

FIRST DIVISION

[G.R. No. 192491, August 17, 2016]

MARY JANE G. DY CHIAO, PETITIONER, VS. SEBASTIAN BOLIVAR, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 19, IN NAGA CITY RESPONDENT.

DECISION

BERSAMIN, J.:

A losing party cannot seek relief from the execution of a final judgment by bringing a separate action to prevent the execution of the judgment against her by the enforcing sheriff. Such action contravenes the policy on judicial stability. She should seek the relief in the same court that issued the writ of execution.

The Case

The petitioner — a subsidiary judgment debtor — appeals the resolution promulgated on November 12, 2009,^[1] whereby the Court of Appeals (CA) denied her *Motion for Extension of Time to File Verified Petition for Review on Certiorari* filed in CA-G.R. SP No. 111113 entitled *Mary Jane G. Dy Chiao v. Sebastian Bolivar, Regional Trial Court of Naga City*, and declared the case closed and terminated, on the ground that her appeal by petitioner for review on *certiorari* could only be brought to the Supreme Court.

Antecedents

The antecedents are not disputed. On March 31, 1999, the CA promulgated its decision in CA-G.R. SP No. 44261 declaring the petitioner subsidiarily liable to pay the exact amount of P5,711,164.00, to wit:

WHEREFORE, judgment is hereby rendered declaring the assailed decision dated December 13, 1993 of the respondent court as *NULL and VOID and without legal force and effect*. Co[r]ollarily, the execution and the public auction sale held thereunder are likewise VOID.

The Clerk of Court of the Regional Trial Court of Naga City is directed to deliver within ten (10) days from finality of this judgment the amount of P15,482,200.00 together with all interests earned thereby, to the respondent court, which court is hereby directed to distribute the aggregate amount to the buyers of the properties of Benito Dy Chiao, Sr., in proportion to the amounts they paid therefor.

Benedick Arevalo, through his mother, Shirley Arevalo, is directed to turn over to the respondent court within ten (10) days from finality of this judgment the amount of P5,711,164.00 which she received from Sheriffs

Rubio and Cledera, together with all other amounts she might have been paid on the Compromise Agreement, without prejudice to the buyer's right of recourse against Mary Jane, who is hereby declared to be subsidiarily liable therefor. Upon receipt thereof, the respondent court shall likewise return to the buyers the aggregate amount in the same proportion as above stated.

Thereafter the properties shall be delivered to the intestate estate of Benito Dy Chiao, Jr. for proper disposition by the intestate court.

Let a copy of this judgment be furnished the Office of the Court Administrator for whatever action it might deem proper to take on the premises.

SO ORDERED.^[2]

The decision in CA-GR. SP No. 44261 was ultimately affirmed by the Court, and thus attained finality. Execution proceedings followed in due course upon issuance of the writ of execution by the RTC (Branch 19) as the court of origin, but respondent Branch Sheriff of the RTC (Branch 19) filed a sheriff's report to the effect that, one, the amount of P5,711,164.00 could not be satisfied by principal obligor Benedick Arevalo because he had no assets that could be levied on execution; and that, two, the liability could be paid out of the assets of the petitioner under her subsidiary liability as decreed in the final judgment. Accordingly, the respondent recommended that an alias writ of execution be issued against the properties of the latter.

On June 12, 2008, the RTC (Branch 19) issued the writ of execution and directed the respondent to levy as much properties of the petitioner as would be sufficient to satisfy the amount of P5,711,164.00, and to sell the properties at public auction.^[3]

On November 21, 2008, the respondent proceeded with the public auction of the petitioner's levied properties, and sold two parcels of her realty with areas of 69 square meters and 85 square meters, both located in Naga City, to the highest bidders for P8,000,000.00, namely: Jose R. Rivero, Jessie Rivero, Jr. and Amalia Rivero Ranosa.^[4] In due course, the respondent issued a provisional certificate of sale dated November 24, 2008.

The respondent, allegedly without any order from the Presiding Judge of the RTC (Branch 19), or without an alias writ of execution being issued by the court, and without notice to the petitioner, pursued further execution proceedings against the petitioner. She learned of such proceedings only from Atty. Greta Paraiso, the Registrar of Deeds of Naga City.^[5]

The notice of levy dated March 10, 2009 issued by the respondent, addressed to the petitioner, identified the two parcels of land located in City registered in her name under Transfer Certificate of Title (TCT) No. 8933 of the Register of Deeds of Camarines Sur. The first property had an area of 386 square meters, while the second an area of 387 square meters.^[6] Although the notice stated that it was being issued by virtue of a writ of execution, it did not bear the date of its issuance.

On May 8, 2009, the petitioner received a notice of sale of real property on

execution dated April 15, 2009 stating that the two real properties of the petitioner were being levied to satisfy the sum of P5,711,164.00; and that the public auction was set from 9:00 a.m. to 3:00 p.m. on May 15, 2009.

To fend off the public auction, the petitioner filed on May 13, 2009 a so-called *Petition for Prohibition with Application for Temporary Restraining Order and Preliminary Injunction*. On the same date, the Executive Judge of the RTC in Naga City issued a 72-hour temporary restraining order (TRO) enjoining the respondent from conducting the scheduled public auction.^[7] The case was raffled to the RTC (Branch 23) in Naga City.

After receiving the respondent's comment and opposition, the petitioner's reply, and the respondent's rejoinder, the RTC (Branch 23) dismissed the case for lack of jurisdiction,^[8] opining that the processes being undertaken by the respondent were deemed proceedings in the same civil case assigned to and still pending before the RTC (Branch 19); and that the RTC (Branch 19) continued to exercise general supervision and control over such proceedings.^[9]

After the RTC (Branch 23) denied the petitioner's *Motion for Reconsideration*, she filed in the CA her *Motion for Extension of Time to File Verified Petition for Review on Certiorari* indicating therein that she would be raising a question of law. The case was docketed as CA-G.R. SP No. 111113.

As stated, the CA promulgated the assailed resolution on November 12, 2009,^[10] pertinently holding:

The motion must fail.

A motion praying for an extension of time to file a petition for review on *certiorari* filed before this Court pursuant to Section 2 of Rule 45 of the Rules of Court raising only questions of law is improper.

A petition for review on *certiorari* is governed by Section 1 of Rule 45, viz:

"Section 1. Filing of petition with Supreme Court - A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth."

Clearly therefore, the proper remedy under the afore-quoted rule where only questions of law are raised or involved, is a petition for review on *certiorari* which shall be filed with the Supreme Court and not with this Court.

Thus, the instant motion praying for an extension of time to file a petition for review on *certiorari* must be denied outright pursuant to Supreme Court Circular No. 2-90 dated March 9, 1990 which mandates the

dismissal of appeals involving pure questions of law erroneously brought to the Court of Appeals, to wit:

"4. Erroneous appeals. - An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

(c) Raising issues purely of law in the Court of Appeals, or appeal by wrong mode. - If an appeal under Rule 41 is taken from the Regional Trial Court to the Court of Appeals and therein the appellant raises only questions of law, the appeal shall be dismissed, issues purely of law not being reviewable by said court...

x x x x"

WHEREFORE, the instant motion praying for an extension of thirty (30) days to file a petition for review on *certiorari* is hereby **DENIED** and the above-entitled case is considered **CLOSED** and **TERMINATED**.

Let this case be excluded from the Court's docket.

SO ORDERED.^[11]

The petitioner filed a *Motion for Reconsideration*, but the CA denied the motion on May 12, 2010.^[12]

Hence, this appeal by the petitioner.

Issues

The petitioner hereby urges the Court to consider:

WHETHER IT WAS PROPER FOR THE APPELLATE COURT TO DENY PETITIONER'S MOTION FOR EXTENSION, WHICH INDICATED THAT IT WOULD BE RAISING A QUESTION OF LAW, ON THE GROUND THAT IT SHOULD HAVE BEEN FILED BEFORE THE SUPREME COURT DESPITE THE RECOGNIZED PRINCIPLE OF HIERARCHY OF COURTS.

WHETHER OR NOT IT WAS PROPER FOR THE ORIGINAL PETITION FOR PROHIBITION BEFORE THE REGIONAL TRIAL COURT TO BE DENIED ON THE GROUND OF LACK OF JURISDICTION.^[13]

Ruling of the Court

We deny the petition for review on *certiorari* for its lack of merit.

First of all, the CA properly denied the petitioner's *Motion for Extension of Time to File Verified Petition for Review on Certiorari* and justifiably considered the case closed and terminated. The petitioner was patently guilty of taking an erroneous appeal in view of her *manifest* intention to limit her appeal to questions of law. Such an appeal would only be by petition for review on *certiorari*, to be filed in this Court pursuant to Section 1, Rule 45 of the *Rules of Court*, as follows: