

VILLA-REY TRANSIT, INC., PETITIONER VS. HON. ELOY B. BELLO, FLORENTINA ASUNCION, THE PROVINCIAL SHERIFF OF PANGASINAN, ET AL., RESPONDENTS.*G.R. No. L-21399. January 31, 1964*

Ponente: PAREDES, J.

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On September 18, 1961, respondent Judge Hon. Eloy Bello entered an Order in Civil Case No. 14122, CFI of Pangasinan, entitled "Florentina Asuncion, et al vs. Villa Rey Transit, Inc., et al.", declaring the defendant Villa Rey Transit, Inc., in default for failure to file its Answer to the complaint within the reglementary period. On September 23, 1961, a default judgment was rendered by respondent judge, whereby it awarded to plaintiffs therein (now private-parties respondents) the amount of P70,100.00 as damages, as a result of the death of Felipe Tejada, husband and father of the private-parties respondents. Execution of the default judgment was issued on September 26, 1961, upon ex-parte petition of the Tejadas, and the personal properties of the transportation company were levied upon.

Under date of September 27, 1961, the Villa Rey Transit presented a motion to "Lift Order of Default", which was opposed by the respondents. On September 30, 1961, a motion to lift the Order of Execution was also filed, which motion was denied in open court on October 2, 1961. On this same day, Villa Rey Transit, submitted a Motion for New Trial or to Set Aside Judgment, requesting that same be heard on October 5, 1961. Said motion was opposed by the respondents. At the hearing on October 5, the respondent judge suggested to counsel for petitioner, to file a bond of P30,000.00 in order to stop the projected sale of the properties levied upon. Petitioner did not do anything about the court's suggestion, for it had already elevated the matter to this Court on a petition for Certiorari (G. R. No. L-18957), on October 4, 1961, contesting the Order of Default, Judgment of Default and Writ of Execution and praying for a preliminary writ of injunction to stop the sale. This Court issued the injunction, but on April 23, 1963, resolving the certiorari case, it held, among others, the following:

"* * *. The respondent, in declaring petitioner in default, found that it did not file a responsive pleading within the period granted to it, and that the motion to dismiss, (which, by the way, is not responsive pleading, *Paestre & Carpio vs. Jaurique*, 50 Off. Gaz., 112), did not pertain to petitioner, but to the defendants-incorporators. Granting, for purposes of argument, that these findings are erroneous, still it is a legal truism that not every error in the proceeding, or every erroneous conclusion of law or of fact, is abuse of discretion (*Gov't vs. Judge of First Instance*, 34 Phil., 157). True, that petitioner had filed a motion to lift order of default, and a motion for new trial and to set aside the default judgment, but before they could be resolved, petitioner had already brought the matter to this Court, on a petition for Certiorari with Injunction, without giving the respondent court an opportunity to pass upon said motions, which act renders the filing of the present petition premature. Moreover, the trial court did not act with abuse of discretion in issuing the orders complained of, for it is clear that they are in accordance with the facts and circumstances of record and the law on the subject.

"Wherefore, the petition should be, as it is hereby denied, for lack of merits. The injunction issued is dissolved, and costs taxed against herein petitioner Villa-Rey Transit, Inc."

On May 4, 1963, petitioner, claiming that the above decision authorized the respondent Court, to take further cognizance of the Motion for New Trial or to Set Aside Judgment which it presented on October 2, 1961, he filed a "Motion to Reset Hearing of Motion to Lift Order of Default and Motion for New Trial or to Set Aside Judgment" requesting May 11, 1963 as the date of the hearing. On May 11, 1963, the respondents opposed the Motions and instead petitioned for the execution of the decision. One of the grounds advanced by the respondents in their opposition is that the Motions submitted on October 2, 1961 were deemed automatically abandoned, by the presentation with this Court, of the Petition for Certiorari with Preliminary Injunction on October 4, 1961 (G. R. No. L-18957). The opposition and the petition for a writ of execution of the decision were pet for hearing on May 23, 1963, on which date respondent Judge handed down an order of the following tenor:

"Acting on the petition to execute, decision filed by the plaintiffs, thru counsel, in the above-entitled case, it appearing that the execution ordered by this Court on September 26, 1961, has been suspended because of the Writ of Preliminary Injunction issued by the Honorable Supreme Court in the case of Villa-Rey Transit, Inc., versus Honorable Eloy B. Bello, et al., G. R. No. L-18957, and it appearing further that the Honorable Supreme Court had already decided the above mentioned case on April 24, 1963, denying the petition for a writ of certiorari and dissolving- the injunction heretofore issued, and finally, it being already mandatory on the part of this Court to re-issue a writ of execution, as prayed for, let a writ of execution issue against the defendants and in favor of the plaintiffs of the decision rendered by this Court on September 23, 1961."

On May 24, the date the Motion to Reset, etc., was scheduled to be heard, the respondent Judge issued the following Order:

* * * * *

"After this Court had declared the defendant, Villa-Rey Transit Incorporated in default and had rendered a decision in favor of the plaintiffs in this case, the defendant, Villa-Rey Transit Incorporated, filed the said motion to lift order of default and motion for new trial or to set aside judgment was submitted, to this Court of October 2, 1961, and before this Court could resolve the said motion, it received a writ of preliminary injunction issued by the Honorable Supreme Court in G. R. No. L-18957, entitled "Villa-Rey Transit Incorporated vs. Hon. Eloy B. Bello, et al., respondents", in connection with a petition for certiorari filed with the Supreme Court wherein, it is alleged among other things that this Court gravely abused its discretion in declaring the defendant, Villa-Rey Transit Incorporated, in default and rendering the judgment. Unfortunately, the defendant, Villa-Rey Transit Incorporated and petitioner of the above entitled case in the Supreme Court, lost by virtue of the decision rendered in said case on April 23, 1963. In said decision, the Supreme Court said among other things:

'However, the trial court did not act with abuse of discretion in issuing the orders complained of for it is clear that they are in accordance with the facts and circumstances of record and the law on the subject.'

"The said defendant in going to the Supreme Court without waiting for the resolution of this Court on its motion for new trial or to set aside judgment has abandoned said motion; and after losing in said Court now comes back to this Court to ask for relief. By filing a petition for certiorari with the Supreme Court and consequently abandoning all its motions before this Court, it comes now to this Court and asks that this Court sets for hearing motions that have already been abandoned.

"There being no motion to set aside or to reset, this Court denies the motion, dated May 24, 1963."

Petitioner brought the above order to this Court in a petition for Mandamus and Certiorari with Preliminary Injunction. An Injunctive writ to stay the execution of the default judgment was issued on June 22, 1963.

In the petition at bar, Villa-Rey Transit contends that since this Court had said in the decision in G. R. No. L-18957, that the filing of the certiorari proceeding therein was premature, then the lower court will have to pass

or rule again, upon the Motion to Lift Order of Default and the Motion for New Trial or to Set Aside Judgment; and that in denying to set for hearing said motions, respondent judge has gravely abused his discretion and unlawfully neglected to perform an act or duty specially enjoined of him by law.

Under the facts obtaining in the case at bar, we believe the respondent judge did not abuse his discretion, much less gravely. Respondent judge, in denying the motion to set for hearing the two (2) motions which petitioner alleged to be pending with his court, said that there were no motions to set aside or to re-set. In arriving at this conclusion, respondent judge entertained the opinion that when Villa Rey Transit filed the petition for certiorari with this Court on October 2, 1961, without having waited the result or resolution of the trial court on its motion to Lift Order of Default and Motion for New Trial and/or to set aside judgment, which petitioner itself had asked to be heard on October 5, 1961, it (Villa Rey Transit) was deemed to have abandoned said motions and placed itself at the disposal of the Supreme Court. Whether the procedure adopted by the petitioner constituted an act of abandonment, does not seem to have much importance in the determination of the case at bar. What we are called upon to decide, is whether the respondent judge committed grave abuse of discretion in issuing the orders complained of and whether mandamus will lie.

We discern no abuse, much less a grave abuse of discretion in the actions of respondent judge. In our decision in G. R. No. L-18957, we stated that the orders complained of therein were not issued in excess of jurisdiction or with grave abuse of discretion, and that they were legal and valid. It was not the intention of this Court, by saying that the presentation of the certiorari was premature, to have the respondent court, pass upon the same orders again after we have ruled upon their legality and validity. Petitioner in filing case No. L-18957, repeatedly mentioned, ahead of the hearing set to determine the motions under consideration, simply wanted to gamble. Having lost, in this move, the petitioner tried to ask the help of the court whose resolution on the orders it refused to wait. Petitioner should not be permitted to take two courses of action at one time, with the end in view that if it loses in one, it still have the order. One cannot eat his cake and have it too.

Furthermore, when respondent judge in the case at bar, refused to set the hearing of the motions, there existed already a virtual denial to lift the order of default or to grant the new trial and/or to set aside judgment. The proper remedy would have been an appeal (I Moran's Comments on the Rules of Court, 1957 Ed. p. 485 and cases cited therein). The actions of a court, done in the valid exercise of jurisdiction, like the case under consideration, even granting that it committed and/or made erroneous conclusions of facts or of law, are not correctible by certiorari. If, as stated by the respondent court, there is no motion to set aside or to re-set, to which we agree, it follows that there was no right of petitioner which it was excluded from exercising and there is no duty on the part of the respondent judge to perform. Clearly enough, mandamus does not lie.

The main case was for damages, resulting from a breach of contractual obligation of the petitioner as a transportation firm; and its principal defense in that case was the supposed negligence of a third party, not the deceased husband and father of the private-parties respondents. This being true, petitioner's remedy should not be to resist a valid execution, which has already been implemented by the levying of petitioner's personal properties, but to seek redress from the third party, if and when the facts and circumstances of the case so warrant.

In view hereof, the writ prayed for is denied; the orders complained of should be, as it is hereby affirmed, and the writ of preliminary injunction heretofore issued is dissolved; with costs against petitioner, in both instances.

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

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