

PRICE STABILIZATION CORPORATION, PHILIPPINE WHEAT FLOUR BOARD, MANUEL S. RUSTÍA, ERNESTO Y. SIBAL, AND OTHER MEMBERS OP THE PHILIPPINE FLOUR, INSTITUTE, INC., PETITIONERS, VS. O...

G.R. No. L-4327. December 15, 1950

Ponente: FERIA, J.

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FERIA, J.:

Petition for certiorari denied. Lower court had jurisdiction to issue the special order of execution complained of. Section 2, Rule 39 provides that before the expiration of the time to appeal, execution may issue, at the discretion of the court, on motion of the prevailing party, but before the perfection of the appeal. The parties were notified of the decision on the 13th and 14th of November, and the time within which to appeal is 15 days from notice of judgment in a mandamus case (sec. 17, Rule 41). The lower court issued, on November 22, 1950, a special order of execution of the judgment after hearing both parties under said section 2, Rule 39. Without necessity of discussing whether the approval or order of transmittal by the lower court of the original record to the Supreme Court, which may be considered as equivalent to the approval of a Record on Appeal in an ordinary civil action, is necessary for the perfection of the appeal in certiorari, prohibition, mandamus and quo warranto, it is obvious that the mere filing of the notice of appeal and appeal bond is not sufficient, because the appeal bond must be approved by the court as expressly required by sections 5 and 9 of Rule 41, the approval thereof being one of the requisites for the perfection of an appeal. In case of cash bond, mere deposit of the amount of sixty pesos (P60) with the clerk of the court is not sufficient. Notice of such deposit must be served upon the adverse party, and the approval of the court is required, not only to inform the court that the deposit was made at a date within the period fixed by law, but to inform and enable the adverse party to object to the amount of the bond so deposited, in order that the court may decide whether to approve the bond or fix different amount.

Section 5 of Rule 41, provides that "the appeal bond shall be in the amount of P60 unless the court shall fix a different amount or unless a supersedeas bond is filed. The appeal bond shall be approved by the court, and is conditioned for the payment of costs which the appellate court may award against the appellant." For instance, if the appeal is clearly without merit, and the appellate court may probably impose triple costs upon the appellant, the lower court may require a higher amount of appeal bond. And section 9, Rule 41, in consonance with the above quoted provision of section 5, 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, except 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."

To hold that, in the present case, the mere filing of the notice of appeal, and the filing or deposit of cash bond with the clerk of court has automatically deprived the trial court of its jurisdiction over this case, would be to practically nullify the discretionary power granted said court by section 2, Rule 39, to order, upon good reasons,

the execution of its judgment before the expiration of the time to appeal; because in all cases the judgment debtor may, on the very day the judgment is rendered or notified to him, file notice of appeal and deposit of P60 as cash bond with the clerk of court.

It is true that in the minute resolution on the motion for reconsideration filed in *Lopez vs. Lopez, et al.* (77 Phil., 133), it was held that "the filing of cash bond on time in the amount required by the court requires no express approval because it can not be disapproved." (Italics ours.) But this is an obiter because necessity for the approval of cash bond was not in issue in the motion for reconsideration in that case, for one of the premises of said minute resolution was: "taking into consideration that the second ground alleged in the motion to dismiss dated June 11, 1946, filed in the court below, was failure to file appeal bond, and not failure to have the appeal bond already filed approved alleged in the motion to dismiss filed with this court." Besides said resolution is not applicable to the present case because here the court did not require the appellant to put up a cash bond of sixty pesos, the cash bond having been deposited by the appellant without notifying the adverse party thereof and submitting it to the court for approval. It is common sense that if the court would have required that the amount of sixty pesos be deposited by the appellant as appeal bond as expressly stated in said resolution, and that amount is deposited, no express approval thereof is necessary because the court can not disapprove what is done in compliance with its own order. There is absolutely no previous ruling of this court in support of the dissenters' theory, which is obviously incorrect.

It can not be argued, in support of dissenters' contention, that "there is nothing in the filing of a cash bond that may prevent the appellee from demanding and the court from requiring a greater amount of bond, for such discretion is expressly vested in the court by Rules." Because if an appeal cash bond is deemed filed, and the court loses its jurisdiction over the case according to the dissenters' theory, from the time it is deposited with the clerk of the court without necessity of notifying the adverse party thereof and submitting it to the court for approval, the adverse party would have no opportunity to object to appeal cash bond and the court to demand a greater amount. No, before the filing or deposit of the appeal bond, because the adverse party and the court could not tell beforehand whether or not it will be filed or deposited; no, at the very time of its being filed or deposited, for not being notified or informed thereof they were not supposed to know anything about it; and no, after it has been filed or deposited, since the court had already lost its jurisdiction over the case, and therefore neither the adverse party could object to the cash bond nor the lower court demand the increase of the amount thereof. And if the dissenters mean to hold that after the filing or deposit of the appeal bond the court had still jurisdiction to order the increase of the amount thereof, they have to admit that the lower court had also still jurisdiction to issue the special order of execution on November 22, nine (9) days (not 20) after the petitioners were notified of the judgment on November 13 and 14 as above-stated, contrary to the dissenters' theory.

Pablo, Bengzon, Padilla, Tuason, Montemayor, and Jugo, JJ., concur.

MORAN, C.J., with whom concur PARAS, REYES, and BAUTISTA ANGELO, JJ., dissenting:

In the instant mandamus case an appeal from the decision of the Court of First Instance has been perfected by filing a notice of appeal and depositing P60 as cash bond. A cash appeal bond needs no approval of the court because, as we have held in a reasoned resolution, "only a personal bond requires approval because the document of bond itself or the sureties may not be sufficient, while the filing of cash bond on time in the amount required by the court requires no express approval, because it cannot be disapproved." (*Lopez vs. Lopez et al.*, 77 Phil., 133.) It is upon the strength of this ruling that this dissent is predicated with a view to procuring stability in our jurisprudence.

This ruling is now being brushed aside upon the allegation that it is an obiter dictum when in fact it was one of the reasons given by this court for denying the motion for reconsideration presented in that case. And it is further indicated that such ruling may apply only when the amount of the cash bond has been fixed by the court, a limitation that has no foundation in logic. There is no difference between a cash bond in an amount required by the court and a cash bond in an amount fixed by the Rules in so far as the necessity for judicial approval is concerned, for in both cases the money is deposited in court and therefore no question of sufficiency or insufficiency of document or sureties is involved.

It is said that approval is necessary when the cash bond is in the amount fixed by the Rules, so that the court may exercise its discretion in requiring a greater amount of bond under Rule 41, section 5. But there is nothing in the filing of a cash bond that may prevent the appellee from claiming and the court from requiring a greater amount of bond, for such discretion is expressly vested in the court by the Rules. In other words, a cash bond in the amount fixed by the Rules needs no judicial approval but is always subject to the discretion of the court of requiring a greater amount of bond. In the instant case, no such requirement has ever been made by the court. No objection has ever been made to the sufficiency of the bond. In fact the bond has never been disapproved. And it is certainly hard to maintain that the court of first instance has still jurisdiction over the case.

The argument that approval is necessary so that the court may determine whether or not the bond has been filed on time is applicable to both cash bond in an amount fixed by the Rules and cash bond in an amount fixed by the court, and if judicial approval is unnecessary in the second case, as the majority maintains, there is no reason why judicial approval is necessary in the first. The truth, however, is that the power to approve or disapprove is directed to the sufficiency or insufficiency of a bond filed on time. When the bond is filed out of time, no approval or disapproval is necessary, because the bond must be excluded from the record in the same way that a pleading which is filed out of time must be stricken from the record regardless of its sufficiency or insufficiency.

It is true that Rule 41, section 5 provides that "appeal bond shall be approved by the court." But in a unanimous ruling by this court, an exception has been made of cash bonds upon grounds which the legal profession may believe to have been accepted by the court only after mature deliberation. This unanimous ruling must have been noted by inferior courts and practitioners, and it cannot easily be disregarded now by this court.

In our opinion, the respondent should be required to answer and the writ of preliminary injunction issued. No writ of execution may be issued by the lower court as it has lost jurisdiction.

Petition denied.

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