

**VALDERRAMA LUMBER MANUFACTURERS’ CO., INC.,
PETITIONERS, VS. VICENTE N. CUSI, JR. IN HIS CAPACITY AS
PRESIDING JUDGE, SALA I, COURT OF FIRST INSTANCE OF DAVAO,
PROVINCIAL SHERIF...**

G.R. No. L-16864. April 18, 1962

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

Suit to annul an order of execution pending appeal.

In Civil Case No. 3125 of the Davao court of first Instance, judgment was rendered requiring Valderrama Lumber Manufacturers' Co., Inc., to pay to Francisco Ang, Pablo Albios, Avelina Chaves and the heirs of Carlos Chaves, the total sum of P29,683.32 as damages arising from a collision of two trucks, one of them owned by said corporation, whose driver, Perfecto Veras, was found to be guilty of homicide and physical injuries thru reckless negligence in a previous criminal proceeding. He bumped against the truck of Ang, killed Carlos Chaves and injured Albios (Avelina is the widow of Carlos).

The judgment rested on the corporation's subsidiary liability as employer, the driver having been shown to be insolvents.

Copy of the judgment was received by said corporation on March 30, 1960; and on the same date, the above named awardees filed a motion for immediate execution of the judgment pending appeal, after serving on the Valderrama Corporation copy of such motion, which fixed the next day for its hearing. That day, the corporation opposed the motion for non-compliance with the three-day-notice requirement, and that, anyway, the motion was groundless and premature.

The respondent Judge Cusi, Jr., granted the motion, holding that any apjteal by the corporation would obviously be for the mere purpose of delay, inasmuch as its defense against the claims for damages consisted of "a mere denial unaccompanied by any facts which would be admissible in evidence at a hearing."

Wherefore, the corporation instituted this proceeding. And it having alleged that pursuant to the order of execution the sheriff had levied on certain logs ready for exportation which were worth P42,000.00, we issued upon its request, a writ of preliminary injunction.

The respondents answered alleging that the order of execution pending appeal had been issued for good cause; that the three-day period may be waived under certain circumstances in the court's discretion; and that, anyway, the corporation had an adequate remedy in law, namely, to file a supersedeas bond under Section 2, Rule 39, which for convenience, is hereby quoted:

"Sec. 2. Execution discretionary.—Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good1 reasons to be stated in a special order. If a record on appeal is filed thereafter, the special order shall be included

therein. Execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part."

It is admitted that in the court below, herein petitioner never offered to file a supersedeas bond. Here it alleges it is solvent, and apparently, it would not be difficult for it to file such bond. On the other hand, we do not perceive a clear abuse of discretion in the circumstances because (without prejudging the case), we notice that the lower court in its decision said that the corporation "presented only Exh. A, affidavit of Francisco Ang, which proves nothing.[1]

WHEREFORE, this petition is hereby dismissed with the understanding that petitioner will be given 10 days from the time this decision becomes final within which to file a supersedeas bond. Otherwise, the order of execution shall be carried out.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

[1] Affidavit says Albros and Carlos Chavez insured.

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