

MAXIMO GALVEZ, PLAINTIFF AND APPELLEE, VS. REPUBLIC SURETY & INSURANCE CO., INC., DEFENDANT AND APPELLEE. ATTORNEYS RAQUIZA, SUPNET, DE GRACIA AND ASUNCION, RESPONDENTS AND APPE...

G.R. No. L-12581. May 29, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from an order of the Court of First Instance of Manila, Hon. Gregorio Narvasa, presiding, which reads as follows:

"Wherefore, the said counsel for plaintiff are hereby declared in contempt of court, and it appearing that it was Atty. Eugenio de Gracia of the law firm who received from the Sheriff of Manila a check for the amount of P463.70, it is hereby ordered that said Atty. de Gracia be placed in custody and kept in confinement by the Sheriff until the Order of April 28, 1957, directing the return of the amount therein mentioned to defendant is complied with, or until further order."

The proceedings leading to the issuance of the above order are briefly stated as follows:

In C. A.-G. R. No. 15437-R, entitled "Maximo Galvez, plaintiff-appellee vs. Republic Surety & Insurance Co., defendant-appellant," the Court of Appeals awarded costs to appellee Galvez. Thereupon, the attorneys of Galvez, namely, Raquiza, Supnet, De Gracia and Asuncion, filed with the Clerk of Court of Manila a bill of costs, in the total amount of P502.35. The bill was received by the office of the clerk of court on January 17, and on that same date attorney for defendant-appellant received copy thereof. As no opposition was forthcoming, counsel for Galvez filed an ex-parte motion for execution on January 23, but the following day the motion for execution was withdrawn and another filed. On January 25, a writ of execution was issued, but on the previous day, January 24, attorney for the Republic Surety filed an opposition to the bill, claiming that as the judgment of the Court of First Instance appealed from made no finding as to costs and only the decision of the Court of Appeals granted costs to appellee, the total amount recoverable should only be P60.00. In view of the difficulty on the part of the court to determine what was meant by the grant of costs in general terms by the Court of Appeals, Judge Narvasa issued an order dated February 2, granting the defendant-appellant five days within which to seek clarification of the decision of the Court of Appeals as to costs. On February 13, as nothing appears to have been made by the appellant to clarify the grant of costs in the Court of Appeals, Judge Narvasa, upon an ex-parte motion of appellee's counsel, ordered, the sheriff to deliver the amount to said counsel. Thereupon counsel for appellant moved to reconsider the order, saying that the petition for clarification was filed on February 7 in the Court of Appeals. In the meantime, however, the writ of execution issued on January 25 had been carried out and funds of the appellant in the Philippine Bank of Commerce were garnished to the amount of P472.67. The amount was collected by the clerk of the Court of First Instance on January 27, 1957. The same was received by Atty. De Gracia of the law firm which is the counsel for appellee.

The motion filed by appellant in the Court of Appeals to clarify the grant of costs in that court was acted upon by the said court on February 22, 1957, in a resolution to the effect that the costs granted are those incurred in the appellate court only. This resolution was presented to the Court of First Instance of Manila by counsel for appellant and received by the clerk of court on March 13, 1957. On March 15, counsel for appellee filed an opposition to the petition of counsel for appellant, to reduce the costs to P20, and to return the balance of the costs already paid to them. On March 16, the court granted the petition of appellant's counsel, reducing costs to P20.00, and ordered the return of the balance of P473.00 to the appellant. A motion for reconsideration of the order was presented on March 19, and after the presentation of the opposition and the reply thereto, the court was informed by the sheriff that the amount ordered to be returned, P473, to the appellant, had already been received on February 14 by Atty. De Gracia of the law firm of Raquiza, et al., counsel for the appellee. As the court found out that the writ of execution for the payment of costs had already been executed, the court set aside its order for the return (by the sheriff) of the excess in the costs to the appellant on March 25. On April 16, the court entered another order requiring the appellee's counsel to return to the appellant the amount of P473. Notice of this order was served on appellee's counsel on April 22, 1957. On April 29, the clerk of court manifested that he had required counsel for the appellee to return the sum of P473 within five days, and that the period of time given has already expired without the return being made. Thereupon counsel for appellant asked for the issuance of a writ of execution against the properties of counsel for appellee, to enforce payment of the amount of P473. Opposition to this motion was presented, but on May 24, the court directed counsel for the appellee to comply with the order dated April 16, requiring them to return the sum of P473 within 10 days from notice, copy of this order was served on said counsel on May 27. Appellee's counsel question the validity of this order of the court, alleging that the amount of P400, out of the sum of P473 received by them, constitute premiums paid by appellee on the injunction bond filed in the Court of Appeals, and that the same was recoverable as part of the costs in the appellate court. As no payment was forthcoming, on June 7, 1957, appellant's counsel moved the court to declare appellee's counsel in contempt, and the court issued an order requiring said counsel to show cause why they should not be declared in contempt. On June 26, after hearing the explanations given by appellee's counsel, the court issued the order in question.

The ground stated in the order why the action of appellee's counsel is contemptuous was their knowledge that the motion for clarification was filed on February 7, in the Court of Appeals, to which they had filed an opposition on February 11, but that notwithstanding this fact they still filed an urgent ex-parte motion for execution, knowing that the Court of Appeals had not yet resolved the motion for clarification.

On this appeal, it is claimed that the action of appellee's counsel is not contemptuous, for the reason that it was appellant Republic Surety itself that had delayed presentation of motion for clarification because it did so only on February 7, the last day. The order of the court did not state that appellant was to get the order from the Court of Appeals within five days; the court only requires the appellant to present a motion for clarification within five days. Granting that counsel may have misunderstood the order, it is apparent that knowing as they did that the motion for clarification was still pending, they took advantage of the delay to secure delivery to them of the excessive costs.

It is also contended that the order of the court constitutes imprisonment for non-payment of a questionable debt. We do not find merit in this contention. Appellant does not claim that he no longer has possession of the disputed amount of money. A cursory reading of the order would show that it only requires compliance with a simple order of the court to return the excess costs paid to them, and this order dates back as early as April 16, 1957. The order appealed from was issued only after the lapse of 70 days from the first order requiring the return. Certainly, courts should not tolerate this unjustifiable delay in returning sums obtained under doubtful conditions. It is only by a threat of imprisonment that a court can compel respect for it and obedience to its orders. The order is

expressly in accordance with Section 7 of Rule 64 of the Rules of Court, which provides as follows:

"SEC. 7. Imprisonment until order obeyed.— When the contempt consists in the omission to do an act which is yet in the power of the accused to perform, he may be imprisoned by order of a superior court until he performs it."

In *Harden vs. Director of Prisons*, 81 Phil. 741, 748, we explained the nature of the above-quoted provisions, thus:

"As stated in a more recent case (*De Wees* [1948], 210 S.W., 2d, 145-147, 'to order that one be imprisoned for an indefinite period in a civil contempt is purely a remedial measure. Its purpose is to coerce the contemner to do an act within his or her power to perform. He must have the means by which he may purge himself of the contempt. The latter decision cites *Staley vs. South Jersey Realty Co.*, 83 N. J. Eq., 300, 90 A., 1042, 1043, in which the theory is expressed in this language:

" In a "civil contempt" the proceeding is remedial, it is a step in the case the object of which is to coerce one party for the benefit of the other party to do or to refrain from doing some act specified in the order of the court. Hence, if imprisonment be ordered, it is remedial in purpose and coercive in character, and to that end must relate to something to be done by the defendant by the doing of which he may discharge himself. As quaintly expressed, the imprisoned man "carried the keys to his prison in his own pocket."

The order of the court is hereby affirmed, and compliance therewith insofar as it requires return of the amount of P472.00 to the appellant is hereby ordered. otherwise said order would be enforced according to its terms. Without costs.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Endencia, JJ., concur.

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