

PACIFIC UNION INSURANCE CO., PETITIONER, VS. HON. GREGORIO S. NARVASA, ETC., AND QUINTILLANA SANSON, RESPONDENTS.

G.R. No. L-10696. May 28, 1958

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

Petitioner brought this petition for certiorari, injunction and mandamus to secure from this Court:

- (a) A writ of preliminary injunction to restrain the Court of First Instance of Manila, Branch IV (Probate Court), presently presided over by respondent Hon. Judge Gregorio S. Narvasa, from enforcing the orders of confiscation or forfeiture of herein petitioner's bond (Annex A), more particularly the orders of April 14, 1955, July 20, 1955, August 20, 1955, September 17, 1955, October 31, 1955, December 6, 1955, and January 14, 1956;
- (b) An order to set aside the Orders of March 15, 1956 and April 21, 1956, which declared that herein petitioner's notice of appeal, record on appeal, and appeal bond were filed not within the reglementary period allowed by law; and
- (c) An order to require the respondent Hon. Judge Gregorio S. Narvasa to give due course to the appeal interposed by herein petitioner from the orders of confiscation and forfeiture, and to approve petitioner's notice of appeal, record on appeal, and appeal bond filed simultaneously on February 14, 1956.

The factual background of the petition may be briefly stated as follows:

In Special Proceeding No. 11259 of the Court of First Instance of Manila, entitled Testate Estate; of Vicente Sotto, the petitioner posted Executor's Bond PU No. 1310, dated July 11, 1950, in the sum of P10,000, in behalf of Executor Tagakotta Sotto and "for the benefit of the heirs, legatees or creditors" of the deceased Vicente Sotto. Tagakotta Sotto failed to perform his duties as such executor and, by court's order dated April 19, 1955, he was relieved of his trust, and in his stead Plaridel Sotto was appointed administrator of said estate.

Prior to the aforementioned date, viz., on November 24, 1954, December, 1954, January 31, 1955, February 1, 1955, March 31, 1955, and June 15, 1955, Tagakotta Sotto was ordered to render his account, but failed to do so; hence on June 23, 1955, Quintillana Sanson, one of the claimants, filed a motion against him for contempt of court, praying at the same time that the bond posted by the herein petitioner be confiscated and disposed of in accordance with Sec. 2 of Rule 32 of the Rules of Court. At the hearing of this motion, Atty. Heraclio Abistado appeared for the executor, stating that the latter was in New York, and prayed that said executor be given an opportunity to submit the accounting called for in the order of the court of April 14, 1955. On July 20, 1955, the court granted the motion and gave Tagakotta Sotto time, up to August 15, 1955, to submit the required accounting, with warning that should he fail to do so, "the bond filed by him would be automatically confiscated." Despite this order, the executor did not submit his accounts, so on August 20, 1955, the lower court entered the following order:

"It appearing that the former executor Tagakotta Sotto has failed to submit the accounting called for in the

order of April 14, 1955 on August 15, 1955, and in consonance with the order of July 20, 1955,

"The bond filed by said former executor Tagakotta Sotto (PU No. 1810) is hereby ordered confiscated.

"The motion filed by counsel for said former executor on August 15, 1955) is hereby denied.

"Let the Pacific Union Insurance Company be notified of this order."

Petitioner herein was notified of this order on August 23, 1955. On September 14, 1955, petitioner filed a motion praying that the order of August 20 be lifted and that it be given opportunity to be heard in connection with the motion of August 20 for confiscation or forfeiture of the bond of P10,000 and to contact Tagakotta Sotto to make him comply with the orders of the court requiring him to file his account of administration. Acting upon this petition, on September 17, 1955, the court gave the petitioner herein 30 days from receipt of the order to cause "the submission by the former executor Tagakotta Sotto of the accounting called for in the order of April 14, 1955 as supplemented by the order of July 20, 1955." On September 21, 1955, petitioner was notified of this order, but it failed to cause the submission of the accounting, so on October 31, 1955, the court issued a writ of execution of the bond which was confiscated by virtue of the order of August 20, 1955. Upon being notified of this order on November 4, petitioner herein, instead of filing a notice of appeal, asked the court on November 25, 1955, that "the writ of execution be lifted or at least suspended and that another extension of time of 30 days be granted to give the movant an opportunity to finally cause the submission by former executor Tagakotta Sotto of his accounts." The court denied this motion on December 6, 1955, for not being well taken, of which petitioner was notified on December 9, 1955.

On January 7, 1956, petitioner herein filed a motion to annul the orders of July 20, August 20, October 31 and December 6, 1955, on the ground that -

- The movant Surety Company can not be held liable under its executor's bond unless an action against said undertaking is instituted against the surety and the principal;
- No writ of execution may issue against the surety's bond when its liability thereunder has not been previously determined by this Honorable Court by proper accounting, wherein the surety should be allowed to intervene;
- The proper remedy is removal of executor when he fails to render an accounting of his administration, and not confiscation of his bond;

contending that said orders were null and void, leaving been issued by the court without jurisdiction and without basis in law, for without an action previously filed against the executor or administrator wherein his liability and that of the petitioner under the administration bond in question has been determined, the bond can not be confiscated or executed, and therefore the order of July 20, 1955 declaring the bond in question as automatically confiscated, as well as the order of August 20, 1955 confiscating the bond, were illegal, null and void. This motion was denied by the lower court on January 14, and the petitioner has been notified thereof on January 17, 1956. Thereupon, on February 15, 1956, petitioner filed notice of appeal, record on appeal and appeal bond, praying that the appeal be given due course.

On March 14, 1956, the respondent Judge dismissed the appeal on the ground that the notice of appeal, record on appeal and appeal bond "have been filed not within the reglementary period allowed by law,"

It is vigorously contended by the petitioner that the appeal was filed within the time allowed by law because it was presented 28 days immediately after it was notified on January 17, 1956 of the court's order dated January 14, 1955; but it appears that from the orders of August 20, 1955, October 31, 1955 and December 6, 1955 no appeal was filed by the petitioner except the Record on Appeal presented only on February 14, 1956, when the 30 days

prescribed by law for perfecting an appeal had already elapsed. Again, petitioner contends that the respondent Judge denied its motion of January 17, 1956 on the only ground that it was not well founded" and not because the previous orders of confiscation and execution of the executor's bond in question, viz., (orders of July 20, 1955, August 20, 1955, October 31, 1955 and December 6, 1955) had already become final and executory; but it is a fact that at the time of the filing of the notice of appeal, appeal bond and record on appeal which were rejected by the lower court, the aforesaid orders were already final and executory.

Anent petitioner's contention that the orders of confiscation and execution of the bond in question were null and void for having been issued by the lower court without or in excess of jurisdiction and without basis in law, for no confiscation and execution of said bond can be ordered without the liability of the petitioner and the executor thereunder having been previously determined in a separate action, we find it untenable for as ruled in *Cosme de Mendoza vs. Pacheco and Cordero*, 64 Phil. 136 -

"It is clear that a Court of First Instance, exercising probate jurisdiction, is empowered to require the filing of the administrator's bond, to fix the amount thereof, and to hold it accountable for any breach of the administrator's duty. Possessed as it is, with an " all-embracing power over the administrator's bond and over administration proceedings, a Court of First Instance in a probate proceeding can not be devoid of legal authority to execute and make that bond answerable for the very purpose for which it was filed. It is true that the law does not say expressly or in so many words that such court has power to execute the bond of an administrator, but by necessary and logical implication, the power is there as eloquently as if it were phrased in unequivocal terms. When the accountability of an administrator's bond is spoken of in the very provisions dealing with and bearing directly on administration proceedings, it would involve a strained construction to hold, as appellants would have us do, that where an administrator is held liable for a devastavit for having squandered and misapplied property which he was in duty bound to marshal and conserve, the estate is without a remedy to against the administrator's bond in the same probate proceeding, but in an action outside of and separate from it."

It is undeniable that a bond posted in behalf of an executor or administrator "is conditioned on the latter's rendering a true and just account of his administration to the court within one year, and at any other time when required by the court" (par. c, Sec. 1, Rule 62, Rules of Court). Consequently, upon failure of the herein executor Tagakotta Sotto to render the accounts required by the disputed orders, the bond in question may be held liable for such failure, and accordingly ordered confiscated and executed. It should be noted that the court below ordered the confiscation and execution of the bond in question after the herein petitioner had been given opportunity to cause the submission by executor Sotto of his accounting and upon failure of the latter to submit it, so that it could not be said that the court below issued the order of confiscation and the writ of execution without giving the herein petitioner its day in court to be heard in connection therewith.

Lastly, it is undisputed that on January 7, 1955 when the petitioner filed its motion to annul the aforesaid orders dated July 20, 1955, August 20, 1955, October 31, 1955, these orders were already final and executory and beyond the jurisdiction of the court below, and therefore said motion to annul could no longer be entertained by the court because of lack of jurisdiction, and it was properly overruled. Accordingly, we hold that petitioner's appeal from the order of the lower court dated January 14, 1955 denying the aforesaid motion to annul dated January 7, 1955, was not well taken and was correctly rejected by the court.

Wherefore, the petition under consideration is hereby denied, with costs against the petitioner.

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

Felix, J., reserves his vote.

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