

**JOURDAN ET CIE GROUP OF COMPANIES, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION, SHERIFF MARIO L.
GARCIA, LEONILO VALLEJO AND AVELINO CASIPIT, JR.,
RESPONDENTS.**

Ponente: COSICO, J.

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COSICO, J.:

Before us is a special civil action for certiorari and prohibition with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction assailing the Resolutions[1] dated April 13, 2004 and August 23, 2004 issued by the National Labor Relations Commission (NLRC) (Second Division) in NLRC NCR CASE NO. 017999-99 which affirmed the Orders dated July 7, 2003 and August 18, 2003 of Executive Labor Arbiter Norma C. Olegario in NLRC Case No. RAB-1-06-1121-97 (LU) granting the issuance of two alias writs of execution to enforce the money judgment obtained in the said case in favor of complainants therein (herein private respondents) which had already attained finality for failure on the part of respondents therein (herein petitioner) to pursue further relief.

The decretal portions of the assailed Resolutions are enumerated hereunder:

In the Resolution dated April 13, 2004, respondent Commission decreed:

“WHEREFORE, the orders appealed from are hereby AFFIRMED, and the respondents’ APPEAL dismissed for absolute lack of merit.”[Id. at p. 5]

Meanwhile, the Resolution dated August 23, 2004 states:

“WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby denied for lack of merit.

No further Motion of this nature shall be entertained.

SO ORDERED.” [Id. at 2]

Not in agreement with the above rulings and alleging that the respondent Commission committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the same, petitioner files the instant petition.

The Facts

This petition originally stemmed from the complaint for illegal dismissal and money claims for separation pay, wage differentials, backwages, holiday pay, rest day pay and overtime pay filed by private respondents Leonilo Vallejo and Avelino Casipit, Jr. against their former employer, petitioner Jourdan Et Cie Group of Companies and one Teresita Yujuico. The complaint was filed before the Regional Office of the Department of Labor and Employment and was referred to the Regional Arbitration Branch No. 1 in San Fernando, La Union before Executive Labor Arbiter Olegario. Subsequently and after hearing the respective sides of the contending parties,

Executive Labor Arbiter Olegario in her decision dated September 30, 1998[2] found private respondents to have been illegally dismissed and ruled that each is entitled to a monetary award in the amount of P68,740.75 representing claims for separation pay, back wages unpaid wages, attorney's fees and indemnity for denial of their right to due process.

As can be expected, petitioner appealed the above September 30, 1998 decision of the Executive Labor Arbiter to the respondent Commission. The NLRC, through its Second Division, in turn, dismissed the said appeal for lack of merit in its Decision[3] dated April 5, 2001. This decision by respondent Commission later on became final and executory for failure on petitioner's part to obtain further relief.

Thereafter, a writ of execution[4] dated July 23, 2002 was issued by Executive Labor Arbiter Olegario to enforce the monetary award due to private respondents in the total sum of P137,481.50 which, among other matters, stated:

‘WHEREAS, the respondent chose not to comply voluntarily with the judgment in this case, not having acted on the letter of this tribunal requesting them to deposit the amount of the award to obviate the necessity of issuing a writ of execution since the amount involved is not so big.

NOW, THEREFORE, you are hereby commanded that, of the goods and chattels of respondent JOURDAN ET CIE GROUP OF COMPANIES, of Gentex Compound, E. Rodriguez Avenue Extension, Libis, Murphy, Quezon City, or whenever it may be found, you cause to be made the sum of ONE HUNDRED THIRTY-SEVEN THOUSAND FOUR HUNDRED EIGHTY-ONE & 50/100 (P137,481.50), together with the lawful fess for the service of this execution in the amounts of P1,000.00 (as Execution Fee) and P687.00 (as Deposit Fee), all in Philippine Currency, which complainants LEONILO VALLEJO and AVELINO CASIPIT, JR. x x x”

Conformably with the above-quoted writ, a notice of garnishment was served by Sheriff Mariano L. Garcia to Augusto A. Fausto, Executive Vice-President of First Savings Bank where petitioner has in deposit an amount which will satisfy the monetary award as well as the other fees stated in the writ. However, the bank refused to comply with the writ per instruction by petitioner. In the meantime, petitioner filed a Motion to Quash Alias Writ of Execution and/or Lift Notice of Garnishment on the basis of two grounds: first, that the said writ deviated from the dispositive portion of the September 30, 1998 decision of the Executive Labor Arbiter which adjudged the total monetary award to be only P137,481.50 and not P139, 168.50; and second, the notice of garnishment mentioned the name of Teresita M. Yujuico despite the fact that the case against her was already dismissed.

Pending resolution of the above motion, and noting that the first writ of execution was returned unsatisfied, a 2nd Alias Writ of Execution[5] dated April 22, 2003 was issued by Executive Labor Arbiter Olegario which now included Stronghold Insurance Company, the bonding company which posted the appeal bond for petitioner, to wit:

“NOW THEREFORE, you are hereby commanded that, of the goods and chattels of respondent JOURDAN ET CIE GROUP OF COMPANIES, of Gentex Compound, E. Rodriguez Avenue Extension, Libis, Murphy, Quezon City, you cause to be made the sum of ONE HUNDRED THIRTY-SEVEN THOUSAND FOUR HUNDRED EIGHTY-ONE & 50/100 (P137,481.50), together with the lawful fees for the service of this execution in the amounts of P1,000.00 (as Execution Fee) and P687.00 (as Deposit Fee), all in Philippine Currency, and/or to proceed against the surety bond issued by Stronghold Insurance Company, secured by respondent's Time Deposit with the First Savings Bank, in the same amount awarded in this case, together with the lawful fees for the service of this execution x x x”

Thereafter, acting on the motion to quash the writ of execution filed by petitioner, Executive Labor Arbiter Olegario issued the Order[6] dated July 7, 2003 resolving to deny the same motion and in effect ruling that

execution can proceed either against petitioner or the surety company since they are solidarily liable to comply with the monetary judgment herein. The Executive Labor Arbiter stressed that the time deposit of petitioner was garnished because it formed part of the appeal bond and was used as security for such bond. As such, it was therefore completely absurd to state that the amount put up as collateral for the bond cannot be made to answer for the judgment award when its purpose was precisely to secure performance of the decision. Meanwhile, the motion for reconsideration filed by petitioner was denied in the August 18, 2003 Order[7] of the Executive Labor Arbiter for being a prohibited motion under the NLRC Rules of Procedure.

Undaunted, petitioner appealed the above orders of denial to respondent Commission. As earlier adverted to, the NLRC affirmed the same under the following ratiocinations in the assailed issuances, the pertinent portions of which are herein reproduced:

April 13, 2004 Resolution

“Section 6 of the NLRC Manual on Execution of Judgment provides that execution fees shall be charged against the losing party, and that for awards in the amount of P100,000.00 or more but not exceeding P150,000.00, the fee in question shall be in the amount of P1,000.00.

Batas Pambansa Blg. 325 and its implementing rules and regulations, in cooperation with Ministry of Finance Order No. 6-83, authorizes this Commission to charge the losing party a deposit fee, which for judgment awards over P18,000.00, shall be equivalent to 0.50% of the judgment award. A notice to this effect was published in the Bulletin Today on September 10, 12 and September 14, 1983.

x x x

x x x

Since there is no question that the above-mentioned time deposit belongs to respondent Jourdan et Cie Group of Companies, there can be no doubt whatsoever that it may be executed against in satisfaction of the judgment in favor of the complainants.” [Id. at 3-4]

Meanwhile, the August 23, 2004 Resolution denied petitioner’s motion for reconsideration which assailed the April 13, 2004 Resolution, to wit:

“Finding that no palpable or patent error was committed by the Commission to warrant the modification and/or reversal of the Resolution, the motion for reconsideration is hereby DENIED for lack of merit.” [Id. at 2]

Hence, the instant petition with prayer for the issuance of an injunctive writ.

The Issue

The sole issue raised as a ground for the allowance of the present petition is:

THE RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS QUESTIONED RESOLUTIONS IN THAT:

- THE WRIT OF EXECUTION VARIED THE TERMS OF THE JUDGMENT WHEN IT INCREASED THE JUDGMENT AMOUNT FROM P137,481.50 TO P139,168.50.

- THE NLRC ALLOWED THE GARNISHMENT OF PETITIONER’S TIME DEPOSIT WITH THE FAMILY SAVINGS BANK IN SATISFACTION OF THE JUDGMENT A QUO AS THE TIME DEPOSIT WAS PUT UP AS COLLATERAL FOR THE SURETY BOND POSTED IN CONNECTION WITH PETITIONER’S APPEAL FROM THE LABOR ARBITER’S ORDER OF 7 JULY 2003 AND 18 AUGUST 2003, A NOTICE OF GARNISHMENT AGAINST THE BANK HOLDING THE CERTIFICATE OF TIME

DEPOSIT IS HIGHLY IRREGULAR AND IMPROPER AND WOULD VIOLATE SUBSTANTIAL AND PROCEDURAL DUE PROCESS OF LAW.

This Court's Ruling

The petition is partly meritorious.

Execution is the final stage of litigation, the end of the suit.[8] It can not be frustrated except for serious reasons demanded by justice and equity.[9] In this jurisdiction, the rule is that when a judgment becomes final and executory, it is the ministerial duty of the court, or in this case, the proper labor official, to issue a writ of execution to enforce a judgment.[10] Notwithstanding, and in certain instances, corrections may be made by a superior court where it appears that an error was committed in the course of the execution proceedings prejudicial to the rights of a party. Thus in *Limpin v. Intermediate Appellate Court*[11], the Supreme Court enumerated the following grounds where corrections of a perceived error in the execution proceedings may be warranted, to wit:

- the writ of execution varies the judgment;
- there has been a change in the situation of the parties making execution inequitable or unjust;
- execution is sought to be enforced against property exempt from execution;
- it appears that the controversy has never been submitted to the judgment of the court;
- the terms of the judgment are not clear enough and there remains room for interpretation thereof; or
- it appears that the writ of execution has been improvidently issued, or that it is defective in substance or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or that the writ was issued without authority.

Petitioner's contention that the two alias writs of execution are patent nullity since it allegedly varies the monetary judgment of Executive Labor Arbiter Olegario by adding execution fees and also, considering that it has been issued against the wrong party is untenable.

Section 7, Rule VIII of the 2002 Rules of Procedure of the NLRC on enforcement of the writ specifically states that, 'in executing an order, resolution or decision, the sheriff or other authorized officer acting as such, shall be guided strictly by the Sheriff's Manual (NLRC Manual on Execution of Judgment) which shall form part of these Rules, and in the absence of applicable rules, the revised Rules of Court, as amended'. Meanwhile, Section 6, Rule IX of the NLRC Manual on Execution of Judgment provides that execution fees shall be charged against the losing party, and that for awards in the amount of P100,000.00 or more but not exceeding P150,000.00, the fee in question shall be in the amount of P1,000.00.

Indeed, the imposition of execution fees is allowed by law and does not amount to varying or modifying a final judgment. For this matter, we lay stress that in the first writ of execution issued, the Executive Labor Arbiter could not have been more equivocal in stating that 'execution and deposit fees in the amounts of P1,000.00 and P687.00 x x x should be paid separately from the judgment award' -- thus indicating that it is not part of the monetary award to be given to the private respondents.

Corollary to this, we are of the view that while the doctrines in the cases cited by petitioner are the prevailing jurisprudence in this jurisdiction, the facts attendant to the instant case are not similar to those taken into account in the said cases to justify the application of the principles laid down therein. To illustrate, in *Philippine Bank of Communications v. Court of Appeals*[12] which involve an execution pending appeal, the Supreme Court noted that the order of execution issued by the judge therein modified or otherwise failed to conform to the dispositive portion of the decision sought to be executed in that:

“The January 2, 1996 decision ordered petitioner to ‘restore immediately to plaintiff’s Current Account No. 25-00640-7 the sum of P12,729,092.78, plus interest at the rate of 12% per annum to commence from the date of the filing of the complaint until the said amount is fully restored, and to operate the said account in accordance with the instructions of plaintiffs, acting through its board of directors.’ In contrast, the May 7, 1996 order directed petitioner to ‘immediately pay the sum of P12,729,092,78’ plus interest and other damages.”

In the meantime, in *Ex-Bataan Veterans Security Agency, Inc. v. National Labor Relations Commission*[13], the writ of execution therein was at variance with the judgment sought to be executed considering that the dispositive portion of the decision in the said case did not contain an award of separation pay which was included in the said writ. Lastly, in *Foremost Farms, Incorporated v. Department of Labor and Employment*,[14]the Supreme Court ruled that the writ of execution issued in the said case was at variance with the judgment as there was nothing in the decision regarding the award of backwages.

To our mind, the payment of additional fees, in the nature of execution fees, does not amount to varying the judgment. Verily, the payment thereof could have been averted by petitioner if the latter was sincere in its stance to satisfy its obligation to private respondents. Undeniably, the monetary judgment in favor of the latter had long become final and executory. As such, if ever execution fees were imposed, it only has itself to blame for such additional expense. More than five years had passed since the finality of the judgment and yet, the said individuals are still waiting to savor the fruits of their success in the said case. We shall not make them wait any further.

Notwithstanding the foregoing disquisition however, we find the deposit fee in the amount of P687.00 not warranted as a perusal of the NLRC Manual on Execution of Judgment does not provide for the same. This view is also consistent with Section 7, Rule VIII of the 2002 Rules of Procedure of the NLRC and Section 6, Rule IX of the NLRC Manual on Execution of Judgment.

Finally, petitioner’s stand that the writs were improvidently issued for being issued against the wrong party is unavailing. The world has not changed so much as to relieve a losing party in a litigation proceeding from satisfying the judgment rendered against it. Ultimately, it is petitioner, being the judgment obligor which shall satisfy the monetary award due to private respondents. On this note, Paragraph 2, Section 2, Rule III of the NLRC Manual on Execution of Judgment provides:

(a) If the execution be for the payment of a sum of money by the losing party, the writ shall be served by the sheriff upon the losing party or upon any person required by law to obey the same before proceeding to satisfy the judgment out of the personal property of such party and if no sufficient personal property can be found, then out of his real property.

As borne out by the records, petitioner has been served by the NLRC a letter requesting the former to deposit the amount equivalent to the monetary judgment but to no avail. In this respect, Section 2, Rule V states:

SECTION 2. Effect of Garnishment. – Garnishment is effected by the sheriff or authorized officer by serving a notice thereof to the third party who has possession or control of such money, goods, chattels and/or any interest therein, belonging or owing to the losing party directing or requiring him (garnishee) to hold the same subject to further orders from the Commission or Labor Arbiter who issued the writ. Where the property

garnished consists of money deposited with a bank or third party, the Commission or Labor Arbiter shall order that the same shall only be released to the cashier of the NLRC.

In hindsight, we are dismayed by the conduct displayed by petitioner in the instant case as well as by petitioner's counsel, Atty. Victor V. Diciembre, who is well reminded that his duty in assisting in the administration of justice lies, first and foremost, with the court and not with his client. To repeat, petitioner does not dispute the amount owing to private respondents, nonetheless, the former refuses to satisfy its obligations. Suffice it to state that petitioner is only prolonging the inevitable.

WHEREFORE, premises considered, the petition is PARTLY GRANTED. The two alias writs of execution issued by Executive Labor Arbiter Norma C. Olegario insofar as it orders the payment of deposit fee are hereby quashed.

SO ORDERED.

Sundiam, and Librea-Leagogo, JJ., concur.

[1] Rollo at 13-18 and 20-22.

[2] Id. at 26-45.

[3] Id. at 59-67.

[4] Id. at 68-70.

[5] Id. at 77-81.

[6] Id. at 85-91.

[7] Id. at 96.

[8] Torres v. National Labor Relations Commission, 330 SCRA 311, 316[2000].

[9] Ibid.

[10] Ibid.

[11] 147 SCRA 516 [1987].

[12] 279 SCRA 364 [1997]

[13] 250 SCRA 418 [1995]

[14] 251 SCRA 123 [1995].

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