102 Phil. 714

[G. R. No. L-11142. December 24, 1957]

ISIDORO P. AURELIO, IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF THE LATE ISIDRO P. AURELIO, PETITIONER, VS. FIRST NATIONAL SURETY & ASSURANCE COMPANY, ET AL., RESPONDENTS.

D E C I S I O N

REYES, J.B.L., J.:

In Special Proceedings No. 684 of the Court of First Instance of Nueva Ecija for the settlement of the intestate estate of the deceased Isidro P. Aurelio, the First National Surety & Assurance Co., on October 12, 1955, presented a claim against the estate for the total amount of P14,030.10, allegedly duo claimant under its Bond No. LES-080, which it had issued as surety for the deceased in favor of the Republic of the Philippines. The deceased had signed, with two other persons, an indemnity contract agreeing to Pay, jointly and severally, to the surety company any losses, damages, payments, costs and expenses of whatever kind and nature, including attorney's fees and premiums for renewals or extensions. The claimed amount of P4,030.10 purportedly represents the following items:

(1) P11,717.48 as the amount being demanded from claimant by Philippine National Bank, through the Bureau of Commerce under said Bond No. LES-080;
(2) P555.00 as premiums on said bond for three years; and
(3) P1,757.62 as attorney's fees.

On October 26, 1955, the lower court issued an order approving the surety company's claim "in the sum of P11,717.48" and ordered the Administrator to pay the same out of the estate of the deceased within sixty days. The Administrator sought reconsideration of the order on the ground that the claim in question was contingent on claimant's paying the principal obligation; that such payment had not yet been made; and that the estate had already paid a portion of the obligation to the Philippine National Bank and was taking

steps to settle the balance of the liability. The court, however, found that the obligation of the deceased to the claimant surety company was based on their indemnity agreement under the provisions of which the deceased agreed to pay the surety company "as soon as demand is received from the creditor"; hence, it denied the motion for reconsideration, and held that "the claim of the First National Surety & Assurance Co., Inc. is in order and should be paid by the estate of the deceased" (Order of November 25, 1955). No appeal having been taken from the two orders approving the claim, the same became final and executory.

On June 22, 1956, the claimant surety company filed a petition with the trial court, alleging' that the Administrator had already paid the sum of P11,718.00 on account of its claim, and praying that he b3 ordered to pay the remaining balance of P3,322.18 with interest until full payment. The administrator opposed this petition aver- ring that the claim of the surety company was approved in the amount of P11,717.48, and the estate having paid said amount, payment of further sums should be denied. Whereupon, the court, on July 6, 1956, issued an order stating that the surety company's claim against the estate was the amount of P14,030.10 and it was only through clerical error that the court, in its order of October 26, 1955, limited its amount to P11,717.48; and amended said order "in the sense that the amount to be paid by the said Administrator is P14,030.10 and considering the interest which the money should earn, there is a balance in the amount of P3,322.18 which should be paid to the petitioner by the said Administrator", and ordered the Administrator to pay P3,322.18 in addition to that already paid, with interest at the rate of P4.35 daily from June 22, 1956, until the same is fully paid". The Administrator filed a motion for reconsideration, stressing that the order of October 26, 1955 having become final and unappealable, and having already been executed by his payment to the claimant company of the amount of P11,718.00, the court no longer had jurisdiction to amend said order. But the motion for reconsideration was denied; hence, the Administrator filed the present petition for certiorari with this Court.

Assuming that the claim of the respondent company should have been approved for more than the amount of P11,718.00, and that the lower court committed an error in approving said claim for only the sum of P11,717.48, the order of approval has, however become final and unappealable, and beyond the power of the court below to amend or modify. The court sought to justify the amendment (increasing the amount awarded) on the theory that it committed a simple clerical error when it approved the claim for P11,717.48. But such amendment can not be said to merely correct a clerical mistake; for the original order approved the claim in question for P11,717.48 only, and to increase

the same by 3,322.18, plus interests, is to effect a substantial and material change in the original order, under which the estate had already acquired the right to pay the claimant P11.717.48 and no more. Distinguishing the court's power to correct errors and omissions in final judgments from its power to repair a judicial error or inaction therein, Freeman makes the following comment:

> "The general power to correct clerical errors and omissions does not authorize the court to repair its own inaction, to make the record and judgment say what the court did not adjudge, although it had a clear right to do so. The court can not under the guise of correcting its record put upon it an order or judgment it never made or rendered, or add something to either which was not originally included although it might and should have so ordered or adjudged in the first instance. It can not thus repair its own lapses and omissions to do what it could legally and properly have done at the right time. A court's mistake in leaving" out of its decision something which it ought to have put in, and something in issue of which it intended but failed to dispose, is a judicial error, not a mere clerical misprision, and can not be corrected by adding to the entered judgment the omitted matter on the theory of making the entry conform to the actual judgment entered." (Freeman on Judgments, see. 141, Vol. I, p. 273)

Pursuant to the above rule, we held in Marasigan vs. Ronquillo, 94 Phil., 237, that "the rule is absolute that after a judgment becomes final, by the expiration of the period provided by the rules within which it so becomes, no further amendment or correction can be made by the court except for clerical errors or mistakes". And in Halili vs. Public Service Commission, 98 Phil., 357, we said that the mere fact that the decision does not conform to the evidence presented is not a justification for an amendment of the decision; and that rights acquired by virtue of a decision should not be revoked under the pretext of amendment.

The respondent company points to the lower court's order of November 25, 1955 (denying petitioner's motion to reconsider its earlier order of October 26, 1955 approving the claim of P11,717.48), the dispositive portion of which says that "the claim of the First National Surety & Assurance Co., Inc. is in order and should be paid by the estate of the deceased"; and argues that as the correct amount of its claim is P14,030, with

interests, that is the amount that the estate must pay under this second order. The argument is untenable, for in said order of November 25, 1955, the lower court simply rejected petitioner's theory that he could be made to answer for the surety company's claim only after the latter had paid the creditor and not before, on the ground that the estate's liability is based on an express provision in the indemnity agreement between claimant and the deceased that indemnity will be made "as soon as demand is received from the creditor * * *". The order in question did not state that the surety company's claim, approved at P11,717.48 in the court's first order of October 26, 1955, had been increased to a bigger amount on the other hand, it still referred to the claim of the company as "in the amount of P11,717.48".

If respondent had wanted the order of October 26, 1955 amended so as to correct the amount of its approved claim, it should have promptly called the attention of the court to that matter and asked for the correction of the amount allowed. Only respondent, however., failed to take this step; the order approving its claim for a lesser amount became final and executory (it has in fact been fully executed by payment of the Administrator of the amount of P11,718.00) ; and thereafter, it was too late, and beyond the jurisdiction of the trial court, to repair its error by substantially amending an already final and executed judgment (Carla Pirovano, et al. vs. Canizares, G. R. L-9431, May 17, 1957).

The Order appealed from is therefore', set aside. Costs against respondent First National Surety & Assurance Co. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, Bautista Angelo, Labrador, Concepcion, Endencia, and *Felix, JJ.,* concur.

Date created: October 14, 2014