

FIRST DIVISION

[G.R. NOS. 169131-32, January 20, 2006]

**LULLETE S. KO AND ARLETTE SIMPLICIANO BASILIO,
PETITIONERS, VS. PHILIPPINE NATIONAL BANK, LAOAG
BRANCH, AND THE REGISTER OF DEEDS OF ILOCOS NORTE,
RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for review on certiorari assailing the April 27, 2005 Order ^[1] of the Regional Trial Court of Laoag City, Branch 14, in Civil Case No. 12523-14 dismissing petitioners' complaint, and the July 28, 2005 Resolution ^[2] denying petitioners' motion for reconsideration.

The case stemmed from an action filed by petitioners in the trial court for Annulment of Mortgage, Extra-judicial Foreclosure Sale, Annulment of Transfer Certificate of Title Nos. T-21064 and T-21065 and Deed of Sale with a Prayer for Preliminary Injunction and Restraining Order. The complaint alleged that the assailed mortgage and the foreclosure proceedings were null and void since the written consent of petitioners, as beneficiaries of the mortgaged property, were not secured. Respondent bank denied the claim and alleged that in the execution of the mortgage, petitioners in fact gave their consent.

During the course of the proceedings, petitioners and their counsel failed to attend a scheduled trial. Upon motion of respondent bank, the complaint was dismissed. In its order dated April 27, 2005, the trial court stated:

When the case was called, Atty. Lorenzo Castillo, counsel for the plaintiffs did not appear despite proper notice. No plaintiff appeared. Atty. Eduardo Alcantara, counsel for defendant bank appeared.

Atty. Alcantara manifested that there were numerous occasions in the past when plaintiffs and counsel did not attend. He pointed out that there is an apparent lack of interest on the part of plaintiff to prosecute the action. He moved to dismiss the case on that legal ground.

WHEREFORE, in view of the above premises, the above-entitled case is hereby ordered dismissed.

SO ORDERED. ^[3]

Petitioners filed a motion for reconsideration claiming that they have been continuously pursuing negotiations with respondent bank to purchase back the property and have gained positive results. Respondent bank countered that from the

time the complaint was filed, a period of three years had elapsed but petitioners failed to prosecute their case, showing lack of interest in the early resolution thereof. The trial court denied the motion for reconsideration.

Hence, the instant petition for review on the following grounds:

I

THE TRIAL COURT ERRED IN LAW IN DISMISSING PETITIONERS COMPLAINT ON THE GROUND OF THEIR FAILURE TO APPEAR AT THE SCHEDULED HEARING DESPITE THAT DEFENDANT PNB HAS BEEN EQUALLY GUILTY LIKEWISE.

II

THE TRIAL COURT ERRED IN LAW IN DISMISSING THE CASE DESPITE THAT THE CASE INVOLVES A PROPERTY OF SIGNIFICANT IMPORTANCE AND VALUE TO THE LIFE AND DIGNITY OF THE PETITIONERS THIS (sic) CALLING FOR THE OVERRIDING CONSIDERATION OF A JUDGMENT BASED ON THE MERITS OVER THE PRIMORDIAL INTEREST OF PROCEDURE AND TECHNICALITIES. [4]

The petition lacks merit.

On the procedural aspect, we find that petitioners erred in filing a petition for review on certiorari under Rule 45 of the Rules of Court instead of filing an appeal with the Court of Appeals. Section 3, Rule 17 of the Rules of Court provides:

SEC. 3. Dismissal due to fault of plaintiff.—If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon the motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. (Emphasis supplied)

Upon the order of dismissal, petitioners' counsel filed a timely motion for reconsideration which was denied by the trial court. Considering that an order of dismissal for failure to prosecute has the effect of an adjudication on the merits, petitioners' counsel should have filed a notice of appeal with the appellate court within the reglementary period. [5] Instead of filing a petition under Rule 45 of the Rules of Court, the proper recourse was an ordinary appeal with the Court of Appeals under Rule 41, which provides:

Sec. 2. Modes of Appeal.—

(a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party x x x. (Emphasis supplied)