

OLYMPIA INTERNATIONAL, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS, ALPHA INSURANCE & SURETY CO., INC., AND JUDGE JOSE C. CAMPOS, JR., RESPONDENTS.

G.R. No. L-43236. December 20, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Petitioner Olympia International, Inc. seeks a review of the Resolution dated January 22, 1976 of the Court of Appeals[1] dismissing its petition for certiorari as well as the Resolution dated February 19, 1976 denying its motion for reconsideration.

The antecedent facts are undisputed:

On various dates from November 1965 to March 1966, petitioner Olympia International, Inc. (hereinafter Olympia) sold several typewriters to private respondent Alpha Insurance & Surety, Co., Inc. (Alpha, for brevity). For alleged non-payment of the purchase price, Olympia instituted on July 7, 1966 two (2) actions against Alpha: Civil Case No. 15053 of the City Court of Manila and Civil Case No. 2757-P of the Court of First Instance of Pasay City, both replevin with damages but referring to different typewriters.

In Civil Case No. 2757-P, which is the root case of the petition at bar, Olympia alleged that of the total purchase price of P24,430.80 of the typewriters involve therein, only P5,500.00 had been paid by Alpha. It therefore prayed that the court issue an order for the seizure of the typewriters and their delivery to Olympia to protect its interest thereon and to confirm its ownership over said personal properties; that should delivery thereof be unavailing, that Alpha be ordered to pay Olympia the typewriters' actual value in the sum of P18,930.80; that the amounts deposited by Alpha be forfeited and considered as rents for the typewriters; and that Alpha be ordered to pay 12% interest per annum commencing from the date of payment indicated on each invoice until the unpaid amount is fully paid, plus attorney's fees of P4,425.20 and damages of P4,000.00.

After Olympia had posted a bond in an amount twice the value of the typewriters involved and its assistant manager for credit and collection had filed an affidavit showing that Olympia was entitled to the ownership of the said typewriters, the lower court ordered on July 15, 1966 the issuance of a writ of replevin and directed the deputy sheriff of Pasay City to seize the personal properties involved and to retain the same in his custody "to be dealt with as prescribed in Rule 60 of the Rules of Court until further orders" from the court[2]. Consequently, the typewriters enumerated in said order were seized from Alpha and delivered to Olympia.

In its answer to the complaint, Alpha alleged that since the invoices presented by Olympia in its application for a writ of replevin had not been signed by its authorized corporate officers, they were not reflective of the real terms and conditions of the sales. It prayed for the redelivery of the 24 typewriters seized and in addition, asked for the delivery of six (6) more units which Olympia had allegedly failed to deliver to it pursuant to the sale agreement embodied in its confirmatory letter dated October 29, 1965. As counterclaim, Alpha prayed for moral damages of P75,000.00, actual damages of P10,000.00 and attorney's fees of P5,000.00. Olympia thereafter filed its reply to

said answer and its answer to the counterclaim.

Upon failure of the parties to reach an amicable settlement, the lower court set the case for trial on the merits. Olympia began presenting its evidence, and on May 17, 1971, it moved for the consolidation of Civil Case No. 2757-P with Civil Case No. 15053 of the City Court of Manila. The record is not clear as to whether the consolidation of said cases materialized.

It appears on record, however, that on December 15, 1972, the lower court issued the following order:

"On joint motion of both parties in the above-entitled case, that they will settle the case amicably out of court, this case is hereby dismissed without prejudice." [3]

As negotiations for an amicable settlement again failed, Olympia filed a motion to revive the case for trial on the merits, acting upon which, the lower court in its order of December 7, 1973 provided:

"On December 1, 1973, plaintiff through counsel filed a 'Motion to Revive Case.' It appearing from the records that the case was dismissed without prejudice on December 15, 1972 (almost a year ago) on joint motion of the parties and that the defendant has failed to comply with its commitment to arrive at an amicable settlement of the case, the motion is granted.

"Let the case be set for hearing on January 11, 1974 at 8:30 o'clock in the morning.

"SO ORDERED." [4]

However, on January 16, 1974, the lower court issued another order stating:

"On January 14, 1974, counsel for the defendant filed a 'Manifestation and Motion Ex Parte' asking that this Court reconsider its previous order, dated December 7, 1973 reopening this case on the ground that the parties have previously filed a joint motion to dismiss the case and that the subject matter of this case is presently before the military authorities. It appearing that the plaintiff, in filing its motion for reopening the case, failed to mention this fact and that at the hearing in chambers on January 7, counsel for the plaintiff admitted the allegations of the defendant that the matter is now in the hands of the military.

"Wherefore, the previous Order, dated December 7, 1973 is lifted and set aside and that the Order of December 15, 1972 which dismissed the case is hereby reinstated and reiterated. As far as this Court is concerned, this case is dismissed with prejudice.

"SO ORDERED." [5]

For more than one and a half years thereafter, neither of the parties filed a motion for reconsideration nor questioned the legality of said order in a higher court. Sometime in October, 1975, Alpha filed a motion in the lower court praying, on equitable grounds, for the cancellation of the "preliminary provisional writs of replevin" previously issued by the court "inasmuch as no judgment was even rendered in this case affirming plaintiff's right to its possession of the typewriters involved in this suit conformably to the provisions of Sec. 9, Rule 60 of the Rules of Court." It averred that the return of the typewriters was necessary "to afford the military administration of a freer hand in settling the controversy between the parties." [6]

On November 7, 1975, the lower court issued an order reading:

"At today's hearing, both parties were represented by counsel, who requested that the case be discussed in chambers. It appearing that there is no opposition to the motion and finding the reason for the motion to be well taken, the motion is granted.

"Wherefore, the preliminary provisional writs of replevin previously issued by this Court to enable plaintiff to obtain possession of defendant's personal property, subject matter of this suit, is (sic) hereby cancelled and set

aside in view of the dismissal of this case, as per Order of January 16, 1974 which dismissal is with prejudice. The plaintiff is further ordered to return the aforesaid personal property belonging to the defendant, to the Military Management of Alpha Insurance & Surety Co.

"SO ORDERED." [7]

Olympia moved for a reconsideration of said order on the grounds that the lower court had lost jurisdiction over the case and that the return of the typewriters to Alpha was tantamount to tolerance of its wrong-doing which the writ of replevin sought precisely to avoid. This was denied in an order dated December 5, 1975.

Consequently, Olympia filed a petition for certiorari with the Court of Appeals, charging the lower court with lack of jurisdiction and abuse of discretion in issuing the order of November 7, 1975. In its resolution of January 22, 1976, the Court of Appeals dismissed the petition on the ground that manual delivery of personal property or replevin under Rule 60 being a provisional or ancillary remedy to the main action of recovery of personal property, the writ issued against Alpha was provisional and temporary. The appellate court opined that since Olympia allowed the dismissal with prejudice of the case, "its right to replevin died with the dismissal." And, as said dismissal was allowed by Olympia to become final, the trial judge could do no less than to order the redelivery of the typewriters otherwise he could be accused of "inconsistency and extralimitation of authority." [8]

Its motion for reconsideration of said resolution having been denied, Olympia filed the instant petition for review on certiorari, alleging that:

RESPONDENT JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, SEVENTH JUDICIAL DISTRICT, PASAY CITY, BRANCH XXX, COMMITTED GRAVE ERROR OF JURISDICTION IN DISMISSING ON JANUARY 16, 1974 THE CIVIL SUITS FOR REPLEVIN WITH DAMAGES FILED BY PETITIONER AGAINST PRIVATE RESPONDENT, AND IN ISSUING THE SUBSEQUENT ORDER DATED NOVEMBER 7, 1975.

RESPONDENT COURT OF APPEALS ERRED IN DENYING THE ORIGINAL PETITION FOR CERTIORARI FILED BY PETITIONER THRU COUNSEL ON JANUARY 15, 1976.

BOTH THE RESPONDENT JUDGE AND THE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ERROR IN OVER-ESPOUSING LEGAL TECHNICALITIES TO THE PREJUDICE AND IMPAIRMENT OF SUBSTANTIAL JUSTICE AND EQUITY. [9]

Undoubtedly, this impasse is the result of the unorthodox proceedings in this case. The management by the military of the Fernando Jacinto group of companies, including Alpha, during the martial law years, deterred the lower court from judicially determining which of the contending companies was entitled to the ownership or possession of the typewriters. It allowed the military to take over the task of helping the parties settle their controversy extrajudicially. However, belatedly realizing that its military manager could not facilitate the redelivery of the typewriters seized from it through the writ of replevin, Alpha went back to court which issued the orders in question.

The decisive factor in this controversy is the effect of the first dismissal of Civil Case No. 2757-P on December 15, 1972.

Aside from the fact that the aforesaid dismissal was expressly reserved by the trial court to be without prejudice, it has been held that the dismissal of a case on motion of both parties as in the case at bar is a dismissal contemplated under Section 2, Rule 30 (now Rule 17) of the Rules of Court, which is a dismissal without prejudice and not a dismissal governed by Section 4 thereof, which operates as an adjudication on the merits [10]. Similarly, it has been ruled that under certain attendant facts and circumstances, and the added fact that the trial

on the merits had not as yet commenced, dismissal of the complaint is without prejudice and does not have the effect of adjudication on the merits[11]. Precisely, the previous dismissal without prejudice was removed from the general rule that it should have the effect of an adjudication on the merits, since the lower court had provided otherwise and declared the dismissal to be without prejudice[12].

The dismissal without prejudice of a complaint does not however mean that said dismissal order was any less final. Such Order of dismissal is complete in all details, and though without prejudice, nonetheless finally disposed of the matter[13]. It was not merely an interlocutory order but a final disposition of the complaint[14].

Thus, upon said dismissal order attaining finality for failure of either party to appeal therefrom, the jurisdiction which the court had acquired thereon was finally discharged and terminated, and any subsequent action filed in accordance with the reservation cannot be considered a continuation of the first action which was dismissed[15].

From the foregoing, it becomes apparent that the lower court acted in excess of its jurisdiction when it granted the motion to revive the case filed by petitioner as plaintiff therein. By then (December 7, 1973), the dismissal order of December 15, 1972 had long become final and executory, thereby beyond the power of the court to amend, modify, reverse or set aside. And certainly, for the court to entertain and grant said motion to revive the case would result in the setting aside of the subject dismissal order.

Under the circumstances, the step available to petitioner as plaintiff therein if it wanted to pursue its claim against Alpha was to institute a new action in accordance with the reservation contained in the order of dismissal. It could not revive the dismissed case by motion or otherwise, as said dismissal, although without prejudice, had attained finality.

By the same token did the lower court act in excess of its jurisdiction when it issued the Order of January 16, 1974 dismissing Civil Case No. 2757-P anew, but this time, with prejudice. That Order of January 16, 1974 had the same effect of reversing and setting aside the dismissal order of December 15, 1972, which as above-stated could no longer be done in view of its having become final and executory.

But while the Order of December 7, 1973 which granted petitioner's motion to revive case and that of January 16, 1974 dismissing the case with prejudice are null and void for having been issued in excess of jurisdiction, the same cannot be said of the order dated January 22, 1976 which granted Alpha's motion to cancel the writ of replevin. The crucial difference lies on the fact that while the first two orders of December 7, 1973 and January 16, 1974 had the effect of reversing and setting aside the long final dismissal order of December 15, 1972, the Order of January 22, 1976 enforced and implemented it.

In other words, the motion of Alpha to cancel the writ of replevin was in the nature and character of a motion for execution of the dismissal order of December 15, 1972. That the lower court retained jurisdiction to carry into effect its final and executory order of December 15, 1972 is beyond cavil for while Alpha's motion was filed three (3) years after the issuance of said dismissal order, the same may still be taken cognizance of by the lower court in accordance with Section 6, Rule 39 of the Rules of Court which states:

Sec. 6. Execution by motion or by independent action.- A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.

Indeed, logic and equity demand that the writ of replevin be cancelled. Being provisional and ancillary in character, its existence and efficacy depended on the outcome of the case. The case having been dismissed, so must the writ's existence and efficacy be dissolved. To let the writ stand even after the dismissal of the case would be adjudging Olympia as the prevailing party, when precisely, no decision on the merits had been rendered. The

case having been dismissed, it is as if no case was filed at all and the parties must revert to their status before the litigation.

The allegation of Olympia that to cancel the writ of replevin would result in Alpha's unjust enrichment does not persuade. Alpha has consistently denied liability to Olympia, and even assuming Alpha to be liable to Olympia, the latter, having failed to properly exercise its right of action against Alpha, must suffer the consequences thereof.

It is equally important to note that the right to file a new action in this case has long prescribed, for while the commencement of a civil action stops the running of the statute of prescription or limitations, its dismissal or voluntary abandonment by the plaintiff leaves the parties in exactly the same position as though no action had been commenced at all. The commencement of an action, by reason of its dismissal or abandonment, takes no time out of the period of prescription[16].

WHEREFORE, the instant petition is hereby DENIED. Costs against petitioner.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Feliciano, J., on leave.

[1] First Division, Magno S. Gatmaitan, J., Chairman and Roseller T. Lim and Sixto A. Domondon, JJ., Members.

[2] CA Rollo, pp. 31-33.

[3] CA Rollo, p. 4; underscoring supplied.

[4] Ibid., p. 78.

[5] Ibid., pp. 74-75, Underscoring supplied.

[6] Ibid., p. 48.

[7] Ibid., p. 49.

[8] CA Rollo, pp. 65-67; Rollo, pp. 18-20.

[9] Petitioner's Brief, pp. 1-2; Rollo, p. 71.

[10] Advincula vs. Advincula, 10 SCRA 190 (1964).

[11] Perez vs. Perez, 73 SCRA 523 (1967).

[12] American Insurance Co. vs. United States Lines Company, et al., 63 SCRA 325 (1975).

[13] Aguisap vs. Basilio, 23 SCRA 1437 (1967).

[14] Zabat, Jr. vs. Court of Appeals, et al., 142 SCRA 587.

[15] Aguisap vs. Basilio, supra.

[16] Conspecto vs. Fruto, 31 Phil. 145 (1915).

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