

HOME INSURANCE COMPANY, PETITIONER, VS. THE HON. COURT OF APPEALS AND MADRIGAL SHIPPING CO., INC., RESPONDENTS.

G.R. NO. L-47916. April 17, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The propriety of the order of execution pending appeal is the bone of contention in this petition.

On September 14, 1959, petitioner filed an action for damages against private respondent as well as Pacific Far East Lines and United States Lines for recovery of loss of cargoes under "bills of lading" on board private respondent's Y-45 Interisland vessel in the Court of First Instance of Manila. In due course and after a prolonged trial a decision was rendered on July 22, 1976, the dispositive part of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of Home Insurance Company sentencing defendants, jointly and severally, to pay the plaintiff:

(a) Under the First and Second Causes of Action, the sum of \$95,763.00 at the prevailing rate of exchange as certified to by the Central Bank at the time of payment with legal rate of interest from the date of the filing of the complaint;

(b) Compensatory damages by way of attorney's fees in an amount equivalent to 20% of recovery from the defendants.

With costs against the defendants.

SO ORDERED."[1]

On September 30, 1976, prior to the approval of the record on appeal, petitioner filed a motion for execution pending appeal advancing the following special and compelling reasons:

"a) The appeal appears to be frivolous and interposed merely to delay the execution of the judgment considering the finding of facts of the lower court which commend themselves for clarity being amply supported by admissions of defendants' witnesses and uncontroverted evidence on record;

b) Defendant's (now respondent) chance of obtaining a reversal of the lower court decision is practically nil because, as the decision aptly points out, the facts and the evidence do not support the defendant; and

c) The case has remained pending for more than 17 years from the time of the filing of the complaint."[2]

After an opposition thereto was filed by private respondent, on December 16, 1976 the trial court issued an order granting execution pending appeal upon a bond in the amount of P200,000.00 to be filed by petitioner. A motion for reconsideration thereof was filed by private respondent which was opposed by petitioner. On February 22, 1977, the trial court denied the motion for reconsideration.

On March 10, 1977, private respondent filed a motion offering to file a supersedeas bond in the amount of

P200,000.00 to which an opposition was filed by petitioner. The motion was denied on March 24, 1977.

Petitioner filed a surety bond in the amount of P200,000.00. On April 4, 1977, private respondent filed a petition for certiorari with the public respondent docketed as CA-G.R. No. SP-06550-R with a prayer for the issuance of a writ of preliminary injunction to set aside said orders of the trial court dated December 16, 1976 and February 22, 1977. On April 12, 1977, the appellate court gave due course to the petition and required petitioner to answer the same. On April 13, 1977, a writ of preliminary injunction was issued upon a bond in the amount of P10,000.00 filed by private respondent. On September 7, 1977, the appellate court rendered its decision granting the petition and annulling the questioned order of December 16, 1976. Thus, the writ of preliminary injunction was made permanent. A motion for reconsideration thereof filed by petitioner was denied on February 15, 1978.

Hence, the herein petition wherein it is alleged that respondent court acted with grave abuse of discretion in substituting its judgment for the discretion judiciously exercised by the trial court when the latter issued the questioned special order of execution dated December 16, 1976.

The petition is impressed with merit.

Section 2, Rule 39 of the Rules of Court provides -

"Execution pending appeal. - On motion of the prevailing party with notice to the adverse party the court may in its discretion order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein."

The rule is that the matter of whether or not to grant an execution pending appeal based upon good reasons is addressed to the sound discretion of the trial court and its exercise shall not be disturbed on appeal unless it commits a grave abuse of discretion or otherwise acted without or in excess of its jurisdiction in the process.

In the questioned order of the trial court, the issuance of the order of execution pending appeal is predicated on the following disquisition:

"The Court is convinced based on the following admissions of defendant's witnesses and uncontroverted evidence on record, among others, that the appeal taken by defendants is dilatory:

- The Certificate of Annual Inspection of the vessel Y-45 had expired for eight (8) months when it sank showing gross negligence on the part of defendant Madrigal in failing to drydock the vessel, in violation of Section 903 of the Tariff and Customs Code which requires that 'all vessels engaged in coastwise trade must be licensed annually.'
- The admission of Captain Orlina, who was then in command of the Y-45, that the vessel was one of those old rusty vessels and that the Y-45 sank while it was at anchor and not when it was being navigated. The sinking, according to him, was caused by the sudden flow of water inside the tank on one side of the ship and water entered into a leak that developed at the ship's bottom.
- The admission of Captain Orlina and Charles McKenzie, the Chief Engineer, that in their experience with other vessels on previous occasions where said vessels took heavy poundings and bigger waves worse than those encountered by the Y-45 on September 30, 1957, not one of them cracked and the Y-45 was the only vessel in their entire experience that sank due to the kind of weather it encountered from the time it left Manila until it capsized, despite the admitted fact that the Y-45 being a tanker was supposed to weather bigger waves and heavier poundings.
- The testimony of Captain Rafael Garcia, the Port Captain of defendant Madrigal, that the wind at Palawan Bay where the vessel encountered heavy waves was westerly with Force 3 to 4 which occasionally increased

from 4 to 5 during squalls. By this admission, it is clear that the wind form cannot be considered as a typhoon because the speed of wind necessary to be classified as a typhoon of the weakest type would be Force 9 under the Beaufort Scale, and consequently the force of the wind that the ill-fated vessel encountered was not a typhoon, much less a gale. The wind force and the state of sea testified to by defendant Madrigal's witnesses were corroborated by the weather report, Exhibits E and E-1.

- The transshipment was arranged at the instance of United States Lines Co. acting as agent of defendant Pacific Far East Lines, Inc. without the participation of the consignee and/or shipper.

The plaintiff's claim has found relief after more than 17 years since the instant case was commenced. Of course, the mere pendency of the case by itself and/or standing alone does not per se constitute good reason to justify execution pending appeal. Yet, the long pendency of the case becomes another vital factor in determining the merit of a plea for execution pending appeal, because the Court takes judicial notice of the fact that the purchasing power of the Philippine peso has considerably declined since the inception of the case.

The conclusions of the Court are supported and buttressed by evidence on record. When the court stated in its decision that 'the evidence on record shows that not only did defendants fail to rebut the presumption of fault or negligence but that their very evidence indicates fault or negligence on defendants' part,' it is a statement supported by the evidence on record.

This is a money judgment for recovery under bills of lading and the plaintiff is ordered to file a bond in the amount of P200,000.00."^[3]

A good and sufficient reason upon which to issue execution of the judgment pending appeal is when the appeal is being taken for the purpose of delay.^[4] While it is true that it is not for the trial court to say that the appeal may not prosper or that it is frivolous, there are circumstances which may serve as cogent bases for arriving at such a conclusion.

In the present case, the admission of private respondent's witnesses and uncontroverted evidence which were enumerated show that the appeal is dilatory. The trial court reiterated in its decision that "the evidence on record shows that not only did defendants fail to rebut the presumption of fault or negligence but that their very evidence 'indicates fault or negligence on defendants' part." This observation is supported by the record.

This conclusion of the trial court is not traversed in the motion for reconsideration filed by private respondent and addressed to the trial court, or in the comment and memorandum filed in this case.

Another vital factor which led the trial court to allow execution pending appeal was the pendency of the case for more than 17 years so that the purchasing power of the peso has undeniably declined. The court agrees. The case had been pending in court for over 30 years now. Petitioner should be given relief before it is too late.

Moreover, the trial court nevertheless required petitioner to file a bond in the amount of P200,000.00 for the issuance of the order of advance execution of judgment to answer for any damage that may be caused private respondent should its issuance prove to be improper. The filing of the bond is another good reason for the execution of a judgment pending appeal.

Of course, in this case, private respondent proposed to file a supersedeas bond of P200,000.00 to stay the execution. The trial court denied the motion for the reason that the order of execution pending appeal was not predicated on the sole ground of the filing of the bond but also on other grounds hereinabove discussed. We agree.

WHEREFORE, the petition is GRANTED. The decision of the respondent court dated September 7, 1977 and its resolution dated February 15, 1978 are hereby reversed and set aside and the permanent injunction issued is dissolved. The questioned orders of the trial court dated December 16, 1976 and February 22, 1977 are hereby

affirmed with the modification that petitioner is to file a bond in the amount of P500,000.00 for the issuance of the order of execution pending appeal. Costs against private respondent.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Pages 92-93, Rollo.

[2] Page 6, Rollo.

[3] Pages 105 to 108, Rollo.

[4] Iloilo Trading Center and Exchange vs. Judge Rodas, et al, 73 Phil. 327 (1941); Rodriguez vs. Court of Appeals, 105 Phil 777 (1959).

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