

N. M. BALUYOT & CO., PETITIONER, VS. ANTONIO TY, HON. FELIX DOMINGO, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH XV, AND UNION TEXTILE CORPORATION, RESPONDE...

G.R. No. L-29905. December 24, 1968

Ponente: DIZON, J.

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DIZON, J.:

N. M. Baluyot & Co., in a verified petition for certiorari, prohibition and/or mandamus, alleges:

That on April 28, 1967 respondent Antonio Ty and the Union Textile Corporation, hereinafter referred to as UTC entered into a written agreement whereby the latter, for a period of one year, undertook to manufacture, sell and deliver, and the former undertook to buy all the textile products of UTC; that on April 18, 1968 the Chair-man of the Executive Committee of UTC reminded Ty in writing that their agreement would expire at the end of said month, and was invited to submit the terms and conditions under which he would like the same to be renewed; that on April 24 of the same year Ty submitted to UTC his terms and conditions for a new contract; that in two letters dated April 22 and May 8, 1968, respectively, petitioner also offered in writing to enter into a sole buyership agreement with UTC under the terms and conditions set forth therein, which offer was the one accepted by the Board of Directors of UTC on May 14, 1968; that the execution of said sole buyership contract scheduled on June 6, 1968 could not be carried out because two days before Ty had filed with the Court of First Instance of Manila, Branch II, presided by the Honorable Judge Jose Leuterio Civil Case No. 73189 where, upon his petition, Judge Leuterio issued an order restraining the UTC from (a) entering into any sole buyership contract with any party other than Ty, and (b) from selling and delivering textile goods and yarns manufactured by it, and to continue manufacturing, selling and delivering its textile goods and yarns to Ty alone; that herein petitioner, with previous leave of court, intervened in said Civil Case No. 73189 and filed its opposition to the issuance of the writ of preliminary injunction prayed for by Ty in his petition; that although at the hearing upon the petition for injunction held on June 19, 1968, Ty presented no evidence whatsoever while herein petitioner presented documentary evidence to show that Ty's cause of action, as set forth in his petition, was not free from doubt and dispute and that he was not, therefore, entitled to the injunction prayed for therein, Judge Leuterio, completely disregarding the circumstances just referred to, issued the preliminary injunction prayed for in Ty's petition upon the filing and approval of a bond in the sum of P30,000; that the writ thus issued prevented the implementation or consummation of the sole buyership award made by the UTC to herein petitioner; that petitioner, on June 29, 1968, filed with the Court of Appeals a petition for certiorari, with a prayer for the issuance of a writ of preliminary injunction against Judge Leuterio and Antonio Ty (C.A.-G.R. No. 41449-R) in which case, on July 3, 1968 said Court issued an order restraining the respondents therein from enforcing or executing the order and/or writ of the respondent judge of June 22, 1968 mentioned heretofore, which restraining order was subsequently confirmed by the Court of Appeals in its resolution of July 12, 1968 granting the writ of preliminary injunction prayed for in the basic petition filed in said case; that after receiving notice of the restraining order issued by the

Court of Appeals on July 3, 1968 as just mentioned, Ty filed on July 6, 1968 another action against UTC (Case No. 73530) covering the same subject matter involved in Civil Case No. 73189 pending before the Honorable Judge Leuterio, this new action having been assigned to Branch XV of the same Court of First Instance of Manila presided by the herein respondent Judge Felix Domingo; that the complaint in this Civil Case No. 73530 was for specific performance and damages for an amount in excess of nearly P5,000,000 with a prayer for the issuance of a writ of preliminary injunction, and it alleged that UTC had made short deliveries of fabrics and yarns called for under its agreement with Ty of April 28, 1967 because it had sold said fabrics and yarns to third parties in violation of said agreement; that pursuant to the petition made in said complaint the respondent judge issued on July 9, 1968 the order prayed for therein restraining the therein defendant, during the pendency of the case, from selling and delivering to third persons other than Ty all its present stocks of fabrics and yarns including those to be manufactured and produced, until such time that said defendant would have fully complied with its contractual obligation with Ty; that herein petitioner was likewise allowed to intervene in said case (Civil Case No. 73530) by order of the Court of July 30, 1968 and promptly filed therein its opposition to the issuance of a writ of preliminary injunction; that the respondent judge in his restraining order of July 9, 1968 set the hearing of the petition for a writ of preliminary injunction on July 13, 1968 at 8:30 a.m.; that on petition of Ty said hearing was cancelled and reset on August 6, 1968, over the objection of herein petitioner - intervenor in said case; that this hearing set for August 6, 1968 upon motion of Ty again, was postponed to August 22, 1968, over the objection of herein petitioner; that on August 22, 1968 Ty again moved to postpone the hearing upon some other ground and again the respondent judge granted the postponement and reset the hearing on the incident on August 26, 1968; that this hearing set for August 26, 1968 was again postponed, but this time upon an ex-parte motion filed by UTC, defendant in said case, and the hearing on the incident was again reset for October 7, 1968; that before said hearing on October 7, 1968, Ty again filed a motion for the postponement of the hearing upon the ground that the evidence he would present would form part of the evidence he would produce during the trial on the merits, and the respondent judge not only granted again the postponement in his order of October 5, 1968 but also set the hearing of the petition for preliminary injunction simultaneously with the trial of the case on the merits, in this manner maintaining indefinitely the injurious effects of the restraining order previously issued by him without bond.

The facts set forth above, alleged under oath in the petition before Us, clearly show arbitrariness and grave abuse of discretion on the part of the respondent judge, considering first, that the obvious effect of said restraining order - issued without bond - is to circumvent and nullify the preliminary injunction issued by the Court of Appeals in CA-G.R. No. 41449 involving the same parties and subject matter; second, that the repeated and unjustified postponements of the hearing on the petition for the issuance of a writ of preliminary injunction were clearly intended to delay a definite resolution thereof thus allowing the prejudicial effects of the restraining order issued by the respondent judge without bond to continue; and lastly, that the setting of the hearing on said petition simultaneously with the trial of the case on the merits - a proceeding that, judging from the issues involved in the case - will be long and protracted - will result in nothing else but the continued enforcement of said restraining order for an indefinite period of time, contrary to the usual practice of issuing orders of such nature to be effective only for a short and definite period of time.

However, under the recent amendments to Section 29 of the Judiciary Act of 1948, the writs of certiorari, prohibition and mandamus prayed for in the petition under consideration are in aid of the appellate jurisdiction of the Court of Appeals over the main case - Civil Case No. 73530 - pending before the respondent judge.

In *Breslin et al. vs. Luzon Stevedoring Company, et al.* (47 O.G. No. 3, pp. 1170-1175) We held that this court has also original jurisdiction to entertain special civil actions for the issuance of a writ of certiorari, prohibition or mandamus because the Court of Appeals' original jurisdiction to issue said writs in aid of its appellate jurisdiction

is not exclusive. This notwithstanding, the policy heretofore consistently adhered to by this Court in situations like the present is to require that petitions similar to the one under consideration should be filed with the Court of Appeals, this Court re-serving for itself the power to review, in accordance with law, whatever final judgments or orders are rendered or issued therein by the latter.

Consequently, We are constrained to dismiss this case but without prejudice to the filing of the corresponding petition with the Court of Appeals.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.
Castro, J., did not take part.

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