

## SECOND DIVISION

[ G.R. No. 172880, August 11, 2010 ]

### CHINA BANKING CORPORATION, PETITIONER, VS. CEBU PRINTING AND PACKAGING CORPORATION, RESPONDENT.

#### D E C I S I O N

**PERALTA, J.:**

This is a petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court which seeks to annul and set aside the Amended Decision<sup>[2]</sup> dated March 3, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 71017.

The facts, as shown in the records, are the following:

On January 29, 2002, Cebu Printing and Packaging Corporation (CEPRI) filed a Petition for Rehabilitation<sup>[3]</sup> with the Regional Trial Court (RTC) of Cebu City, Branch 11.<sup>[4]</sup> Finding the petition sufficient in form and substance, the RTC issued a Stay Order<sup>[5]</sup> dated February 11, 2002: staying enforcement of all claims against CEPRI, its guarantors and sureties; appointing Mr. Sergio D. Lim, Jr. as rehabilitation receiver and fixing his bond at P100,000.00; directing CEPRI to publish said Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; fixing the initial hearing on the petition on March 21, 2002; and directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on CEPRI a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before March 21, 2002, and putting them on notice that their failure to do so will bar them from participating in the proceedings, among others.

After due publication of the Stay Order, only China Banking Corporation (Chinabank) filed a Comment/Opposition<sup>[6]</sup> dated March 8, 2002.

After the initial hearing, the RTC issued the Order<sup>[7]</sup> dated April 30, 2002 denying due course to the petition for rehabilitation. The Order reads in part:

WHEREFORE, in view of the foregoing premises, this Court hereby does not give due course to the petition for rehabilitation filed in this case.

Accordingly, the Court lifts the stay order issued in this case on February 11, 2002 and recalls the appointment of Mr. Carlos G. Co as rehabilitation receiver.

IT IS SO ORDERED.

CEPRI received the Order of the RTC on May 8, 2002, and filed an Urgent Motion for Reconsideration<sup>[8]</sup> on May 14, 2002, which the court, in an Order<sup>[9]</sup> dated May 23, 2002, desisted from taking cognizance because such motion is a prohibited pleading. Thus:

The Court hereby desists from taking cognizance of the petitioner's urgent motion for reconsideration of the order issued in this case on April 30, 2002 because **a motion for reconsideration of an order is a prohibited pleading under Section 1 of Rule 3 of the Interim Rules of Procedure on Corporate Rehabilitation.**

On June 4, 2002, or past the period within which to file an appeal, CEPRI filed with the CA a Petition for *Certiorari*<sup>[10]</sup> which the court denied, and affirmed *in toto* the Order dated April 30, 2002 of the RTC, the dispositive portion of which reads:

WHEREFORE, premises considered, the Petition is hereby DENIED. Accordingly, the Orders dated April 30, 2002 and May 23, 2002 are AFFIRMED *in toto*.

SO ORDERED.<sup>[11]</sup>

Aggrieved, CEPRI filed a Motion for Reconsideration<sup>[12]</sup> dated September 27, 2005 which the CA granted in its Amended Decision<sup>[13]</sup> dated March 3, 2006, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Petition is hereby GRANTED. The Orders dated April 30, 2002 and May 23, 2002 are REVERSED, and the case is remanded to the lower court. The Stay Order issued by the public respondent is REINSTATED, and the appointment of the Rehabilitation Receiver, Mr. Carlos G. Co, is RESTORED. The Petition for Rehabilitation is given DUE COURSE, and the petition is referred to the Rehabilitation Receiver for the evaluation of the rehabilitation plan. The Rehabilitation Receiver is given ONE HUNDRED TWENTY (120) days from receipt of this Amended Decision to submit his recommendations to the lower court for the proper disposition thereof.

SO ORDERED.

Due to the above ruling, Chinabank filed a motion for reconsideration<sup>[14]</sup> dated March 23, 2006, which was denied by the CA in its Resolution<sup>[15]</sup> dated May 29, 2006.

Hence, the present petition with the following issues raised:

A -

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT RULED THAT EVEN A PETITION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT IS EMBRACED UNDER A.M. NO. 04-9-07-SC PROMULGATED ON SEPTEMBER 14, 2004 AND TOOK EFFECT ON OCTOBER 15, 2004, GOVERNING APPEALS IN CORPORATE REHABILITATION CASES.

B -

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT CONVENIENTLY DISREGARDED THE FACTUAL FINDINGS OF THE COMMERCIAL COURT, AND SUBSTITUTED THE SAME WITH ITS OWN JUDGMENT, BY MERELY RELYING ON THE OPINION OF AN AUTHOR IN CORPORATE REHABILITATION, WHOSE EXPERTISE IN THE FIELD IS NOT EVEN WELL ESTABLISHED.

C -

THE ASSAILED AMENDED DECISION REINSTATING THE REHABILITATION CASE HAD UNWITTINGLY SANCTIONED THE DESPICABLE PRACTICE OF FORUM SHOPPING BY THE RESPONDENT AND ITS COUNSEL, WHEREBY THERE ARE NOW TWO (2) CASES PENDING, ONE FOR CORPORATE REHABILITATION UNDER SRC CASE NO. 001-CEB, AND THE OTHER, FOR ANNULMENT OF LOANS AND MORTGAGE CONTRACTS, AMONG OTHERS, UNDER CIVIL CASE NO. MAN-4372, PRESENTLY PURSUED SIMULTANEOUSLY BY THE RESPONDENT, EACH ASKING FOR RELIEF INCOMPATIBLE WITH THE OTHER.<sup>[16]</sup>

In its Comment<sup>[17]</sup> dated October 23, 2006, CEPRI argued that the CA did not commit any reversible error when it ruled that even a petition for *certiorari* under Rule 65 of the Rules of Court is embraced under A.M. No. 04-9-07-SC promulgated on September 14, 2004 and took effect on October 15, 2004, governing appeals in corporate rehabilitation cases. It further claimed that the CA did not err in disregarding the factual findings of the RTC. It also pointed out that the issue on forum shopping should not have been raised in this Court, because the said issue had already been addressed by the CA.

The petition is impressed with merit.

Petitioner contends that a special civil action under Rule 65 of the 1997 Rules of Civil Procedure is not a remedy for the failure to timely file a petition for review under Rule 45. It adds that Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, especially if such loss or lapse was occasioned by one's own negligence or error in the choice of remedies. It also claims that CEPRI was prompted to file the petition for *certiorari* not because of its firm conviction that grave abuse of discretion attended the issuance of the commercial court's Order dated April 30, 2002, denying due course on the petition for rehabilitation, but in a bid to make up for the lost remedy of appeal.

Nevertheless, the CA, in its Amended Decision dated March 3, 2006, treated the petition for *certiorari* as a petition for review citing several decisions<sup>[18]</sup> of this Court. The CA went on to state that the petition for *certiorari* filed by CEPRI was pursuant to A.M. No. 04-9-07-SC which treats the said petition as a petition for review under Rule 43. This is an error on the part of the CA.

The foremost issue to be resolved is whether or not CEPRI availed of the proper remedy. This Court rules in the negative.

Section 5,<sup>[19]</sup> Rule 3 of the Interim Rules of Procedure on Corporate Rehabilitation provides:

*Sec. 5. Executory Nature of Orders.* - Any order issued by the court under these Rules is immediately executory. **A petition for review or an appeal therefrom shall not stay the execution of the order unless restrained or enjoined by the appellate court. The review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court:** *Provided, however,* that the reliefs ordered by the trial or appellate courts shall take into account the need for resolution of proceedings in a just, equitable, and speedy manner.

As correctly argued by petitioner, the proceedings for corporate rehabilitation is categorized as a special proceeding; hence, as supplied in A.M. 00-8-10-SC:

Following the discussion above, the period of appeal provided in section 3, Rule 41<sup>[20]</sup> of the 1997 Rules of Civil Procedure for ordinary civil actions shall apply to cases involving intra-corporate disputes. Corollarily, the period of appeal provided in paragraph 19 (b) of the Interim Rules Relative to the Implementation of B.P. Blg. 129 for special proceedings shall apply to petitions for rehabilitation.

However, this Court issued A.M. No. 04-9-07-SC<sup>[21]</sup> as a clarification on the proper mode of appeal of cases which were formerly under the jurisdiction of the Securities and Exchange Commission, such as those cases involving corporate rehabilitation. Now, there is no more need to file a notice of appeal and record on appeal. An appeal may now be perfected by filing a petition for review within fifteen (15) days from notice of the decision or final order of the trial court, directly to the CA under Rule 43 of the Rules of Court. As stated:

WHEREFORE, the Court Resolves:

1. All decisions and final orders in cases falling under the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.

2. The petition for review shall be taken within fifteen (15) days from notice of the decision or final order of the Regional Commercial Court. Upon proper motion and the payment of the full amount of the legal fee prescribed in Rule 141, as amended before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days within which to file the petition for review. No further extension shall be granted except for the most compelling reasons and in no case to exceed fifteen (15) days.

3. This Resolution shall apply to all pending appeals filed within the reglementary period from decisions and final orders in cases falling under the Interim Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799, regardless of the mode of appeal or petition resorted to by the appellant.

4. These pending appeals or petitions shall be treated in the following manner:

a. In case a notice of appeal and/or record on appeal was filed with the Regional Commercial Court within the period provided in A.M. No. 00-8-10-SC, and the original record or the approved record on appeal has not been transmitted to the Court of Appeals, the appealing party shall have fifteen (15) days from the effectivity of this Resolution to file a petition for review under Rule 43 with the Court of Appeals, without prejudice to filing a motion for extension in accordance with 1 hereof.

The notice of appeal and/or record on appeal shall remain in the original record but the Regional Commercial Court and/or its clerk shall not transmit the original record or the approved record on appeal to the Court of Appeals anymore.

An appealing party who fails to file a petition for review with the Court of Appeals within the prescribed period shall not be deemed to have abandoned his appeal, in which case the appeal shall run its due course.

b. In case a notice of appeal and/or record on appeal was filed with the Regional Commercial Court within the period provided in A.M. No. 00-8-10-SC, and the original record or the approved record on appeal has been transmitted to the Court of Appeals, the case shall continue as an appeal.

**c. In case a petition appealing or assailing the decision and/or final order is filed directly with the Court of Appeals within the reglementary period, such petition shall be considered a petition for review under Rule 43.**

d. In case a notice of appeal and/or record on appeal is filed with the Regional Commercial Court and a petition appealing