

ENGINEERING CONSTRUCTION INCORPORATED, PETITIONER, VS. NATIONAL POWER CORPORATION AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-34589. June 29, 1988

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FERNAN, J.:

In these related petitions for review under Rule 45 of the Rules of Court, the Engineering Construction, Inc. [ECI] and the Manila Electric Company [MERALCO] question the decision of the Court of Appeals in CA-G.R. No. 47528-R which set aside the orders of the trial court directing execution pending appeal of a judgment for P1,108,985.31 in damages in favor of ECI. Petitioners also question the resolution of said court holding them liable for restitution of the garnished funds to the National Power Corporation [NPC].

On August 29, 1968, ECI filed a complaint for damages against the NPC in the then Court of First Instance of Manila, Branch 15, alleging that it suffered damages to its facilities and equipment due to the inundation of its campsite in Ipo, Norzagaray, Bulacan, as a direct result of the improper and careless opening by NPC of the spillway gates of Angat Dam at the height of typhoon "Welming" on November 4, 1967.[1]

On December 23, 1970, the trial court found NPC guilty of gross negligence and rendered its judgment, thus:

"WHEREFORE, judgment is rendered in favor of plaintiff and against defendant as follows:

"1. Ordering defendant to pay plaintiff actual or compensatory damages in the amount of P675,785.31;

"2. Ordering defendant to pay consequential damages in the amount of P233,200.00;[*]

"3. Ordering defendant to pay plaintiff the amount of P50,000 as and by way of exemplary damages; and

"4. Ordering defendant to pay plaintiff the amount of P50,000 as and for attorney's fees..... "[2]

NPC filed a notice of appeal from that decision but before it could perfect its appeal, ECI moved for and was granted execution pending appeal upon posting a covering bond of P200,000 which it later increased to P1,109,000 to fully answer for whatever damages NPC might incur by reason of the premature execution of the lower court's decision.[3]

In granting said motion for the exceptional writ over the strong opposition of the NPC, the trial court adopted the grounds adduced by movant ECI:

"1. . . .

"2. That the substantial portion of the award of damages refers to the actual or compensatory damages incurred by plaintiff, which are supported by voluminous documentary evidence, the genuineness and due execution of which were admitted and further, no evidence whatever was presented to contest the same;

"3. That this case has been pending for years, as the plaintiff and the Honorable Court were led to believe that the matter in dispute would be settled amicably;

"4. That an appeal by defendant would obviously be for purposes of delay;

"5. That on appeal, the case would certainly drag on for many years, and in the meantime, the actual loss and damages sustained by plaintiff, who because of such loss have become heavily obligated and financially distressed, would remain uncompensated and unsatisfied;

"6. That also, plaintiff is willing and able to file a bond to answer for any damage which defendant may suffer as a result of an execution pending appeal." [4]

Subsequently, Deputy Sheriff Restituto R. Quemada who was assigned to enforce the writ of execution, garnished in favor of ECI all amounts due and payable to NPC which were then in possession of MERALCO and sufficient to cover the judgment sum of P1,108,985.31. [5]

Attempts to lift the order of execution having proved futile and the offer of a supersedeas bond having been rejected by the lower court, NPC filed with the Appellate Court a petition for certiorari. [6]

In its challenged decision of October 20, 1971, the Court of Appeals granted NPC's petition and nullified the execution pending appeal of the judgment rendered by the trial court on December 28, 1970, as well as all issued writs and processes in connection with the execution. One justice dissented. [7]

On November 11, 1971, MERALCO sought from the Appellate Court a clarification and reconsideration of the aforesaid decision on the ground, among others, that the decision was being used by NPC to compel MERALCO to return the amount of P1,114,545.23 (inclusive of sheriff's fees) in two checks which it had already entrusted to the deputy sheriff on February 23, 1971, who then indorsed and delivered the same to ECI. Whereupon, in its resolution of January 7, 1972, the Appellate Court held the sheriff, MERALCO and ECI liable to restore to NPC the amount due to NPC which MERALCO had earlier turned over to the sheriff for payment to ECI. [8]

Their two motions for reconsideration having been denied, ECI and MERALCO filed separate petitions for review before this Court: Nos. L-34589 and 34656, the very petitions before us for adjudication. In this connection, it must be made clear that we are not concerned with the main appeal. For the present, we limit our discussion to the correctness of the extraordinary writ of execution pending appeal and the ordered restitution of the garnished funds — two collateral matters which have greatly exacerbated the existing dispute between the parties.

We shall deal first with the propriety of the execution pending appeal.

Section 2, Rule 39 of the Rules of Court provides:

"Execution pending appeal. — On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included thereon."

While the rule gives the court the discretionary power to allow immediate execution, the following requisites must be satisfied for its valid exercise:

- (a) There must be a motion by the prevailing party with notice to the adverse party;
- (b) There must be good reasons for issuing the execution; and
- (c) The good reasons must be stated in a special order.

In its assailed decision, the Appellate Court, through Justice Salvador V. Esguerra, observed that NPC, as defendant in the civil case for damages, was being ordered to pay the amount of P1,108,985.31 pending appeal

when practically 40% thereof was made up of awards of damages based on the court's sole and untrammelled discretion. Such amount might greatly be reduced by the superior court, especially the items for consequential and exemplary damages and attorney's fees which by themselves would amount to the "staggering" sum of P433,220.00.

The Appellate Court noted the many instances when on review, the amounts for attorney's fees and exemplary and moral damages were drastically cut or eliminated altogether in the absence of proof that the losing party acted with malice, evident bad faith or in an oppressive manner.

Inasmuch as the list submitted by ECI of the estimated losses and damages to its tunnel project caused by the instant flooding on November 4, 1967 was duly supported by vouchers presented in evidence, and considering that NPC, for its part, failed to submit proofs to refute or contradict such documentary evidence, we are constrained to sustain the order of execution pending appeal by the trial court but only as far as the award for actual or compensatory damages is concerned. We are not prepared to disagree with the lower court on this point since it was not sufficiently shown that it abused or exceeded its authority.

With respect to the consequential and exemplary damages as well as attorney's fees, however, we concur with the Appellate Court in holding that the lower court had exceeded the limits of its discretion. Execution should have been postponed until such time as the merits of the case have been finally determined in the regular appeal.

In the fairly recent case of RCPI, et al. vs. Lantin, Nos. 59311 and 59320, January 31, 1985, 134 SCRA 395, 400-401, the Court said:

"The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. Unlike actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. The existence of the factual bases of these types of damages and their causal relation to petitioners' act will have to be determined in the light of the assignments or errors on appeal. It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced."

Indeed, as later events would show, the Appellate Court was proven right when it postulated that it is not beyond the realm of probability that NPC's appeal from the lower court's judgment could result in the substantial reduction of the consequential damages and attorney's fees and the deletion of exemplary damages.

We take judicial notice of the fact that on August 24, 1987, the Court of Appeals rendered a decision on the main appeal.[9] It affirmed the trial court's conclusion that NPC was guilty of negligence but differed in the award of damages. While it upheld the court a quo's award of P675,785.31 as actual damages, it reduced the consequential damages from P333,200.00 to P19,200.00 and the attorney's fees from P50,000 to P30,000. The grant of P50,000 as exemplary damages was eliminated. Altogether, the award of damages was modified from P1,108,985.31 to P724,985.31. From that decision, both the ECI and NPC filed their separate appeals to this Court.[10] Finally, on May 16, 1988, the Court promulgated its judgment affirming in all respects the Appellate Court's decision in CA-G.R. No. 49955-R, thus putting to rest the question of negligence and NPC's liability for damages.

The point that the Court wishes to emphasize is this: Courts look with disfavor upon any attempt to execute a judgment which has not acquired a final character. Section 2, Rule 39, authorizing the premature execution of judgments, being an exception to the general rule, must be restrictively construed. It would not be a sound rule to allow indiscriminately the execution of a money judgment, even if there is a sufficient bond. "The reasons allowing execution must constitute superior circumstances demanding urgency which will outweigh the injury or

damages should the losing party secure a reversal of the judgment." [11]

We come now to the second issue of whether petitioners, including the sheriff, are bound to restore to NPC the judgment amount which has been delivered to ECI in compliance with the writ of garnishment.

In line with our pronouncement that we are sanctioning in this particular instance the execution pending appeal of actual but not consequential and exemplary damages and attorney's fees which must necessarily depend on the final resolution of the main cases, i.e., Nos. L-47379 and 47481, the direct consequence would be to authorize NPC to proceed against the covering bond filed by ECI but only to the extent of the difference between the amount finally adjudicated by this Court in the main cases [P724,985.31] and the amount originally decreed by the trial court relating to the consequential and exemplary damages and attorney's fees [P1,108,985.31]. In other words, ECJ's bond is held answerable to NPC for P384,000.

But while partial restitution is warranted in favor of NPC, we find that the Appellate Court erred in not absolving MERALCO, the garnishee, from its obligations to NPC with respect to the payment to ECI of P1,114,543.23, thus in effect subjecting MERALCO to double liability. MERALCO should not have been faulted for its prompt obedience to a writ of garnishment. Unless there are compelling reasons such as: a defect on the face of the writ or actual knowledge on the part of the garnishee of lack of entitlement on the part of the garnisher, it is not incumbent upon the garnishee to inquire or to judge for itself whether or not the order for the advance execution of a judgment is valid.

Section 8, Rule 57 of the Rules of Court provides:

"Effect of attachment of debts and credits. — All persons having in their possession or under their control any credits or other similar personal property belonging to the party against whom attachment is issued, or owing any debts to the same, at the time of service upon them of a copy of the order of attachment and notice as provided in the last preceding section, shall be liable to the applicant for the amount of such credits, debts or other property, until the attachment be discharged, or any judgment recovered by him be satisfied, unless such property be delivered or transferred, or such debts be paid, to the clerk, sheriff or other proper officer of the court issuing the attachment.

Garnishment is considered as a specie of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation. Under the above-cited rule, the garnishee [the third person] is obliged to deliver the credits, etc., to the proper officer issuing the writ and "the law exempts from liability the person having in his possession or under his control any credits or other personal property belonging to the defendant, x x x, if such property be delivered or transferred, x x x, to the clerk, sheriff, or other officer of the court in which the action is pending." [12]

Applying the foregoing to the case at bar, MERALCO, as garnishee, after having been judicially compelled to pay the amount of the judgment represented by funds in its possession belonging to the judgment debtor or NPC, should be released from all responsibilities over such amount after delivery thereof to the sheriff. The reason for the rule is self-evident. To expose garnishees to risks for obeying court orders and processes would only undermine the administration of justice.

WHEREFORE, the Court in disposing of the two side issues of execution pending appeal and petitioners' liability for restitution, hereby MODIFIES the Court of Appeals' decision and resolution under review, and rules as follows:

[a] NPC is authorized to proceed against the P1,109,000 bond filed by ECI to the extent of P384,000 which corresponds to the difference between the awards for consequential and exemplary damages and attorney's fees upheld by the Court in the main cases (Nos. L-47379 and 47481) and those decreed for the same items by the

trial court;

[b] MERALCO is declared absolved from any and all responsibilities in connection with the amount of P1,114,545.23 representing the NPC garnished funds and therefore relieved from the burden of restoring the same to NPC.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Gutierrez, Jr., J., on leave.

[1] Civil Case No. 74086.

[*] The amount of P233,200.00 should really be P333,200.00 as shown in the succeeding pleadings.

[2] Rollo of L-34589, p. 113.

[3] Rollo of L-34589, Annexes N and N-1, pp. 143 and 146.

[4] Rollo of L-34589, Annex D, p. 121.

[5] Rollo of L-34589, Annex G, p. 132.

[6] CA-G.R. No. 47528-R.

[7] Rollo of L-34589, Annex A, p. 80.

[8] Rollo of L-34589, Annex A-1, p. 98.

[9] CA-G.R. No. 49955-R.

[10] Nos. L-47481 and L-47379.

[11] *Jaca vs. Davao Lumber Co.*, No. L-25771, March 29, 1982, 113 SCRA 107, 121; *City of Bacolod vs. Judge Enriquez*, 101 Phil. 644; *Roxas vs. Court of Appeals*, G.R. No. 56960, January 28, 1988.

[12] 3 Moran, *Comments on the Rules of Court* 34 [1970 Ed.]

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