

## SECOND DIVISION

[ G.R. No. 221046, January 22, 2020 ]

**SPOUSES AGERICO ABROGAR AND CARMELITA ABROGAR,  
PETITIONERS, VS. LAND BANK OF THE PHILIPPINES,  
RESPONDENT.**

### RESOLUTION

**INTING, J.:**

The Court resolves the Petition for Review on Certiorari<sup>[1]</sup> under Rule 45 of the Rules of Court assailing the Resolutions dated June 23, 2014<sup>[2]</sup> and October 22, 2015<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R SP No.134435.

#### *The Antecedents*

On October 14, 1996, Spouses Agerico and Carmelita Abrogar (petitioners) obtained a loan amounting to P11,250,000.00 from respondent Land Bank of the Philippines (Land Bank). The loan was secured by a real estate and chattel mortgage<sup>[4]</sup> executed by petitioners in Land Bank's favor.<sup>[5]</sup>

Petitioners, however, eventually defaulted in the payment of their loan. This prompted Land Bank to commence extra-judicial foreclosure proceedings on the mortgaged properties.<sup>[6]</sup> To stop the foreclosure proceedings, petitioners filed a Complaint<sup>[7]</sup> against Land Bank before Branch 51, Regional Trial Court (RTC), Puerto Princesa City for specific performance and damages with application for a writ of preliminary injunction and/or temporary restraining order. Petitioners prayed, among others, that the RTC order Land Bank to allow them to settle their obligation pursuant to the Letter<sup>[8]</sup> dated October 5, 1998 which contained the bank's proposed terms and conditions for the restructuring of their loan.<sup>[9]</sup>

#### *Ruling of the RTC*

In its Decision<sup>[10]</sup> dated April 1, 2011, the RTC dismissed the Complaint for lack of a cause of action.<sup>[11]</sup> It explained that:

[Petitioners'] lawful obligation is to settle its delinquent account with [Land Bank] in order that the latter may perform its mandate of extending financial assistance to those who are qualified.

x x x [Petitioners] ought to bear in mind that restructuring their loan is not part of their original contract. It is merely a privilege accorded to them by [Land Bank]. They cannot invoke that as a demandable right. When [Land Bank] refused to adopt their own interpretation, they should have taken that as being equivalent to a denial of their request for restructuring. x x x<sup>[12]</sup>

The RTC likewise denied petitioners' Motion for Reconsideration<sup>[13]</sup> in its Order<sup>[14]</sup> dated November 25, 2013. Petitioners thereafter elevated the case *via* a Petition for *Certiorari*<sup>[15]</sup> under Rule 65 of the Rules of Court before the CA.

#### *Ruling of the CA*

In its Resolution<sup>[16]</sup> dated June 23, 2014, the CA dismissed the Petition for *Certiorari* for: (a) being the wrong mode of appeal;<sup>[17]</sup> and (b) lack of an affidavit of service, pursuant to Section 13, Rule 13 of the Rules of Court.<sup>[18]</sup>

The CA stressed that the proper recourse for petitioners was to file an ordinary appeal under Section 2(a), Rule 41 and *not* to resort to the extraordinary remedy of *certiorari* under Rule 65 of the Rules of Court.<sup>[19]</sup> Moreover, the CA noted that even if the Petition for *Certiorari* was treated as an ordinary appeal, it would still be dismissed for having been filed beyond the 15-day reglementary period provided under Rule 41.<sup>[20]</sup>

Petitioners moved for reconsideration,<sup>[21]</sup> but the CA denied the motion in its Resolution<sup>[22]</sup> dated October 22, 2015. Consequently, petitioners filed the present Petition for Review on *Certiorari*<sup>[23]</sup> before the Court assailing the CA Resolutions.

#### *The Issue*

The sole issue for the Court's resolution is whether the CA correctly dismissed the Petition for *Certiorari* outright for being the wrong mode of appeal.

#### *The Court's Ruling*

The petition is without merit.

It is settled that a special civil action for *certiorari* may only be resorted to in cases where there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.<sup>[24]</sup> "The extraordinary remedy of *certiorari* is not a substitute for a lost appeal; it is not allowed when a party to a case fails to appeal a judgment to the proper forum, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse."<sup>[25]</sup> As the remedies of appeal and *certiorari* are *mutually exclusive*, *certiorari* will *not* prosper if appeal is an available remedy to a litigant, even if the ground is grave abuse of discretion.<sup>[26]</sup>

In this case, the proper recourse for petitioners was to appeal the Decision dated April 1, 2011, which was rendered by the RTC in the exercise of its original jurisdiction, under Section 2(a)<sup>[27]</sup> of Rule 41 and *not* to resort to *certiorari* under Rule 65 of the Rules of Court. Since the remedy of an ordinary appeal was undeniably available to petitioners, the CA correctly dismissed their Petition for *Certiorari* for being the wrong mode of appeal.

In an attempt to justify their plea for the liberal application of the Rules, petitioners insist that they should not be bound by their former counsel's negligence in choosing to file the wrong remedy because it would deprive them of their property without due process of law.<sup>[28]</sup>