

**JOSE A. V. CORPUS, PETITIONER, VS. HON. FEDERICO C. ALIKPALA,
AS PRESIDING JUDGE OF BRANCH XXII, COURT OF FIRST INSTANCE
OF MANILA; AND ACME MANUFACTURING CO., INC.,
RESPONDENTS...**

G.R. Nos. L-23707 & L-23720. January 17, 1968

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

In a suit for foreclosure of a real estate mortgage filed by Jose A. V. Corpus against Acme Steel Manufacturing Co., Inc. in the Court of First Instance of Manila (docketed as Civil Case No. 56047) judgment was rendered on 26 May 1964 upon a compromise, stipulating the following terms and conditions:

"(1) That the parties hereto mutually agreed that the unpaid balance of the purchase price of the 'Maria Dolores Building' now known as the 'Nestor de Castro Building' including the two (2) lots on which said building is erected, is ONE HUNDRED THOUSAND PESOS (P100,000.00);

"(2) That defendant will pay the said balance of P100,000.00 at any time between the period from the signing of this compromise agreement up to December 15, 1965 subject to the following terms and conditions:

[a] The interest on the aforesaid balance of ONE HUNDRED THOUSAND PESOS (P100,000.00) for the period from December 1, 1963 to December 15, 1964 at the rate of one (1%) per cent per month or a total of TWELVE THOUSAND PESOS (P12,000.00) shall be paid in advance by the defendant as follows: P6,500.00 on May 30, 1964 and P6,000.00, on or before June 15, 1964; provided, however, that in case defendant will pay any sum on the principal amount thereby correspondingly reducing the unpaid principal, the excess interest already paid shall likewise be credited to the unpaid principal which will therefore be correspondingly reduced further.

[b] The interest for the period from December 16, 1964 to December 15, 1965 on whatever principal balance remains, at the rate of one (1%) per cent per month shall likewise be paid in advance as follows: one half (1/2) on or before December 15, 1964 and the other one half (1/2) on or before January 31, 1965 subject to the same proviso stated in sub-paragraph (a) above;

"(3) That the parties hereto waive their claim for attorney's fees and damages, each party to shoulder his own expenses.

"(4) That failure of the defendant to pay the plaintiff of any of the amounts stated above, the latter shall be entitled to the issuance of a writ execution of the entire balance, including interests."

compliance with which was enjoined in the judgment.

The defendant Acme Steel Manufacturing Co., Inc. issued to plaintiff Corpus, which he accepted, two checks, one for P6,500.00, dated 30 May 1964, and the other for P6,000.00, postdated 16 June 1964.

The first check was duly cashed, but the second check was dishonored for insufficiency of funds; whereupon, on

25 June 1964, plaintiff Corpus, invoking the defendant's failure to pay on time the sum of P6,000.00 on 15 June 1964 moved for execution for the entire balance. The defendant corporation opposed the motion on the ground that, in issuing checks after the said postdated check, it failed to detect, through oversight and mathematical error in computation, that its funds in the bank will run short by about a few hundred pesos to cover the amount of the dishonored check; that immediately after it learned that the check was dishonored, it informed the plaintiff that he may re-deposit the check and the same would be honored; but instead of doing so, the plaintiff filed the motion for execution; that the delayed payment was not a substantial violation of the compromise agreement because all that plaintiff had to do was to re-deposit the postdated check and, at any rate, the amount of P6,000.00 was only as advance payment of interest.

After the parties had submitted their respective memoranda, the trial court, on 18 August 1964 ordered the issuance of a writ of execution for the payment of P100,000.00 with interest of 1% per month from 16 December 1963 until fully paid.

On 26 August 1964, the defendant corporation filed a notice of appeal from the order of execution, dated 18 August 1964, to the Supreme Court on questions of law, and an appeal bond and then a record on appeal, which was later amended. Corpus opposed the record on appeal and moved to dismiss the appeal; and the defendant opposed the motion to dismiss its appeal. In view of the steps taken by the defendant to appeal, the trial court on 31 August 1964 ordered the suspension of the enforcement of the writ of execution.

On 7 October 1964, the trial court allowed the appeal. Plaintiff Corpus moved for reconsideration but was denied on 17 October 1964. The appeal is now before this Court as case No. L-23720. The amended record on appeal was forwarded to this Court by the Clerk of Court of the Court of First Instance of Manila on 26 October 1964.

Meanwhile, on 23 October 1964, even before the transmittal of the amended record on appeal from the trial court, Corpus filed in this Supreme Court a petition for certiorari, prohibition and mandamus, with preliminary injunction, praying for the nullification of the allowance of the appeal (orders of 7 and 17 October 1964); that the respondent judge be prohibited from allowing any further appeal from the decision and the order of execution and to command him to give due course to the writ of execution. This petition is docketed in this Court as case No. L-23707 (Corpus vs. Judge Alikpala et al).

The procedural issue in these cases is whether, under the facts, the order of execution is appealable or not or, whether some discretion may yet be exercised by the Court below. If no discretion is left to be exercised, the issuance of the order of execution is ministerial and non-appealable; otherwise, it is appealable. If ministerial, issuance of execution is compellable by mandamus; if discretionary, mandamus will not lie.

In opposing the execution, the defendant corporation alleged that plaintiff accepted the postdated check, even before the approval of the compromise agreement, but that due to the defendant's over-sight and mathematical error in computation in issuing other checks, the postdated check was dishonored for insufficiency of funds at the time of its presentment, which occurred after the approval by the court of the compromise.

The defendant company relies on *Cotton vs. Almeda-Lopez*, CA-G.R. No. 22875-R, 27 June 1958, which was affirmed by the Supreme Court in case L-14113, 19 September 1961, to support its view that the trial court could still exercise some discretion before issuing the order of execution, but the facts therein are dissimilar to the case at bar. In the *Cotton* case, the compromise agreement was not complete, definite or certain and the obligation of the defendant to perform certain acts seemed (the stipulations were not clear) to depend upon some conditions precedent; thus, the compromise agreement in the aforesaid case provided for a continuance of the administration of certain properties by the defendant subject to his payment of encumbrances thereon, while at the same time providing for the turn-over of the properties upon the expiration of certain contracts to sell, without stating in the

compromise agreement itself the dates of expiration of the said contracts; and providing also for the submission of receipts of payment "called for in the contracts" to the judge. There was, therefore, need for the exercise of discretion in the interpretation of the terms of the compromise agreement and the determination by the judge of whether the conditions precedent were complied with or not was needed before execution could issue.

In the present case, the terms of the compromise agreement are complete, definite and certain and no suspensive condition is attached to any of them. Therefore, insofar as the judgment upon the compromise is concerned, there was nothing left for judicial determination, unlike that in the Cotton case.

The case before us is an appeal from the order of execution, not an appeal from the judgment. And the general rule is that an order of execution is not appealable; otherwise, a case could never end (2 Moran 360, 1963 Ed.). Two exceptions to this rule were announced in *Castro vs. Surtida*, 87 Phil. 166, namely, where the order of execution varies the tenor of the judgment and when the terms of the judgment are not very clear and there is room for interpretation. The present case does not fall under either exception since the order of execution does not vary the tenor of the judgment, but is in accord therewith; and the terms of the judgment, as previously stated, are clear and definite; hence, the general rule of non-appealability applies.

But even if the order to issue execution were really appealable, the appeal (L-23720) is untenable. As we view the compromise agreement, the advance payment of the interest was plainly the main consideration for the creditor's assent to delay payment of the balance of the purchase price (P100,000.00) up to December 15, 1965, despite previous defaults of the defendant-appellant. On that basis, the dishonor of the check representing the advance interest resulted in the forfeiture of the period given to pay the principal, (as prescribed by Article 1198, paragraph 4 of the Civil Code of the Philippines (R.A. No. 386), which is of the following tenor:

"ART. 1198 - The debtor shall lose every right to make use of the period:

x x x x x

"(4) When the debtor violates any undertaking in consideration of which the creditor agreed to the period."

The foregoing is the applicable legal rule, and not Article 1191, since in asking for execution, the appellee was not seeking the resolution of the compromise but its enforcement. The appellee's acceptance of the check had suspended his action to enforce the payment of the balance of the principal; but it was not a true payment until the value of the check was realized (Civ. C. Art. 1249). Since the check was dishonored, the appellant automatically became in default and lost the right to the period for paying the principal of P100,000.00.

The claim that the acceptance of the check in question novated the original compromise is untenable. The check was issued as a means to comply with the provisions of the compromise; hence, there was no incompatibility from which a novation could possibly be inferred (*Inchausti vs. Yulo*, 24 Phil. 978; *Pablo vs. Sapungan*, 71 Phil. 145; *Ramos vs. Gibbon*, 67 Phil. 371; *Zapanta vs. De Rotaeché*, 21 Phil. 154).

Nor can we agree to the proposition that the failure to provide funds for paying the value of the check at maturity constituted merely an unsubstantial breach. Whether a breach is substantial or not depends on the attendant circumstances. Here the appellant's failure to provide adequate funds to back its check resulted not only in a delay in payment, but in positive injury to the credit of the appellee, who had indorsed the check to a stranger. Appellant had the duty to foresee such eventuality, since the check issued by it was negotiable. That appellee the next day provided the requisite funds could not cure the injury. Further, after its check was dishonored, appellant could not expect or demand that appellee should re-deposit the check once more. What assurance did the latter have that it would not be dishonored again?

Also, whether the appellant's breach was substantial or not is primarily a question addressed to the discretion of

the trial court; and in deciding that execution should issue, the Court a quo was clearly intimating that it regarded the breach as substantial. We find that conclusion to be neither legally erroneous nor in abuse of discretion.

The trial court therefore, did not err in issuing the order of execution; it, however, gravely abused its discretion, or exceeded its jurisdiction, in allowing the appeal from the same order.

For the foregoing reasons, the order to issue execution in case L-23720 is affirmed, and in case L-23707, the writs prayed for in the petition are granted. Costs in both cases against Acme Steel Manufacturing Co., Inc.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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