

ADELINA SEVERO, ETC., PETITIONER, VS. HON. PANTALEON PELAYO, ETC., JULIO LASIAN AND REMEDIOS PINEDA, RESPONDENTS.*G.R. No. L-9390. February 28, 1958*

Ponente: ENDENCIA, J.

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On September 20, 1954, the herein respondents Julio Lasian and Remedios Pineda, as dependents of their son Jose C. Pineda who died while in the service of C. Ying Bakery, of which the petitioner Adelina Severo was the manager, were awarded "a compensation of P1,560, plus burial expenses not exceeding P100.00, less any amount already paid," by the Workmen's Compensation Commission in case No. 18982 thereof. The award was not appealed and became final and executory. C. Ying, owner of the bakery, or its manager Adelina Severo, failed to pay the award except the amount of P500.00 and the fee of P16, thus leaving unpaid the sum of P1,060.00 plus the burial expenses, so on June 27, respondents Lasian and Pineda filed with the Court of First Instance of Iloilo, under Section 5 of the Workmen's Compensation Act, a petition wherein they prayed for an order of execution of the aforesaid award; and said court, acting on the petition, entered on July 2, 1955, the following order:

"It appearing from the certification of the workmen's Compensation Commission (Appendix B) that the above-named respondent has not appealed within the period allowed by Act No. 3428 as amended, to the Supreme Court, against the decision of the said Commissioner as contained in his letter-computation dated September 20, 1953 (Appendix A), judgment is hereby entered ordering the said respondent to pay claimants the amount of P1,560.00 plus burial expenses not exceeding P100, less any amount already paid, pursuant to Section 51 of Act No. 2429, as amended, otherwise known as the Workmen's Compensation Act." and forthwith issued the writ of execution prayed for.

Upon being notified of this order and the writ of execution, petitioner filed on July 5, 1955 a motion "for reconsideration and to quash the writ of execution" alleging: "that the Court of First Instance of Iloilo has no jurisdiction to enter the order and to issue the writ complained of; that there is no exact amount to be executed and, therefore, the order cannot be enforced thru execution; that contrary to the provision of Section 51 of Act 3428 to the effect that the court shall render a decree or judgment in accordance therewith and notify the parties thereof, the herein petitioner was never notified of said judgment," and asked that the aforequoted order and writ of execution be annulled. This motion was denied by the respondent Judge, hence the present petition for certiorari filed on July 11, 1955 premised on the ground that the respondent Judge acted without or in excess of jurisdiction, or with grave abuse of discretion in issuing the aforesaid order and writ of execution of July 2, 1955, and in denying petitioner's motion for reconsideration of July 5, 1955

On July 12, 1955 and before the herein respondents Lasian and Pineda were properly summoned of the present petition, they filed with the Court of First Instance of Iloilo a motion wherein they alleged that (a) according to the return of the Sheriff, C. Ying offered P875 to pay the execution against him, but refused to pay the balance of P285 alleging to have already paid it; (b) that said Sheriff, instead of receiving the offer and attaching the

properties of the herein petitioner for the unpaid balance of P285, in connivance with the latter's lawyer, maliciously and voluntarily discontinued the execution on the pretext that he was not in a position to determine the amount already paid; and (c) that said conduct of the Sheriff constituted a misbehavior in court; and thereby they asked (1) that the herein petitioner (respondent therein) and his lawyer be ordered to deposit with the Clerk of Court the amount offered; (2) that the Sheriff be ordered to continue the execution for the remaining unpaid amount of P285 until the herein petitioner can prove that he has paid it; and (3) that both the herein petitioner and his lawyer be ordered to appear before the Court to explain why they were systematically obstructing the administration of justice. This motion was opposed by the herein petitioner; it was heard on July 15, 1955 and, on that same date, the respondent Judge, modifying his previous order of July 2, 1955, entered the following order:

"Considering that claimants have, thru their counsel Atty. Nicolas P. Nonato, admitted having already received the amount of P500, the dispositive part of the order of the Court dated July 2, 1955 is hereby amended so as to read as follows:

'Judgment is hereby entered ordering respondent to pay claimants the sum of P1,060.00 plus P100.00 as burial expenses pursuant to Sec. 51 of Act 3423, as amended, otherwise known as the Workmen's Compensation Act.'"

Alleging that this order was against the law and the facts of the case, petitioner herein tried to appeal therefrom and to that end he filed a notice of appeal on July 16, 1955, but took no further steps to perfect it; so, on July 18, 1955, the herein respondents Lasian and Pineda moved that the notice of appeal be disregarded or rejected, that a more drastic measure be adopted to compel the officer of law to expedite the enforcement of the award, and that the case be endorsed to the City Fiscal for proper action. Petitioner opposed this motion and moved the court to overrule it and that the writ of execution already issued be stayed to wait for the result of the present petition, which motion was denied on July 21, 1955, on the ground that there was a writ of execution already issued.

Carefully considered, the issue involved in the case revolves around the proposition whether the lower court had no jurisdiction or abused its discretion in entering its orders of July 2 and 15, 1955, directing the petitioner to pay the sum of P1,060.00 plus P100 as burial expenses. These orders were evidently issued by the respondent Judge under section 51 of Act No. 3428, as amended, which provides:

"SEC. 51. Enforcement of Award.- Any party in interest may file in any court of record in the jurisdiction of which the accident occurred a certified copy of a decision of any referee or the Commissioner, from which no petition for review or appeal has been taken within the time allowed therefor, as the case may be, or a certified copy of a memorandum of agreement duly approved by the Commissioner, whereupon the Court shall render a decree or judgment in accordance therewith and notify the parties thereof.

"The decree or judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as though the decree or judgment had been rendered in a suit duly heard and tried by the Court, except that there shall be no appeal therefrom."

Petitioner claims that, without notice to him, the respondents' ex-parte motion of June 27, 1955 was heard and acted upon by the lower court and, therefore, the order of July 2, 1955 granting it, was illegal and unenforceable against him. This contention is, however, untenable for, according to the aforequoted Sec. 51, of Act No. 3423, as amended, the herein petitioner is only entitled to be notified of the judgment entered in accordance therewith; it does not require that before the hearing of a petition filed pursuant thereto, there should be a notification to the other party; it only provides that upon the filing of an application for execution of a decision of any referee or Commissioner together with a certified copy of the award, the Court shall render a decree or judgment in accordance therewith and notify the parties thereof. In the case at bar, Annex C of the petition clearly shows that counsel for herein petitioner was notified and received copy of the disputed order of July 2, 1955 as well as copy

of that of July 15, 1955, such that thereafter he filed a notice of appeal from said orders. There was, therefore, compliance with the law as to the notification of judgment entered by the court below, hence it cannot be pretended that it acted illegally or without jurisdiction when it entered the disputed order.

Petitioner also contends that the award of September 20, 1950 was not yet executory when the writ of execution was issued, because in that award the petitioner was ordered to pay the amount of P1560, plus burial expenses not exceeding P100, less any amount already paid, and therefore, if there has been partial payment, the lower court cannot issue the writ of execution before the partial payment is deducted from the amount to be executed, which deduction should be decided, not by the lower court, but by the Commissioner. We find this contention also untenable because, in case of partial payment, the deduction should be determined; not by the Workmen's Compensation Commissioner, but by the Court of First Instance at the hearing of the motion for execution. In the case at bar, the question of what should be deducted from the award of September 20, 1950, was brought up before the lower court when the motion of the herein respondents of July 12, 1955 was duly heard on July 15, 1955 and which caused the respondent Judge to modify his order of July 2, 1955, requiring the petitioner herein to pay, not P1,560 as previously ordered, but P1,060.00 only plus P100 as burial expenses. Petitioner tried to appeal from the order but later on desisted, so the same became final and executory and could be enforced legally against the petitioner.

Lastly, it is contended that the lower court exceeded its jurisdiction when it entered the order of July 15, 1955, because the same changed, altered and modified the decision of the Workmen's Compensation Commission. This contention merits no serious consideration, for the order in question did not change the nature of the award; it only reduced the amount that should be executed because of partial payment admitted by the respondents, otherwise injustice may be committed against the herein petitioner.

In view of all the foregoing, the petition under consideration is hereby denied without costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Felix, JJ., concur

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