



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

LIAO SEN HO,

Petitioner,

G.R. No. 219810

Present:

LEONEN, J., *Chairperson,*
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 LOPEZ, J., *JJ.*

- versus -

Promulgated:

PHILIPPINE SAVINGS BANK,

Respondent.

May 12, 2021

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RESOLUTION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ assailing the Resolutions dated April 21, 2015² and August 6, 2015³ of the Court of Appeals (CA) which, respectively, dismissed the appeal and denied the Motion for Reconsideration⁴ in CA-G.R. CV No. 102707.

The Antecedents

The instant case emanated from an *Ex Parte* Petition for Writ of Possession,⁵ docketed as LRC Case No. M-5246, for the issuance of a writ of possession filed by the Philippine Savings Bank (respondent)

¹ *Rollo*, pp. 8-16.

² *Id.* at 18-21; penned by Associate Justice Danton Q. Bueser with Associate Justices Apolinario D. Bruselas, Jr. and Edwin D. Sorongon, concurring.

³ *Id.* at 22-23.

⁴ *CA rollo*, pp. 90-92.

⁵ *Records*, pp. 1-5.

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over Unit No. 602, Cianno Plaza Condominium in Makati City (subject property).

In support of its petition, respondent made the following assertions:

On September 12, 2006, spouses Jenny S. Liao (Jenny) and Chi-Horng⁶ Liao (Chi) (collectively, Spouses Liao) obtained a loan from respondent in the amount of ₱2,446,000.00.⁷ By reason of the loan, Spouses Liao executed a promissory note with real estate mortgage (REM) over the subject property covered by Condominium Certificate of Title (CCT) No. 97781⁸ in the name of Jenny. However, despite demand, Spouses Liao failed to settle their obligation prompting respondent to institute an extrajudicial foreclosure over the REM. Later, the disputed subject property was sold at a public auction with respondent as the highest bidder. A certificate of sale was then issued to respondent and registered with the Register of Deeds of Makati City on January 15, 2008.⁹

Spouses Liao failed to exercise their right of redemption which expired on January 15, 2009.¹⁰ Thus, respondent demanded Spouses Liao and all those claiming rights under them to vacate and turnover the possession of the subject property, but to no avail. Thus, being the successful purchaser during the public auction, respondent was duly authorized to apply for the issuance of a writ of possession over the subject property.¹¹

For his part, Liao Sen Ho (petitioner) filed an Opposition-in-Intervention¹² on the petition for writ of possession. He claimed that he was the owner of the subject property; and that the CCT in the name of Jenny was fake.

⁶ Referred to as Chi-Horing in some parts of the records.

⁷ Records, p. 42.

⁸ *Id.* at 10.

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *Id.* at 37-40.

Proceedings before the Regional Trial Court (RTC)

On September 2, 2009, the RTC denied¹³ the Opposition-In-Intervention.¹⁴ It ruled that a petition for a writ of possession is a summary proceeding undertaken *ex parte* to enforce a party's right to possession over a property bought during a foreclosure sale. The RTC highlighted that in resolving the petition, its jurisdiction was limited into considering the evidence presented to enforce the possessory right of the applicant and determine the basis, if any, for the issuance of a writ of possession.

On February 8, 2010, the RTC denied¹⁵ petitioner's Motion for Reconsideration.¹⁶

Eventually, the RTC rendered its Decision¹⁷ dated November 22, 2010 granting the petition for writ of possession. It ruled that the evidence adduced fulfilled the requirement for the issuance of the writ. It underscored that respondent was the absolute and legal owner of the subject property and having consolidated its right thereto, respondent was entitled to its possession.

Thereafter, petitioner filed a Motion for the Consolidation¹⁸ of the petition for writ of possession (LRC Case No. M-5246) and the case for annulment of the mortgage agreement and promissory note that he filed against Spouses Liao (Civil Case No. 11-619).

On October 29, 2013, the RTC denied¹⁹ the motion for consolidation on the ground that its Decision dated November 22, 2010 in LRC Case No. M-5246 was already in the execution stage; and that petitioner did not present any evidence in support thereof.

¹³ See Order dated September 2, 2009 of Branch 60, Regional Trial Court, City of Makati, *id.* at 70-71; penned by Judge Marissa Macaraig-Guillen.

¹⁴ *Id.* at 37-40.

¹⁵ See Resolution dated February 8, 2010, *id.* at 120-121; penned by Acting Presiding Judge J. Cedrick O. Ruiz.

¹⁶ *Id.* at 414-416.

¹⁷ *Id.* at 180-182.

¹⁸ *Id.* at 370-373.

¹⁹ See Resolution dated October 29, 2013, CA *rollo*, pp. 17-18; penned by Acting Presiding Judge Maria Amifait S. Fidei-Reyes.

Thereafter, the RTC denied²⁰ petitioner's Motion for Reconsideration;²¹ thus, he filed an appeal²² with the CA.

Proceedings before the CA

On September 22, 2014, the CA issued a notice to file an appellant's brief to petitioner.

Nonetheless, petitioner failed to submit an appellant's brief. Instead, he filed an Appeal Memorandum²³ with the Court on December 15, 2014.

On January 9, 2015, respondent filed a Manifestation with Omnibus Motion (for the Striking Out of the Appeal Memorandum/Dismissal of the Appeal or Additional Time to Submit Appellee's Brief).²⁴ Respondent alleged, *inter alia*, that the appeal should be dismissed because petitioner submitted an Appeal Memorandum, not an appellant's brief, in contravention of the Notice dated September 22, 2014 and the provisions of the Rules of Court.

On April 21, 2015, the CA dismissed²⁵ the appeal.

The CA decreed that ten days after the expiration of the reglementary period to file brief, petitioner filed an Appeal Memorandum instead of an appellant's brief. It also elucidated that petitioner's Appeal Memorandum contained serious defects as it failed to comply with the requirements under Section 7,²⁶ Rule 44 of the Rules of Court.

The CA further ruled that even if the Appeal Memorandum be

²⁰ See Resolution dated April 3, 2014, *id.* at 19-20.

²¹ Records, pp. 414-416.

²² See Notice of Appeal dated April 26, 2014, *CA rollo*, pp. 21.

²³ *Id.* at 41-50.

²⁴ *Id.* at 75-77.

²⁵ *Rollo*, pp. 18-21;

²⁶ Section 7, Rule 44 of the Rules of Court provides:

SEC.7. *Appellant's Brief*. — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk: that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee. (10a, R46)

treated as an appellant's brief, it would still fail since petitioner did not observe the requirements under Section 12²⁷ of Rule 44. Specifically, Section 12 requires that for the allowance of an extension of time to file brief, the movant must establish good and sufficient cause for the extension and the motion for extension must be filed before the expiration of the time sought to be extended.

In conclusion, the CA ruled that the appeal must be dismissed as the nonfiling of a brief is a recognized ground to dismiss an appeal pursuant to Section 1(e),²⁸ Rule 50 of the Rules of Court.

With the denial²⁹ of his Motion for Reconsideration,³⁰ petitioner filed the instant Petition for Review raising the sole issue as follows:

Whether the CA erred in dismissing the appeal on technical grounds.³¹

Our Ruling

The Court is once again confronted with a petition asking for liberality for us to set aside procedural rules and resolve the case on the merits. More particularly, petitioner contends that respondent and Spouses Liao committed deceit and fraud against him. He also insists that the issuance of the writ of possession in favor of respondent was without merit because he is the owner of the subject property.

The contentions of petitioner are untenable.

²⁷ Section 12, Rule 44 of the Rules of Court provides:

SEC. 12. *Extension of Time for Filing Briefs.* — Extension of time for the filing of briefs will not be allowed, except for good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended. (15, R46)

²⁸ Section 1(e), Rule 50 of the Rules of Court provides:

SEC. 1. *Grounds for Dismissal of Appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

x x x

²⁹ *Rollo*, pp. 22-23.

³⁰ *CA rollo*, pp. 90-92

³¹ *Rollo*, p. 12.

First, petitioner raises factual matters which are not within the scope of a petition under Rule 45 of the Rules of Court. Time and again, we have stressed that the Court is not a trier of facts and solely questions of law may be raised in a petition for review on *certiorari*.³² While there are recognized exceptions to this rule, none of which was established in this case.

Second, the dismissal of petitioner's appeal with the CA was warranted. Section 1(e) of Rule 50, of the Rules of Court, provides that the appellant must file with the CA an appellant's brief and failure to do so within the allowable period is a ground for the dismissal of the appeal, to wit:

RULE 50
Dismissal of Appeal

Section 1. *Grounds for Dismissal of Appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules[.]

The word “may” is used in Section 1 of Rule 50 which implies that the dismissal of the appeal due to the grounds stated therein is not mandatory but only discretionary. This means that the failure to file appellant's brief within the reglementary period would not automatically result in the outright dismissal of the appeal as the CA is bound to exercise its sound discretion whether to allow the appeal to proceed or not. To be sure, the allowance of the appeal despite the failure to file an appellant's brief must be decided by the CA taking into account all the factors surrounding the case. Its discretion must be exercised with due regard to justice and fair play under the circumstances.³³

In *National Grid Corporation of the Philippines v. Bautista*,³⁴ the Court also underscored the guidelines as regards the nonfiling of appellant's brief, to wit:

³² See *Pascual v. Burgos, et al.*, 776 Phil. 167, 181-182 (2016).

³³ *Sindophil, Inc. v. Republic*, G.R. No. 204594, November 7, 2018.

³⁴ G.R. No. 232120, September 30, 2020.

- (1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules;
- (2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;
- (3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;
- (4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency[,] it is imperative that:
 - (a) the circumstances obtaining warrant the court's liberality;
 - (b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;
 - (c) no material injury has been suffered by the appellee by the delay;
 - (d) there is no contention that the appellee's cause was prejudiced;
 - (e) at least there is no motion to dismiss filed.
- (5) In case of delay, the lapse must be for a reasonable period; and
- (6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except:
 - (a) where the reckless or gross negligence of counsel deprives the client of due process of law;
 - (b) when application of the rule will result in outright deprivation of the client's liberty or property; or
 - (c) where the interests of justice so require.³⁵

In the case, for no apparent reason, petitioner did not file with the CA a timely motion for extension to file a brief. Moreover, after the lapse of the period to file brief, he submitted an Appeal Memorandum instead of an appellant's brief as required under Section 7, Rule 44 of the Rules of Court. Added to this, in his Motion for Reconsideration on the denial of his appeal, petitioner did not explain why he did not submit an appellant's brief, other than stating that his former counsel prepared and made him sign the Appeal Memorandum. Taking into account all these matters, the Court finds *no* strong considerations of equity that will justify the liberal application of the rules of procedure in the case.

Third and more importantly, the Court observes that petitioner did not file a Motion for Reconsideration on the RTC's issuance of a writ of possession in favor of respondent. Instead, he filed a motion to

³⁵ *Id.* Citations omitted.

consolidate LRC Case No. M-5246 and Civil Case No. 11-619 which the RTC eventually denied. Thus, strictly speaking, the subject of the appeal (before the CA) was *not* the RTC's grant of the petition for writ of possession, but the denial of petitioner's motion to consolidate. Without a timely motion for reconsideration on the RTC Decision dated November 22, 2010 which granted the petition for a writ of possession, the ruling had already attained finality and can no longer be disturbed by the Court.

The Court had repeatedly emphasized in jurisprudence the significance of the principle of immutability of judgment. Indeed, once a judgment becomes final, it becomes unalterable and immutable. Its enforcement cannot be prevented as the immediate enforcement of the rights of the parties, embodied in a final judgment, is a vital component of the ideal administration of justice. Hence, the Court frowns upon any delay in the execution of a decision that is already final and executory. Definitely, any "remedy intended to frustrate, suspend, or enjoin the enforcement of a final judgment must be granted with caution and upon a strict observance of the requirements under existing laws and jurisprudence."³⁶

It is beyond cavil that to permit petitioner's appeal before the CA to proceed would unduly prejudice the cause of respondent as the grant of the petition for writ of possession in its favor had already become final and executory. In fact, the RTC had emphasized on the matter when it denied the motion to consolidate declaring that its decision of November 22, 2010 was in the execution stage.

All told, petitioner's appeal has become unnecessary considering that the circumstances obtaining do not warrant the liberality of the Court.

WHEREFORE, the petition is **DENIED**. The Resolutions dated April 21, 2015 and August 6, 2015 of the Court of Appeals in CA-G.R. CA-G.R. CV No. 102707 are hereby **AFFIRMED**.

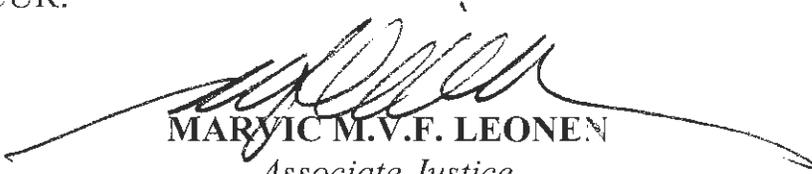
³⁶ *Lagua v. Court of Appeals, et al.*, 689 Phil. 452, 462 (2012), citing *Pahila-Garrido v. Tortogo, et al.*, 671 Phil. 321, 326 (2012).

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice