

THIRD DIVISION

[G.R. No. 128310, August 13, 2004]

ALFREDO M. DESAVILLE, JR., PETITIONER, VS. HON. COURT OF APPEALS, HON. HELEN M. RICAFORT, PRESIDING JUDGE, RTC, BRANCH 260, PARAÑAQUE; ROBERT V. GATCHALIAN, INC., RESPONDENTS.

DECISION

CORONA, J.:

This petition for review under Rule 45 of the Rules of Court assails the decision^[1] and resolution^[2] of the Court of Appeals^[3] in CA-G.R. SP No. 40691, dated October 22, 1996 and February 17, 1997, respectively. Said decision dismissed the petition for certiorari and prohibition which sought to set aside the February 27, 1996^[4] and April 24, 1996^[5] orders^[6] of the Regional Trial Court of Parañaque, Branch 260, in Civil Case No. 94-0289, entitled "*Robert V. Gatchalian, Inc. vs. Alfredo M. Desaville, Jr.*"

On or about February 11, 1992, petitioner Alfredo M. Desaville Jr. entered into a contract to sell with private respondent Robert V. Gatchalian, Inc., whereby petitioner agreed to buy on installment basis a house and lot known as Blk. 1, Lot 2, Phase II, R. Medina Subdivision, Sucat, Parañaque. The installment price for the lot was P437,400 while that of the three-bedroom house was P1,362,600, or a total installment price of P1,800,000. Petitioner paid P882,810.99 upon signing the contract.

Due to the failure of petitioner to make further payments, however, private respondent filed, on September 26, 1994, a complaint for recovery of possession of the property based on the cancellation of the contract to sell between petitioner and private respondent.

On November 3, 1995, the trial court rendered a decision in favor of private respondent, the dispositive portion of which read:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff, as follows:

1. Ordering the defendant and all persons claiming title under him to vacate the subject property and surrender possession of the same to plaintiff;
2. Ordering the defendant and all persons claiming title under him to pay rentals to the plaintiff in the amount of P5,000.00 each month from May, 1994 until possession has been transferred to the latter;

3. Ordering the defendant to pay attorney's fees in the amount of P25,000.00 plus costs.

SO ORDERED.^[7]

On November 17, 1995, petitioner received a copy of the decision of the trial court. He subsequently filed his notice of appeal on November 24, 1995.

For his part, private respondent filed, on December 4, 1995, a motion for execution of judgment pending appeal.

The next day, December 5, 1995, respondent judge issued an order approving petitioner's notice of appeal and directing the clerk of court to transmit the records of the case to the Court of Appeals.

On January 24, 1996, private respondent, pursuant to its earlier motion to execute judgment pending appeal, posted a bond in the amount of P200,000.

On February 5, 1996, respondent judge released the assailed order granting private respondent's motion for execution pending appeal and issued the corresponding writ of execution.

In response thereto, petitioner, on February 13, 1996, filed an urgent motion to set aside the order granting execution pending appeal and to allow petitioner to post a counterbond in the same amount posted by private respondent in order to stay the execution of the decision.

On February 22, 1996, petitioner posted the said counterbond in the amount of P200,000.

On February 27, 1996, respondent judge issued the first questioned order expunging from the records the counterbond posted by petitioner on the ground that it was "in a quandary on the purpose of said bond."

The respondent judge also denied, in an order dated March 18, 1996, petitioner's motion to set aside the order issuing the writ of execution of judgment pending appeal.

On April 24, 1996, petitioner's motion for reconsideration was also denied.

On May 21, 1996, the petitioner filed in the Court of Appeals a petition for certiorari seeking, among others, the nullification of the orders of the respondent judge issuing the writ of execution pending appeal and denying his motion to admit the counterbond to stay execution of the decision.

The Court of Appeals, in a decision dated October 22, 1996, upheld the validity of the assailed orders of respondent judge. It held that, even if a losing party has already filed a notice of appeal and has thereby perfected his appeal, the winning party is not deprived of the right to the remedies still available to him, including the filing of a motion for execution pending appeal, provided his own deadline to appeal has not yet lapsed. It also found no grave abuse of discretion on the part of respondent judge in expunging the counterbond filed by petitioner on the ground