

SECOND DIVISION

[G.R. No. 138031, May 27, 2004]

ANTONIO NAVARRO AND GRAHMMS, INC., PETITIONERS, VS. METROPOLITAN BANK & TRUST COMPANY, THE HON. COURT OF APPEALS, AND THE HON. ZEUS C. ABROGAR (PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 150), RESPONDENTS.

DECISION

CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court, as amended, assailing the Decision^[1] of the Court of Appeals, which affirmed the denial by the Regional Trial Court of Makati City, Branch 150, in Civil Case No. 94-2913, of the petitioners' appeal for non-payment of docket fees, as well as the appellate court's March 29, 1999 Resolution which denied the petitioners' motion for reconsideration.

The facts are undisputed:

On November 3, 1994, the private respondent Metropolitan Bank and Trust Company (respondent MBTC) filed with the RTC of Makati City a petition for the judicial foreclosure of the real estate mortgage executed by the petitioners in its favor.^[2] The case was docketed as Civil Case No. 94-2913 and was raffled to Branch 150 of the same court.

After due proceedings, the RTC rendered judgment on January 16, 1998,^[3] the dispositive portion of which reads:

WHEREFORE, the court hereby grants the right of the plaintiff bank to foreclose the properties belonging to defendant Antonio Navarro covered by TCT Nos. 155256, 155257, 155258 particularly described as follows:

...

to be sold at public auction the proceeds of which to be applied in payment of the P3,500,000.00 loan, plus interest and penalty charges until fully paid. In case of deficiency on the proceeds of the aforesaid sale, execution on the defendant's property shall be implemented. Likewise, 10% of the total amount due shall be awarded as attorney's fees.^[4]

The petitioners received a copy of the Decision on February 10, 1998 and on February 18, 1998 filed a Motion for Reconsideration of the decision.^[5] On March 25, 1998, the trial court issued an Order denying the said motion.^[6] The petitioners

received their copy of the order on April 7, 1998.

On April 14, 1998, the last day of the reglementary period, the petitioners filed with the RTC a Notice of Appeal^[7] from its January 16, 1998 Decision and March 25, 1998 Order. However, the petitioners failed to pay the requisite docket and other lawful fees.

On April 21, 1998, the respondent MBTC filed a Motion to Deny Due Course to Notice of Appeal with Motion for Execution^[8] on the ground that the notice of appeal was not timely filed. Acting on the motion, the RTC, while ruling in favor of the timeliness of the petitioners' notice of appeal, nevertheless denied the appeal for not being accompanied by the required docket fees. Hence, in its Order dated May 27, 1998,^[9] the RTC granted the motion of the respondents for the issuance of a writ of execution for the enforcement of the decision. The RTC held that:

... From the sequence of dates and events, it is clear that defendants filed their Notice of Appeal within the reglementary period from the date of their receipt of the denial of their motion for reconsideration since they had still seven days left to file an appeal. However, since Section 4, Rule 41 of the New Rules of Civil Procedure, states that:

"Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal."

It is also incumbent upon the appellants to pay the required appeal fee within the reglementary period. Up to the present, the court has not yet received any evidence of payment of the appellate docket fee to be attached to the record of this case, in accordance with the New Rules, to the prejudice of the other party.

Wherefore, from the foregoing, the notice of appeal is hereby DENIED for not being accompanied by the required docket fees, and let a writ of execution be issued for the enforcement of the decision.

On June 2, 1998, the RTC correspondingly issued the Writ of Execution^[10] prayed for by the respondent MBTC.

On June 11, 1998, the counsel for the petitioners informed the court by letter that on June 9, 1998, he sent his messenger to the court to pay the docket fees on the notice of appeal but was refused by the receiving clerk.^[11] In a Letter-Response dated June 19, 1998, the trial court instructed the counsel for the petitioners, to wit:

In response to your letter dated June 11, 1998, please be informed that as a matter of policy, courts do not receive payments of docket fees. This should be made to the Office of the Clerk of Court, with only the official receipts and/or proofs of payment filed in court to be attached to the record of the case to be forwarded to the Court of Appeals. Moreover, the

court has already resolved all pending incidents before it, the last one in its Order dated May 27, 1998 so that, if the receiving clerk refused receipt of the docket fee on the nature (sic) of appeal, it is only in consonance with the above-mentioned order.^[12]

On June 29, 1998, the petitioner filed with the CA a petition for certiorari assailing the May 27, 1998 Order of the RTC for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.^[13] In their reply to the comment, the petitioners, for the first time, proffered to the appellate court an explanation for their admitted failure to pay the appellate docket fees within the prescribed reglementary period. The petitioners, thus, averred:

6. Petitioners' failure to pay the appellate docket fee is not without a valid explanation. At the time of the filing of Notice of Appeal, petitioners' counsel's lone secretary, without informing in advance the undersigned, decided to migrate to another country for "greener pasture," leaving the undersigned the responsibility to tend to all the cases in his office. The undersigned's operation was literally disabled and in shambles;

7. Thus, when the undersigned discovered this inadvertence, he immediately tried to remedy the situation and can only hope that this Honorable Court can understand the undersigned's predicament.^[14]

On September 30, 1998, the CA promulgated its Decision dismissing the petitioner's appeal.^[15] The petitioner's motion for reconsideration^[16] and its supplement^[17] thereto was, likewise, denied by the appellate court in its Resolution dated March 29, 1999.^[18]

Hence, the petition at bar.

The petitioners assail the decision of the CA grounded on the following:

- A. THE APPEAL OF PETITIONER WAS DULY AND SEASONABLY PERFECTED; HENCE, THE HON. CA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RENDERING THE ASSAILED DECISION (ANNEX "M") THAT SUSTAINED THE ORDER OF THE RTC DENYING, DISALLOWING AND DISMISSING THE APPEAL;
- B. THE ORDER [OF THE RTC] DIRECTING THE EXECUTION OF ITS JUDGMENT [BEFORE THE EXPIRY OF THE 90-DAY PERIOD FROM RECEIPT THEREOF BY THE PETITIONERS] IS PREMATURE, BECAUSE (1) THE COURT HAD LOST JURISDICTION OVER THE CASE UPON THE FILING OF THE NOTICE OF APPEAL AND (2) RULE 68 PROVIDES FOR THE PROCEDURE HOW TO ENFORCE A JUDGMENT IN A PETITION FOR FORECLOSURE;
- C. THE HONORABLE COURT OF APPEALS ERRED IN SUSTAINING THE ORDER OF THE RTC THAT DISMISSED THE THIRD-PARTY COMPLAINT OF PETITIONER NAVARRO AGAINST THE ERRANT AND FRAUDULENT BRANCH MANAGER DANILO MENESES OF RESPONDENT METROBANK;

D. THE JUDGMENT BINDING THE CONJUGAL PROPERTY OF SPOUSES CLARITA PARAGAS AND ANTONIO NAVARRO ON THE ALLEGED DEBT OF THE HUSBAND IS AGAINST THE LAW;^[19]

The petition is denied due course.

The petitioners contend that the appellate court erred in sustaining the RTC's denial of their notice of appeal on the ground of their failure to pay the docket and other legal fees. The petitioners aver that the payment of the said fees is not a prerequisite for the perfection of an appeal. They contend that having seasonably filed their notice of appeal from the RTC's January 16, 1998 Decision and March 25, 1998 Order, the appeal therefrom was deemed perfected; thus, divesting the RTC of jurisdiction over the case. Hence, when the RTC issued its March 25, 1998 Order, it had no jurisdiction to do so. The petitioners cited the rulings of this Court in *Santos v. Court of Appeals*^[20] and in *Manila Mandarin Employees Union v. NLRC*^[21] to bolster its stance.

We are not convinced. Time and time again, this Court has consistently held that the "payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appeal is not perfected. The appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory."^[22]

It bears stressing that appeal is not a right, but a mere statutory privilege.^[23] Corollary to this principle is that the appeal must be exercised strictly in accordance with the provisions set by law. Rule 41 of the Rules of Court provides that an appeal to the CA from a case decided by the RTC in the exercise of the latter's original jurisdiction shall be taken within fifteen (15) days from the notice of judgment or final order appealed from. Such appeal is perfected by filing a notice of appeal thereof with the court that rendered the judgment or final order and, by serving a copy of that notice upon the adverse party,^[24] and by paying within this same period the full amount of the appellate court docket and other lawful fees to the clerk of court.^[25]

The payment of the docket fees within this period is a condition sine qua non to the perfection of the appeal. Contrary to the petitioners' predication, the payment of the appellate docket and other lawful fees is not a mere technicality of law or procedure. It is an essential requirement, without which the decision or final order appealed from would become final and executory as if no appeal was filed at all.

We have consistently ruled that litigation is not a game of technicalities and that every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved.^[26] However, we have also ruled that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. *Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.*^[27]