

L & M MAXCO COMPANY, INC. (NOW MS MAXCO COMPANY, INC.), PETITIONER, VS. HON. CESAR MANGROBANG (IN HIS CAPACITY AS PRESIDING JUDGE OF RTC & BRANCH 22, IMUS, CAVITE), EDGAR C. BER...

Ponente: BARRIOS, J.

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BARRIOS, J.:

The respondent First Solid Builders (or hereafter FIRST SOLID) sued the petitioner L & M Maxco Company Inc. (or MAXCO), now known as MS Maxco Company, Inc., principally for sum of money with prayer for the issuance of a writ of preliminary attachment before the Regional Trial Court of Cavite (or RTC). This was docketed as Civil Case No. 0290-04 and raffled to Branch 22 presided by the respondent Hon. Cesar Mangrobang.

In the course of the case, the RTC issued the assailed Order dated November 24, 2004 granting the application of FIRST SOLID for the issuance of a writ of preliminary attachment. Asserting that this was issued with grave abuse of discretion amounting to lack or excess of jurisdiction, MAXCO asks that this be nullified and set aside.

In 2002 the parties contracted for FIRST SOLID to supply and deliver ready mix concrete materials to MAXCO for its project in Woodridge Tagaytay Highlands, the terms of which are set down in their Contract Proposal and Agreement Nos. 00-00845 and 00854. MAXCO issued postdated checks to secure the payment of the materials to be delivered. FIRST SOLID delivered the materials but MAXCO failed to make good on the value of the checks. FIRST SOLID demanded for the payment of its obligation which as of September 2004 amounted at P3,519,650.08. Further demands to pay were sent to MAXCO to settle its obligations but it failed to heed these and so on October 28, 2004 FIRST SOLID filed the said suit for sum of money with allegations and prayer for the issuance of a writ of preliminary attachment to secure the satisfaction of the judgment prayed.

Summons and copy of the complaint were served on MAXCO at its given address in Fortune Office Building, 160 Legaspi Street, Legaspi Village, Makati City on November 8, 2004. It was received by one Col. Almino Malaza.

Thereafter, as said the RTC granted the prayer of FIRST SOLID for the issuance of the preliminary attachment, stating that:

Considering that a sufficient cause of action against the defendant exists; that the instant case is based on Rule 57 of the Rules of Civil Procedure, specifically Section 1 paragraph (e) thereof, and that there is no other sufficient security for the claim sought in this case, plaintiff's prayer for the issuance of a writ of attachment is hereby granted.

Accordingly, let a writ of preliminary attachment be issued upon approval of applicant's bond in the amount of Three Million Pesos (Php3,000,000.00) to be approved by the court and to answer for all damages which defendant may sustain should the court finally decided that the plaintiff is not entitled thereto.

The Chief of Police Philippine National Police, Makati City is hereby ordered to assist the Sheriff of this Court in enforcing this Order and the ancillary writ and to employ all necessary means under the law to make sure

that the Writ of Preliminary Attachment is appropriately implemented.

SO ORDERED. (pp. 15-16, rollo)

The corresponding writ of attachment was then issued and implemented, and so the properties of MAXCO were seized and placed in custodia legis.

As recourse against the said set back, MAXCO has come before this Court through this petition for certiorari positing these issues for Our resolution:

- Whether or not the Court A Quo has acquired jurisdiction over the petitioner.
- Whether or not the Court A Quo, in granting the prayer for Preliminary Attachment, committed grave abuse of discretion tantamount to lack or excess of jurisdiction. (p. 5, rollo)

We deny the petition.

We must stress that MAXCO in this suit prays for a writ of certiorari, the main requisites for the issuance of which are (1) that the writ be directed against a tribunal, board or officer exercising judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (3) that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law (Florida vs. Shemberg Marketing Corporation, G. R. No. 146400, October 25, 2005). Hence, it has been ruled time and again that the special civil action for certiorari under Rule 65 may be allowed only where there of no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law (Cantoria vs. Commission on Elections, G. R. No. 162035, November 26, 2004).

Mark that the instant petition stems from an Order granting the writ of preliminary attachment, and MAXCO was not without other remedies against it in the ordinary course of law. Rule 57 specifically provides for the remedies of a defendant whose property or asset has been attached:

Sec. 12. Discharge of attachment upon giving counterbond. – After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing order the discharge of the attachment if the movant makes a cash, deposit or files a counter-bond executed to the attaching party with the clerk of court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. . . .

Sec. 13. Discharge of attachment on other grounds. – The party whose property has been ordered attached may file a motion with court in which the action is pending, before or after levy or even after the release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient. . . .

Upon the issuance of the Order dated November 24, 2004, the aggrieved MAXCO could have availed of the remedies provided for in Rule 57 of the Rules of Court and which were well within its reach. It could have, before the court a quo, given a counterbond or asked for correction. Whatever irregularity is claimed to have attended the issuance of the writ of preliminary attachment, should first be referred to the same court or tribunal which rendered the Order. This is so because any court which issued the writ has inherent power, for the advancement of justice, to correct errors and to control its own processes. It is only after these when the remedy of MAXCO from an adverse resolution of the trial court could be by petition for certiorari under Rule 65, if the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction. MAXCO should have therefore followed the prescribed recourse rather than attempt to short-circuit the rules. Its premature resort to this Court by petition for certiorari was a fatal procedural error and this petition therefore must fail.

The grant or denial of a writ of preliminary attachment in a pending case rests in the sound discretion of the court taking cognizance of the case (vide: Chuidian vs. Sandiganbayan, G. R. No. 139941, January 19, 2002). In this case, the RTC found sufficient basis to conclude that the issuance of a writ of preliminary attachment was necessary and proper. MAXCO on the other hand failed to show that the RTC acted without or in excess of jurisdiction, meaning having been clothed with power to determine the case, it overstepped its authority as determined by law, or that it committed grave abuse of discretion or acted in capricious, whimsical, arbitrary or despotic manner in the exercise of its discretion as to be equivalent to lack of jurisdiction (Rivera vs. Palattao, G. R. No. 157824, January 17, 2005). It not having been shown that the assailed Order was done with grave abuse of discretion -

WHEREFORE, the petition is DENIED DUE COURSE and accordingly DISMISSED.

SO ORDERED. Guariña, III and Tagle, JJ., concur.

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