its decision, the net result showed that as of the date of the foreclosure sale on August 8, 1983, Cuenca was still indebted to SIHI, and such being the case, the foreclosure sale was valid.

In her Motion for Reconsideration, Cuenca asked the appellate court to reconsider its finding that she had obtained a third loan from SIHI for P61,500.00. She further asked that she be credited two amounts which were disallowed by respondent court.

On April 30, 1991, respondent court promulgated its Amended Decision, reversed its earlier ruling and held that in accordance with its own computations, Cuenca was still indebted to SIHI in the amount of P279,963.42 as of the date of the foreclosure sale. The dispositive portion of this Amended Decision reads:

"The decision of this Court is hereby modified as follows:

a) Plaintiff-appellee is ordered to pay defendant-appellant the sum of P279,963.42, consisting of the unpaid balance of her outstanding obligation within 30 days from receipt of this Amended Decision with payment of interest at the legal rate from date of this decision until final judgment.

b) The foreclosure proceedings and the resultant Certificate of Sale executed and issued by the foreclosing sheriff by reason of such foreclosure are rendered null and void.

c) Transfer Certificate of Title No. 324372 issued in the name of SIHI is declared null and void and the Register of Deeds of Quezon City is ordered to reinstate Transfer Certificate of Title No. 126578 in the name of plaintiff.

d) No pronouncement as to payment of damages and attorney's fees.

SO ORDERED." (p. 49, Rollo.)

Dissatisfied, SIHI filed the instant petition and as clarified in pages 4 and 5 of the petition, the appeal is limited to the following aspects:

"(i) The original Decision in C.A.-G.R. CV No. 24339, 'Sabina Vda de Cuenca, plaintiff-appellee v. State Investment House, Inc., et al., defendants; State Investment House, Inc., defendant-appellant,' promulgated by respondent Court on 28 February 1991, only insofar as the decision voided the foreclosure sale of the mortgaged property and SIHI's title acquired by virtue of such foreclosure sale, the challenged part of the dispositive portion reading as follows:

'(b) Declaring the sale of the mortgaged property of plaintiff under the foreclosure proceeding and of the resultant Certificate of Sale executed and issued by the foreclosing Sheriff by reason of such foreclosure to be null and void;

(c) Directing the Register of Deeds of Quezon City to cancel Transfer Certificate of Title No. 325372 (Exhibit N) in the name of SIHI, and to reinstate Transfer Certificate of Title No. T-12678 (Exhibit B) in the name of the plaintiff.'

(ii) And the Amended Decision in the same appealed case, promulgated on 30 April 1991, only insofar as it adjudicated as follows:

'(a) Plaintiff-appellee is ordered to pay defendant-appellant the sum of P279,963.42, consisting of the unpaid balance of her outstanding obligation within 30 days from receipt of this Amended Decision with payment of interest at the legal rate from date of this decision until final judgment.

(b) The foreclosure proceedings and the resultant Certificate of Sale executed and issued by the foreclosing Sheriff by reason of such foreclosure are rendered null and void.

(c) Transfer Certificate of Title No. 324372 issued in the name of SIHI is declared null and void and the Register of Deeds of Quezon City is ordered to reinstate Transfer Certificate of Title No. 126578 in the name of plaintiff.'

(b) Petitioner is not appealing the rest of the dispositive portions of the Decision and Amended Decision."

SIHI presents the following as grounds for its petition:

"MAIN GROUND OF THE PETITION

RESPONDENT COURT MANIFESTLY ERRED AND MISAPPLIED THE LAW WHEN IT REFUSED TO DECLARE THE FORECLOSURE PROCEEDINGS VALID DESPITE ITS OWN DETERMINATION THAT RESPONDENT CUENCA WAS TRULY AND GENUINELY INDEBTED TO PETITIONER WHEN THE FORECLOSURE PROCEEDINGS WERE INSTITUTED.

ALTERNATIVE GROUND

SHOULD THE SUPREME COURT AFFIRM THE VOIDING OF THE FORECLOSURE SALE AND OF PETITIONER'S TITLE, PETITIONER IS ENTITLED, IN LAW AND EQUITY TO THE PAYMENT OF LEGAL INTEREST ON THE PRINCIPAL SUM OF P279,963.42 (THE SUM ADJUDGED IN PETITIONER'S FAVOR BY RESPONDENT COURT) COMPUTED FROM THE DATE OF THE FORECLOSURE SALE UP TO THE DATE OF ACTUAL PAYMENT OF THE PRINCIPAL SUM." (pp. 15-16, Rollo)

On July 25, 1991, shortly after she filed her Comment, Cuenca consigned with this Court Metrobank Cashier's

Check No. CC-17743 in the sum of P279,963.42, representing the amount ordered by the Court of Appeals (in its Amended Decision) to be paid to SIHI. Thereafter, SIHI filed its Reply on August 15, 1991, to which a Rejoinder was filed by Cuenca on August 27, 1991.

As correctly formulated by SIHI, the principal issue in this case is the effect upon the validity of the extra-judicial foreclosure proceedings of a judicial determination that the debtor-mortgagor (Cuenca), at the time of the foreclosure, was still indebted and in default in the payment of the obligations to the creditor-mortgagee (SIHI).

Cuenca's loan with SIHI was restructured and rolled over twelve (12) times, with the last promissory note indicating the maturity date of November 29, 1982. The recomputation (attached to the Amended Decision) of the Court of Appeals shows, however, that on the said date Cuenca still had an outstanding indebtedness of P416,188.08. SIHI, in its letters to Cuenca dated December 2 and 15, 1982 (Exhibits 36 and 36-A, pp. 435 and 436, Vol. I, Record) demanded the payment of this unpaid amount. Cuenca, however, failed to make any payments and thus, even at that point in time, was already a debtor in default under Article 1168 of the New Civil Code.

The extra-judicial foreclosure instituted by SIHI in February 1983 was, therefore, valid as at that time, Cuenca's loan being then already almost three (3) months overdue (*Bonnevie vs. Court of Appeals*, 125 SCRA 122 [1983]). Aside from the fact that Cuenca was already in default, the Real Estate Mortgage executed by the parties expressly granted SIHI the option to foreclose when it provided that:

"6. In the event that the Mort-gagor/Debtor herein, should fail or refuse to pay any of the sums of money secured by this mortgage, or any part thereof, in accordance with the terms and conditions herein set forth or those stipulated in the correlative promissory note(s), or should he/it fail to perform any of the conditions stipulated herein, or those in the promissory note(s), then and in such case the Mortgagee shall have the right, at its election, to foreclose this mortgage"

SIHI, however, deferred the auction sale when Cuenca subsequently asked for more time to pay her obligation. Cuenca's account, however, was not restructured and she herself gave SIHI permission to proceed with the auction sale on August 8, 1983 should she not be able to pay her account by then (Exhibit 47, p. 457, Vol. I, Record). As of that date, the Court of Appeals computed Cuenca's unpaid account with SIHI to be P279,963.42. It is worth noting that this computation is not challenged or questioned by either SIHI or Cuenca and We find no reason to disturb the same.

The obvious implication is that, at the time of the foreclosure sale on August 8, 1983, Cuenca had defaulted in the payment of P279,963.42. Thus, SIHI had the option, under the aforementioned provision of the Real Estate Mortgage, to foreclose on the mortgaged property. SIHI cannot be faulted for having chosen that option.

The Court of Appeals, therefore, erred in concluding that despite Cuenca's default, the foreclosure sale and the resultant issuance of the certificate of sale by the foreclosing Sheriff were null and void. Foreclosure is valid where the debtor is in default in the payment of his obligation (Cf. *Bicol Savings and Loan Association vs. Court of Appeals*, 171 SCRA 630 [1989]). In a real estate mortgage when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation (*Commodity Financing Co., Inc. vs. Jimenez*, 91 SCRA 57 [1979]). Once the proceeds have been applied to the payment of the obligation, the debtor cannot anymore be required to pay, unless, of course, there is a deficiency between the amount of the loan and the foreclosure sale price, because the obligation has already been extinguished.

We now come to the second issue posed by the parties: with the auction sale having been done on August 8, 1992

and the certificate of foreclosure sale having been validly registered with the Register of Deeds of Quezon City on August 24, 1983, was Cuenca able to redeem the property in the manner and within the period provided by law?

With the aforequoted provision of the Real Estate Mortgage having expressly authorized SIHI to extra-judicially foreclose the mortgage in case of Cuenca's failure to comply with her obligation to pay, the law governing the foreclosure is Republic Act No. 3135 (An Act To Regulate The Sale Of Property Under Special Powers Inserted In Or Annexed To Real Estate Mortgages), as amended by Republic Act No. 4118 (See *Luna vs. Encarnacion*, 91 Phil. 531 [1952]). Section 6 of the said Act states:

"Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale" (Underscoring supplied.)

In a long line of cases, We have consistently held that this one-year redemption period should be counted not from the date of foreclosure sale, but from the time the certificate of sale is registered with the Register of Deeds (*Agbulos vs. Alberto*, 5 SCRA 790 [1962]; *Salazar vs. Meneses*, 8 SCRA 495 [1963]; *Reyes vs. Noblejas*, 21 SCRA 1027 [1970]; *Quimson vs. Philippine National Bank*, 36 SCRA 26 [1970]). In this case, therefore, the one-year redemption period should be reckoned from the time the certificate of sale was registered on August 24, 1983 (*Bernardez vs. Reyes*, 201 SCRA 648 [1991]).

Under Article 13 of the New Civil Code, a year is understood to be of three hundred sixty-five (365) days. Thus, excluding the first day and counting from August 25, 1983 (under paragraph 3 of Article 13 of the New Civil Code), and bearing in mind that 1984 was a leap year, Cuenca had only until August 23, 1984, the 365th day after registration of the sale on August 24, 1983, within which to redeem the foreclosed property in accordance with law. It was thus already beyond the redemption period when Cuenca filed her suit below on August 24, 1984.

It should be stressed in this regard that it is not proper to count, as Cuenca submits in her Rejoinder, the period on the basis of 30 days per month. The law speaks of a "one year" period within which to redeem, not twelve months as in the case of redemption by a judgment debtor under Section 30 of Rule 39. Applying Article 13 of the Civil Code, the period of one year within which to redeem in the case at bar is to count 365 days from August 24, 1983. Consequently, the last day to redeem would be and indeed fell on August 23, 1984, said year being a leap year (cf *Go vs. Dizon, et al.*, G.R. No. 75915-16, Sept. 18, 1992).

Cuenca, however, was not able to exercise her right of redemption on or before August 23, 1984. Although she wrote to SIHI twice on July 17 and August 23, 1984 and offered to redeem her property, these offers were not accompanied by simultaneous bona fide tender or delivery of the redemption price to SIHI. In *Belisario vs. Intermediate Appellate Court* (165 SCRA 101 [1988]), this Court, through Justice Medialdea, held:

"The general rule in redemption is that in making a repurchase, it is not sufficient that a person offering to redeem makes manifestation of his desire to repurchase; this statement of intention must be accompanied by an actual and simultaneous tender of payment, which constitutes the legal use of exercise of the right to repurchase (*Angao vs. Clavano*, 17 Phil. 152). Likewise, in several cases decided by this Court (*Fructo vs. Fuentes*, 15 Phil. 362; *Retes vs. Suelto*, 20 Phil. 394; *Rosales vs. Reyes, et al.*, 98 Phil. 975) where the right to repurchase was held to have been properly exercised, there was a definite finding of tender of payment having been made by the vendor. The tender of payment must be for the full amount of the repurchase price, otherwise the offer to redeem will be held ineffectual. (*Rumbaoa vs. Arzaga*, 84 Phil. 812). Bona fide redemption necessarily imports a reasonable and valid tender of the entire repurchase price. There is no cogent reason for requiring the vendee to accept payment by installments from the redemptioner, as it would ultimately result in

an indefinite extension of the redemption period (Conejero, et al. vs. Court of Appeals, et al., L-21812, April 29, 1966, 16 SCRA 775, 780).

The rule that tender of payment of the repurchase price is necessary to exercise the right of redemption finds support in civil law. Article 1616 of the Civil Code of the Philippines, in the absence of an applicable provision in Commonwealth Act No. 141, furnishes the guide, to wit: 'The vendor cannot avail himself of the right to repurchase without returning to the vendee the price of the sale x x x' (UY Lee vs. Court of Appeals, L-28126, November 28, 1975, 68 SCRA 196, 204)." (at pp. 107-108.)

Cuenca's use of the phrase "offering and tendering" in her letter dated August 23, 1984 does not comply with the ruling in Belisario. There is no showing whatsoever here that the redemption price was delivered to SIHI. Redemption is not a matter of intent but involves making the proper payment or tender of the price of the land within the specified period (De la Merced vs. De Guzman, 160 SCRA 87 [1988]).

Neither is Cuenca correct in contending that SIHI in effect extended the redemption period when it stated in its letter dated August 16, 1984 that Cuenca had until August 24, 1984 within which to pay its outstanding account in full. In Lazo vs. Republic Surety & Insurance Co., Inc., (31 SCRA 329 [1970]), We held that it is only where, by voluntary agreement of the parties, consisting of extensions of the redemption period, followed by commitment by the debtor to pay the redemption price at a fixed date, will the concept of legal redemption be converted by the parties into one of conventional redemption such that it generates binding contracts when approved by the creditor. In the instant case, however, there is no showing that Cuenca agreed to pay the redemption price on or before August 24, 1984, as set by SIHI. On the contrary, Cuenca's filing of her complaint on August 24, 1984 principally seeking to declare the nullity of the foreclosure sale is indicative of her refusal to pay the redemption price on the deadline mistakenly set by SIHI.

Cuenca's complaint filed on August 24, 1984 (the 365th day from the registration of the certificate of sale, having fallen on August 23, 1984), did not have the effect of a formal offer to redeem. In Belisario (supra), We further explained,

"This case is different from Uy Lee vs. Court of Appeals, supra where the action to compel redemption was filed after the lapse of the period of redemption. Thus, the Court held in said case, to wit:

'It is clear that the mere sending of letters by vendor Simeon expressing his desire to repurchase the property without an accompanying tender of redemption price fell short of the requirements of law. Having failed to properly exercise his right of redemption within the statutory five-year period, the right is lost and the same can no longer be revived by the filing of an action to compel redemption after the lapse of the period.'

The same factual antecedent obtained in Conejero, et al. vs. Court of Appeals, supra, where the complaint seeking to be declared entitled to redeem was filed after the expiration of the statutory period of redemption. What was proper for determination then in said cases was whether or not the right of redemption sans judicial action was validly exercised. In said cases, the Court applied the general rule that bona fide redemption necessarily imports a reasonable and valid tender of the entire purchase price." (at p. 109; emphasis added.)

Thus, it is only when the complaint to enforce a repurchase is filed within the period of redemption will it be equivalent to an offer to redeem and have the effect of preserving the right of redemption (Belisario, supra, citing Reoveros vs. Abel and Sandoval, 48 O.G. 5318). Where, as in this case, the complaint for redemption was filed after the redemption period expired, the complaint is a useless exercise which can not defeat the purchaser's right to have the title of the property transferred in his name. Cuenca's reliance on the ruling in Hulganza vs. Court of Appeals (147 SCRA 77 (1987)) is without any basis. The doctrine laid down in Hulganza finds no applicability to the instant case for unlike the complaint filed by Cuenca in the case at bar, the action for redemption in Hulganza

was filed within the period of redemption.

Moreover, it bears noting that Cuenca sent letters (dated July 17 and August 23, 1984) to SIHI within the redemption period in which she offered to redeem her property. In her letter dated July 17, 1984, she offered to pay her indebtedness according to an installment plan which, if carefully analyzed, had the effect of extending the period of redemption beyond one year contrary to the policy of the law (Belisario, *supra*). In her other letter dated August 23, 1984, she offered to pay the amount of P426,874.72 in full settlement of her obligation, although, as we earlier stated, this amount was never properly delivered to SIHI in accordance with law. There is thus no proof at that time that Cuenca possessed the ability to pay the redemption amount she was offering. This is especially true in the light of the fact that in her first letter she merely offered to pay in installments.

If only to prove the veracity of her claim that at that time she was capable of paying SIHI the full amount of what she thought was a reasonable redemption price, the least that Cuenca could have done was to consign payment in court simultaneous with her filing of the action to redeem on August 24, 1992. In so stating, we do not here depart from our consistent ruling that a formal offer to redeem, accompanied by a bona fide tender of the redemption price, although proper, is not essential where the right to redeem is exercised through the filing of a judicial action (Tolentino vs. Court of Appeals, 106 SCRA 513 [1981]; Tioseco vs. Court of Appeals, 143 SCRA 705 [1986]; Hulganza, *supra*; Belisario, *supra*). As earlier stated, this rule only holds where the action to redeem is filed within the redemption period. Where, as in the instant case, the action is filed after the statutory period has expired, the determination of whether the plaintiff consigned the redemption price with the court simultaneous with the filing of the action is necessary to see if the right of redemption sans judicial action was validly exercised (Belisario, *supra*).

Cuenca's consignment with this Court of the amount ordered by the Court of Appeals to be paid to SIHI only eight (8) years after her action to redeem was filed in 1984 is a belated move which merely shows that in 1984 she had no ability to pay SIHI the redemption price. Her filing of the action was a mere device and scheme to buy time to raise the amount needed to redeem her property. In Conejero, et al. vs. Court of Appeals, et al. (16 SCRA 775 [1966]), we precisely stated that "a buyer can not be expected to entertain an offer of redemption without attendant evidence that the redemptioner can, and is willing to accomplish the repurchase immediately. A different rule would leave the buyer open to harassment by speculators or crackpots, as well as to unnecessary prolongation of the redemption period, contrary to the policy of the law. x x x. Of course, consignment of the price would remove all controversy as to the redemptioner's ability to pay at the proper time." (at pp. 781-782.)

We further stated in *Basbas vs. Entena* (28 SCRA 665, 671 [1969]) that:

"... the right of legal redemption must be exercised within specified time limits: and the statutory periods would be rendered meaningless and of easy evasion unless the redemptioner is required to make an actual tender in good faith of what he believed to be the reasonable price of the land sought to be redeemed. The existence of the right of redemption operates to depress the market value of the land until the period expires, and to render that period indefinite by permitting the tenant to file a suit for redemption, with either party unable to foresee when final judgment will terminate the action, would render nugatory the period of two years fixed by the statute for making the redemption and virtually paralyze any efforts of the landowner to realize the value of his land. No buyer can be expected to acquire it without any certainty as to the amount for which it may be redeemed, so that he can recover at least his investment in case of redemption. In the meantime, the landowner's needs and obligations cannot be met. It is doubtful if any such result was intended by the statute, absent clear wording to that effect.

The situation becomes worse when, as shown by the evidence in this case, the redemptioner has no funds and must apply for them to the Land Authority, which, in turn, must depend on the availability of funds from the Land Bank. It then becomes practically certain that the landowner will not be able to realize the value of his

property for an indefinite time beyond the two years redemption period.” (at pp. 671-672.)

WHEREFORE, the appealed portions of the Original Decision and the Amended Decision are REVERSED and SET ASIDE and a new judgment is hereby entered:

- 1) Declaring valid and effective the extrajudicial foreclosure of the mortgage of respondent Sabina Vda. de Cuenca’s property in Timog, Quezon City on August 8, 1983; and
- 2) Upholding and confirming the cancellation of Transfer Certificate of Title No. 126578 of the Register of Deeds of Quezon City in the name of Sabina Vda. de Cuenca, as well as its replacement by Transfer Certificate of Title No. 324372 in the name of State Investment House, Inc.

Neither party is to recover damages or costs.

SO ORDERED.

Gutierrez, Jr., Acting C.J., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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