

## **SECOND DIVISION**

**[ G.R. No. 140316, August 01, 2002 ]**

**JEFFREY DAYRIT, PETITIONER, VS. PHILIPPINE BANK OF COMMUNICATIONS, RESPONDENT.**

### **R E S O L U T I O N**

**QUISUMBING, J.:**

This petition for review seeks the reversal of the decision<sup>[1]</sup> of the Court of Appeals dated July 2, 1999 in CA-G.R. CV No. 53374, dismissing petitioner's appeal and affirming the writ of possession issued by the Regional Trial Court of Quezon City, Branch 94, in L.R.C. Case No. Q-6570 (94). It likewise seeks to annul the resolution<sup>[2]</sup> denying petitioner's motion for reconsideration.

The facts of this case, as culled from the records, are as follows:

Petitioner Jeffrey Dayrit and his wife Marina Valencia Dayrit obtained a P15 million loan from respondent Philippine Bank of Communications and posted as collateral their house and lot covered by TCT Nos. RT 14505 (364674) PR 9723 and RT 14504 (364675) PR 9724 in White Plains, Quezon City. They failed to pay the obligation. Respondent bank foreclosed the mortgage, sold the property at public auction where the bank itself was the highest bidder, and eventually was issued a certificate of sale. Upon the lapse of the period to redeem in May 1993, respondent moved to consolidate the titles. TCT Nos. 94179 and 04180 were thereafter issued in respondent bank's name.

As the Dayrits refused to turn over the possession of the property to respondent, it filed a petition for the issuance of a writ of possession with the Regional Trial Court of Quezon City. At the first hearing the Dayrits, through counsel, appeared and manifested their desire to pay the obligation. However, they failed to appear during the subsequent hearings. Consequently, the trial court allowed respondent to present its evidence ex parte.

On August 10, 1995, the trial court rendered its decision, disposing as follows:

WHEREFORE, premises considered, let a writ of possession be issued in favor of the petitioner against spouses Jeffrey Dayrit and Marina Valencia Dayrit.

SO ORDERED.<sup>[3]</sup>

The Dayrits received a copy of the decision on September 15, 1995. Thirty-two days after or on October 17, 1995, they moved for reconsideration of the decision on the ground that they did not receive the notices for the hearing on the merits of the case, the resolutions allowing respondent to present its evidence ex-parte, and the decision itself. The trial court denied the motion. The Dayrits appealed before the Court of Appeals which on July 2, 1999, promulgated its decision decreeing, thus:

WHEREFORE, the instant appeal is hereby DISMISSED for being filed late and for lack of merit. The writ of possession issued in the Decision in LRC Case No. Q-6570 (94) dated August 10, 1995 is hereby AFFIRMED.

SO ORDERED.<sup>[4]</sup>

In dismissing the appeal, the appellate court held that Section 8 (a) of the Interim Rules<sup>[5]</sup> fixes the period to appeal to fifteen (15) days from receipt of notice of the decision. The petitioner filed the appeal beyond the said period, or thirty-two (32) days after such receipt. The appellate court also said that the petition filed in the trial court was not the proper action that the Dayrits could take in order to question the mortgage contract. Citing *Vaca vs. Court of Appeals*,<sup>[6]</sup> the appellate court stated that the legality of a mortgage contract cannot be questioned in a petition for the issuance of a writ of possession because the latter is purely a ministerial act of the trial court after title on the property is consolidated in the mortgagee.

Hence, this instant petition alleging that the Court of Appeals erred in holding that:

I. ...AN EX PARTE PRESENTATION OF EVIDENCE IS ALLOWED TO OBTAIN POSSESSION OF A PROPERTY FORECLOSED EXTRA-JUDICIALLY AFTER THE PERIOD TO REDEEM THE SAME HAD LAPSED;

II. ...THE ISSUANCE OF THE WRIT OF POSSESSION IS A MINISTERIAL DUTY ON THE PART OF THE COURT A QUO;

III. ...THE DECISION OF THE COURT A QUO ACQUIRED THE CHARACTER OF FINALITY WHEN THE MOTION TO RECONSIDER THE SAME WAS FILED WITH THE COURT A QUO THIRTY-TWO DAYS AFTER RECEIPT THEREOF.<sup>[7]</sup>

The main issue for our resolution is whether or not petitioner was denied due process of law. To resolve this issue, we must also inquire whether ex-parte presentation of evidence by respondent was proper; whether the trial court had the ministerial duty to issue a writ of possession; and whether petitioner's appeal was belatedly filed.

Petitioner argues that he was denied due process of law when the trial court allowed respondent bank to present evidence ex parte in LRC Case No. Q 6570 (94) and rendered judgment thereon. He contends that there is no law allowing the issuance of the writ of possession ex-parte after the lapse of the redemption period. Petitioner also claims that the period to appeal from the decision of the trial court had not yet prescribed when he appealed to the Court of Appeals. For he states that neither he nor his counsel received a copy of the decision, and he learned of it only through a lawyer-friend. Petitioner adds that, even assuming he received a notice of the decision, his counsel did not. Thus, he concludes the reckoning date for the 15-day period to appeal remains uncertain.

Respondent counters in its motion to dismiss, treated here as a comment to the petition, that petitioner only raises factual issues, in violation of Section 1, Rule 45 of the Revised Rules of Court.<sup>[8]</sup> It contends that the petitioner's action is intended only to delay the issuance of the writ of possession in favor of respondent.

Petitioner insists that after the hearing on January 12, 1995, he was not notified of subsequent hearings. In one of these hearings, respondent was allowed to present evidence ex parte. Petitioner adds that he did not receive the order dated March 9,