

G.R. No. L-9136

[**G.R. No. L-9136. May 31, 1958**]

LVM TRANSPORTATION COMPANY AND LORENZO CATALAN, PETITIONERS, VS. HON. ENRIQUE A. FERNANDEZ JUDGE OF THE COURT OF FIRST INSTANCE OF DAVAO, AND STANDARD VACUUM OIL COMPANY, RESPONDENTS.

D E C I S I O N

REYES, A., J.:

Following the rendition of a money judgment in its favor in Civil Case No. 1149 of the Court of First Instance of Davao brought by it against the therein defendants LVM Transportation Co. and Lorenzo Catalan, now petitioners herein, the Standard Vacuum Oil Co. filed a motion for immediate execution on January 3, 1955. But defendants opposed the motion and took their appeal in due time, filing, on January 11, their notice of appeal, appeal bond and record on appeal and setting the hearing thereon on January 15. As no one appeared for plaintiff at the hearing and no objection to the record on appeal had been filed, the court approved the record on that same day. But despite that fact, the court on the 28th of that month granted plaintiff's motion for immediate execution without even requiring plaintiff to file a bond. On February 10, defendants asked for a reconsideration of this order on the ground that, with the approval of the record on appeal, the court had no more jurisdiction to issue said order. Plaintiff opposed the motion and, in what would appear to be an attempt to obviate the objection as to want of jurisdiction, countered with a motion to set aside the order approving the record on appeal on the ground that it was rendered by mistake, that is, without the court being aware that plaintiff had asked for the postponement of the hearing on the record on appeal, to say nothing of the fact that the motion for immediate execution was still unresolved. In an order dated March 2, 1955, the lower court resolved to let the order for immediate execution stand, at the same time setting aside the order approving the record on appeal.

Alleging that the order for immediate execution was rendered after the lower court had already lost jurisdiction over the case and that in authorizing immediate execution without bond the respondent judge acted with grave abuse of discretion, the defendants came to this Court with the present petition for certiorari to have the said order annulled and its enforcement enjoined.

The writ must be granted.

Section 9 of Rule 41 provides that “upon the filing of the notice of appeal and the approval of the appeal bond and the record on appeal, the appeal is deemed perfected and the trial court loses its jurisdiction over the case.” Excepted from that provision is the authority “to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal”; but an order for immediate execution does not come under that exception, for as this Court has already said, “the execution of a judgment is a proceeding affecting the rights of the parties, which are the subject matter thereof, and from which appeal is taken, and its purpose is not to preserve and protect the subject of the litigation,” (Syquia vs. Concepcion, 60 Phil. 186.) With, jurisdiction over the case already transferred to the appellate court upon the approval of the record on appeal (Santiago et al, vs. Valenzuela et al., 76 Phil. 397) that of the trial court is necessarily lost or terminated (De la Fuente et al. vs. Jugo et al., 76 Phil. 262), except the authority “to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, and to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court” as expressly provided in section 9 of Rule 41. Subject only to this exception, the cessation of the trial court’s jurisdiction is not postponed to the day the record is actually transmitted to the appellate court.

Plaintiff-respondent complains against the approval of the record on appeal despite its motion, for postponement and before the expiration of the five-day period allowed by section 7 of Rule 41 for the filing of objections. But the mere fact that a party has asked for postponement does not give him the right not to appear at the hearing without the request having been granted. And the premature approval of the record on appeal would appear to be a harmless error

as no prejudice caused thereby has been alleged, plaintiff-respondent never having formulated any objection to the record on appeal which the premature approval of that record has prevented it from filing.

The complaint that plaintiff was not furnished a copy of the appeal bond is but a technical objection of little significance, it appearing that the bond was actually filed together with the record on appeal and the notice of appeal served upon plaintiff makes express reference thereto. Moreover, there is no showing that the alleged omission has caused any prejudice.

We concur:

In view of the foregoing, the petition for certiorari is hereby granted and the order setting aside the order approving the record on appeal and granting immediate execution annulled, with costs against plaintiff-respondent.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ.,
concur.