

LULLETE S. KO AND ARLETTE SIMPLICIANO BASILIO, PETITIONERS, VS. PHILIPPINE NATIONAL BANK, LAOAG BRANCH, AND THE REGISTER OF DEEDS OF ILOCOS NORTE, RESPONDENTS.

G.R. Nos. 169131-32. January 20, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review on certiorari assailing the April 27, 2005 Order [1] of the Regional Trial Court of Laoag City, Branch 14, in Civil Case No. 12523-14 dismissing petitioners' complaint, and the July 28, 2005 Resolution [2] denying petitioners' motion for reconsideration.

The case stemmed from an action filed by petitioners in the trial court for Annulment of Mortgage, Extra-judicial Foreclosure Sale, Annulment of Transfer Certificate of Title Nos. T-21064 and T-21065 and Deed of Sale with a Prayer for Preliminary Injunction and Restraining Order. The complaint alleged that the assailed mortgage and the foreclosure proceedings were null and void since the written consent of petitioners, as beneficiaries of the mortgaged property, were not secured. Respondent bank denied the claim and alleged that in the execution of the mortgage, petitioners in fact gave their consent.

During the course of the proceedings, petitioners and their counsel failed to attend a scheduled trial. Upon motion of respondent bank, the complaint was dismissed. In its order dated April 27, 2005, the trial court stated:

When the case was called, Atty. Lorenzo Castillo, counsel for the plaintiffs did not appear despite proper notice. No plaintiff appeared. Atty. Eduardo Alcantara, counsel for defendant bank appeared.

Atty. Alcantara manifested that there were numerous occasions in the past when plaintiffs and counsel did not attend. He pointed out that there is an apparent lack of interest on the part of plaintiff to prosecute the action. He moved to dismiss the case on that legal ground.

WHEREFORE, in view of the above premises, the above-entitled case is hereby ordered dismissed.

SO ORDERED. [3]

Petitioners filed a motion for reconsideration claiming that they have been continuously pursuing negotiations with respondent bank to purchase back the property and have gained positive results. Respondent bank countered that from the time the complaint was filed, a period of three years had elapsed but petitioners failed to prosecute their case, showing lack of interest in the early resolution thereof. The trial court denied the motion for reconsideration.

Hence, the instant petition for review on the following grounds:

I

THE TRIAL COURT ERRED IN LAW IN DISMISSING PETITIONERS COMPLAINT ON THE GROUND OF THEIR FAILURE TO APPEAR AT THE SCHEDULED HEARING DESPITE THAT DEFENDANT PNB HAS BEEN EQUALLY GUILTY LIKEWISE.

II

THE TRIAL COURT ERRED IN LAW IN DISMISSING THE CASE DESPITE THAT THE CASE INVOLVES A PROPERTY OF SIGNIFICANT IMPORTANCE AND VALUE TO THE LIFE AND DIGNITY OF THE PETITIONERS THIS (sic) CALLING FOR THE OVERRIDING CONSIDERATION OF A JUDGMENT BASED ON THE MERITS OVER THE PRIMORDIAL INTEREST OF PROCEDURE AND TECHNICALITIES. [4]

The petition lacks merit.

On the procedural aspect, we find that petitioners erred in filing a petition for review on certiorari under Rule 45 of the Rules of Court instead of filing an appeal with the Court of Appeals. Section 3, Rule 17 of the Rules of Court provides:

SEC. 3. Dismissal due to fault of plaintiff.—If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon the motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. (Emphasis supplied)

Upon the order of dismissal, petitioners' counsel filed a timely motion for reconsideration which was denied by the trial court. Considering that an order of dismissal for failure to prosecute has the effect of an adjudication on the merits, petitioners' counsel should have filed a notice of appeal with the appellate court within the reglementary period. [5] Instead of filing a petition under Rule 45 of the Rules of Court, the proper recourse was an ordinary appeal with the Court of Appeals under Rule 41, which provides:

Sec. 2. Modes of Appeal.—

(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 x x x. (Emphasis supplied)

The rule is clear. In order to perfect an appeal all that is required is a pro forma notice of appeal. Perhaps due to failure to file a notice of appeal within the remaining two days of the appeal period, petitioners' counsel instead filed the instant petition. The rules of procedure, however, do not exist for the convenience of the litigants. These rules are established to provide order to and enhance the efficiency of our judicial system. They are not to be trifled with lightly or overlooked by mere expedience of invoking "substantial justice." In *Balindong v. Court of Appeals* [6] we stated:

Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain its failure to comply with the rules. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism or whimsicality in the settlement of

disputes. The enforcement of procedural rules is not antithetical to the substantive rights of the litigants. The policy of the courts is to give effect to both procedural and substantive laws, as complementing each other, in the just and speedy resolution of the dispute between the parties. (Emphasis supplied)

Even on the merits, petitioners' cause must still fail. The trial court dismissed the complaint due to petitioners and counsel's apparent lack of interest to prosecute the case. Petitioners' counsel argued that their repeated failure to attend the hearing was caused by conflicts in his schedule and by his lack of knowledge of the trial dates. He also contended that respondent bank and counsel have been similarly guilty thereof, and that petitioners have informed the court of ongoing negotiations for the re-purchase of the foreclosed property. Hence, petitioners invoke liberality and the primordial interest of substantial justice over the strict enforcement of the rules of technicality.

We are not persuaded. In every action, the plaintiff is duty-bound to prosecute the same with utmost diligence and with reasonable dispatch to enable him to obtain the relief prayed for and, at the same time, minimize the clogging of the court dockets. The expeditious disposition of cases is as much the duty of the plaintiff as the court. It must be remembered that a defendant in a case likewise has the right to the speedy disposition of the action filed against him [7] considering that any delay in the proceedings entail prolonged anxiety and valuable time wasted.

In the case at bar, three years have since lapsed from the filing of the complaint on May 3, 2002 and the order of dismissal on April 27, 2005. Petitioners' failure to prosecute their case and proceed with the trial during the span of three years leads to no other conclusion than that petitioners have no interest in seeing their case terminated at the earliest possible time; or that petitioners' case is unmeritorious from inception. Whichever the case may be, the dismissal order of the trial court stand and is now immutable.

Petitioners cannot claim that they were deprived of due process. True, the right to due process safeguards the opportunity to be heard and to submit any evidence one may have in support of his claim or defense. [8] Nonetheless, we have time and again held that where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can "present its side" or defend its "interest in due course," there is no denial of due process. [9] What the law proscribes is the lack of opportunity to be heard. [10]

Petitioners had the opportunity to present their case and claim the relief they seek. But their inadvertence and lack of circumspect renders the trial court's order dismissing their case final and executory.

WHEREFORE, the petition is DENIED. The assailed April 27, 2005 Order of the Regional Trial Court of Laoag City, Branch 14 and its July 28, 2005 Resolution in Civil Case No. 12523-14 are AFFIRMED.

SO ORDERED.

Panganiban, C.J., (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, p. 11. Per Judge Ramon A. Pacis.

[2] Id. at 12-13.

[3] Id. at 11.

[4] Id. at 6-7.

[5] Producers Bank of the Phils. v. Court of Appeals, 430 Phil. 812, 827-828 (2002).

[6] G.R. No. 159962, December 16, 2004, 447 SCRA 200, 212; see also Civil Service Commission v. Asensi, G.R. No. 160657, December 17, 2004, 447 SCRA 356, 375; Castillo v. Court of Appeals, G.R. No. 159971, March 25, 2004, 426 SCRA 369, 375.

[7] Olave v. Mistas, G.R. No. 155193, November 26, 2004, 444 SCRA 479, 493.

[8] Azucena v. Foreign Manpower Services, G.R. No. 147955, October 25, 2004, 441 SCRA 346, 356.

[9] Air Philippines Corporation v. International Business Aviation Services Phils., Inc., G.R. No. 151963, September 9, 2004, 438 SCRA 51, 67.

[10] Herrera-Felix v. Court of Appeals, G.R. No. 143736, August 11, 2004, 436 SCRA 87, 95.

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