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SUPREME COURT
THIRD DIVISION

EL REYNO HOMES, INC.,
***Petitioner*,**

-versus-

G.R. No. 142440
February 17, 2003

ERNESTO ONG and MA. SONIA TAN SOON HA,
***Respondents*.**
x---x

D E C I S I O N

CORONA, *J.*:

The instant Petition under Rule 45 of the Rules of Court seeks a Review of the Resolution[1] dated December 15, 1999 of the Court of Appeals (Third Division) in CA-G.R. SP No. 55988 denying petitioner's motion for extension of time to file a petition for review, thereby dismissing the case, and the Resolution[2] dated March 10, 2000 which denied the subsequent motion for reconsideration.

It appears that private respondents, Ernesto Ong and Ma. Sonia Tan Soon Ha purchased from petitioner, El Reyno Homes, Inc., Lot 2, Block 9 of subdivision plan PSD-04-001498 situated at the Loyola Grand Villas W-2, Quezon City containing an area of 1,000 square meters initially covered by Transfer Certificate of Title (TCT) No. 261758. For its failure to develop and deliver the title to the property, the private respondents filed an action against the petitioner for specific performance and for violation of Sections 19, 20, 25 and 29 of Presidential Decree No. 957[3] on March 22, 1991 with the Housing and Land Use Regulatory Board (HLURB for brevity). After conducting the required hearings and an ocular inspection of the property, HLURB Arbiter Cesar A. Manuel, found that:

> To this date, the parcel of land, Lot No. 2, Block No. 9 under Transfer Certificate of Title No. 261758 of the Registry of Deeds for Metro Manila District II, sold by the respondent to complainants, is still registered in the name of one Antonio Tuazon, Jr., despite full payment of the lot by the buyers, complainants herein, in violation of Section 25 of PD 957. We are not persuaded by the respondent's argument that complainants are not entitled to delivery of title pending their payment of taxes and other assessments (Respondent's Answer Par. II). This is in contravention with Section 26 of PD 957 which provides that "Real Esate (sic) Tax and assessment on a lot shall be paid by the owner or developer with out (sic) recourse to the buyer for as long as the title has not passed to the buyer." The only exception to this rule is when the title has passed to the buyer and the latter took possession of and occupied the lot. This is not obtaining in the instant case.
>
> As to the issue of non-development, the above quoted ocular inspection speaks for itself.
>
> We are not also convinced with the argument of respondent that it "is physically and legally impossible for it at this point in time to force before the development of the property as it may result in violence and bloodshed" (Respondent's Opposition par. 1, sub-par. b, citing its par. 7 of its Answer). This principle which is enriched under Articles 1266 and 1267 of the Civil Code does not apply in the instant case for the simple reason that in

order for the said principle to apply, it is a condition sine qua non that the prestation constituting the object of the obligation must have become legally or physically impossible of compliance without the fault of the obligor and before he has incurred in delay. (Jurado, Comments and Jurisprudence on Obligations and Contracts, 1983 Edition, p. 249)[4]

Hence, the HLURB arbiter rendered the following judgment:

WHEREFORE, judgment is hereby rendered ordering the respondent EL REYNO HOMES, INC., within thirty (30) days from finality hereof to:

1. To deliver immediately the title to the complainants;

2. Complete the development of the said subdivision in accordance with the approved subdivision plan such as to:

    a. construct the road going to the property of the complainants;

    b. construct the drainage and/or sewer pipe serving the said subject lot;

    c. provide and/or construct water distribution line; and

    d. provide electrical power supply;

3. Pay to this Board an administrative fine of P10,000.00 for violation of Sections 20 and 25 in relation to Section 38 of PD 957.

4. Pay to the complainant the sum of P20,000.00 as attorney's fees.

Finding the respondent's counterclaim without merit, the same is hereby dismissed.

IT IS SO ORDERED.[5]

From the said decision, the petitioner filed a notice of appeal with the HLURB Board of Commissioners (Board for brevity) on March 11, 1992 which subsequently issued an Order on April 3, 1992 requiring the parties to file their respective memoranda within 10 days from receipt thereof.

In an urgent motion filed on April 30, 1992, petitioner El Reyno Homes, Inc. requested that it be given an extension of 15 days from May 1, 1992, or until May 16, 1992, to file its memorandum of appeal which was granted by the Board on May 8, 1992.

However, the petitioner failed to file its memorandum of appeal within the extended period prompting the private respondents to file a motion to dismiss the appeal. Despite the filing of a memorandum of appeal[6] by the petitioner on May 22, 1992, or six (6) days after the expiration of the period of extension on May 16, 1992, the Board issued an Order[7] on December 16, 1992 dismissing the appeal of the petitioner, the dispositive portion of which reads:

> Considering the foregoing, respondent's (herein petitioner) appeal is hereby declared ABANDONED and hence DISMISSED.
>
> SO ORDERED.

On January 26, 1993, the petitioner filed a motion for reconsideration which was denied by the Board in an Order[8] dated May 4, 1993.

On May 24, 1993, the petitioner timely filed a notice of appeal with the Office of the President which subsequently issued an Order dated May 28, 1993 requiring the said petitioner to file its memorandum of appeal.

The petitioner filed its memorandum of appeal on July 20, 1993 while the respondents filed their reply memorandum on August 10, 1993.

On October 27, 1999, the Office of the President rendered a Decision[9] dismissing the appeal of the petitioner. On November 25,

1999, the petitioner filed with the Court of Appeals a Motion for an Extension[10] of 15 days within which to file a petition for review counted from December 1, 1999, or until December 16, 1999.

On December 9, 1999, which was within the requested period of extension, the petitioner filed a Petition for Review[11] with the Court of Appeals.

In the questioned Resolution dated December 15, 1999 however, the Court of Appeals denied petitioner's motion for extension of time to file a petition for review for not having been accompanied by an affidavit of service, consequently dismissing the case. The motion for reconsideration of the questioned resolution was denied by the appellate court on March 10, 2000.

Hence, the instant Petition[12] with the following assignments of error:

1. THE COURT OF APPEALS COMMITTED AN ERROR IN DISMISSING THE CASE ON PURE TECHNICALITY THEREBY DENYING THE PETITIONER ITS DAY IN COURT AND IN EFFECT AFFIRMING THE DECISION OF THE HOUSING AND LAND USE REGULATORY BOARD WHICH GROSSLY ERRED IN CONSIDERING THE APPEAL AS HAVING BEEN ABANDONED INSTEAD OF DECIDING THE CASE.

2. THE AWARD OF ATTORNEY'S FEES WAS MANIFESTLY EXCESSIVE AND WITHOUT LEGAL OR FACTUAL BASIS.

The petitioner claims that the delay in filing its memorandum of appeal with the Board was due to the sudden and unexpected absence without official leave of Attorney Herenio Martinez on May 15, 1992 to whom the instant case was allegedly assigned. The absence of Attorney Martinez, who remained in possession of the records of this case, was beyond the control of the petitioner, such that a rigid application of the rules would defeat substantial justice especially since the said petitioner filed its memorandum of appeal, albeit 6 days after the expiration of the extended period. Besides, Section 2 of the HLURB rules provides for a liberal construction thereof "in order to promote public interest and to assist the parties in obtaining just,

speedy and inexpensive determination of every action, application or other proceedings."

Likewise, according to petitioner, the Court of Appeals erred when it denied petitioner's motion for extension of time to file a petition for review because of its failure to attach an affidavit of service. The private respondents were furnished a copy of the motion for extension of time to file a petition for review by registered mail posted on November 24, 1999 at Greenhills Post Office, San Juan, Metro Manila under Registry Receipt No. 15088 addressed to their counsel, Atty. Edito A. Rodriguez, at 16 CRM Rhia Street, BF Almanza, Las Piñas City. The pleading was actually received by the counsel of private respondents on November 29, 1999 per Certification[13] of the Las Piñas Post Office dated January 5, 2000. The purpose of the rule on service of pleadings, to ensure that the other party was properly notified of the pleading, had thus been served. Moreover, petitioner filed the petition for review with the Court of Appeals on December 9, 1999 which was well within the extended period prayed for in its motion for extension of time to file a petition. Invoking the ruling of this Court in the case of Republic vs. Court of Appeals,[14] the petitioner opined that the Court of Appeals should have decided the petition on the merits rather than on mere technicality in order to promote substantial justice.

Additionally, petitioner argues that the award of attorney's fees by the HLURB arbiter had no factual nor legal basis. It alleges that the private respondents still had obligations to settle under the contract, thus, the petitioner was not yet in default nor bound to deliver the title to the lot to the said private respondents.

In their Comment,[15] the private respondents contend that, while the rules of procedure may be liberally construed, such liberality should not apply in case of wanton disregard of said rules or if it will only cause needless delay. Respondents point out that petitioner was silent until the motion for extension of time to file its petition for review was denied and the case was dismissed by the appellate court, before it exerted effort to comply with the requirements. They claim that the petitioner was advised of its failure to attach the affidavit of service on the same day that it filed its said motion. 16 They also maintain that the award of attorney's fees is justified by the circumstances of the

case, praying that it be increased because the case is now on appeal to the Supreme Court.

By way of Reply,[17] the petitioner insists that its failure to attach the required affidavit of service to its motion was not a wanton disregard of the rules nor intended to cause needless delay in the administration of justice. It also reiterates the alleged lack of factual or legal basis for the award of attorney's fees in favor of the private respondents.

We deny the instant petition.

In not a few instances, we relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should thus not serve as basis of decisions. In that way, the ends of justice would be better served.[18] For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.[19]

However, as correctly pointed out by the private respondents, such liberality in the application of rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice. It is equally settled that, save for the most persuasive of reasons, strict compliance is enjoined to facilitate the orderly administration of justice.[20]

The HLURB Board of Commissioners considered the appeal filed by the petitioner from the adverse decision of the HLURB arbiter as abandoned after it failed to file the required memorandum of appeal within the extended period prayed for by the petitioner itself. The delay was allegedly brought about by the failure of its counsel to turn over the records before his sudden and unexpected absence without official leave on May 15, 1992. This unsubstantiated allegation of the petitioner is far from convincing. The record shows that the petitioner was represented by Atty. Emiliano L. Tamboan, Jr. throughout the

trial of the case before the HLURB arbiter and subsequently by Atty. Aristotle Q. Sarmiento. No Atty. Herenio Martinez ever entered his appearance at any stage of the proceedings in this case. It is obvious that this tale of "abandonment by its supposed counsel" was merely concocted by the petitioner in its desperate attempt to evade the legal effects of failure to file timely appeal.

After its motion for reconsideration was denied by the Board, the petitioner filed an appeal with the Office of the President but this was denied on October 27, 1999. Subsequently, the petitioner filed a motion for extension of time to file a petition with the Court of Appeals. Apparently unmindful of its previous mistake, the petitioner this time failed to attach to its said motion for extension of time the required affidavit of service. And in an attempt to cover up the grave consequences of its second mistake, the petitioner, in its subsequent motion for reconsideration, contended that the purpose of this particular procedural requirement had anyway been served already when the private respondents' counsel actually received a copy of its motion on November 29, 1999, as shown by the certification of the Las Piñas Post Office.

We agree with the appellate court that the failure of the petitioner to attach the required affidavit of service warranted outright denial of the motion for extension of time to file its petition for review. Consequently, the judgment sought to be appealed from became final after the lapse of the original period within which the petition should have been filed. The subsequent compliance by the petitioner with the required attachment of affidavit of service did not cure the defect.

The petitioner has no one to blame but itself for its failure to attach the required affidavit of service to its motion. In fact, it did not even exert enough effort to comply with this particular procedural requirement as soon as practicable. Its counsel waited indifferently until the motion for extension was denied and the case was eventually dismissed on December 15, 1999 — despite having been advised on the day it filed the motion for extension on November 25, 1999 of such failure to attach the required affidavit of service.

As if it were not enough, the explanation regarding the mode of service used in the instant petition was left unsigned by the counsel of

the petitioner.[21] It should be pointed out that herein petitioner filed the instant petition with this Court as an appeal from the adverse Resolutions[22] of the Court of Appeals. We emphasize that the right to appeal is a mere statutory privilege. Not being a natural right or a part of due process, the right to appeal may be exercised only in the manner and in accordance with the rules provided therefore. Failure to bring an appeal in the manner and within the period prescribed by the rules renders the judgment appealed from final and executory.[23]

The case of Republic vs. Court of Appeals[24] which was relied upon by the petitioner does not apply squarely to the case at bar. In that particular case, the Solicitor General filed the record on appeal 6 days late. This Court suspended the rules on perfection of appeal as its strict application would have resulted in the State's loss of close to 300 hectares of prime sugarland which a private individual had apparently succeeded in registering in his name through fraudulent misrepresentation and machination.

On the other hand, herein petitioner has failed to convince the Court that an extremely compelling reason exists to justify suspension of the strict application of the rules and to avert the commission of grave injustice. A review of the questioned decision of the HLURB arbiter does not show any reversible error in its appreciation of the facts and its application of the pertinent laws. No development of roads, drainage and water system has as yet been introduced by the petitioner to the subject property in violation of Section 20[25] of P.D. No. 957. The petitioner cannot seek refuge in its gratuitous claim that the property was invaded by squatters for its failure to introduce the required development. As found by the HLURB arbiter, the same was due to the fault of the said petitioner and that the squatters entered the property after petitioner was already in delay. Likewise, title to the property has not been delivered up to the present despite full payment of the price of the lot in contravention of Section 25[26] of the same decree.

WHEREFORE, in view of the foregoing, the petition is hereby **DENIED** and the questioned resolutions of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.

Puno, Panganiban, Sandoval-Gutierrez and Carpio-Morales, *JJ*., concur.

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[1] Penned by Associate. Justice Quirino D. Abad Santos, Jr. and concurred in by Associate Justices Romeo J. Callejo, Sr. and Presbitero J. Velasco, Jr. Petition, Annex "A", Rollo, pp. 28–29.
[2] Petition, Annex "B", Rollo, pp. 30–32.
[3] Otherwise known as The Subdivision and Condominium Buyers' Protective Decree of 1976.
[4] Petition, Annex "C", Rollo, pp. 35–36.
[5] Id., pp. 36–37.
[6] Petition, Annex "D", Rollo, pp. 38–44.
[7] Petition, Annex "E", Rollo, pp. 55–56.
[8] Petition, Annex "F", Rollo, pp. 57–59.
[9] Petition, Annex "G", Rollo, pp. 60–63.
[10] Petition, Annex "H", Rollo, pp. 64–65.
[11] Petition, Annex "I", Rollo, pp. 66–81.
[12] Rollo, pp. 11–27.
[13] Petition, Annex "K", Rollo, p. 85.
[14] 292 SCRA 243, 252 (1998) citing the case of Republic vs. Court of Appeals, 83 SCRA 453 (1978).
[15] Rollo, pp. 87–91.
[16] Rollo, .p. 84.
[17] Rollo, pp. 94–101.
[18] Republic vs. Court of Appeals, 292 SCRA 243; 251–252 (1998).
[19] Udan vs. Amon, 23 SCRA 837, 843 (1968) citing Mc Entee vs. Manotok, 3 SCRA 273 (1961).
[20] Ortiz vs. Court of Appeals, 299 SCRA 708, 712 (1998).
[21] Rollo, p. 26.
[22] See Notes nos. 1 and 2.
[23] Manila Memorial Park Cemetery, Inc. vs. Court of Appeals, 344 SCRA 769, 776 (2000).
[24] Supra.
[25] Section 20. Time of Completion — Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, within one year from the date of issuance of the license of the subdivision or condominium project or such other period of time as may be fixed by the Authority.

[26] Section 25. Issuance of Title. — The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title.

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