609 Phil. 355

THIRD DIVISION

[G.R. No. 166734, July 03, 2009]

MANDY COMMODITIES CO., INC., PETITIONER, VS. THE INTERNATIONAL COMMERCIAL BANK OF CHINA, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Assailed in this petition for *certiorari*[1] is the August 30, 2002 Decision[2] of the Court of Appeals in CA-G.R. SP No. 68382 as well as its September 3, 2004 Resolution[3] which denied reconsideration. The assailed decision affirmed the September 7, 1999 Order[4] issued by the Regional Trial Court of Manila, Branch 4 in LRC Case entitled "In the Matter of the Petition for the Issuance of a Writ of Possession Pending Redemption" which directed the issuance of a writ of possession following the extrajudicial foreclosure of the mortgages constituted by petitioner Mandy Commodities Co., Inc. in favor of respondent The International Commercial Bank of China.

The facts follow.

On July 17 and December 17, 1996, petitioner Mandy Commodities Co., Inc., through its authorized representative, William Mandy, obtained a total of P20,000,000.00 loan from respondent The International Commercial Bank of China. The loan was secured by two deeds of chattel mortgage in favor of respondent over twenty-five (25) units of two-storey concrete buildings all found in Binondo, Manila. These buildings were owned by petitioner, but the land on which they stood was merely being leased to it by PNB-Management and Development Corporation.[5]

On the day of the execution of the first deed, petitioner and respondent entered into an agreement whereby they specifically stipulated to consider the buildings "as chattels, and as such, they can be the subject of a Chattel Mortgage under the law."[6] The deeds of chattel mortgage and the agreement were registered with the Chattel Mortgage Registry of Manila.[7]

When petitioner defaulted in the payment of its obligation, respondent, on February 26, 1999, applied before a notary public for the notarial sale of the mortgaged buildings, pursuant to paragraph 18 of the chattel mortgage agreements which practically gave the mortgagee full and irrevocable power as attorney-in-fact to sell and dispose of the mortgaged properties in a public or private sale should the mortgagor default in the payment of its obligation.[8] Alleging that petitioner as mortgagor despite repeated demands failed to make good its commitment, respondent mortgagee prayed that the subject buildings be sold to satisfy the total money obligation of P26,825,770.83 inclusive of interest, but exclusive of charges and penalties.[9]

The sale was scheduled on March 26, 1999. On March 1, 1999, the notary public caused the posting of the Notice of Extrajudicial Sale[10] at the Office of the Register of Deeds of Manila, the Office of the *Ex Officio* Sheriff and the Regional Trial Court of Manila.[11] The notice was likewise published in *The Philippine Recorder,* a national weekly newspaper, in its March 1, 8 and 15, 1999 issues.[12]

At the sale, respondent placed the highest bid at P25,435,716.89, and so on April 12, 1999, the notary public issued a Certificate of Sale in its name with the notation that the sale was "subject to petitioner's right of redemption."[13]

It appears that the controversy arose when, on May 17, 1999, respondent filed with the Regional Trial Court of Manila, Branch 4, an *Ex Parte* Petition for the Issuance of a Writ of Possession Pending Redemption.[14] In said petition, respondent stated that the extrajudicial foreclosure of the mortgage proceeded from the provisions of Act No. 3135 (The Real Estate Mortgage Law) which entitles it, under Section 7 thereof, to take possession of the subject properties pending redemption upon approval of the bond.[15]

In its Order[16] dated September 7, 1999, the trial court, after an *ex parte* hearing, approved respondent's bond of P600,000.00, granted the petition, and directed the issuance of a writ of possession supposedly in pursuant to Act No. 3135.

Petitioner immediately filed a Motion for Reconsideration[17] in which it pointed out that, in accordance with its agreement with respondent, the buildings covered by the mortgage were in fact chattels and not real properties, and the fact that the parties agreed to that effect, should bar either of them from claiming the contrary. Asserting that the governing law is Act No. 1508 (The Chattel Mortgage Law) and not Act No. 3135, petitioner advanced that the foreclosure sale was null and void as it did not follow the specific procedure laid down by the applicable law, particularly the requirement of a 10-day personal notice to the mortgagor of the date and time of the sale.

In the meantime, as an offshoot of the September 7, 1999 Order, the trial court issued a Writ of Possession dated December 10, 2001, directing the sheriff to place respondent in possession of the subject buildings.[18] The sheriff complied and served a notice to vacate on petitioner.[19]

Subsequently, the motion for reconsideration was denied in the trial court's January 16, 2001 Order,[20] thus, urging petitioner to seek redress from the said Order as well as from the September 7, 1999 Order directly to this Court via a Rule 45 petition, docketed as G.R. No. 146929.[21] In this recourse, petitioner claimed that it was error for the trial court to affirm the validity of the foreclosure sale which was conducted under the provisions of Act No. 3135 considering that the parties had agreed to be bound by Act No. 1508, and that the writ of possession pending redemption should not have been issued in view of the irregularities that marked the foreclosure sale.[22] The petition, however, was dismissed in the Court's March 12, 2001 Resolution[23] for being violative of the principle of hierarchy of courts. Petitioner moved for reconsideration, but it was also denied in the Court's June 18,

2001 Resolution.[24]

Unrelenting, petitioner then sought the annulment of the twin orders of the trial court this time through a Rule 47 petition[25] before the Court of Appeals. There, it specified the errors supposedly committed by the trial court in the issuance of the challenged orders which allegedly were made without jurisdiction since the trial court had no power to issue writs of possession under Act No. 1508. It invoked denial of due process when it was deprived of its properties without respondent complying with the 10-day notice requirement in Act No. 1508.

The Court of Appeals gave due course to the petition and issued a temporary restraining order to enjoin the sheriff from enforcing the notice to vacate. At the ensuing hearing, no settlement materialized, but the parties, admitting that there were no factual issues to be resolved anyway, agreed not to have a writ of preliminary injunction issued in the case. Instead, petitioner committed to deposit the corresponding monthly rentals on the subject buildings to an account it owned jointly with respondent.[26]

On August 30, 2002, the Court of Appeals rendered the assailed Decision[27] in favor of respondent. It conceded that, as could be derived from the terms of the deeds of chattel mortgage and the July 17, 1999 agreement, the unmistakable intent of the parties was to consider the buildings as chattels and, hence, covered by the provisions of Act No. 1508. It pointed out, however, that while respondent indeed did not comply with the personal notice requirement under the said law and later on filed an *ex parte* petition for a writ of possession pending redemption which again, was supposedly not authorized by law, the petition nevertheless must be dismissed because the remedy of annulment of order was not the proper remedy under the premises. Accordingly, it affirmed the September 7, 1999 Order of the trial court.[28] Petitioner moved for reconsideration, but it was denied.[29]

In its bid to once again avert the implementation of the writ of possession, petitioner, in this petition for review under Rule 65,[30] insists on the nullity of the September 7, 1999 Order. It raises two points of argument: first, that nothing in the chattel mortgage agreement states that the same would be enforceable under Act No. 3135; and, second, that no provision relating to possession pending redemption can be found in the chattel mortgage law--not like in the real estate mortgage law—which means that a creditor may not, under the former law, have a writ of possession issued in his favor but that he must resort to an action for recovery of possession. Petitioner theorizes that because the foreclosure sale was null and void, the trial court was then devoid of jurisdiction to act on the petition for a writ of possession and, more so, issue the said writ. It concludes that when the Court of Appeals did not annul the said Orders and instead affirmed the same, it likewise abused its discretion which amounted to lack or excess of jurisdiction on its part.[31]

Respondent was told to comment,[32] but instead, ROP Investments, Limited - Philippine Branch (ROP Philippines)[33] moved that it be substituted as the respondent in this case, because in September 2003, it had acquired by assignment all the rights, titles and interest of respondent.[34] The Court allowed the substitution.[35]

ROP Philippines posits that the filing of the petition was a mere after-thought in the hope of curing the wrong remedy availed of by petitioner in the first instance, which resulted in the dismissal of its petition in G.R. No. 146929 for violation of the rule on hierarchy of courts. It maintains that the Court of Appeals did not abuse its discretion in dismissing the petition which was, to begin with, procedurally infirm as the grounds invoked by petitioner are not apt for a Rule 47 petition.[36] Finally, it asserts that the issuance of the writ of possession is a ministerial duty of the trial court under Act No. 3135, and that since petitioner did not pursue any of the proper remedies against the orders of the trial court, then with more reason that the said writ be issued in the case.[37]

Prefatorily, we find no need to delve further and deeper into the facts and issues raised by both petitioner and respondent because at the outset it is clear that the instant petition must be dismissed in any event, first, for being the wrong remedy under the premises, and second, for failure of petitioner to demonstrate grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court of Appeals in rendering the assailed Decision and Resolution.

We agree with the Court of Appeals that the remedy of annulment was not the proper remedy to set aside the orders of the trial court. To start with, the remedy of petition for annulment of judgment, final order or resolution under Rule 47 of the Rules of Court is an extraordinary one inasmuch as it is available only where the ordinary remedies of new trial, appeal, petition for relief or other remedies can no longer be availed of through no fault of the petitioner.[38] The relief it affords is equitable in character[39] as it strikes at the core of finality of such judgments and orders.

The grounds for a petition for annulment are in themselves specific in the same way that the relief itself is. The Rules restrict the grounds only to lack of jurisdiction and extrinsic fraud[40] to prevent the remedy from being used by a losing party in making a complete farce of a duly promulgated decision or a duly issued order or resolution that has long attained finality.[41] This certainly is based on sound public policy for litigations and, despite occasional risks of error, must be brought to a definite end and the issues that go with them must one way or other be laid to rest.[42] In turn, lack of jurisdiction — the ground relied upon by petitioner — is confined only to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[43] A valid invocation of this ground rests exclusively on absolute lack of jurisdiction as opposed to a mere abuse of jurisdictional discretion[44] or mere errors in judgment committed in the exercise of jurisdiction[45] inasmuch as jurisdiction is distinct from the exercise thereof.[46] Hence, where the facts demonstrate that the court has validly acquired jurisdiction over the respondent and over the subject matter of the case, its decision or order cannot be validly voided via a petition for annulment on the ground of absence or lack of jurisdiction.[47]

It must be noted that in its petition for annulment of the assailed orders on the ground of lack of jurisdiction, petitioner kept alluding to several errors supposedly committed by the trial court which tend to show that said tribunal had no jurisdiction to issue the orders. In this light, inasmuch as the petition questioned

the manner by which the trial court arrived at the issuance of its orders, it is unmistakable that petitioner, in effect, acknowledged that the trial court possessed jurisdiction to take cognizance of respondent's application for a writ of possession.

It is also unmistakable that the trial court, in which jurisdiction over applications for writs of possession is by law vested, had acquired jurisdiction over the subject matter of respondent's application merely upon its filing. And since it had so acquired jurisdiction over the incidents of the application, it was then bound to act on it and issue the writ prayed for inasmuch as that duty is essentially ministerial.[48] The purported errors that it may have incidentally committed do not negate the fact that it had, in the first place, acquired the authority to dispose of the application and that it had since retained such authority until the assailed orders were issued. Such errors, if indeed there were, are nevertheless mere errors of judgment which are correctible by an ordinary appeal before the Court of Appeals,[49] a remedy that was then available to petitioner, and not by a petition for annulment under Rule 47. Furthermore, the order granting a petition for a writ of possession is a final order from which an appeal would be the proper and viable remedy.[50]

We, therefore, find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court of Appeals, because it had every good and valid reason to dismiss the petition for annulment filed with it.

Moreover, we cannot help but observe that the instant petition is bound to meet a certain failure because for yet a third time since the petition in G.R. No. 146929, petitioner had sought to evade the consequences of the foreclosure sale by resorting to another wrong remedy.

In *Alba v. Court of Appeals*[51] and *Linzag v. Court of Appeals,*[52] it was held that a party aggrieved by the decision of the Court of Appeals in a petition filed with it for annulment of judgment, final order or resolution is not a petition for *certiorari* under Rule 65, but rather an ordinary appeal under Rule 45 where only questions of law may be raised. A petition for *certiorari* is, like a petition for annulment, a remedy of last resort and must be availed of only when an appeal or any other adequate, plain or speedy remedy may no longer be pursued in the ordinary course of law.[53] A remedy is said to be plain, speedy and adequate when it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency.[54]

To warrant the issuance of a writ of *certiorari*, the tribunal must be shown to have capriciously and whimsically exercised its judgment in a way equivalent to lack or excess of jurisdiction; or, in other words, that the power was exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[55] A bare allegation of grave abuse of discretion is not enough. *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation*[56] supplies the reason behind this rule, to wit:

> x x x when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error was committed. If it did, every error committed by a court would