

**MERCEDES SY, PETITIONER, VS. JUDGE DOMINADOR C. MINA,
MUNICIPAL COURT, CABATUAN, ISABELA, M. CHUAKAY & SONS
RICE MILL, INC., QUEZON CITY SHERIFF, L.F. VILLASENOR AND
DEPUTY SHER...**

G.R. No. L-32217. August 15, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for prohibition and certiorari with preliminary injunction to set aside the June 17, 1970 Order of the Municipal Court of Cabatuan, Isabela, in Civil Case No. 298 "M. Chuakay & Sons Rice Mill, Inc. vs. Mercedes Sy" denying the motion to dismiss and to discharge writ of attachment.

On April 22, 1970, herein private respondent filed with the Municipal Court of Cabatuan, Isabela, a complaint docketed as Civil Case No. 298 against herein petitioner (Rollo, pp. 9-11), alleging, in substance, that on October 25, 1969, in Quezon City, petitioner purchased 180 cavans of rice worth P8,560.00. Per issued purchase invoice, she agreed to the jurisdiction of Isabela courts in case of any action that might arise thereon. She paid the purchase price with a post-dated check, No. CB-229040-A, drawn against her current account with the Consolidated Bank and Trust Co., Quezon City; which check was dishonored. When the check was returned on December 15, 1969 and payment in cash was demanded, she issued another check, No. CB-220903-A, drawn against her current account with the Philippine Trust Co., and this check was also dishonored. Accordingly, private respondent prays, among others, that a writ of preliminary attachment be issued against petitioner's properties. This complaint was amended on May 26, 1970, reducing the amount claimed for attorney's fees and damages. (Ibid., pp. 17-20).

On April 25, 1970, respondent judge issued a writ of attachment commanding the Sheriff of Quezon City to attach real and personal properties of the petitioner (Ibid., p. 25).

On June 10, 1970, petitioner filed a Motion to Dismiss the Complaint and to Discharge the Writ of Attachment raising among other things, that venue was improperly laid, defendant (petitioner herein) being a resident of Quezon City and, the questioned transaction having occurred thereat, and that a criminal charge of estafa against the same defendant petitioner had already been filed in the City Fiscal's Office of Quezon City.

In opposition thereto private respondent alleged that petitioner had already waived her right to venue as clearly shown by the Sales Invoice issued to her on the basis of which the questioned check was issued in full payment thereof. (Ibid., pp. 33-35). In an Order dated June 17, 1970, respondent judge denied the motion. (Ibid., pp. 41-42).

On June 22, 1970, petitioner filed a Motion for Reconsideration (Ibid., pp. 45-48), but the same was denied in an Order dated April 25, 1970 (Ibid., p. 55). Hence, the instant petition.

Petitioner raised two issues, to wit:

I

Whether or not the Municipal Court of Cabatuan, Isabela is the proper venue of respondent Chuakay's Civil Case No. 298 against the petitioner Mercedes Sy on the basis of the concededly unsigned sales invoice receipt.

II

Whether the pretended sales invoice receipt can change the venue of action in accordance with Section 3, Rule 4, Revised Rules of Court.

The instant petition is devoid of merit.

The pivotal issue in this case is whether or not private respondent's Sales Invoice Receipt No. 2262 (Ibid., p. 84), issued for the purchase of 180 cavans of rice by petitioner, is determinative of the venue of the case.

Said invoice receipt stipulates:

"Buyer hereby agrees on terms indicated above and in the event of default or non-payment buyer agrees further to the jurisdiction of Cabatuan, Isabela Courts, x x x."

Petitioner claims that the Sales Invoice Receipt showing that the blank space found on top of the printed word "BUYER" is not signed and without even any initial of the person who prepared it, cannot be the "written agreement", which the law requires that may change the venue of an action from one province to another. She quoted Section 3, Rule 4, Re-vised Rules of Court which provides:

"By written agreement of the parties, the venue of the action may be changed or transferred from one province to another"

and contends that from the said provision, it is clear that the agreement as to a change of venue must be in writing; which necessarily must be signed by the parties and must show explicitly on its face, consent of the parties signified by affixing their signatures on such written agreement. She argues that most essential in any kind of agreement and under the above legal requirement in particular, is the meet-ing of the minds of the parties which must appear in writing. Allegedly such legal requirement does not find compliance in Chuakay's "Sales Invoice Receipt".

This issue has already been laid to rest by this Court, in the case of Pan Pacific Company (Phil.) vs. Advertising Corporation (23 SCRA 977, 991, [1968]), where under similar circumstances, it was held that the vendee's acceptance of the equipment and supplies and accessories, and the use it made of them is an implied conformity to the terms of the invoices and he is bound thereby.

Later, in reiteration of the above ruling, this Court in Naga Development v. Court of Appeals 41 SCRA 106 [1971], stated more categorically, that the buyer's failure to inter-pose any objection to the invoices issued to it, to evidence delivery of the materials ordered as per their agreement and which contained the clause in question, should be deemed as an implied acceptance by the buyer of the said conditions.

PREMISES CONSIDERED, the instant petition is DISMISSED for lack of merit; the writ of preliminary injunction issued in this case is LIFTED and this case is REMANDED to the lower court for hearing on the merits; with costs against the peti-tioner.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, and Sarmiento, JJ., concur.

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