

VICENTE G. ACABAN, PETITIONER, VS. HONORABLE WENCESLAO M. ORTEGA, IN HIS CAPACITY AS PRESIDING JUDGE, CFI OF MANILA, BRANCH VIII, AND B & B FOREST DEVELOPMENT CORPORATION, RESP...

G.R. Nos. L-38515-16. June 19, 1982

Ponente: ESCOLIN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/41cd18befeb3/>

ESCOLIN, J.:

Petition for certiorari and mandamus to annul and set aside the order of the Court of First Instance of Manila, Branch VIII, presided by Judge Wenceslao M. Ortega, which authorized the issuance of a writ of injunction restraining petitioner Vicente C. Acaban and the Sheriff of Manila from enforcing the writ of execution of the decision in Civil Case No. 75138, entitled "Vicente Acaban versus Bautista Logging Co., Inc., B & B Forest Development Corporation, and Mariano A. Bautista"; and to compel the respondent judge to order the garnishment of the bank deposit of the respondent B & B Forest Development Corporation, hereinafter referred to simply as "B & B".

It appears that on January 30, 1970, the Court of First Instance of Manila, Branch VIII, rendered a decision in Civil Case No. 75138, the dispositive portion of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter, jointly and severally, to pay the former the following:

- a. the sum of P24,910.41, plus interest thereon at the rate of 12% per annum from the expiry date of thirty days from the respective dates of delivery of goods under the different invoices, Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M and N until fully paid;
- b. the sum of P300.00 representing the cash amount advanced by plaintiff to defendants on February 13, 1968 , Exh. O, plus interest thereon at 6% per annum from December 17, 1968 , the date of filing of the complaint;
- c. the sum of P6,300.00 as and for attorney's fees; and
- d. the costs of this suit.

SO ORDERED."

Thereafter, petitioner Acaban, plaintiff therein, filed a motion seeking the garnishment of the bank deposit of "B & B" with the China Banking Corporation. Acting on this motion, the respondent judge ordered the bank's cashier, Tan Lim Lion, "to inform the court within five days from receipt of this order whether or not there is a deposit in the China Banking Corporation of defendant B & B Forest Development Corporation, and if there is any deposit, to hold the same intact and not allow any withdrawal until further order from this court."

On February 21, 1972, or more than two years after the decision in Civil Case No. 75138 had been rendered, "B &

B" filed a complaint in the Court of First Instance of Manila, docketed as Civil Case No. 86246, for annulment of the aforesaid judgment on grounds of want of jurisdiction and denial of due process for alleged failure to serve the summons upon "B & B", as defendant in Civil Case No. 75138.[1] On motion of "B & B", a writ of preliminary injunction was issued by the respondent judge restraining Acaban and the Sheriff of Manila from enforcing the writ of execution previously issued in Civil Case No. 75138.

After trial on the merits of Civil Case No. 86246, the respondent judge rendered a decision, dated March 6, 1974, dismissing the complaint, the dispositive portion of which reads:

"FOR ALL THE FOREGOING, judgment is hereby rendered:

- a. Dismissing plaintiff's complaint against defendant in this Civil Case No. 86246; and the writ of preliminary injunction issued in said case in favor of plaintiff and against the defendant is set aside and vacated;
- b. Ordering plaintiff to pay defendant P2,000.00 as and for attorney's fees plus double the costs; and
- c. Declaring the decision of this court in Civil Case No. 75138 valid, legal, binding, final and executory.

SO ORDERED."

The above judgment was appealed to the Court of Appeals. But prior to the perfection of the appeal, or on March 12, 1974, Acaban filed a "Motion to Order Sheriff to Proceed with the Garnishment" in Civil Case No. 75138[2] while "B & B" filed an "Urgent Motion to Restore or Grant Injunction Pending Appeal" of Civil Case No. 86246.[3]

On March 27, 1974, the respondent judge issued the questioned order[4] which granted the writ of injunction restraining the execution of the decision in Civil Case No. 75138.

Hence, the instant petition to annul the said order and to compel the respondent judge to order the sheriff to proceed with the garnishment of "B & B"'s bank deposit. The petition poses the following issues:

- (1) Is a judgment debtor, like respondent "B & B", entitled to an injunctive writ enjoining the execution of a final judgment?
- (2) Did respondent judge gravely abuse his discretion in denying petitioner's "Motion to Order Sheriff to Proceed with the Garnishment"?

There is no useful and pragmatic purpose for this Court to resolve these issues, for the reason that the decision in Civil Case No. 86246, which had been appealed by "B & B" to the Court of Appeals, was affirmed by the said court on July 20, 1979. The finality of said judgment renders the instant petition moot and academic.

ACCORDINGLY, this petition is hereby dismissed, without pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Guerrero, Abad Santos, and De Castro, JJ., concur.

Aquino, J., see attached concurrence.

Concepcion, Jr., J., on leave.

[1] p. 95, rollo.

[2] p. 30, rollo.

[3] pp. 32-35, rollo.

[4] p. 36, rollo.

CONCURRING OPINION

AQUINO, J.:

I concur. Judge Ortega in Civil Case No. 86246 dismissed on March 6, 1974 the action of B & B Forest Development Corporation to annul the final and executory money judgment in Civil Case No. 75138 which was rendered by Judge Manuel P. Barcelona on January 20, 1970 in favor of Vicente Acaban and against Bautista Logging Co., Inc., Marino A. Bautista and B & B Forest Development Corporation. Judge Ortega declared the said judgment valid and binding.

Pending the appeal to the Court of Appeals from Judge Ortega's decision, he issued an order to enjoin the execution of Judge Barcelona's judgment in Civil Case No. 75138.

That order of injunction was assailed in this petition for certiorari and mandamus which was filed on April 17, 1974 . During the pendency of this case, the Court of Appeals in its decision of July 20, 1979 affirmed Judge Ortega's decision dismissing Civil Case No. 86246.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.