

JULIAN S. YAP, PETITIONER, VS. HON. SANTIAGO O. TAÑADA, ETC., AND GOULDS PUMPS INTERNATIONAL (PHIL.), INC., RESPONDENTS.

G.R. No. L-32917. July 18, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

The petition for review on certiorari at bar involves two (2) Orders of respondent Judge Tañada[1] to Civil Case No. 10984. The first, dated September 16, 1970, denied petitioner Yap's motion to set aside execution safe and to quash alias writ of execution. The second, dated November 21, 1970, denied Yap's motion for reconsideration. The issues concern the propriety of execution of a judgment claimed to be "incomplete, vague and non-final," and the denial of petitioner's application to prove and recover damages resulting from alleged irregularities in the process of execution.

The antecedents will take some time in the telling. The case began in the City Court of Cebu with the filing by Goulds Pumps International (Phil.), Inc. of a complaint[2] against Yap and his wife,[3] seeking recovery of P1,459.30 representing the balance of the price and installation cost of a water pump in the latter's premises.[4] The case resulted in a judgment by the City Court on November 25, 1968, reading as follows:

"When this case was called for trial today, Atty. Paterno Natinga appeared for the plaintiff (Goulds) and informed the court that he is ready for trial. However, none of the defendants appeared despite notices having been served upon them.

"Upon petition of Atty. Natinga, the plaintiff is hereby allowed to present its evidence ex-parte.

"After considering the evidence of the plaintiff, the court hereby renders judgment in favor of the plaintiff and against the defendant (Yap), ordering the latter to pay to the former the sum of P1,459.30 with interest at the rate of 12% per annum until fully paid, computed from August 12, 1968, date of the filing of the complaint; to pay the sum of P364.80 as reasonable attorney's fees, which is equivalent to 25% of the unpaid principal obligation; and to pay the costs, if any."

Yap appealed to the Court of First Instance. The appeal was assigned to the sala of respondent Judge Tañada. For failure to appear for pre-trial on August 28, 1968, this setting being intransferable since the pre-trial had already been once postponed at his instance,[5] Yap was declared in default by Order of Judge Tañada dated August 28, 1969,[6] reading as follows:

"When this case was called for pre-trial this morning, the plaintiff and counsel appeared, but neither the defendants nor his counsel appeared despite the fact that they were duly notified of the pre-trial set this morning. Instead he filed an Ex-Parte Motion for Postponement which this Court received only this morning, and on petition of counsel for the plaintiff that the Ex-Parte Motion for Postponement was not filed in accordance with the Rules of Court he asked that the same be denied and the defendants be declared in default; * * * the motion for the plaintiff being well-grounded, the defendants are hereby declared in default and the Branch Clerk of Court * * * is hereby authorized to receive evidence for the plaintiff and * * * submit his report within ten (10) days after reception of evidence."

Goulds presented evidence ex parte; and judgment by default was rendered the following day by Judge Tañada requiring Yap to pay to Goulds (1) P1,459.30 representing the unpaid balance of the pump purchased by him; (2) interest of 12% per annum thereon until fully paid; and (3) a sum equivalent to 25% of the amount due as attorney's fees and costs and other expenses in prosecuting the action. Notice of the judgment was served on Yap on September 1, 1969.[7]

On September 16, 1969 Yap filed a motion for reconsideration.[8] In it he insisted that his motion for postponement should have been granted since it expressed his desire to explore the possibility of an amicable settlement; that the court should give the parties time to arrive at an amicable settlement failing which, he should be allowed to present evidence in support of his defenses (discrepancy as to the price and breach of warranty). The motion was not verified or accompanied by any separate affidavit. Goulds opposed the motion. Its opposition[9] drew attention to the eleventh-hour motion for postponement of Yap which had resulted in the cancellation of the prior hearing of June 30, 1969 despite Gould's vehement objection, and the re-setting thereof on August 28, 1969 with intransferable character; it averred that Yap had again sought postponement of this last hearing by another eleventh-hour motion on the plea that an amicable settlement would be explored, yet he had never up to that time ever broached the matter,[10] and that this pattern of seeking to obtain last-minute postponements was discernible also in the proceedings before the City Court. In its opposition, Goulds also adverted to the examination made by it of the pump, on instructions of the City Court, with a view to remedying the defects claimed to exist by Yap; but the examination had disclosed the pump's perfect condition. Yap's motion for reconsideration was denied by Order dated October 10, 1969, notice of which was received by Yap on October 14, 1969.[11]

On October 15, 1969 Judge Tañada issued an Order granting Goulds' Motion for Issuance of Writ of Execution dated October 14, 1969, declaring the reasons therein alleged to be meritorious.[12] Yap forthwith filed an "Urgent Motion for Reconsideration of Order" dated October 17, 1969,[13] contending that the judgment had not yet become final, since contrary to Goulds' view, his motion for reconsideration was not pro forma for lack of an affidavit of merit, this not being required under Section 1(a) of Rule 37 of the Rules of Court upon which his motion was grounded. Goulds presented an opposition dated October 22, 1969.[14] It pointed out that in his motion for reconsideration Yap claimed to have a valid defense to the action, i.e., "discrepancy as to price and breach of seller's warranty," in effect, that there was fraud on Goulds' part; Yap's motion for reconsideration should therefore have been supported by an affidavit of merit respecting said defenses; the absence thereof rendered the motion for reconsideration fatally defective with the result that its filing did not interrupt the running of the period of appeal. The opposition also drew attention to the failure of the motion for reconsideration to specify the findings or conclusions in the judgment claimed to be contrary to law or not supported by the evidence, making it a pro forma motion also incapable of stopping the running of the appeal period. On October 23, 1969, Judge Tañada denied Yap's motion for reconsideration and authorized execution of the judgment.[15] Yap sought reconsideration of this order, by another motion dated October 29, 1969.[16] This motion was denied by Order dated January 26, 1970.[17] Again Yap moved for reconsideration, and again was rebuffed, by Order dated April 28, 1970.[18]

In the meantime the Sheriff levied on the water pump in question, [19] and by notice dated November 4, 1969, scheduled the execution sale thereof on November 14, 1969.[20] But in view of the pendency of Yap's motion for reconsideration of October 29, 1969, suspension of the sale was directed by Judge Tañada in an order dated November 6, 1969:[21]

"Counsel for the plaintiff is hereby given 10 days time to answer the Motion, dated October 29, 1969, from receipt of this Order and in the meantime, the Order of October 23, 1969, insofar as it orders the sheriff to enforce the writ of execution is hereby suspended."

It appears however that a copy of this Order was not transmitted to the Sheriff "through oversight, inadvertence and pressure of work" of the Branch Clerk of Court.[22] So the Deputy Provincial Sheriff went ahead with the scheduled auction sale and sold the property levied on to Goulds as the highest bidder.[23] He later submitted the requisite report to the Court dated November 17, 1969,[24] as well as the "Sheriff's Return of Service" dated February 13, 1970,[25] in both of which it was stated the execution had been "partially satisfied." It should be observed that up to this time, February, 1970, Yap had not bestirred himself to take an appeal from the judgment of August 29, 1969.

On May 9, 1970 Judge Tañeda ordered the issuance of an alias writ of execution on Goulds' ex parte motion therefor.[26] Yap received notice of the Order on June 11. Twelve (12) days later, he filed a "Motion to Set Aside Execution Sale and to Quash Alias Writ of Execution." [27] As regards the original, partial execution of the judgment, he argued that —

- 1) "the issuance of the writ of execution on October 16, 1969 was contrary to law, the judgment sought to be executed not being final and executory;" and
- 2) "the sale was made without the notice required by Sec. 18, Rule 39, of the New Rules of Court", i.e., notice by publication in case of execution sale of real property, the pump and its accessories being immovable because attached to the ground with character of permanency (Art. 415, Civil Code).

And with respect to the alias writ, he argued that it should not have issued because -

- 1) "the judgment sought to be executed is null and void" as "it deprived the defendant of his day in court" and "of due process";
- 2) "said judgment is incomplete and vague" because there is no starting point for computation of the interest imposed, or a specification of the "other expenses incurred in prosecuting this case" which Yap had also been ordered to pay;
- 3) "said judgment is defective" because it contains no statement of facts but a mere recital of the evidence; and
- 4) "there has been a change in the situation of the parties which makes execution unjust and inequitable" because Yap suffered damages by reason of the illegal execution.

Goulds filed an opposition on July 6, 1970. Yap's motion was thereafter denied by Order dated September 16, 1970. Judge Tañada pointed out that the motion had "become moot and academic" since the decision of August 29, 1969, "received by the defendant on September 1, 1969 had long become final when the Order for the Issuance of a Writ of Execution was promulgated on October 15, 1969." His Honor also stressed that-

"The defendant's Motion for Reconsideration of the Court's decision was in reality one for new trial. Regarded as motion for new trial it should allege the grounds for new trial, provided for in the Rules of Court, to be supported by affidavit of merits; and this the defendant failed to do. If the defendant sincerely desired for an opportunity to submit to an amicable settlement, which he failed to do extra-judicially despite the ample time before him, he should have appeared in the pre-trial to achieve the same purpose."

Judge Tañada thereafter promulgated another Order dated September 21, 1970 granting a motion of Goulds for completion of execution of the judgment of August 29, 1969 to be undertaken by the City Sheriff of Cebu. Once more, Yap sought reconsideration. He submitted a "Motion for Reconsideration of Two Orders" dated October 13, 1970,[28] seeking the setting aside not only of this Order of September 21, 1970 but also that dated September 16, 1970, denying his motion to set aside execution dated June 23, 1970. He contended that the Order of September 21, 1970 (authorizing execution by the City Sheriff) was premature, since the 30-day period to appeal

from the earlier order of September 16, 1970 (denying his motion to set aside) had not yet expired. He also reiterated his view that his motion for reconsideration dated September 15, 1969 did not require that it be accompanied by an affidavit of merits. This last motion was also denied for "lack of merits," by Order dated November 21, 1970.[29]

On December 3, 1970, Yap filed a "Notice of Appeal" manifesting his intention to appeal to the Supreme Court on certiorari only on questions of law, "from the Order * * * of September 16, 1970 * * * and from the Order * * * of November 21, 1970, * * * pursuant to sections 2 and 3 of Republic Act No. 5440." He filed his petition for review with this Court on January 5, 1971, after obtaining an extension therefor.[30]

The errors of law, he attributes to the Court a quo are the following:[31]

- 1) refusing to invalidate the execution pursuant to its Order of October 16, 1969 although the judgment had not then become final and executory and despite its being incomplete and vague;
- 2) ignoring the fact that the execution sale was carried out although it (the Court) had itself ordered suspension of execution on November 6, 1969;
- 3) declining to annul the execution sale of the pump and accessories subject of the action although made without the requisite notice prescribed for the sale of immovables; and
- 4) refusing to allow the petitioner to prove irregularities in the process of execution which had resulted in damages to him.

Notice of the Trial Court's judgment was served on Yap on September 1, 1969. His motion for reconsideration thereof was filed 15 days thereafter, on September 16, 1969. Notice of the Order denying the motion was received by him on October 14, 1969. The question is whether or not the motion for reconsideration — which was not verified, or accompanied by an affidavit of merits (setting forth facts constituting his meritorious defenses to the suit) or other sworn statement (stating facts excusing his failure to appear at the pre-trial) — was pro forma and consequently had not interrupted the running of the period of appeal. It is Yap's contention that his motion was not pro forma for lack of an affidavit of merits, such a document not being required by Section 1 (a) of Rule 37 of the Rules of Court upon which his motion was based. This is incorrect.

Section 2, Rule 37 precisely requires that when the motion for new trial is founded on Section 1 (a), it should be accompanied by an affidavit of merits.

"* * *

* * *

* * *

"When the motion is made for the causes mentioned in subdivisions (a) and (b) of the preceding section, it shall be proved in the manner provided for proof of motions. Affidavit or affidavits of merits shall also be attached to a motion for the cause mentioned in subdivision (a) which may be rebutted by counter-affidavits.

* * *

* * *

* * *." [32]

Since Yap himself asserts that his motion for reconsideration is grounded on Section 1 (a) of Rule 37,[33] i.e., fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which * * * (the) aggrieved party has probably been impaired in his rights" — this being in any event clear from a perusal of the motion which theorizes that he had "been impaired in his rights" because he was denied the right to present evidence of his defenses (discrepancy as to price and breach of warranty) — it was a fatal omission to fail to attach to his motion an affidavit of merits, i.e., an affidavit "showing the facts (not conclusions) constituting the valid * * * defense which the movant may prove in case a new trial is granted." [34] The requirement of such an affidavit is essential because obviously "a new trial would be a waste of the court's time if the complaint turns out to be groundless or the defense ineffective." [35]

In his motion for reconsideration, Yap also contended that since he had expressed a desire to explore the possibility of an amicable settlement, the Court should have given him time to do so, instead of declaring him in default and thereafter rendering judgment by default on Goulds' ex parte evidence.

The bona fides of his desire to compromise is however put in doubt by the attendant circumstances. It was manifested in an eleventh-hour motion for postponement of the pre-trial — which had been scheduled with intransferable character since it had already been earlier postponed at Yap's instance; it had never been mentioned at any prior time since commencement of the litigation; such a possible compromise (at least in general or preliminary terms) was certainly most appropriate for consideration at the pre-trial; in fact Yap was aware that the matter was indeed a proper subject of a pre-trial agenda, yet he sought to avoid appearance at said pre-trial which he knew to be intransferable in character. The considerations and the dilatory tactics thus far attributable to him — seeking postponements of hearings, or failing to appear therefore despite notice, not only in the Court of First Instance but also in the City Court — proscribe belief in the sincerity of his avowed desire to negotiate a compromise. Moreover, the disregard by Yap of the general requirement that "(n)otice of a motion shall be served by the applicant to all parties concerned at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it," [36] for which no justification whatever has been offered, also militates against the bona fides of Yap's expressed wish for an amicable settlement. The relevant circumstances do not therefore justify condemnation, as a grave abuse of discretion, or a serious mistake, of the refusal of the Trial Judge to grant postponement upon this proffered ground.

The motion for reconsideration did not therefore interrupt the running of the period of appeal. The time during which it was pending before the court — from September 16, 1969 when it was filed with the respondent Court until October 14, 1969 when notice of the order denying the motion was received by the movant — could not be deducted from the 30-day period of appeal. [37] This is the inescapable conclusion from a consideration of Section 3 of Rule 41 which in part declares that, "The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37," [38]

Notice of the judgment having been received by Yap on September 1, 1969, and the period of appeal therefrom not having been interrupted by the motion for reconsideration filed on September 16, 1968, the reglementary period of appeal expired thirty (30) days after September 1, 1969, or on October 1, 1969, without an appeal being taken by Yap. The judgment then became final and executory; Yap could no longer take an appeal therefrom or from any other subsequent orders; and execution of judgment correctly issued on October 15, 1969, "as a matter of right." [39]

The next point discussed by Yap, that the judgment is incomplete and vague, is not well taken, it is true that the

decision does not fix the starting time of the computation of interest on the judgment debt, but this is inconsequential since that time is easily determinable from the opinion, i.e., from the day the buyer (Yap) defaulted in the payment of his obligation,[40] on May 31, 1968.[41] The absence of any disposition regarding his counterclaim is also immaterial and does not render the judgment incomplete. Yap's failure to appear at the pre-trial without justification and despite notice, which caused the declaration of his default, was a waiver of his right to controvert the plaintiffs proofs and of his right to prove the averments of his answer, inclusive of the counterclaim therein pleaded. Moreover, the conclusion in the judgment of the merit of the plaintiffs cause of action was necessarily and at the same time a determination of the absence of merit of the defendant's claim of untenability of the complaint and of malicious prosecution.

Yap's next argument that the water pump had become immovable property by its being installed in his residence is also untenable. The Civil Code considers as immovable property, among others, anything "attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object."⁶ The pump does not fit this description. It could be, and was in fact separated from Yap's premises without being broken or suffering deterioration. Obviously the separation or removal of the pump involved nothing more complicated than the loosening of bolts or dismantling of other fasteners.

Yap's last claim is that in the process of removal of the pump from his house, Goulds' men had trampled on the plants growing there, destroyed the shed over the pump, plugged the exterior casings with rags and cut the electrical and conduit pipes; that he had thereby suffered actual damages in an amount of not less than P2,000.00, as well as moral damages in the sum of P10,000.00 resulting from his deprivation of the use of his water supply; but the Court had refused to allow him to prove these acts and recover the damages rightfully due him. Now, as to the loss of his water supply, since this arose from acts legitimately done, the seizure on execution of the water pump in enforcement of a final and executory judgment, Yap most certainly is not entitled to claim moral or any other form of damages therefor.

WHEREFORE, the petition and DENIED and the appeal DISMISSED, and the Orders of September 16, 1970 and November 21, 1970 subject thereof, AFFIRMED in toto. Costs against petitioner.

Cruz, Gancayco, Griño-Aquino and Medialdea, JJ., concur.

[27] Then presiding Judge of Branch V of the Court of First Instance of Cebu City.

[2] Annex E, petition, pp. 34-35, Rollo.

[3] However, Mrs. Minerva V. Yap was subsequently dropped from the complaint.

[4] Yap's answer (Rollo, pp. 36 et seq) put up the defense that the purchase document did not reflect his real agreement with Goulds, and he had made severe complaints about the pump to no avail. Goulds' claim is that the examination of the pump showed it to be in good working order, but the Yaps had refused to attest thereto despite being present during the examination (Rollo, pp. 72 et seq).

[5] *Infra*: footnote No. 1, p. 3

[6] Rollo, p. 188.

[7] *Id.*, p. 10

[8] *Id.*, pp. 41-42

[9] *Id.*, pp. 43 et seq. An additional ground for postponement was that he would be in Barili, Cebu, on the date of the pre-trial.

[10] It appears that the pump was delivered and installed at the Yaps' premises in December, 1967: Rollo, pp. 34 et seq.

[11] Rollo, p. 10.

[12] *Id.*, p. 114.

[13] *Id.*, p. 115.

[14] *Id.*, p. 117.

[15] *Id.*, p. 11.

[16] *Id.*, p. 124 et seq. The motion reiterated prior arguments and in addition, contained a "Specification of findings not supported by evidence" and a "Specification of conclusions contrary to law." An opposition thereto was filed under date of Nov. 27, 1969 (Rollo, p. 128).

[17] *Id.*, p. 133.

[18] *Id.*, p. 135.

[19] *Id.*, pp. 52, 53.

[20] *Id.*, p. 54.

[21] *Id.*, p. 56, SEE paragraphs 18 and 19, petition.

[22] Rollo, pp. 137, 134

[23] *Id.*, p. 131. The Certificate of Sale is dated November 14, 1969.

[24] *Id.*, p. 123.

[25] *Id.*, p. 57.

[26] Par. 21, petition, p. 12, Rollo.

[27] Rollo, pp. 22, et seq.

[28] *Id.*, pp. 30 et seq.

[29] *Id.*, p. 142.

[30] Granted by Resolution dated January 4, 1971, for 15 days from December 8 (Rollo, p. 5).

[31] Rollo, pp. 5-6.

[32] Italics supplied.

[33] SEE footnote No. 6, p. 3, *supra*.

[34] SEE *Coombs v. Santos*, 24 Phil: 446, 451, cited in *Feria*, Civil Procedure, 1969 ed., p. 514; see, too, *Moran*, Comments on the Rules, 1979 ed., Vol. 2, pp. 214-215, citing numerous cases; parenthetical insertion supplied.

[35] *Moran*, op. cit., p. 215, citing *Vda. de Yulo v. Chua Chuco, et al.*, 48 O.G. 554; *Baguieran v. Court of Appeals*, L-14551, July 31, 1961, 2 SCRA 873.

[36] SEE Sections 4, 5 and 6, Rule 15; *Manila Surety & Fidelity Co. v. Batu Construction Co.*, L-16636, June 24, 1965; *Fulton Insurance Co. v. Manila Railroad Co.*, L-24263, November 18, 1967, cited in *Moran*, op cit., p. 214.

[37] BP No. 129 has since reduced the period of appeal to 15 days except in special proceedings or cases where multiple appeals are allowed.

[38] Italics supplied; see *Coombs' v. Santos*. 24 Phil. 446, 451, and *Alfonso v. Bustamante*, 98 Phil. 158, cited in *Feria*, op. cit., pp. 514-515; and *Capinpin, et al. v. Isip*, L-14018, Aug. 31, 1959, cited in *Moran*, op. cit.

[39] Sec. 1, Rule 39; See *Amor v. Jugo, et al.*, 77 Phil. 703.

[40] *Rollo*, p. 39.

[41] *Id.*, pp. 35, 193.

[42] ART. 415, par. (3).

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