

JULIA A. DE GUIA, ET AL., PLAINTIFF AND APPELLEE, VS. ALTO SURETY & INSURANCE CO., INC., DEFENDANT AND APPELLANT.*G.R. No. L-18646. February 28, 1963*

Ponente: BARRERA, J.

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This is an appeal[1] taken by defendant Alto Surety & Insurance Co., Inc. from the decision of the Court of First Instance of Manila (in Civil Case No. 34442) ordering it to deliver to plaintiffs Julia A. De Guia and J. de Guia "the refrigerator in question or, in default thereof, to pay to said plaintiffs the amount of P330.00, with legal interest from the filing of the coinplaint until fully paid, and the costs."

The records show that in a replevin case (Civil Case No. 2957) filed by plaintiffs in the Justice of the Peace Court of Caloocan, Rizal, against Anastacia C. Alejo and Perfecto M. Alejo (defendants therein), the latter, to secure the return of a refrigerator seized by plaintiffs, posted a bond, with defendants Alto Surety as surety, in the sum of P660.00, which is double the value of said refrigerator; the condition of said bond was for the delivery to plaintiffs of said refrigerator, if delivery is adjudged by the court, as well as for the payment of such sum as plaintiffs may recover from defendants (the Alejos), together with the costs of suit. After trial, judgment was rendered by the Justice of the Peace Court "ordering the defendants to deliver immediately to the plaintiffs the refrigerator mentioned in the complaint; to pay the plaintiffs, as compensation for the use of plaintiffs' refrigerator from March 16, 1955 until it is delivered at the rate of P100.00 a year and to pay the costs".

On appeal by defendants (the Alejos) to the Court of First Instance of Rizal (Civil Case No. 4109), said judgment of the justice of the peace court was affirmed. When plaintiffs asked for the execution of said judgment, however, the writ was returned unsatisfied, with the information that "the said defendants have left the house at 489 M. Shaw St., Samson, Caloocan, Rizal, and their whereabouts could not be ascertained". Whereupon, plaintiffs filed a motion to execute the replevin bond, praying that the court "issue the corresponding order directing the Sheriff of Rizal to serve the said writ of execution upon the Manager of the Alto Surety & Insurance Co., Inc., Manila, for all intents and purposes of the law". The court denied said motion, reasoning as follows: "As may be seen, therefore, the purpose of the motion is to have a writ of execution served upon the manager of the said bonding company, so that the plaintiffs may recover from it the value of the aforementioned refrigerator. On going over the judgment, however, it was found that it merely ordered the immediate delivery of the refrigerator, but there was no finding therein as to the value of said property, nor is there any directive for the payment of the value thereof in case of failure to deliver. This being the case, the Court is not in a position to order the issuance of a writ against the bond posted by the aforementioned company".

Instead of appealing from this order, plaintiffs instituted the present action in the Municipal Court of Manila against defendant Alto Surety, allegedly for the specific performance by the surety of the latter's aforementioned surety bond. After trial, the court rendered judgment in favor of plaintiffs and against defendant Alto Surety, ordering the latter, in the alternative, "to deliver immediately to the plaintiffs the refrigerator in question; in default thereof, to pay its value of P330.00; plus the sum of P42.75 for cost recovered in the Court of First

Instance of Rizal; and the further sum of P50.00 as and for attorney's fees; and the coats of the suit".

From said judgment, the surety company appealed to the Court of First Instance of Manila. On April 19, 1958, the court rendered the decision adverted to at the beginning of this opinion, (affirming that of the municipal court) stating in part as follows:

"Defendant's answer to the complaint puts up the following special defenses: '1. Plaintiffs have no cause of action and/or the same is barred, as under Section 10, Rule 60, in connection with Section 20, Rule 29, of the Rules of Court, an action against the replevin bond must be filed in the same case where the replevin bond was issued; in other words, it must be filed in Civil Case No. 4109, Court of First Instance of Rizal; 2. That the plaintiffs hereon did file a motion to execute the defendant's bond in Civil Case No. 4109, dated June 6, 1957, but the same was denied by the Court of First Instance of Rizal, in an order dated June 20, 1957.

* * * * *

"This Court finds no merit in the special defenses set up in defendant's answer. This is so, for the obvious reason that plaintiffs' action against defendant surety is not for damages. As a matter of fact, plaintiffs cannot sue defendant surety for damages on the latter's bond (Exh. A) because, the said bond does not speak of any liability for damages. Plaintiffs' present action against defendant surety is upon the said bond, the condition of which is for the delivery to plaintiffs of the refrigerator in question, if said delivery is adjudged by the court, as well as for the payment of such sum as plaintiffs may recover from defendants in Civil Case No. 4109 of the CFI of Rizal, together with the costs that may be taxed in the said case. Inasmuch as the judgment in the said civil case adjudged that defendants therein return the said refrigerator to plaintiffs and inasmuch further, as the said judgment could not be executed because said defendants had disappeared and could not be located, plaintiffs are within their rights in defendant surety upon its said bond, because the latter expressly speaks of defendant surety's joint and several obligation to return said refrigerator to plaintiffs. Otherwise, there would be no purpose in the filing of the said bond which is certainly not the case, as already above shown. The rules and doctrines, therefore, cited by defendant in its memorandum, while sound, have no application to the case at bar.

"Plaintiffs could not have applied for its remedy against defendant surety in Civil Case No. 4109 of the CFI of Rizal, either before the trial or, in the discretion of the court, before entry of final judgment therein. This is so, because plaintiffs could neither have reasonably known, nor foreseen that defendants in the said civil case were not going to comply with the judgment rendered therein. This latter fact only came to the knowledge of plaintiffs after the said judgment had become final, when said defendants could not be located after plaintiffs asked for the execution of the said judgment. This Court is, therefore, of the opinion, and so rules, that after defendants in the said civil case had disappeared and failed to comply with the judgment rendered therein, plaintiffs could sue defendant surety, on its bond, as they have presently done in the instant case. To rule otherwise, would be to enable defendant surety to avoid its obligation and liability upon the said bond, to the prejudice of plaintiffs, who were compelled to yield possession of the refrigerator, in question to said defendants, on the strength of the said bond. Plaintiffs' plight is excellently illustrated by the fact that, on top of their failure to get any satisfaction of the judgment rendered in their favor and against defendants in the said civil case, plaintiffs' subsequent motion therein to execute the replevin bond was also denied. Accordingly, after plaintiffs had thus been twice repulsed in the enforcement of their rights, it is only a matter of simple justice and high time that this Court put an end to their legal reverses and sustained the cause of action of their complaint.

"WHEREFORE, judgment is hereby rendered ordering defendant Alto Surety & Insurance Co., Inc., to deliver to plaintiffs the refrigerator in question or, in default thereof, to pay to said plaintiffs the amount of P330.00, with legal interest from the filing of the Complaint until fully paid, and the costs.

"SO ORDERED."

Its motion for reconsideration of said decision having been denied, defendant Alto Surety interposed this present appeal.

The appeal is well-taken. Only one point of law is in issue and it is whether appellees, plaintiffs in a replevin case, after failing to obtain relief against appellant's surety bond in said case, can still maintain a separate action against the same bond.

As the original replevin case (Civil Case No. 2957, Justice of the Peace Court of Caloocan, Rizal) was appealed to the Court of First Instance of Rizal, thereby vacating the proceedings in the inferior court, the surety bond in question may be deemed as filed in Civil Case No. 4109, Court of First Instance of Rizal. It appears that appellant filed the bond in question under, the provisions of Rule 62 (Manual Delivery of Property) of the Rules of Court. The procedure for holding it liable or its bond liable, is therefore governed by Section 10 of Rule 62, in connection with Section 20, Rule 59, which respectively read:

"Sec. 19. Judgment to include recovery against sureties.—The amount, if any, to be awarded to either party upon any bond filed by the other in accordance with the provisions of this rule, shall be claimed, ascertained and granted under the same procedure prescribed in Section 20 of Rule 59."

"Sec. 20. Claim for damages on plaintiff's bond on account of illegal attachment.—If the judgment on the action be in favor of the defendant, he may recover, upon the bond given by the plaintiff damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and, shall be included in the final judgment. The application must be filed before the trial or, in the discretion of the court, before entry of final judgment, with due notice to the plaintiff and his surety or sureties, setting forth facts showing, his, right to damages and the amount thereof." (*Italics supplied.*)

Construing and applying these provisions of the Rules, we have held in a long line of cases that said provisions are mandatory and require the application upon the bond against the surety or bondsmen and the award thereof to be made after hearing and before the entry of final judgment in the case (*Visayan Surety & Insurance Corp. vs. Pascual*, 85 Phil., 779; *Liberty Construction Supply Co. vs. Pecson*, 89 Phil., 50; *Aguasin vs. Velasquez*, 88 Phil., 357; *Abelow vs. de la Riva*, L-1227, January 31, 1959; *Riel vs. Lacson*, 104 Phil., 1055); that if the judgment under execution contains no directive for the surety to pay, and the proper party fails to make any claim for such directive before such judgment had become final and executory, the surety or bondsman cannot be later made liable under the bond (*Port Motors, Inc. vs. Raposas*, 100 Phil., 732; *Luneta Motor Co. vs. Lopez*, 105 Phil., 327; *Visayan Surety & Insurance Co. vs. Aquino*, 96 Phil., 900; *Curilan vs. Court of Appeals*, 105 Phil., 1160; *Alliance Insurance & Surety Co. vs. Piccio*, 105 Phil., 1192). The purpose of the aforementioned rules is to avoid multiplicity of suits (*Del Rosario vs. Nava*, 95 Phil., 637; *Port Motors, Inc. vs. Raposas*, *supra*).

In the case at bar, appellees filed their motion for execution against appellant's surety bond after entry of judgment by the Court of First Instance of Rizal in Civil Case No. 4109 and the latter court correctly denied the motion, considering that the judgment sought to be executed in said case merely ordered the immediate delivery of the refrigerator in question, but "there was no finding therein as to the value of said property, nor is there any directive for the payment of the value thereof in case of failure to deliver", much less any directive for appellant to pay said value, in case of defendants (Alejos') failure to deliver said refrigerator. (*Port Motors, Inc. vs. Raposas*, *supra*).

In entertaining the present action and in rendering the decision in question which orders appellant, either to deliver the refrigerator in question to appellees, or in default thereof, its value, the trial court, in effect altered or modified the decision of the Court of First Instance of Rizal in Civil Case No. 4109, (already final) which it cannot legally do. In the *Raposas* case, we stated:

"Appellant asserts that it is not asking for a writ of execution but for an order to hold the surety liable under the tend and for this matter the surety should be required to show cause why the bond should not respond for the judgment and that the application for damages against the surety be set for hearing. To allow this would result in a reopening of the main case and modification of the decision which had already become final.* * * After the judgment has become final, no motion can now be entertained to correct, modify, or alter said decision, for to do otherwise would work to divest a final judgment of its character of finality."

If no motion can be entertained to hold the surety liable after judgment in the main case has become final, as it would result in the alteration of the judgment, it stands to reason that a separate action cannot be instituted to hold the same surety liable, for it would likewise result in the modification or alteration of the same judgment. (See *Gerardo vs. Plaridel Surety & Insurance Co.*, 100 Phil., 178.)

In its decision, the trial court observed that the action against appellant is not for damages. But the prayer of the complaint, as well as the dispositive part of said decision, clearly refers to the payment by appellant of the sum of P330.00 should it fail to return or deliver to appellees the refrigerator in question, which in effect calls for damages, consisting of the value of the refrigerator.

For all the foregoing, the decision appealed from is hereby reversed and set aside. Without pronouncement as to costs. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon and Makalintal, JJ., concur.

[1] Originally appealed to the Court of Appeals, but certified to us by said court on June 28, 1961 because it involves only questions of law.

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