

46 Phil. 805

[G.R. No. 20144. March 17, 1923]

UNION GUARANTEE CO., LTD., PETITIONER, VS. HONORABLE S. DEL ROSARIO, JUDGE OF FIRST INSTANCE OF MANILA, RICARDO SUMMERS, EX-OFFICIO SHERIFF OF MANILA, AND LIM HONG WAN, RESPONDENTS.

D E C I S I O N

ROMUALDEZ, J.:

The respondents having answered the complaint of the petitioner corporation and the case having been submitted for decision, we find that there is no dispute as to the facts alleged in the petition, and the question is purely a legal one, and that is whether or not a writ of execution can be issued against the property of the herein petitioner by virtue of a judgment rendered against Enrique Legarda Koh, for the reason that this petitioner had subscribed a bond as surety in favor of the sheriff under section 270 of the Code of Civil Procedure, in order that said officer should proceed with the seizure of the automobile claimed by said Enrique Legarda Koh in spite of the claim presented by Lim Hong Wan.

No claim was presented against the sheriff or against the petitioner, nor was any judgment rendered against any of them.

In support of their contention, the respondents cite the doctrine laid down by this court in the case of *Molina vs. De la Riva* (7 Phil., 345), and argue that the formal differences between that and the case at bar are such as not to justify the adoption of another doctrine in the instant case.

That is not the case, however. In *Molina vs. De la Riva*, aforecited, the bond was a *supersedeas* bond or one to stay the execution of the judgment, while here the bond is for the delivery of a personal property *pendente lite*; there the sureties, who, by the execution of such a

supersedeas bond, submitted themselves to the jurisdiction of the court and recognized the validity of the judgment, were summoned by the court to show cause why the writ of execution should not be issued against them, whereas here the petitioner had not submitted itself to the jurisdiction of the lower court, and if it appeared in court when Lim Hong Wan presented the motion for the issuance of the writ of execution against it, its appearance was a special one and for the purpose only of objecting to the jurisdiction of the court.

We hold in the present case that the lower court had no jurisdiction to issue under those circumstances the aforesaid writ of execution against the property of the petitioner, and consequently said execution is not legally valid.

Wherefore, it is ordered that the respondents refrain and abstain from executing or causing to be executed against the property of the petitioner the aforesaid judgment rendered in civil case No, 18074 of the Court of First Instance of Manila.

It is, further, hereby ordered that the preliminary injunction issued by this court in this proceeding be made absolute, without prejudice to such rights as may pertain to Lim Hong Wan.

Without special pronouncement as to costs. So ordered.

*Araullo, C.J.,
Street, Malcolm, Avanceña, Ostrand, and Johns, JJ., concur.*