

SECOND DIVISION

[G.R. No. 179691, December 04, 2013]

**PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS.
MARY ANN O. YEUNG, RESPONDENT.**

DECISION

BRION, J.:

We resolve the petition for review on *certiorari*,^[1] filed by the Philippine Bank of Communications (*petitioner*), to assail the decision^[2] dated August 9, 2006 and the resolution^[3] dated August 2, 2007 of the Court of Appeals (CA) in CA-G.R. SP. No. 82725. The CA decision reversed and set aside the orders dated November 10, 2003,^[4] January 20, 2004,^[5] and February 23, 2004 of the Regional Trial Court (RTC), Davao City, Branch 16, in other Case No. 212-03 granting the issuance of a writ of possession.

The Factual Antecedents

In order to secure a loan of P1,650,000.00 Mary Ann O. Yeung (*respondent*), represented by her attorney-in-fact, Mrs. Le Tio Yeung, executed on December 12, 1994 a Real Estate Mortgage over a property located in Davao City in favor of the petitioner. The mortgaged property was covered by Transfer Certificate of Title (TCT) No. T-187433, registered in the respondent's name. On May 2, 1996, the parties agreed to increase the amount of the loan to P1,950,000.00 as evidenced by an Amended Real Estate Mortgage.

After the respondent defaulted in her obligation, the petitioner initiated a petition for extrajudicial foreclosure of the mortgage, pursuant to Act No. 3135, as amended.^[6] The mortgaged property was consequently foreclosed and sold at public auction for the sum of P2,594,750.00 to the petitioner which emerged as the highest bidder.

A provisional certificate of sale was issued by the sheriff and the sale was registered with the Register of Deeds. When the respondent failed to redeem the mortgage within the one year redemption period, the petitioner consolidated its ownership over the property, resulting to the cancellation of TCT No. T-187433 and to the issuance of TCT No. T-362374 in its name.

On September 15, 2003, the petitioner filed with the RTC an *ex parte* petition for the issuance of a writ of possession, docketed as Other Case No. 212-03.

On November 10, 2003, the RTC granted the petition. The respondent thereafter filed a motion for recall and/or revocation alleging that the writ of possession should not have been issued by the RTC because the petitioner failed to remit the surplus from the proceeds of the sale. When the motion was denied, the respondent filed a

motion for reconsideration (*MR*) which the RTC likewise denied. Hence, the respondent brought the matter to the CA on *certiorari*.

In its August 9, 2006 decision,^[7] the CA granted the petition and ruled that the RTC gravely abused its discretion when it ordered the issuance of a writ of possession. It found that the P2,594,750.00 bid price far exceeded the P1,950,000.00 mortgage obligation. Relying on the Court's pronouncement in *Sulit v. Court of Appeals*,^[8] the CA ruled that the petitioner's failure to remit the surplus from the proceeds of the foreclosure sale (equivalent to 33% of the mortgage debt) was a valid ground to defer the issuance of a writ of possession for reasons of equity. It reversed the RTC orders and ordered the petitioner to remit the excess from the proceeds of the foreclosure sale to the respondent.

The petitioner received a copy of the August 9, 2006 CA decision on September 1, 2006.^[9] Hence, it had up to September 16, 2006 to file an MR.

On September 13, 2006, the petitioner filed an urgent motion for extension of time to file an MR, citing lack of material time due to change of counsel as its ground. It contended that in light of its counsel's withdrawal from the case on September 11, 2006, or during the reglementary period of filing an MR, it had to engage the services of another lawyer who required an additional time to thoroughly study the case. On September 23, 2006, or seven days from the expiry of the reglementary period to file an MR, the petitioner, through its new counsel, filed an MR.^[10]

On March 7, 2007, the CA denied the petitioner's motion for extension of time to file an MR. The petitioner filed an MR dated April 10, 2007,^[11] which the CA similarly denied.^[12] The petitioner thereafter filed a petition for review on *certiorari* before this Court to assail the August 9, 2006 decision^[13] and the August 2, 2007 resolution^[14] of the CA.

The Petition

The petitioner insists that the CA erred when it reversed the RTC's decision. It argues that the *Sulit* case on which the CA's decision was based, is not analogous to the present case. It submits that unlike *Sulit* (where the mortgagor still had an opportunity to redeem the property at the time of the filing of the petition for the issuance of a writ of possession), the respondent had failed to redeem the property within the one year redemption period, thus allowing the petitioner to consolidate its ownership over the property. It also insists that there was no excess or surplus from the proceeds of the foreclosure sale because the respondent's obligation covered the interests, the penalties, the attorney's fees and the foreclosure expenses.

In these lights, the petitioner maintains that the equitable circumstances found by the Court in *Sulit* do not obtain in the present case and the issuance of a writ of possession, being a ministerial duty of the courts, should be granted.

The petitioner lastly submits that the respondent is guilty of forum shopping because of her failure to disclose to the Court the pendency of a civil case for nullity of mortgage and foreclosure sale.

The Case for the Respondent

The respondent maintains that the August 9, 2006 CA decision assailed in this petition had been rendered final and executory by the petitioner's failure to seasonably file an MR within the reglementary period. She submits that having attained finality, the decision can no longer be modified or reviewed by this Court and the petition should thus be dismissed.

The Issues

The petitioner raises the following issues:

- I. Whether circumstances exist in this case to warrant the liberal application of the rules on the reglementary period of filing appeals or MRs;
- II. Whether the case of *Sulit* is applicable to this case;
- III. Whether the petitioner is liable for any excess or surplus from the proceeds of the sale; and
- IV. Whether the respondent is guilty of forum shopping.

Our Ruling

We find the petition impressed with merit.

a. Procedural Question Raised

At the outset, we note that the petitioner's MR of the CA decision was filed out of time. Nevertheless, in accordance with the liberality that pervades the Rules of Court, and in the interest of justice under the peculiar circumstances of this case, we opt to take another look at the petitioner's reason for the late MR and thus consider the MR before the CA to be properly filed.

The general rule is that the failure of the petitioner to *timely* file an MR within the 15-day reglementary period fixed by law renders the decision or resolution final and executory.^[15] The same rule applies in appeals. The filing and the perfection of an appeal in the manner and within the period prescribed by law are not only mandatory but also jurisdictional, and the failure to perfect an appeal has the effect of rendering the judgment final and executory.^[16]

Consistent with this principle is the rule that no motion for extension of time to file an MR shall be allowed. The filing of a motion for extension of time does not, by itself, interrupt the period fixed by law for the perfection of an appeal. A movant, upon filing of a motion, has no right to assume that it would be granted and should verify its status with the court; otherwise, he runs the risk of losing his right to appeal in the event the court subsequently denies his motion and the period of appeal had expired.

This rule however, is not absolute. In exceptional and meritorious cases, the Court has applied a liberal approach and relaxed the rigid rules of technical

procedure.

In *Republic v. Court of Appeals*,^[17] we allowed the perfection of the appeal of the Republic, despite the delay of six days, in order to prevent a gross miscarriage of justice. In that case, the Court considered the fact that the Republic stands to lose hundreds of hectares of land *already* titled in its name.

In *Ramos v. Bagasao*,^[18] we permitted the delay of four days in the filing of a notice of appeal because the appellant's counsel of record was already dead at the time the trial court's decision was served.

In *Olacao v. National Labor Relations Commission*,^[19] we also allowed the belated appeal of the appellant because of the injustice that would result if the appeal would be dismissed. We found that the subject matter in issue in that case had already been settled with finality in another case and the eventual dismissal of the appeal would have had the effect of ordering the appellant to make reparation to the appellee twice.

In *Siguenza v. Court of Appeals*,^[20] we gave due course to the appeal and decided the case on the merits inasmuch as, on its face, it appeared to be impressed with merit.

Also in *Barnes v. Padilla*,^[21] we allowed the liberal construction of the Rules of Court and suspended the rule that the filing of a motion for extension of time to file an MR does not toll the period of appeal, to serve substantial justice. We ruled that the suspension of the rules was not entirely attributable to the petitioner and the allowance of the petition would not in any way prejudice the respondents.

The reasons that the Court may consider in applying a liberal construction of the procedural rules were reiterated in *Sanchez v. Court of Appeals*,^[22] to wit:

Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.

Moreover, the Court has the discretion to suspend its rules when the circumstances of the case warrant. In *Aguam v. Court of Appeals*,^[23] we held:

The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case. xxx **Litigations must be decided on their merits and not on technicality. xxx It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the**

parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

In the present case, we find the delay of 7 days, due to the withdrawal of the petitioner's counsel *during the reglementary period of filing an MR*, excusable in light of the merits of the case. Records show that the petitioner immediately engaged the services of a new lawyer to replace its former counsel and petitioned the CA to extend the period of filing an MR due to lack of material time to review the case. There is no showing that the withdrawal of its counsel was a contrived reason or an orchestrated act to delay the proceedings; the failure to file an MR within the reglementary period of 15 days was also not entirely the petitioner's fault, as it was not in control of its former counsel's acts.

Moreover, after a review of the contentions and the submissions of the parties, we agree that suspension of the technical rules of procedure is warranted in this case in view of the CA's erroneous application of legal principles and the substantial merits of the case. If the petition would be dismissed on technical grounds and without due consideration of its merits, the registered owner of the property shall, in effect, be barred from taking possession, thus allowing the absurd and unfair situation where the owner cannot exercise its right of ownership. This, the Court should not allow. In order to prevent the resulting inequity that might arise from the outright denial of this recourse – that is, the virtual affirmance of the writ's denial to the detriment of the petitioner's right of ownership – we give due course to this petition despite the late filing of the petitioner's MR before the CA.

b. On the Issuance of a Writ of Possession

We have consistently held that the purchaser can demand possession of the property even during the redemption period for as long as he files an ex parte motion under oath and post a bond in accordance with Section 7 of Act No. 3135, as amended.^[24] Upon filing of the motion and the approval of the bond, the law also directs the court in express terms to issue the order for a writ of possession.

When the redemption period has expired and title over the property has been consolidated in the purchaser's name, a writ of possession can be demanded as a matter of right. The writ of possession shall be issued as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser. As explained in *Edralin v. Philippine Veterans Bank*,^[25] the duty of the trial court to grant a writ of possession in these instances is also ministerial, and the court may not exercise discretion or judgment:

Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to