

## THE MANILA POST PUBLISHING COMPANY, RECURRENTE, CONTRA CONRADO SANCHEZ, JUEZ DEL JUZGADO DE PRIMERA INSTANCIA DE MANILA, EMETERIO PASCUAL Y EUGENIO LOPEZ, RECURRIDOS.

*G. R. No. L-1864. October 16, 1948*

Ponente: PABLO, J.

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### PABLO, J.:

En 27 de Noviembre de 1947, la recurrente present la demanda en la Causa Civil No. 4112 del Juzgado de Primera Instancia de Manila contra Emeterio Pascual y John Doe, reclamando la entrega de los bienes muebles relacionados en el Annex "A" (replevin) y pidiendo al mismo tiempo su secuestro bajo fianza de P94,000.00. El sheriff de Manila se incauto de algunos de dichos efectos que estaban en posesion de los recurridos Emeterio Pascual y Eugenio Lopez.

En 29 de Noviembre de 1947, Emeterio Pascual presento una mocion urgente pidiendo (1) la especificacion de los valores de los efectos relacionados en el affidavit de la demandante Annex "A", (2) que el periodo de cinco dias dispuesto por el articulo 5, Regla 62, sea suspendido, y (3) que se ordenase al sheriff que retenga los muebles de que se liabla incautado.

En 2 de Diciembre (en el ultimo dia del plazo de cinco dias en que debe presentarse la fianza para la devolucion de los bienes incautados) el recurrido Eugenio Lopez presents una mocion en que alegaba que en 25 de Noviembre habia comprado de Emeterio Pascual por la cantidad de P33,896.31 las dos maquinas de linotipia con sus accesorios secuestrados por el sheriff en virtud de una peticion presentada por la demandante bajo fianza de P94,000; que el John Doe, uno de los demandados, indudablemente se refiere a 61 porque tenia en su poder las dos maquinas al apoderarse de ellas el sheriff. Juntamente con su mocion presentaba una fianza de P67,792.62, pidiendo (a) la aprobacion de dicha fianza y la devolucion por el sheriff a el de las dos maquinas; (b) que se ordenase a la demandante que incluya corrao uno de los demandados a el (Eugenio Lopez) en vez de John Doe; y (c) que se le conceda 15 dias de plazo para presentar su contestacion.

El Honorable Juez recurrido en su orden de 1 de Diciembre fijo para el 5 del mismo mes la vista de la mocion de Emeterio Pascual en que pedia la especificacion de los efectos en litigio, y ordeno al mismo tiempo al sheriff que desista en devolver a la demandante los bienes secuestrados.

En 4 de Diciembre la recurrente presente dos mociones urgentes: (1) una pidiendo al Juez que ordenase al sheriff de Manila que entregue a ella los bienes de que se habia incautado por la razon de que el demandado no ha presentado la fianza correspondiente dentro de cinco dias, segun exigen los articulos 5 y 6, Regla 62; que dichos articulos son de caracter mandatorio y que no autorizan al Juez para extender el plazo; y (2) otra mocion supleraentaria pidiendo que el Honorable Juez recurrido ordenase al sheriff de Manila que la entregue las dos maquinas de linotipia con sus accesorios por la razon de que el recurrido Eugenio Lopez, con infraccion de los articulos 5 y 6, Regla 62, no ha servido a la demandante copia de su fianza dentro del termino de cinco dias.

En 5 de Diciembre, el Honorable Juez recurrido, despues de oir los argumentos de las partes en la vista de la

mocion de Emeterio Pascual de 29 Noviembre y de las mociones urgentes de la recurrente de 4 de Diciembre, ordeno a esta (a) que presente dentro de cinco dias una declaracion jurada enmendada especificando el valor de cada pieza detallada en el Annex "B", (b) concedio a los recurridos Emeterio Pascual y Eugenio Lopez un plazo de tres dias para presentar la contrafianza correspondiente para la devolucion de los efectos secuestrados, (c) concedio a Eugenio Lopez 15 dias para presentar su contestacion, y (d) ordeno al sheriff de Manila que suspenda la devolucion a la demandante de los efectos por el incautados.

Sin pedir la reconsideracion de estas dos ordenes de lo y 5 de Diciembre, la recurrente acude ante esta Superioridad en un recurso de avocacion y, alegando que el Honorable Juez recurrido las dicto con extralimitacion de Jurisdiccion y con abuso de discrecion, pide que dichas ordenes sean declaradas nulas y de ningun valor.

Ha sido la constante practica de este Tribunal la de exigir a las partes interesadas que den oportunidad a los Juzgados inferiores para reconsiderar con detenimiento sus ordenes y no elevarlas sumariamente aqui en recursos de certiorari. "Las mas poderosas razones de polftica y de cortesia, si no de derecho estricto, requieren semejante modo de proceder; y no prestamos aliciente a todo intento de acudir a esta Corte sobre cuestiones quo el Juez inferior tiene derecho a decidir." (Herrera contra Barretto y Joaquin, 25 Jur. Fil., 253).

"Como regla general no se expedira un mandamiento de certiorari a menos que el error o irregularidad objeto de queja se haya puesto de manifiesto al juzgado inferior por medio de una mocion de reconsideracion. (Uy Chu contra Imperial y Uy Du, 44 Jur. Fil., 29.)

"Sin discutir ni resolver los fundamentos legales Invocados por los abogados de las partes, por considerarlo innecesario, declaramos que la peticion no puede prosperar por no haberse dado oportunidad al Juez recurrido a que examinara de nuevo el aspecto legal del asunto mediante la presentacion de una mocion de reconsideracion. La necesidad de una mocion de reconsideracion, previo al ejercicio de una accion de certiorari y remedios especiales similares, es regla establecida ya en esta jurisdiccion y asi se ha sostenido en los asuntos de Herrera contra Barretto y Joaquin, 25 Jur. Fil., 253; y Uy Chu contra Imperial y Uy Du, 44 Jur. Fil., 29." (Amante contra Sison y Manzanero, 60 Jur. Fil., 1027).

"En cuanto a las supuestas irregularidades, unas envuelven cuestion de hecho, como el defecto de publicacion de la vista, y no pueden ser objeto de certiorari; y otras, como la practica de pruebas ante el Escribano de Tayabas, si bien envuelven cuestiones de derecho que pueden afectar la validez de lo actuado, no consta que se haya llamado la atencion del Juzgado inferior sobre las mismas mediante mocion de reconsideracion para que pueda reconsiderar su actuacion, requisito sin el cual no cabe considerar un recurso de certiorari, segun se ha declarado en los asuntos de Concejo Municipal de Masantol contra Guevara, Jur. Fil. 61; y Herrera contra Barretto y Joaquin, 25 Jur. Fil. 253." (Bongon contra Juzgado de la Inst. de Batangas, 61 Jur. Fil., 912).

Se deniega la solicitud con costas.contra la recurrente.

Bengzon y Briones, MM., estan conformes.

Paras and Feria, JJ., concur in the result.

Tuason, J.:

I concur in the result. I am of the opinion that upon the facts stated in the order appealed from, the present petition should be dismissed.

## DISSENTING

### PEREECTO, J.:

Petitioner prays that the orders of respondent judge of December 1 and 5, 1947, be set aside and that the sheriff who is in possession of chattels seized by virtue of the writ of replevin issued by the lower court, be ordered to deliver said chattels to petitioner, in accordance with the provisions of Sections 5 and 6 of Rule 62 which read as follows:

"SEC. 5. Return of property.-If the defendant objects to the sufficiency of the plaintiff's bond, or of the surety or sureties thereon, he cannot require the return of the property as in this section provided; but if he does not so object, he may, at any time before the delivery of the property to the plaintiff, require the return thereof, by filing with the clerk or judge of the court a bond executed to the plaintiff, in double the value of the property as stated in the plaintiff's affidavit, for the delivery of the property to the plaintiff, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the defendant, and by serving a copy of such bond on the plaintiff or his attorney.

"SEC. 6. Disposition of property by officer.-If within five days after the taking of the property by the officer, the defendant does not object to the sufficiency of the bond, or of the surety or sureties thereon, or require the return of the property as provided in the last preceding section; or if the defendant so objects, and the plaintiff's first or new bond is approved; or if the defendant so requires, and his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered to the plaintiff. If for any reason the property is not delivered to the plaintiff, the officer must return it to the defendant."

There is no question that the lower court erred in issuing the orders complained of and that petitioner is entitled to the remedy prayed for in the petition before us, it appearing that copy of the redelivery bond filed by respondent Lopez was served upon petitioner only on December 4, 1947 or after the lapse of seven days from the time the two linotype machines in question had been seized by the Sheriff of Manila.

There is no question about the mandatory character of Sections 5 and 6 of Rule 62.

But the majority have denied the petition upon a mere legal technicality, which appears to us to be completely wrong, namely, that petitioner's failure to move in the lower court for the reconsideration of the orders, before filing the petition for certiorari with this Court, deprived petitioner of its right granted by Sections 5 and 6 of Rule 62.

The petitioner, instead of filing motions for reconsideration in the lower court, had come to us immediately to seek extraordinary legal relief, and upon the facts of record and the very nature of the proceedings instituted in the lower court, it is fully justified in so doing. Replevin is one of the most urgent remedies known in law. The urgency arises from the very nature of chattels, which can be easily transferred from place to place and are liable to disappear or be destroyed, thereby defeating the purposes of the administration of justice.

Furthermore, the possession of the linotype machines in question was vital to the continued publication of "The Manila Post", one of the most popular dailies published in Manila. Subscribers, readers, advertisers, cannot allow the daily newspaper which they patronize to fail to publish a single regular issue, and the life of a newspaper depends much on the regularity of its daily publication. As a matter of fact, because petitioner was denied in the lower court the remedy to which under Rule 62 it was entitled, "The Manila Post" had not been published since December, 1947. The failure of the newspaper to be published for so many months, since then, undoubtedly is attributable to petitioner's failure to recover the possession of the two linotype machines which it had formerly been using for the publication of the newspaper.

The majority invoke the decisions in *Herrera vs. Barreto* (25 Phil., 245), *Uy Chu vs. Imperial* (44 Phil., 27), *Amante vs. Sison* (60 Phil., 949), but the doctrine in said decisions is not supported either by express provision of law or by reason.

Section 1 of Rule 67 specifies the cases in which a petition for certiorari is in order. Nothing therein requires petitioner to first file a motion for reconsideration with the erring tribunal, board or officer exercising judicial functions. It is enough that it be shown that they acted without or in excess of jurisdiction or with grave abuse of discretion and there is no plain, speedy and adequate remedy in the ordinary course of law.

According to Section 6 of Rule 67, if the petition is sufficient in form and substance to justify the process, the respondent shall be required to answer within ten days, while Section 7 of the same rule authorizes the issuance of orders to expedite certiorari proceedings, because of its extraordinary and urgent nature. There is absolutely no provision in the Rules of Court requiring the filing of a motion for reconsideration as a prerequisite before a petition for a writ of certiorari may be addressed to the Supreme Court.

As a matter of fact, the doctrine upon which petitioner is denied remedy to a substantial wrong suffered in the lower court, is not based on any law but, as stated in *Herrera vs. Barreto* (25 Phil., 245), on reasons of "policy and courtesy". It is alleged that the lower court should be given an opportunity to consider for the second time, through a motion for reconsideration, the question upon which it issued the erroneous or irregular order complained of. This appears to us silly, and highly insulting to the sense of official duty and responsibility of the courts and judges concerned.

The percentage of motions for reconsideration that are granted are so insignificant that, in general, such motions for reconsideration appear to be just an empty legal gesture that lead to nowhere. Considering the importance of their functions, courts and judges do not act on any legal question submitted to them, on the spur of a moment's impulse, but on deliberate and nature thought, which may be the second, third, fifth or even the tenth thought. Their high sense of responsibility will exact no less. The fact that, in exceptional cases, they have reconsidered orders and decisions, only serves to affirm the general rule that repeated sustained thoughts are taken advantage of in judicial actuations.

Why make the filing of motions for reconsideration compulsory? No procedural requirement can be more unreasonable. It is not based on any express or implicit rule or legal provision. It is even repugnant to the spirit and character of the present Rules of Court. Before the enactment of said rules exceptions of record was one of the empty rituals which the parties were required to perform in order to entitle them to seek revision in an appellate court. The present rules eliminated such stupid requirement. The drafters of the rules did not countenance empty gestures, in line with the injunction, in Section 2 of Rule 1 "that these rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just speedy, and inexpensive determination of every action and proceeding".

There is nothing more inimical to the purpose thus enunciated than the requirement of compulsory filing of a motion for reconsideration.

We are convinced that petitioner, if not for the silly technicality, is entitled to the remedy prayed for in the petition. The mandatory provisions of sections 5 and 6 of Rule 62 are not a dead letter. Why compel now petitioner to go first to the lower court and there file a motion for reconsideration and, if the same is denied, then come again to us to renew the present petition? Why require petitioner to try to achieve with a motion for reconsideration in the lower court what can immediately be achieved by the decision we are rendering? Why compel petitioner to face the uncertainty of the action on a motion for reconsideration, when we can hand down the certainty of a favorable decision? Why perform again the role of an ostrich when the imperatives of official

duty demand that petitioner be granted substantial justice?

We vote to grant the petition.

Se deniega la solicitud.

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