

BLUE GREEN WATERS, INC., PETITIONER, VS. HON. CARLOS L. SUNDIAM, JUDGE, COURT OF FIRST INSTANCE OF MANILA, BRANCH XXVIII AND CALIXTO TAN, RESPONDENTS.

G.R. No. L-45901. September 13, 1977

Ponente: MARTIN, J.

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MARTIN, J.:

This is a petition for certiorari, prohibition, mandamus, injunction with prayer for restraining order and writ of preliminary injunction, to review the orders of the respondent Court of First Instance, Branch XXVIII, presided over by the Hon. Carlos L. Sundiam, in Civil Case No. 106172, entitled Calixto Tan, plaintiff, versus Blue Green Waters, Inc. and to annul and modify the same.

On January 5, 1977 private respondent Calixto Tan filed a complaint for recovery of sum of money and damages in the amount of P378,588.61 plus P90,000.00 as attorney's fee, premium paid and costs against petitioner Blue Green Waters, Inc., which case was assigned to Branch XXVII which at the time was left vacant due to the retirement of the presiding Judge therein, the Honorable Rafael Sison. The complaint did not contain any prayer for issuance of preliminary injunction.[1]

On January 12, 1977 the respondent Judge of Branch XXVIII, Court of First Instance, Manila, issued an ex parte order of preliminary attachment in said Civil Case No. 106372 assigned to Branch XXVII, Court of First Instance, Manila, without hearing and without any notice to the petitioner why as Judge of Branch XXVIII he issued said order in Civil Case No. 106172 assigned to Branch XXVII.[2]

On March 6, 1977 the respondent Judge after due hearing lifted the order of preliminary attachment after petitioner filed a counterbond in the amount of P378,588.61 to answer for whatever amount that the private respondent is claiming in his complaint.[3]

On March 9, 1977 after the writ of preliminary attachment was lifted after petitioner filed its counterbond of P378,588.61 thus freeing the property from the custody of the court and from the result of the aforementioned civil case, petitioner sold 10,900 bags of damaged Urea Fertilizer to Mr. Almario P. Laus, as representative of the manager of Pasudeco Marketing Cooperatives which is duly authorized by the Fertilizer Industry Authority to purchase and transport bags of damaged urea fertilizer for use of sugar planters in Pampanga.⁴ The sale of 10,900 bags of damaged Urea Fertilizer was perfected and consummated on March 9., 1977.

On March 11, 1977, respondent Judge upon an ex parte motion of private respondent, without notice and without hearing, issued a restraining order, enjoining petitioner from selling or disposing of the fertilizer in question, unmindful of the provisions of Sections 3, 4 and 5 of Rule 58 of the Revised Rules of Court that preliminary injunction may be granted only where the action is for injunction (Sees. 3 and 4) and no injunction will be granted exparte unless it is shown by affidavit that great and irreparable injury would result[5] and of the fact that the order of attachment previously issued had already been lifted by the respondent Judge after petitioner had duly filed the corresponding counterbond to answer for whatever amount respondent is claiming in his complaint. With

this it would seem that whatever legal obstacle there was to the sale of the fertilizer in question on March 9, 1977 was avoided.

On March 16, 1977, respondent Judge again upon an ex parte motion of private respondent but without notice and hearing, issued an order restraining petitioner from selling or disposing of the fertilizer in question, based on a supposed respondent's supplemental complaint dated March 5, 1977.[6] According to the records the alleged supplemental complaint has not been admitted. Even the motion to strike out respondent's supplemental complaint for having been filed without leave of court and without proof of notice has not been acted upon.

On March 29, 1977 after petitioner filed its motion to strike out the supplemental complaint of private respondent, the respondent Court issued the now disputed order, the dispositive portion of which reads as follows;

"WHEREFORE, premises considered, this Court hereby orders:

1) The lifting of the Restraining Order as regards the sale of 10,900 bags of Urea Fertilizer, leaving open, however, the issue of fraud attendant to the execution of the deed of sale to be ventilated during the trial on the merits.

2) That instead of depositing with court the whole proceeds of the sale of 10,900 bags of urea fertilizer, the court hereby orders defendant Blue Green Waters, Inc. to deliver to the plaintiff 30% of the advance deposit in the total amount of P200,000.00 within thirty (30) days upon receipt of this order and also 30% of the remaining balance within the same period of time upon full payment after the completion of the inventory of the urea fertilizer in pursuance to the terms and conditions under the Deed of Absolute Sale, attached as Annex "A" to the Opposition to plaintiffs Motion for Preliminary Injunction; Opposition to Sell and Motion to Lift Restraining Order, dated March 11, 1977, filed by the defendant, Blue Green Waters, Inc., under the date of March 14, 1977;

3) The taking of an immediate inventory to be constituted by a team representing both parties, within a period of thirty (30) days from receipt of this order, the same to be submitted to the court before any further sale on the remaining salvage goods could be effected in the future.

4) The granting of a preliminary injunction enjoining defendant Blue Green Waters, Inc., its agents, employees, lawyers, or representatives, from selling or disposing in any manner any portion or all of the remaining salvaged cargoes, including the vessel MV "FUSAN," without notice to knowledge and participation of the plaintiff, or his duly authorized representative, and in the event of sales the proceeds thereof (are) ordered deposited with the court unless, of course, the parties by agreement in writing presented with the Court, had opted to divide the said proceeds in accordance with the terms and conditions provided for under the Amended Contract after deducting the preferred claims corresponding to the goods, subject of the sale, such as taxes, warehousing charges, etc. and

5) The immediate sale of the remaining salvaged goods which appear now in deterioration subject, of course, to the abovementioned conditions.

SO ORDERED."

On April 4, 1977, the respondent Court issued another order, upon ex parte motion of private respondent, without notice and hearing, restraining petitioner from selling or disposing of the 10,900 bags of damaged Urea Fertilizer already disposed and sold on March 9, 1977, in disregard of its own order of March 29, 1977 to the effect that the fertilizer in question was beyond the reach of the restraining order or any writ of preliminary injunction henceforth to be issued. It is true that when respondent Judge's attention was called by petitioner on April 6, 1977 to the nullity of the orders dated March 29, 1977 and April 4, 1977, he set aside the order of April 4, 1977 but not his order of March 29, 1977. So the latter remained subsisting.

We hold the questioned order null and void.

It is not shown that petitioner was even notified of the motions which prompted the respondent Judge to issue the questioned order, nor were there hearing held on said motions. The respondent Court's order of attachment on the alleged ground that petitioner was fraudulently disposing its properties was issued without notice to petitioner and without giving him a chance to prove that it was not fraudulently disposing of its properties. This is irregular. Another irregularity was committed by the respondent Judge when he enjoined the petitioner from disposing of the fertilizer in question after the order of attachment on petitioner's properties was already lifted due to the filing of a counterbond by petitioner and worse still, after the fertilizer in question was already sold to a third person. But perhaps the biggest mistake committed by the respondent Judge was when he issued the order dated March 29, 1977 based on private respondent's supplemental complaint which was not even admitted yet by the court and when he treated the matters alleged therein conclusive as to the rights between petitioner and private respondent, thus adjudicating the case on the merits without giving the parties the benefit of due process.

WHEREFORE, the trial court's order dated March 29, 1977

is hereby set aside and declared void as issued in excess of its jurisdiction. With costs against the private respondent.

SO ORDERED.

Makasiar, Muñoz Palma, Fernandez, and Guerrero, JJ., concur.

Teehankee, J. (Chairman), concurs in a separate opinion.

[1] AnnexC of the Petition.

[2] Annex D of the Petition.

[3] Annex E-l of the Petition.

[4] Annex F-l of the Petition.

[5] Annex I of the Petition.

[6] Annex K of the complaint.

CONCURRING:

TEEHANKEE, J.,

I concur in the result. It was grave abuse of discretion on respondent judge's part to issue the questioned order (prescinding from its being premised on a supplemental complaint filed without leave of court[1]) since he had already previously lifted the writ of preliminary attachment upon petitioner's filing of a sufficient counterbond that would answer for respondent-plaintiff s claims, if duly substantiated after trial.

Respondent judge's questioned order granting a preliminary injunction against the disposition of the salvaged cargo without the participation and intervention of respondent-plaintiff was arbitrary and in excess of jurisdiction, since he had already granted said respondent the provisional remedy of attachment (duly discharged by petitioner's counterbond) which adequately protected said respondent's alleged claims, aside from the fact that he

was in effect prejudging the case in respondent's favor without trial and without due process.

I write these brief remarks to avoid the implication in Mr. Justice Martin's opinion (at page 5) that a writ of attachment may not be issued ex parte.

[1] Rule 10. sec. 6.

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