

FIRST DIVISION

[G.R. No. 177711, September 05, 2012]

SUICO INDUSTRIAL CORP., AND SPOUSES ESMERALDO AND ELIZABETH SUICO, PETITIONERS, VS. HON. MARILYN LAGURA-YAP, PRESIDING JUDGE OF REGIONAL TRIAL COURT OF MANDAUE CITY, BRANCH 28; PRIVATE DEVELOPMENT CORP. OF THE PHILS. (PDCP now FIRST EBANK); AND ANTONIO AGRO PROMULGATED: DEVELOPMENT CORPORATION, RESPONDENTS.

DECISION

REYES, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court, which assails the Decision^[1] dated January 16, 2006 and Resolution^[2] dated April 11, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 78676 entitled *Suico Industrial Corporation and Spouses Esmeralda and Elizabeth Suico v. Hon. Marilyn Lagura-Yap, Presiding Judge of Mandaue City Regional Trial Court, Branch 28; Private Development Corporation of the Phils. (PDCP Bank); and Antonio Agro Development Corporation*.

The Factual Antecedents

In 1993, respondent Private Development Corporation of the Philippines (PDCP Bank), later renamed as First E-Bank and now Prime Media Holdings, Inc., foreclosed the mortgage constituted on two real estate properties in Mandaue City then owned by petitioners and mortgagor- spouses Esmeraldo and Elizabeth Suico, following petitioner Suico Industrial Corporation's failure to pay the balance of two secured loans it obtained from the bank in 1987 and 1991. PDCP Bank emerged as the highest bidder in the foreclosure sale of the properties, as evidenced by a Certificate of Sale dated February 29, 1993 issued by the Sheriff of Mandaue City.

The mortgagors' failure to redeem the foreclosed properties within the period allowed by law resulted in the consolidation of ownership in favor of PDCP Bank and the issuance of Transfer Certificate of Title Nos. 34987 and 34988 in the bank's name. The enforcement of a writ of possession obtained by PDCP Bank from the Regional Trial Court (RTC), Mandaue City, Branch 28, was however enjoined by an injunctive writ obtained by the petitioners on January 17, 1995 from the RTC, Mandaue City, Branch 56, where they filed on December 9, 1994 an action for specific performance, injunction and damages to prevent PDCP Bank from selling and taking possession of the foreclosed properties. Petitioners alleged in said action for specific performance that they had an agreement with PDCP Bank to intentionally default in their payments so that the mortgaged properties could be foreclosed and purchased during public auction by the bank. After consolidation of title in the bank's name, PDCP Bank, allegedly, was to allow the petitioners to purchase the properties for P5,000,000.00 through a recommended buyer.

Petitioners then claimed that PDCP Bank increased the properties' selling price, thereby preventing their recommended buyers from purchasing them.

When PDCP Bank questioned before the CA the issuance of the injunctive writ by the RTC Branch 56, the appellate court declared the trial court to have exceeded its jurisdiction in issuing the assailed writ, as it interfered with the proceedings of a court of concurrent jurisdiction, the RTC Branch 28. Said CA decision was affirmed in 1999 by this Court in G.R. No. 123050, entitled *Suico Industrial Corporation v. CA*, [3] wherein we declared:

When petitioners failed to pay the balance of the loan and thereafter failed to redeem the properties, title to the property had already been transferred to respondent PDCP Bank. Respondent PDCP Bank's right to possess the property is clear and is based on its right of ownership as a purchaser of the properties in the foreclosure sale to whom title has been conveyed. Under Section 7 of Act No. 3135 and Section 35 of Rule 39, the purchaser in a foreclosure sale is entitled to possession of the property. Respondent PDCP Bank has a better right to possess the subject property because of its title over the same.

Furthermore, petitioners undertook a procedural misstep when it filed a suit for specific performance, injunction and damages before the RTC Branch 56 instead of a petition to set aside the sale and cancellation of the writ of possession as provided under Section 8 of Act 3135 x x x[.][4] (Citations omitted and emphasis ours)

Notwithstanding the afore-quoted portions in this Court's *Suico* decision, the proceedings in Civil Case No. MAN-2321 for specific performance, injunction and damages before RTC Branch 56 continued. Herein respondent Antonio Agro Development Corporation (AADC), which in the meantime had purchased the foreclosed properties from PDCP Bank, filed with the trial court a motion to intervene and an answer-in-intervention.

RTC Branch 56's Presiding Judge Augustine Vestil later voluntarily inhibited himself from further hearing the case, resulting in the re-raffle of the case to RTC Branch 55. When PDCP Bank failed to file its answer within the period allowed by the rules, the petitioners moved that the bank be declared in default and the answer-in-intervention of AADC be stricken off the records. In an Order⁵ dated August 3, 2001, Judge Ulric R. Cañete (Judge Cañete) of RTC Branch 55 still gave therein defendants the time to file their written oppositions on the motions after noting the following antecedents:

Record shows that this case was filed in 1994 yet and until this point in time there is no answer by the defendant. Likewise, the Motion for Intervention, filed by Antonio Agro Development Corporation was denied per record by the Court. However, [in spite] of the denial[,] an answer in intervention was filed. Hence, plaintiff now, per their motion and manifestation are praying for a default order against PDCP [Bank], and for the striking off from the records [of] Intervenor's Answer in

Intervention.

In today's hearing of the incidents, Atty. Cavada entered his appearance and manifested that he will [sic] just filed a notice of appearance as counsel for the defendant, Private Development Corporation of the Philippines. Atty. Go appeared for the Intervenor. Both counsels pray for a period of ten (10) days from today to file their written opposition in these incidents subject for today's hearing.

Plaintiff failed to appear for the hearing of this incident.^[6]

On October 23, 2001, the RTC issued an order denying the petitioners' motion to declare PDCP Bank in default. PDCP Bank's answer filed on August 24, 2001 and AADC's answer-in-intervention were also admitted. When Judge Cañete also inhibited from further hearing the case, the case was transferred to Judge Marilyn Lagura-Yap (Judge Yap) of RTC Branch 28.

During the case's scheduled pre-trial conference on September 6, 2002, the petitioners' counsel asked for a resetting to allow him more time to reprepare the required pre-trial brief. This was opposed by PDCP Bank and AADC, which filed a motion for the case's dismissal later granted by Judge Yap in its order that reads in part:

Although the Court notes that plaintiff Elizabeth Suico is in court, the fact that there is no pre-trial brief submitted by plaintiffs militates against their cause this morning. Under Section 6 of Rule 18 of the Revised Rules of Court[,] in the penultimate paragraph thereof[,] it is quite expressly provided that failure to file pre-trial brief has the same effect as failure to appear in the pre-trial.

FINDING the joint motion of defendant PDCP[,] now 1st e-Bank[,] and defendant-intervenor Antonio Agro Development Corporation to be meritorious, the Court hereby orders the DISMISSAL of this case.

IT IS SO ORDERED.^[7]

Petitioners' motion for reconsideration, with pre-trial brief attached, was denied by the trial court in its Order⁸ dated February 21, 2003, the dispositive portion of which reads:

Applying these rulings to the environmental circumstances in this case, the Court finds no basis to reconsider its Order dated September 6, 2002.

The Motion for Reconsideration is hereby DENIED.

IT IS SO ORDERED.^[9]

A copy of the order was received by the petitioners' counsel on March 21, 2003.

Unsatisfied with the trial court's rulings, the petitioners filed on April 4, 2003 their notice of appeal. The RTC, however, refused to give due course to the appeal *via* its Order^[10] dated May 15, 2003 given the following findings:

A review of the records of the case shows that the Order dismissing the Complaint was received by plaintiffs through counsel on September 17, 2002. On that date, the 15-day prescriptive period within which to file an appeal began to run. **Plaintiffs filed their Motion for Reconsideration on October 1, 2002, and their filing of the motion interrupted the reglementary period to appeal. By that time however, 14 days had already elapsed;** thus, from their receipt of the order denying the Motion for Reconsideration, they had only one (1) day left within which to file a notice of appeal. **On March 21, 2003, plaintiff received the Order denying their Motion for Reconsideration. Accordingly, they had only one (1) day left, or until March 22, 2003 to file a notice of appeal. However, they were able to do so only on April 4, 2003, or thirteen (13) days late.**^[11] (Emphasis ours)

Petitioners deemed it useless to still file a motion for reconsideration of the Order dated May 15, 2003, and thus went straight to the CA to question the RTC's orders via a petition for *certiorari*.

The Ruling of the CA

On January 16, 2006, the CA rendered its Decision^[12] dismissing the petition for lack of merit, taking note of the following circumstances:

The September 6, 2002 order dismissing the case pointed out that as early as July 29, 2002, the court had already issued the notice of pretrial conference and the return of the notice showed that [plaintiffs'] counsel was furnished a copy on August 21, 2002 but despite the notice, Atty. Manuel Ong, plaintiffs' counsel, did not file the appropriate motion to the [sic] have the conference reset. The order further ruled that in the notice of pre-trial, it was expressly stated that failure to file pre-trial brief may be given the same effect as failure to appear in the pre-trial conference.
^[13] (Citation omitted)

As regards to the petitioners' late filing of their notice of appeal, the CA cited the provisions of Section 13, Rule 41 of the Rules of Court, which provides that the court may dismiss an appeal filed out of time, *motu proprio* or on motion, prior to the transmittal of the original records or the record on appeal to the appellate court.^[14]

Feeling aggrieved, the petitioners filed a motion for reconsideration, which was however denied by the CA in its Resolution^[15] dated April 11, 2007. Hence, the

present petition for review on *certiorari*.

The Present Petition

Petitioners cite the following grounds to support their petition:

I.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN NOT RULING THAT RESPONDENT JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 28 OF MANDAUE CITY COMMITTED GRAVE ABUSE OF DISCRETION IN DECLARING THE PETITIONER[S] NON-SUITED AND DISMISSING THE CASE ON THE GROUND OF FAILURE TO FILE A PRE-TRIAL BRIEF.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RULING THAT PETITIONERS' NOTICE OF APPEAL FILED ON THE 14TH DAY AFTER RECEIPT OF THE ORDER DENYING THEIR MOTION FOR RECONSIDERATION [WAS FILED OUT OF TIME].^[16]

In their prayer, the petitioners specifically ask this Court to, among other things, reverse the CA's rulings and annul and set aside the RTC's Order^[17] dated September 6, 2002 which dismissed their action for specific performance, injunction and damages, and the Order dated February 21, 2003 which denied their motion for reconsideration.

The petitioners were represented in this petition by the same counsel who assisted them during the pre-trial and filing of the notice of appeal before the RTC. A new counsel entered his appearance for the petitioners only upon the filing of a reply.

This Court's Ruling

This Court finds the petition dismissible.

Given the antecedents that led to the filing of this petition, and the fact that the timeliness of an appeal from the RTC's dismissal of the action for specific performance is a crucial issue that will determine whether or not the other issues resolved by the RTC can still be validly questioned at this time, we find it proper to first resolve the question on the RTC's ruling that the petitioners' notice of appeal was filed out of time.

A party is given a "fresh period" of fifteen (15) days from receipt of the court's resolution on a motion for reconsideration within which to file a notice of appeal.