

CLARA E. VDA. DE SAYMAN, ANACORITA S. DE MACAYRA, OSIAS E. SAYMAN, HEIRS OF THE LATE IGNACIO SAYMAN, FAUSTINA VDA. DE SAYMAN, AS GUARDIAN AD LITEM OF THE MINOR ILLEGITIMATE CHIL...

G.R. No. L-25596. April 28, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

This case is intimately related with G.R. Nos. L-29479 and L-29716 which involve the same parties and which arose from the same two cases filed in the trial court between the same parties herein, Our decision in which was promulgated on February 21, 1983.

The subject-matter of the instant proceeding is the writ of execution issued by the trial court to enforce its judgment after the same became final and executory, but during the pendency of a petition for relief from the same. The said order of execution was brought to the respondent Court of Appeals on a petition for certiorari. In a decision of said court promulgated on December 14, 1965, the writ of execution issued by the trial court was annulled and set aside. The said decision of the Court of Appeals is the subject of the petition for certiorari in the instant proceeding.

The petitioners assail the decision of the respondent Court of Appeals on three (3) principal grounds, namely, (1) the petition for certiorari in the Court of Appeals should not have been entertained inasmuch as the private respondent did not file a motion for reconsideration of the order of execution in the trial court; (2) the trial judge did not commit a grave abuse of discretion in authorizing the execution of its judgment; and (3) the Court of Appeals erred in holding that the mere filing of the petition for relief will justify the stay of execution of the judgment complained of.

It is true that as a general rule, a motion for reconsideration should precede recourse to certiorari in order to give the trial court an opportunity to correct the error that it may have committed. The said requirement is not absolute and may be dispensed with in instances where the filing of a motion for reconsideration would serve no useful purpose, such as when the motion for reconsideration would raise the same point stated in the motion (*Fortitch Cildran vs. Cildran*, 19 SCRA 502), or where the error is patent for the order is void (*Iligan Electric Light Company vs. Public Service Commission*, 10 SCRA 46; *Matute vs. Court of Appeals*, 26 SCRA 768; *Locsin vs. Limaco*, 26 SCRA 816); or where the relief is extremely urgent, as in cases where execution had already been ordered (*Suco vs. Vda. de Leary*, 12 SCRA 326); or where the issue raised is one purely of law (*Central Bank vs. Cloribel*, 44 SCRA 307).

In the case at bar, the question of whether a writ of execution may issue under the circumstances obtaining is purely one of law, and the need for urgent relief therefrom is patent from the fact that the trial court had already issued a writ for the execution of the judgment complained of in the petition for relief. Moreover, it is not completely accurate to claim that the trial court was deprived of a chance to correct its error by the failure to file a

motion for the reconsideration of the questioned order. As pointed out by the private respondent, it filed a motion for the reconsideration of the first order of execution dated April 8, 1965. A second opportunity to consider the objection of the private respondent to the writ of execution was granted by the trial court in connection with the petition for relief filed on May 30, 1965 in which the private respondent had prayed for a stay of the execution of judgment.

The second and third contentions of the petitioners boil down to the question of whether a writ of execution may be issued despite the pendency of a petition for relief against the judgment sought to be enforced. It is the rule that when a petition for relief is filed, the court may issue "preliminary injunction as may be necessary for the preservation of the rights of the parties pending the proceeding." (Section 5, Rule 38, Rules of Court.) As pointed out aptly by the respondent Court of Appeals:

".....

"What the respondents entirely overlook is the fact that the order denying the petition for relief is appealable to this Court and the judgment on the merits may be assailed in the appeal on the ground that it is not supported by the evidence and/or is contrary to law (Sec. 2, 2nd paragraph, Rule 41). If so appealable, its supervisory power may be exercised for the purpose of preventing the premature and unjust execution of a judgment. If the writ of execution were allowed to take its course, the appeal might be rendered illusory and the decision thereon, should it be favorable to appellant, nugatory." (Annex "1", Decision, pp. 12-13, Rollo.)

It is to be further noted that in G.R. Nos. L-29479 and L-29716, the right of the private respondent to seek a review of the decision of the trial court in connection with its appeal from the denial of the petition for relief was sustained. The possibility which the respondent Court of Appeals seeks to guard against still exists in greater likelihood. The judgment of the trial court the enforcement of which is sought to be restrained has not yet attained the status of being beyond modification or reversal. Hence, the enforcement of the same at this stage of the proceeding is premature. In the least, to stop its execution as was ordered by the respondent Court of Appeals may not be categorized as a grave abuse of discretion.

WHEREFORE, the petition for certiorari is hereby DENIED. With costs against the petitioners.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova and Gutierrez, Jr., JJ., concur.

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