

THIRD DIVISION

[G.R. No. 110147, April 17, 2001]

**METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS.
COURT OF APPEALS AND ALFONSO ROXAS CHUA,
RESPONDENTS.**

D E C I S I O N

PANGANIBAN, J.:

If an order leaves something to be done by the trial court with respect to the merits of the case, it is interlocutory; if it does not, it is final. Once determined to be final, the order may be the subject of an appeal, as in the present case.

The Case

Filed before this Court is a Petition for Review under rule 45 of the Rules of Court, challenging the December 22, 1992 Decision^[1] of the Court of appeals (CA) in CA-GR SP No. 28679. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, the petition for certiorari is DISMISSED, with costs against private respondent."^[2] The CA affirmed the April 10 and the July 23, 1992 Orders^[3] of the Regional Trial Court of Manila (Branch 46), which denied herein petitioner's Motion to Strike Out or Expunge from the records respondent's Notice of Appeal.

Also questioned is the May 3, 1993 CA Resolution^[4] denying petitioner's Motion for Reconsideration.

The Facts

The undisputed facts are summarized by the appellate court as follows:^[5]

"Petitioner Metrobank and Trust Company (Metrobank for short) brought an action for a sum of money against private respondents Pacific Multi Commercial Corporation and Alfonso Roxas Chua, Jr. on November 25, 1982. Private respondents failed to file their answer and were, for that reason, declared in default.

"On May 26, 1983, the trial court rendered judgment for Metrobank[,], ordering the private respondents jointly and severally liable to pay the following amounts:

- ` 1. The sum of P964,377.49 representing the unpaid balance of the loan as of the date of the filing of the complaint;
- ` 2. Interests on the unpaid balance at the rate of 14% per annum on the unpaid principal from August 10, 1982 until said principal is fully paid;
- ` 3. Penalty charges at the rate of 8% per annum on the outstanding interest, computed from the date of default up to the full payment of the obligation;
- ` 4. Attorney's fees equivalent to 10% of the total amount due and collectible; and
- ` 5. The costs of this suit.'

"After the decision had become final, Metrobank moved for the execution of the judgment in its favor. The trial court granted Metrobank's motion and, among other things, the deputy sheriff garnished the shares of stock of private respondent Alfonso Roxas Chua, Jr. in the Club Filipino.

"On July 17, 1991 the sheriff sold at public auction respondent Roxas Chua's Certificate of Ownership No. 809 in the Club Filipino to the Metrobank as the highest bidder. A certificate of sale was issued to the Metrobank. However, on August 12, 1991, respondent Alfonso Roxas Chua, Jr. filed with the respondent trial court a motion to hold in abeyance the delivery to Metrobank of the certificate of ownership and to declare the sale to Metrobank as null and void on the ground that the certificate of ownership was the conjugal property of respondent Roxas Chua, Jr. and his wife Kiang Ming Chu. Metrobank opposed the private respondent's motion.

"On September 30, 1991, the trial court issued an order denying private respondent Roxas Chua's motion to hold in abeyance the delivery of [the] certificate of ownership to Metrobank and to declare the sale as null and void. Private respondent Alfonso Roxas Chua, Jr. moved for a reconsideration, but his motion was denied by the court in its order dated February 18, 1992. Accordingly, on March 26, 1992, private respondent filed a notice of appeal from the order of the court.

"On April 6, 1992, Metrobank moved to strike out or expunge from the record the notice of appeal of respondent Roxas Chua, Jr. on the ground that private respondent, having been declared in default, ha[d] no standing to file the notice. However, the court, in its order dated April 10, 1992 denied the petitioner's motion.

"Metrobank moved for reconsideration but again [its] motion was denied by the court in another order dated July 23, 1992. Hence, this petition for certiorari to set aside these orders of April 10, 1992 and July 23, 1992 [issued by] the respondent court."

Relying on Section 2, Rule 41 of the pre-1997 Rules of Court, the CA ruled that a defendant may appeal a judgment of default without need to set aside the order declaring him in default.

The CA also disallowed the new grounds raised before it by petitioner. More important, the appellate court held that those grounds were not proper in a petition for certiorari, because they did not involve grave abuse of discretion or jurisdiction. Ruled that CA:

"It is next contended by the petitioner (1) that on the assumption that the certificate of ownership which the sheriff had levied upon execution is conjugal property of private respondent and his wife Kian Ming Chu, nonetheless private respondent would not have the requisite standing to question the validity of the sale insofar as his wife's ownership is concerned because only the latter can question the sale and (2) that the order of February 18, 1992, denying private respondent's motion to set aside the sale of a certificate of ownership, is not appealable. These grounds are being raised for the first time in the present petition. The trial court has had no opportunity to pass on them and it is unfair to find that it committed a grave abuse of discretion for something it has not done. Moreover, these grounds are not proper for a petition for certiorari. If at all they should be raised in defense in the pending appeal brought by the private respondent. It is hardly necessary to state that the function of the writ of certiorari is to keep a lower court within its jurisdiction and that, therefore, only jurisdictional questions may be raised. Mere errors of judgment may be corrected by appeal. If, as petitioner contends, private respondent Alfonso Roxas Chua, Jr. has no standing to question the sale of the certificate of ownership insofar as the sale of his wife's share is concerned, and that at any rate the order denying private respondent's motion to set aside the sheriff's sale is not appealable, these questions should be raised either in petitioner's brief on appeal or in a motion to dismiss the appeal of private respondent."^[6]
Hence, this recourse.^[7] Issues

Petitioner submits, for the consideration of this Court, the following issues:

- "a) The finding and holding of the Former Special Third Division of the respondent Court of Appeals - that the private respondent may appeal the judgment [by] default, rendered against him by the lower Court - is contrary to the facts of the case as set out in the said questioned Decision, Annex `A' hereof;
- b) The Former Special Third Division of the respondent Court of Appeals completely evaded [confrontation of], and thus failed to rule on, the issue raised by petitioner on the continuous loss of standing of the private respondent throughout the entire execution stage of the judgment by default;
- c) The petitioner duly raised before the lower Court the issue