100 Phil. 732

[G. R. No. L-8645. January 23, 1957]

PORT MOTORS, INC., PLAINTIFF AND APPELLANT, VS. COL. FELIPE RAPOSAS, DEFENDANT AND APPELLEE, ALTO SURETY & INSURANCE CO., INC., BONDSMEN AND APPELLEE

D E C I S I O N

FELIX, J.:

The case.-On September 6, 1949, Felipe Raposas, a recognized guerilla with the rank of Lt; Colonel, purchased from Port Motors, Inc., one Lincoln Cosmopolitan Sports Sedan, V-8, (152 HP),. Model 9EH-74, 1949, for the amount of P12,400, with a down payment of F2,600 and executed a promissory note for the balance of P9,800, payable in installments. A chattel mortgage on the car to secure the payment of the said balance of F9,800, was ¦also executed and registered in the Register of Deeds of Manila on the same day. Col. Rapoaas further bound himself to satisfy, upon failure to pay the installments due, the whole amount remaining unpaid which was to become immediately due and demandable, plus interest thereon at 12 per cent per annum. In case of such failure the company was empowered to foreclose the mortgage, to take possession of the car and to demand liquidated damages in a sum equivalent to 38 1/2 of the amount due. Despite repeated demands, Raposas failed to pay the installments due from November, 1949, and on May 10, 1950, Port Motors, Inc., demanded possession of the mortgaged car, but as Raposas did not surrender the Same, the creditor filed on June 22, 1950, a complaint in the Court of First Instance of Manila against Col. Felipe Raposas and one John Doe, supposedly in. possession of the car in question at the time, praying: (a) That the Sheriff of the City of Manila be ordered to seize from the defendants the Lincoln Cosmopolitan Sports Sedan; described therein, taking it unto his custody and disposing of the same in accordance with the Rules of Court; (6) . that after trial, plaintiff be adjudged as having the right to possess the said car and in case of non-delivery, that the value thereof amounting to P8,976 plus 12 per cent interest thereon from September 6, 1949, until fully satisfied be paid; (c) that defendants be ordered to pay to plaintiff the amount of F2,992 as liquidated damages ;(d) that defendants be ordered to pay

the cost, and (e) that plaintiff be granted such other relief to which it may be entitled.

On June 22, 1950, upon plaintiff's filing a bond for the immediate delivery of the car, the Court issued an order directing the Sheriff to seize said property which the latter did. However, on June 24, 1950, defendant Raposas filed a counterbond for PI7,952, which is double the amount stated in the complaint, and thus secured the return of the property after the bond was approved by the Court. The bond was undertaken by Alto Surety & Insurance Co., Inc., that bound itself jointly and severally with defendant Felipe Raposas to deliver the car "if such delivery is adjudged, and for the payment of such sum to plaintiff/ as may be recovered against defendant and the costs of the action".

Defendant Felipe Raposas filed his answer on October 13, 1950, admitting his indebtedness to plaintiff in the amount of P8,970 representing the unpaid balance of the price of the car and alleging that he was willing to pay said amount but his backpay was delayed resulting In his failure to meet his said obligation. He, therefore, prayed that he be given a period of 2 months within which to settle the same.

On October 25, 1950, plaintiff moved that judgment

> "It appearing that the motion filed by the plaintiff on July 28, 1952, has been so filed out of time, that is, after the entry of the final judgment, the said motion is hereby denied".

A motion for reconsideration of this order having been denied for lack of merit, plaintiff Port Motors, Inc., brought the matter to the Court of Appeals, but the latter Tribunal certified the case to this Court on the ground that it involves a purely legal question.

The issues.-In this instance, appellant maintains that the lower court erred in holding" that plaintiff's motion to hold the bonding company liable under its bond was filed out of time, and in denying plaintiff's motion da^ed July 23, 1952, as well as its motion for reconsideration dated November 25, 1952. In other words, appellant contends that the Alto Surety and Insurance Co., Inc. is still liable under the bond, even though it has not been so declared in the judgment rendered against defendant Felipe Raposas alone, which has long become final and ordered executed but without result.

Discussion of the controversy.-:The case at bar is covered by the provisions of section 10, Rule 62, in connection with section 20, Rule 59 of the Rules ef Court. They read as follows:

> "Sec. 10. *Judgment to include recovery against sureties*.-The *amount, if any, to be awarded to either party upon any bond filed by the other in accordance with the provisions of this rule, shall be claimed, ascertained and granted under the same procedure prescribed in section 20 of Rule 59".* (Rule 62.)
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> "SEC. 20. *Claim for damages on plaintiff's bond on account of illegal attachment*.- If the judgment on the action be in favor of the defendant, he may recover, upon the bond given by the plaintiff damages resulting from the attachment. Such damages may be awarded *only upon application and after proper hearingt and shall be included in the final judgment, The application must be filed before the trial or, in the discretion of the court before entry of final judgment,* with due notice to the plaintiff and his surety or sureties, setting forth facts showing his right to damages and the amount thereof. * * *" -(Rule 59.)

Plaintiff-appellant in essence contends that the *application* which must be filed *before trial,* or in the discretion of the court before entry of final judgment, referred to in section 20 of Rule 59 is the application for damages suffered on account of the wrongful attachment, if the judgment is in favor of *defendant* and this is not applicable in *replevin* cases, where the *plaintiff claims against the surety* for its liability under the bond. This contention is untenable because the legal provision applicable to the case at bar is section 10 of Rule 62 and not section 20 of Rule 59, though the procedure prescribed in the latter Section is also to be followed in replevin cases if the surety is to be held liable ior damages under the bond.And it is to be noted that said procedure is exactly the same as that followed in injunction (section 9, Rule 60) and receivership (section 9, Rule 61) cases.'

Appellant further asserts in its brief that a counter-bond required in replevin cases is to ensure "• * * the delivery of the properly to the plaintiff, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the defendant * * * " (section 5, Rule 62), and that unless it is found that the defendant could not return the property or pay the sum adjudged against him, there could be no basis for filing a claim "against the surety under its counterbond. There seems to be no merit in this allegation for the provisions of section 20 of Rule 59 are clear, unequivocal and couched in mandatory terms that require no further interpretation. It prescribes that application MUST be filed before the trial and, if it has to be filed later, it must be with the consent of the court and before entry of final judgment, as such claim if proved shall be included in the final judgment.

There is no question that the decision in the main case has long become final; the writ of execution was issued on March 25, 1952, while the motion to hold the surety liable was filed only on July 28, 1952, or several months thereafter. There is no showing either that appellant ever filed any other application or claim against the surety in the court below during the pendency of that case or before entry of final judgment, and even a cursory reading of the decision will elicit nothing on the liability of the surety, the dispositive part of it being as follows:

> "Wherefore, the Court hereby renders judgment in favor of the plaintiff and against the defendant ordering the latter to pay the former the amount of P8,970, with interest at the rate of six per centum per annum from the date of the filing of the complaint until fully paid. With costs against the defendant".

This Court had already laid down rulings on this point. In the case of Liberty Construction Supply Co. vs. Peeson et al., 89 Phil., 50 this Tribunal. upheld the decision of the trial judge in refusing to order the execution of its judgment against the surety in view of the supposed *failure of the petitioner therein to file his claim for damages in accordance with the provision of section 10, Rule 62 and section 20, Rule 59.*

That the judgment must contain a provision as regards the liability of the surety was enunciated in the case of Visayan Surety & Insurance Co. vs. Aquino et al., 96 Phil., 900, which held:

"As the judgment is against the defendant personally, not against the surety on his counterbond, the execution to be issued must be against the property of the defendant only and it cannot issue against the counterbond because there is no judgment against petitioner thereon. As a matter of fact, the order complained of was issued to secure a judgment against the surety on the counter-bond of defendant, which shows the absence of a judgment against the surety to be executed, A judgment against a defendant cannot per se be enforced- by execution against the surety, on his counterbond; *a judgment against the surety MUST first be secured, before Ha counterbond may be proceeded against.*"

Appellant asserts that it is not asking for a writ of execution but for an order to hold the surety liable under the bond and for this matter the surety should be required to show cause why the bond should not respond for the judgment and that the application for damages against the surety be set for hearing. To allow this would result in a reopening of the main

case and modification of the decision which had already become final. The philosophy behind the provision of section 20, Rule 59, requiring an application to be filed before entry of final judgment was carefully expounded in the case of Santos vs. Moir, 36 Phil. 350, also cited in the case of Visayan Surety & Insurance Co. vs. Aquino et al., *supra*, which says:

> "It is dear that when the cause is finally adjudicated and the injunction continued or dissolved the right to the injunction definitely and finally determined; and with it the right to damages. The liability of the sureties is also determined in large part by such adjudication. Thereafter, the evidence as to their liability, if any, is largely formal. This being so, why not settle the whole matter at the time the cause is decided on the merits?"It not only saves an extra action in the trial court but it avoids an extra appeal. If there are two separate judgments in two separate actions there may be two appeals; one from the judgment on the merits, the other from the judgment for damages for the wrongful issuance of the injunction. Why have two appeals when there need be one only?"

It was further held in the same case;

> "Where the principal cause was finally decided in the Court of First Instance on the merits and a preliminary injunction issued thereon dissolved, and an appeal taken to the Supreme Court and judgment affirmed and the cause sent back for execution of judgment before an application was made for damages alleged to have been caused by the execution of the injunction, Held: That such application was too late."

This ruling was reiterated when this Court held:

> "The rule, therefore, is that a claim for damages suffered by reason of the issuance of a writ of preliminary injunction must be filed before the trial or, in the discretion of the court, before entry of final judgment. It appearing that respondent Lim sought to recover damages upon the injunction bonds only on July 29, 1948, when the decisions in the three proceedings to which the writs of preliminary injunction were; issued had become final, the herein respondent

> courts could no longer make any adjudication in favor of respondent Lim. ? * * (Facundo vs. Tan, 27 Off. Gaz., 2912)" —Visayan Surety & Insurance Co. vs. Lacson, et al.» 96 Phil., 878; 51 Off. Gaz.. 2914, June.

There might have been an oversight on the part of appellant for it has no right to presume that the surety's liability was already taken care of upon the pronouncement of the liability of defendant Raposas, having perhaps in mind their joint and several obligation under the counter-bond. But this Court, through Mr. Justice Tuason, held in the ca3e of Aguasin vs. Velasquez et al., 88 Phil., 257, the following:

> "If the surety is to be bound by his undertaking, it is essential, according to the above-quoted rules (section 10 of Rule 62 and section 20 of Rule 59), that the damages be awaTded upon application and after proper hearing and included in the final judgment. As a corollary to these requirements, due notice to the plaintiff and his surety setting forth the facts showing his right to damages and the amount thereof under the bond is indispensable. This has to be so if the surety is not to be condemned or made to pay without due process of law. It is to be kept in mind that the surety in this case was not a party to the action and had no notice of or intervention in the trial. It seems elementary that before being condemned to pay, it was the elementary right of the surety to be heard and to be informed that the party seeking indemnity would hold it liable and was going to prove the grounds and extent of its liability. This case is different from those in which the surety, by law and/or by the terms of his contract, has promised to abide by the judgment against the principal and renounced the right to be sued or cited."That the liability of the surety and the principal under the term of the bond is joint and several has nothing to do with the case. The objection is purely procedural. *The materiality i of the question of joint and several obligation does not come into play until both principal and surety have legally been adjudged liable by a lawful judgment entered after duo hearing."*

After the judgment has already become final, no motion can now be entertained to correct, modify or alter said decision for to do otherwise would work to divest a final judgment of its character of finality. It has been held time and again that:

> "Public policy and sound practice demand; that, at the risk oi occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were constituted was to put an end to controversies" (Dy Cay vs. Crossfield, 38 Phil. 521; Layda vs. Legaspi, 39 Phil. 83; and others).
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> "After the expiration of the time to appeal, if no appeal is perfected, then the judgment becomes the settled law in the case, which cannot be modified or amended, either by the court which rendered it, or by any other court, except naturally, to correct clerical errors * * *" (I Moran Comments on the Rules of Court, 1952 Ed., reprinted, p. 865 and 867).

On the strength of the foregoing considerations, the orders appealed from are hereby affirmed, with costs against appellant It is so ordered.

Paras, C, J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., and *Endencia, JJ.*, concur.

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