

CAMPUA UY TINA, PETITIONER, VS. THE HON. DAVID P. AVILA, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF COTABATO FIRST BRANCH; TAN CHING JI, AND THE PROVINCIAL SHERI...*G.R. No. L-20900. May 16, 1967*

Ponente: MAKALINTAL, J.

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In Civil Case No. 536 of the Court of First Instance of Cotabato, Tan Ching Ji, plaintiff, vs. Campus Uy Tina, defendant, the parties executed a compromise agreement, which was submitted to and approved by the Court in its decision dated February 4, 1954. Under that agreement the defendant obligated himself to pay the plaintiff the sum of P23,000.00 "without interest, within a period of six (6) years from date hereof." It was also stipulated that certain properties which had been attached as security would not be released until full payment and that the defendant "during the period of six (6) years, shall hold and fully enjoy the fruits of said properties."

On September 20, 1960, after the six-year period had expired, plaintiff Tan Ching Ji filed a motion for execution. The motion was granted and the writ was issued on August 14, 1962. Defendant Campua Uy Tina moved to reconsider on September 13, 1962, announcing in his motion that he was going to file an ordinary action to enjoin the enforcement of the decision. This he did on the following September 18 (Civil Case No. 1843).

On October 20, 1962 the court denied the motion for reconsideration in Civil Case No. 536, and on January 3, 1963 another writ of execution was issued. Several other motions were subsequently filed by the defendant - to quash the writ of execution or stay its enforcement - but they were all denied by the Court in its order dated February 11, 1963.

The defendant thereupon filed the instant petition for certiorari, seeking to have the writ of execution issued on August 14, 1962, and all subsequent proceedings taken thereunder, annulled and set aside.

Petitioner, defendant below invokes Rule 39, Section 6, which provides that a judgment may be executed on motion within five (5) years from the date of its entry, and that after the lapse of such time and before it is barred by the statute of limitations, a judgment may be enforced by action. The contention is that since the decision approving the compromise agreement was rendered on February 4, 1954, it could no longer be executed by mere motion when respondent, plaintiff below, moved for that purpose on September 20, 1960, more than five years having then elapsed. Petitioner would have respondent file an ordinary action in order to realize the amount to which he is unquestionably entitled.

There is a statement in the answer of respondent Judge that entry of judgment in Civil Case No. 536 was made by the Clerk of Court only on February 5, 1960, because it was only then that the judgment had become final and executory, and consequently the writ of execution issued on August 14, 1962 was well within the period of five years provided for in Rule 39, Section 6. Petitioner, on the other hand, argues that said period should be counted

from the date the judgment became final, which was immediately upon its rendition because it was a judgment on compromise.

The uncontradicted statement of respondent Judge that judgment was entered only in 1960 should be sufficient to dispose of this petition on the basis of the literal terms of Rule 39, Section 6, as invoked by petitioner. But even irrespective of the date of entry of judgment, the decisive issue here is not when the judgment became final in the sense that no appeal therefrom could be taken, but when it became executory in the sense that it could already be enforced. For it would be idle to speak of execution or to try to obtain a writ for that purpose if the judgment was not yet enforceable. Rule 39, Section 6, in providing that a judgment may be executed on motion within five (5) years from the date of its entry, clearly and logically contemplates the usual situation wherein such judgment is susceptible of execution or enforcement the moment it acquires the character of finality.

Could defendant, petitioner here, be compelled to comply with his obligation under the judgment and, upon failure to do so could his properties be levied upon, at any time within six (6) years from the rendition of the judgment on February 4, 1954? The answer is obvious. He was given that period within which to pay. His obligation was one with a term and the term was indubitably for his benefit, as shown by the fact that the obligation carried no interest liability and that in the meantime he continued in possession and enjoyment of the properties which were under attachment for purposes of security. Under Article 1193 of the Civil Code an obligation with a term is demandable only when the term expires. Had respondent demanded payment from petitioner before the expiration of the term given to him, he could very well have refused to pay on the ground that his obligation had not yet become due. A writ of execution would have been as futile.

Since such writ could only have been effectively issued after the lapse of six (6) years from February 4, 1954, respondent court committed neither error nor abuse of discretion when he did issue it upon motion on August 14, 1962, pursuant to Rule 39, Section 6. Needless to say, the filing and pendency of Civil Case No. 1843 cannot neutralize the course set by the Rules for enforcement of the judgment in question. The petition here is patently frivolous, and reveals a groundless effort to cling to technicalities in order to enable a confessed debtor to evade or unduly delay payment of his debt.

The case of *Primo vs. Hon. Fidel Fernandez*, L-18738, June 29, 1962, cited by petitioner, is not here applicable. There the plaintiff, after the expiration of the two-year period within which the defendant's obligation under the judgment was payable, had still three years within which to move for execution under Rule 39, Section 6, but failed to do so. In the instant case, under petitioner's theory, no execution by mere motion was possible.

The writ prayed for is denied, with double costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Bengzon, J.P., Zaldivar, Sanchez, and Castro, JJ., concur.

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