

THIRD DIVISION

[G.R. No. 203530, April 13, 2015]

**LUZON DEVELOPMENT BANK, TOMAS CLEMENTE, JR., AND
OSCAR RAMIREZ, PETITIONERS, VS. ERLINDA KRISHNAN,
RESPONDENT.**

D E C I S I O N

PERALTA, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure praying for the annulment of the Decision^[1] dated March 27, 2012 and Resolution^[2] dated September 11, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 120664, which affirmed the Orders dated September 24, 2010 and May 26, 2011, respectively, of Branch 30, Regional Trial Court (RTC) - Manila.

The factual antecedents, as found by the CA, are as follows:

Petitioners Luzon Development Bank, Tomas Clemente, and Oscar Ramirez (hereafter petitioners) are the respondents in the complaint for Collection of Sum of Money and Damages filed by respondent Erlinda Khrishnan (hereafter respondent Erlinda) on February 7, 2001. Respondent Erlinda claimed that she is a client of respondent bank wherein she maintained several accounts including time deposits. On several occasions, when respondent Erlinda presented her Time Deposits Certificates amounting to P28,597,472.70 for payment because they have become due, petitioners refused to honor them for the reason that they were fraudulent. Respondent Erlinda likewise applied for a Preliminary Writ of Attachment which the RTC granted on February 27, 2001.

By virtue of the writ, petitioner bank's accounts in BPI Family Bank, Calamba, Laguna in the amount of P28,597,472.70 and its account amounting to P49,000,000.00 in the Central Bank were garnished.

On March 9, 2001, petitioners filed an urgent ex-parte Motion to Recall Quash and/or Lift Attachment or Garnishment (in excess of amounts in the writ). Respondent Erlinda opposed the motion.

On August 15, 2001, petitioners filed an Omnibus Motion seeking the substitution of their garnished account with government securities and the immediate resolution of their motion to discharge attachment and setting the motion for hearing, which respondent Erlinda opposed.

On May 22, 2002, the RTC resolved the pending incidents and required the petitioners to justify their motion to discharge the attachment.

During pre-trial on May 23, 2002, respondents requested additional time to file a supplemental motion to justify their earlier motions which was granted and gave petitioners ten (10) days from receipt within which to comment or opposed (*sic*) it.

On September 8, 2003, the RTC issued an order lifting the attachment to which respondent Erlinda filed a motion for reconsideration. Respondent Erlinda also filed a Motion for Inhibition. On December 18, 2003, the RTC denied the motion for reconsideration but granted the motion for inhibition. The said Order was questioned by respondent Erlinda by way of Petition for *Certiorari* before the 7th Division which rendered a decision on November 15, 2006, the dispositive portion of which reads as follows:

"WHEREFORE, the PETITION FOR CERTIORARI is GRANTED.

THE ORDERS dated September 8, 2003, and December 18, 2003 are NULLIFIED and SET ASIDE.

The private respondents, as defendants in Civil Case No. 01-100046 entitled *Erlinda C. Krishnan v. Luzon Development Bank, et al.*, are ORDERED to file a counterbond in accordance with Sec. 12, Rule 57, 1997 *Rules of Civil Procedure*, within 10 days from the finality of this decision; otherwise, the REGIONAL TRIAL COURT, BRANCH 36, in Manila shall immediately reinstate the writ of attachment issued and implemented in Civil Case No. 01-100046.

Costs of suit to be paid by the respondents. SO ORDERED.

Petitioners' subsequent motion for reconsideration was denied. Thereafter, their petition and motion for reconsideration before the Supreme Court were likewise denied.

On May 09, 2008, respondent judge issued an Order directing respondent Erlinda to file a new attachment bond in the amount of P35,000,000.00 and petitioners to file a counterbond within ten days from notice of the filing and approval of the bond of respondent Erlinda. Petitioners moved for the reconsideration of the said Order which respondent judge denied and granted a period of fifteen days for respondent Erlinda to file an attachment bond.

Respondent Erlinda filed her attachment bond on June 25, 2009 in the amount of P35,000,000.00 through Visayan Surety and Insurance Corporation which was approved by respondent on July 7, 2009.

Meanwhile, on July 3, 2009, petitioners filed an Omnibus Motion praying that a hearing be held to determine the sufficiency of the attachment bond and they be allowed to deposit Certificates of Title of real property, and the issuance of the writ of attachment be held in abeyance.

On July 20, 2009, petitioners filed a motion for extension of time to comply and/or file the appropriate pleading and to hold in abeyance the

reinstatement of the writ of attachment.

On January 28, 2010, petitioners filed a motion to admit bank property in lieu of counterbond which was opposed by respondent Erlinda.

On September 24, 2010, respondent judge denied petitioners' motion in the assailed Order. Their subsequent motion for reconsideration was denied on May 26, 2011.

On June 27, 2011, respondent judge issued an Order reinstating the Writ of Attachment dated March 1, 2001 for failure of petitioners to file the required counterbond. Respondent judge also issued an amended Reinstated Writ of Attachment directing respondent Sheriff Oscar L. Rojas (hereafter respondent Sheriff) to attach the real estate or personal properties of petitioners in the amount of P28,597,472.70. On June 30, 2011, the sheriff served the Notice of Garnishment and the Amended Reinstated Writ of Attachment.

On July 4, 2011, petitioners filed an urgent motion to recall, suspend or hold in abeyance and re-examination of the amended reinstated writ of preliminary attachment of June 27, 2011 which was opposed by respondent Erlinda.

On July 19, 2011, respondent Sheriff issued a Sheriffs Partial Report. Thereafter, petitioners filed this petition for certiorari x x x.

In a Decision dated March 27, 2012, the CA dismissed petitioners' *certiorari* petition and affirmed the Orders of the RTC reinstating the Writ of Attachment for failure of petitioners to file the required counter-bond. The CA ruled that the RTC judge committed no grave abuse of discretion in denying petitioners' motion to admit bank property in lieu of counter-bond, thus, it held:

WHEREFORE, premises considered, the petition is DISMISSED and accordingly, DENIED DUE COURSE. The Orders dated September 24, 2010 and May 26, 2011 are hereby AFFIRMED.

SO ORDERED.^[3]

Petitioners filed a motion for reconsideration against said decision, but the same was denied in a Resolution dated September 11, 2012.

Hence, petitioners filed this present petition raising the following grounds:

IN THE FIRST ASSAILED ORDER THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT MISCONSTRUED AND FAILED TO RULE ON THE CORRECT LEGAL ISSUE PRESENTED IN THE PETITION FOR CERTIORARI.^[4]

IN THE SECOND ASSAILED ORDER THE FIONORABLE COURT OF APPEALS AGAIN ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO PRESENT ANY LEGAL BASIS FOR STATING THAT RULE 39 OF THE REVISED RULES OF COURT DOES NOT APPLY.^[5]