

**WINDOR STEEL MFG. CO., INC. & FRANCISCO VENTURA,
PETITIONERS, VS. COURT OF APPEALS, HON. JOSE G. BAUTISTA,
JUDGE, CFI OF MANILA, BRANCH III, CITY SHERIFF OF QUEZON
CITY & THE FI...**

G.R. No. L-34332. January 27, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Appeal by certiorari from the Decision of the Court of Appeals in its CA-G.R. No. 47395 upholding the Alias Writ of Execution issued by respondent Judge of the Court of First Instance of Manila, Branch III (Trial Court), in its Civil Case No. 67127 (the Original Case), which involved an action for recovery of a sum of money.

The records disclose that on October 10, 1966, First National City Bank of New York, a foreign banking corporation licensed to do business in the Philippines (Respondent Bank), filed a collection suit against petitioners before the Trial Court in the Original Case. On March 6, 1967, respondent Judge rendered a Decision in the Original Case on the basis of a compromise agreement of the parties wherein petitioners (as defendants) undertook to pay, jointly and severally, to Respondent Bank (as plaintiff), the total sum of P32,000.00 in eleven monthly installments due on the dates therein indicated, beginning March 31, 1967 and ending on January 31, 1968, with a clause to the effect that, should petitioners default in the payment of one or more of said installments on due dates, Respondent Bank shall immediately and automatically be entitled to the issuance of a Writ of Execution to enforce payment of the entire unpaid amount then outstanding. Respondent Bank waived interest and other bank charges in consideration of petitioners' waiving in its favor all marginal deposits made on account of the transaction.

When petitioners defaulted in payments, Respondent Bank moved for execution. On May 12, 1967, respondent Judge issued the original Writ of Execution directing the Sheriff to levy upon the properties of petitioners sufficient to satisfy the judgment of P32,000.00. Petitioners moved to quash on the ground that the Writ varied the terms of the judgment. Quashal was denied by respondent Court.

Petitioners appealed to the Court of Appeals in CA-G.R. No. 42183-R. The appeal was dismissed on July 25, 1970 for failure of petitioners to file their Brief within the reglementary period.

On December 3, 1970, Respondent Bank filed a "Motion for Alias Writ of Execution" before the Trial Court since the Order of dismissal of the Court of Appeals had become final. Significant to note is the following statement in said Motion:

"5. The principal amount of defendants' account is P19,994.34 and interest is P6.67 a day (12%) a year, from February 21, 1969 until fully paid."

On the scheduled date of hearing of the Motion, counsel for petitioners manifested that petitioners had made payments to Respondent Bank[1] and that the alleged balance of P19,994.34 was erroneous. By reason thereof, hearing on the motion was reset to January 9, 1971. Counsel for petitioners did not appear on said date and respondent Judge forthwith authorized the issuance of an Alias Writ of Execution. A 1st Alias Writ, in the usual printed form, was issued on the same day, January 9, 1971, in the amount of P32,000.00. Interest on the said amount was left blank, although the usual "with interest and costs" proviso appears in print in the latter part of the Writ.[2]

On February 4, 1971, the Sheriff of Quezon City levied on the properties of petitioners and scheduled their sale on February 15, 1971, "for the recovery by way of dstraint of the sum of P32,000.00."

Petitioners resorted to a special civil action for Certiorari with Preliminary Injunction before the Court of Appeals (CA-G.R. No. 47395-R) seeking to nullify the Order granting the Alias Writ as well as the Writ itself on the principal ground that said Writ was for execution of the judgment in its entirety and not for the actual balance, notwithstanding that even Respondent Bank admitted that petitioners' liability was for an amount less than P32,000.00.

On July 30, 1971, the Court of Appeals rendered a Decision[3] holding that Certiorari did not lie inasmuch as

"xxx xxx While it may be true that the petitioners have already made some installments to the private respondent, the writ of execution is not rendered invalid simply because it still stated the original amount of P32,000.00 indebtedness and not the actual balance left thereon. When the writ of execution is finally enforced, the Sheriff of Quezon City will not necessarily try to satisfy the judgment for the whole amount of P32,000.00, but will have to adjust the same with what the petitioners may have already paid thereon. To follow the theory of the petitioners that the writ of execution should only be limited to that portion of the indebtedness left unpaid, would afford a scheming debtor an opportunity to thwart, if not unduly delay, the execution of a judgment by the simple expedient of making a payment, no matter how nominal, during the period between the issuance of a writ of execution and its actual service, and then claim that the writ of execution varies the terms of the judgment."[4]

The decretal portion of the Decision of the Appellate Tribunal further directed that Respondent Bank's application for damages against the cash bond of P2,000.00 filed by the petitioners be set for hearing before a Commissioner appointed by the Court.

Petitioners moved for reconsideration. This was denied by a Special Division of Five Justices,[5] which voted three to two for denial. Petitioners filed a Second Motion for Reconsideration, which also met with failure.

Hence, the petition in this case wherein the following queries have been posed:

"I

May an alias writ of execution, such as the one issued by the respondent judge, be validly enforceable although it is in an amount much greater or in excess of the admitted unpaid obligation of a judgment debtor (petitioners herein), in spite of the fact that in the compromise agreement upon which the judgment is based, it is provided that:

'Should the defendant default in the payment of one or more said installments on due date, plaintiff shall immediately and automatically be entitled to the issuance of a writ of execution to enforce payment by defendants, jointly and severally, of the entire unpaid amounts then owing by defendants.'

II

"Along the same line, may interest be imposed on an obligation, although interests were waived by the judgment creditors (private respondent herein) in a compromise agreement upon which the judgment sought to be enforced by the alias writ of execution is based?"

III

"May a bond posted for the issuance of a writ of preliminary injunction be liable in the absence of any showing nor pronouncement in the decision that petitioners who secured and applied for said writ were not entitled thereto?"

This Court, in its Resolution dated November 12, 1971, treated this petition as a special civil action for certiorari and required Respondent Bank to answer.[6] Respondent Bank complied. In lieu of a hearing, memorandum was required of petitioners, to be followed by Respondent Bank's memorandum, but since petitioners failed to file any, the case was deemed submitted for decision in our Resolution of May 29, 1972.[7]

Petitioners' contentions are meritorious.

Firstly, paragraph IV of the Compromise Agreement entered into by the parties, and on the basis of which Agreement the trial Court's Decision was rendered, states:

"Should defendants default in the payment of one or more said installments on due date, plaintiff shall immediately and automatically be entitled to the issuance of a writ of execution to enforce payment by defendant, jointly and severally, of the entire unpaid amount then owing by defendants." [8] (emphasis ours)

It is clear from the foregoing that in case of default in the payment of one or more installments, a Writ of Execution would issue only for the "entire unpaid amount then owing", and not on the original whole amount of the obligation. The "entire unpaid amount" owing by petitioners having been reduced, the Alias Writ for the original indebtedness of P32,000.00 is not validly enforceable. The same set of facts no longer obtained when the original Writ for P32,000.00 was issued. A change in the situation of the parties had supervened in that some installments had been paid resulting in the reduction of the original amount of the judgment.

Section 8, Rule 39, of the Rules of Court explicitly provides that the Writ of Execution must state the amount actually due thereon. A Writ issued for the original amount of the judgment, notwithstanding an admission that partial payments had been made, runs counter to the said rule. An execution has been regarded as void when issued for a greater sum than is warranted by the judgment.[9] It is a general principle of law that an execution

should recite the amount of the judgment and the amount due thereon with a reasonable degree of accuracy.[10] In this respect, it has been declared that if the amount specified in the Writ is erroneously stated, it may not be considered a valid writ for the reasons that it is likely to result in the sale of more of the judgment debtor's property than sound judgment would dictate, and that it prevents the judgment debtor from protecting his property by payment of the correct amount for redemption,[11] if this is allowed.

Leaving to the Sheriff, as held by the Court of Appeals, the determination of the exact amount due under the Writ would be tantamount to vesting such officer with judicial powers. He would have to receive evidence to determine the exact amount owing. In his hands would be placed a broad discretion that can only lead to delay and open the door to possible abuse. The orderly administration of justice requires that the amount on execution be determined judicially and the duties of the Sheriff confined to purely ministerial ones.

Secondly, Respondent Bank's Motion for 1st Alias Writ of Execution[12] was not in order for the reason that it stated that there was interest due on the balance at 12% a year from February 21, 1969, thus:

"5. The principal amount of defendants' account is P19,994.34 and interest is P6.67 a day (12% a year) from February 21, 1969 until fully paid." [13]

The following computation attached to Respondent Bank's Answer filed with the Court of Appeals also included interest:

"Principal amount, per Compromise Agreement dated February 24, 1967 ----- P32,000.00

Deduct: Installment received:

Date Received

For the Month of

Amount

5/29/67 March & April 1967

P6,000.00

5/31/67 May, 1967

3,000.00

7/ 3/67 June, 1967

3,000.00

8/11/67 July, 1967

3,000.00

15,000.00

Unpaid balance as of February, 1971 -----

P17,000.00

Add: Penalty 12% p.a. for 3 years and 7 months (August, 1967 to February, 1971) -----

7,310.00

P24,310.00

The allegation as to interest was out of place because the judgment did not provide for interest. On the contrary, the Bank expressly waived the interest in consideration of the forfeiture by petitioners in the Bank's favor of their marginal deposits.

The contention of Respondent Bank that it was entitled to interest of 12% by way of penalty due to default or delay, citing Articles 1169, 1170 and 2209 of the Civil Code, is not tenable. While the loan or obligation, subject of the present action, may have provided for 12% interest, that has been superseded by the compromise judgment which did not provide for interest but instead expressly waived it. Therefore, the Alias Writ of Execution which commanded the Sheriff that of the goods and chattels of petitioners "you cause to be made the sum of P32,000.00 x x x with interest and costs" and render the same to Respondent Bank, is again, clearly erroneous because the judgment under execution failed to provide for interest.

...

"The writ (of execution) should not require the collection of interest when the judgment on which it is issued does not give it, and interest is not allowed by statute. In this jurisdiction, there is no statute directing that in the execution of judgments for money, legal interest shall necessarily be collected." [14]

Because the Alias Writ of Execution, therefore, varied the terms of the judgment and exceeded it, it had no validity.

"The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has pro tanto no validity." [15]

The foregoing ruling was reiterated in *Gamboa's Inc. vs. Court of Appeals*, 72 SCRA 131, 137 (1976), which held:

"The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed.

Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has pro tanto no validity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law (Moran, Comments on the Rules of Court, Vol. I, 1952 Ed., p. 809; cited in Villoria vs. Piccio, supra)."

Upon the foregoing considerations, we are constrained to reverse the Decision of the Appellate Tribunal upholding the regularity of the issuance of the 1st Alias Writ of Execution and to invalidate the Writ itself. Respondent Bank should renew its Motion for another Writ of Execution before the Trial Court stating therein the amount of the principal indebtedness of P32,000.00 which, up to this date, is still outstanding. Copy of the Motion should be served on petitioners and, if the amount alleged by the Bank in the Motion should be erroneous, then a hearing thereon should be conducted by the Trial Court.

The cash bond posted by petitioners for the issuance of a Writ of Preliminary Injunction to stop the enforcement of the Writ of Execution shall not answer for damages considering that on the basis of our findings herein petitioners must be deemed to have been entitled to the Injunctive Writ.

WHEREFORE, the judgment appealed from is hereby reversed and set aside. Let this case be remanded to the Trial Court for the issuance of another Alias Writ of Execution in the correct amount to be determined in accordance with the guidelines herein set forth.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] Decision, Court of Appeals, p. 3.

[2] Annex "C", p. 14, Court of Appeals Rollo.

[3] Penned by Justice Ramon O. Nolasco, with Justices Juan P. Enriquez and Juan O. Reyes, concurring.

[4] pp. 41-42, Court of Appeals Rollo.

[5] JJ. Ramon O. Nolasco (ponente), Antonio G. Lucero and Lourdes P. San Diego voted for denial. Justices Juan P. Enriquez and Juan O. Reyes dissented.

[6] p. 103, Rollo.

[7] p. 140, *ibid.*

[8] p. 48, *ibid.*

[9] *Den ex dem. Walker v. Marshall*, 29 NC (7 Ired L); *Coltraine v. Mc Cain*, 14 NC (3 Dev. L) 308; 30 Am Jur 2d p. 482.

[10] 30 Am. Jur. 2d p. 480.

[11] *Chittim v. Armco Steel Corp. (Wyo)* 407 P2d 1015; 30 Am Jur 2d p. 482.

[12] Annex "A", pp. 34-35, Petition.

[13] pp. 10-11, Court of Appeals Rollo.

[14] *Zamora vs. Medran*, 90 Phil. 339-340 (1951).

[15] 2 Moran 256, 1963 Ed., citing the cases of Velez vs. Martinez, et al., 63 Phil. 231; Dollente v. Blanco, 87 Phil. 670 (1950); Coll. of Internal Revenue vs. Gutierrez, 108 Phil. 215 (1960).

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