

**THE PEOPLE'S BANK & TRUST COMPANY, ETC.,
PETITIONER, VS. THE HONORABLE RAMON R. SAN JOSE, JUDGE OF
THE COURT OF FIRST INSTANCE OF MANILA (BRANCH IV) AND
SOPHIE M. SEIFERT, RESPO...**

G.R. No. L-7692. April 29, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

This petition for certiorari prays for the annulment of orders to pay monthly allowances pending appeal.

In the Testate Proceedings of E. M. Bachrach deceased, (S. P. No. R-51955) of the Manila Court of First Instance, there is an order dated October 2, 1940 for the payment of a monthly allowance of P500 to Sophie M. Seifert, one of the sisters of the deceased. The People's Bank & Trust Company (People's Bank for short), as administrator, had been regularly paying the allowances until February 1952 when it filed a petition in the case asking that said monthly pensions be discontinued on the ground, among others, that the cash position of the Estate was then depleted, and that payment of such allowances would unduly impair the usufructuary interest of the widow, Mrs. Mary McDonald Bachrach, the legatary interest of charitable hospitals and the Estate itself as a whole.

Herein respondent Sophie M. Seifert opposed the petition. Thereafter she submitted on August 4, 1952 an urgent request for orders requiring the administrator to continue paying her allowances accruing since February of the same year. Pleadings and petitions were afterwards presented, Sophie M. Seifert maintaining there were funds to satisfy her allowances[1] and tendering a surety bond in the amount of P33,250 for the eventual return of such allowances should she be declared without any right thereto, on appeal.

The Court promulgated an order dated December 29, 1953, the pertinent portions of which read:

"Pending resolution is the urgent petition filed by Sophie M. Seifert thru counsel on June 26, 1953, praying that the administrator People's Bank and Trust Company be directed 'to pay and deliver to said Sophie M. Seifert the monthly allowances, at the rate of P500 a month, that she has not been paid from the month of February, 1952, the said monthly allowances to be taken from the sum of P33,250 that the administrator has set apart for the heir Ginda M. Skundina', to which petition is attached a bond in the amount of P33,250 executed in accordance with the order of August 11, 1952, as modified by the order of December 27, 1952.

* * * * *

Wherefore, the bond (CISCO No. G-6056) in the amount of P33,250 filed by the petitioner Sophie M. Seifert on June 26, 1953, is hereby approved, and the administrator People's Bank and Trust Company is hereby authorized and directed to pay forthwith, out of the amount of P33,250 held by it for Ginda M. Skundina, the accrued monthly allowance due to said petitioner at the rate of P500 a month from February, 1952 to December, 1953, or the total amount of P11,500, and from January, 1954, and until further order, the said administrator is authorized and directed to pay, out of the same amount, to the aforesaid petitioner her monthly allowance of P500 a month, within the first five days of every calendar month; it being understood, however,

that the payments of the said monthly allowances shall not exceed the aforesaid amount of P33,250."

Thereafter, on January 26, 1954 Sophie M. Seifert moved for immediate execution of the Court's directive, notwithstanding the administrator's appeal. The People's Bank objected. But on March 26, 1954 the respondent judge, Hon. R. San Jose granted the motion saying partly,

"In her petition filed on January 27, 1954, Sophie M. Seifert, thru counsel, prays for the immediate execution of the order of December 29, 1953. The petition is based upon the following grounds.

'Your petitioner is a widow, and needs her monthly allowance of P500 for her support. * * *

Whereupon this special civil action was instituted. In addition to annulment of the order, it prayed also for a preliminary injunction to enjoin execution thereof pending this litigation. After hearing both sides we declined to prevent execution.

Contrary to what petitioner alleges, it seems clear from the above circumstances that the respondent judge committed no abuse of discretion in directing immediate execution. The monthly allowances were for the necessary support of Sophie M. Seifert, a widow. That in itself constituted a good reason for permitting execution; particularly because it is alleged that she needs the money, being sick in San Francisco, U. S. A.

"The good reasons are required to be stated in the special order, but it has been held that statement by reference is sufficient, as when such reasons appear in a motion for execution, and reference thereto is made in the special order as ground therefor. The element that gives validity to an order of execution is the existence of the good reasons if they may be found distinctly somewhere in the record." (Moran Comments on the Rules of Court, 1952 Ed. Vol. 1 pp. 792-793.)

Furthermore—and this is conclusive—there is the bond promising return of all such allowances (not exceeding P33,250) "should it be decreed later that" Sophie M. Seifert "was not entitled thereto". It should be observed in this connection that the order of December 29 expressly provides "that the payments of the said monthly allowances shall not exceed the aforesaid amount of P33,250.00".

"In this connection, it has been held that the filing of bond by the successful party is a good reason for ordering execution." (Moran Comments on the Rules of Court, 1952 Ed. Vol. 1 p. 793, citing Hacienda Navarra, Inc. vs. Labrador, et al., 38 Off. Gaz., 1141, 65 Phil. 536.)

The People's Bank's real objection to the provisional payments is explained in the following paragraph of its "Memorandum in lieu of oral argument".

"As respondent Sophie M. Seifert very well knows, a grand total of P87,500 in allowances has already been received by her. These allowances have been paid to her as advance inheritance. However, she is not the only heir of the deceased E. M. Bachrach. There are four residuary heirs in all who will get one-half of the residue of his estate upon the death of his widow, Mrs. Mary McDonald Bachrach. There is no guaranty that the amount which respondent Sophie M. Seifert has already received as advance inheritance will be less than what her share in the estate would be upon the death of Mrs. Bachrach. She has not offered any security for the return of any excess payment which may be made to her and it certainly behooves petitioner to guard against such contingency."

The answer is this: The question whether she will receive less or more than her rightful share will be taken up in considering the administrator's appeal on the merits. Anyway even if the grand total of P87,500, already received by Sophie M. Seifert equals to, or exceeds her rightful share, the challenged orders do not add to such excess, because there is the bond to answer for whatever payments are provisionally made on account of such orders.

Furthermore, in the last analysis, as counsel for respondent Sophie M. Seifert suggests, this matter is not really

execution of orders pending appeal. The order to pay P500 monthly allowance to her has long ago become final: it was an order of October 2, 1940 approved by this Court in December 1947 (G. R. No. L-1379).

The appeal interposed by the Administrator herein referred to poses the question whether the allowances should be discontinued. Its petition to discontinue having been denied, it should not be heard objecting to the continued enforcement of a final order, by invoking regulations on execution of judgments pending appeal.

The petition will be denied, with costs.

Pablo, Actg. C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Petition denied.

[1] Some allowances kept by administrator for Ginda M. Skundina, allegedly dead—amounting to P33,250.

It appears that the amount to be paid to the petitioner Sophie E. Seifert pursuant to the order of December 29, 1953, will be taken from 'the. accumulated amount of P33,250 representing the allowances due to the legatee Ginda M. Skundina which was not paid her on account of her absence from this country and the impossibility of sending the same to her place of residence', and that a bond has been filed by the petitioner under the following conditions:

'Now therefore, if the above bonded principal shall make refund, or pay, to the said administrator, the People's Bank & Trust Company, the portion or all, of the said accumulated amount of P33,250 that may be paid to her should it be decreed later that the said principal was not entitled thereto, then this obligation shall be null and void, otherwise to remain in full force and effect'."

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