

**NGO BUN TIONG, PETITIONER, VS. HON. MARCELINO M. SAYO,
PRESIDING JUDGE BR. XXXIII, COURT OF FIRST INSTANCE OF RIZAL,
AND GALAURAN & PILARES CONSTRUCTION CO.,
RESPONDENTS.**

G.R. No. L-45825. June 30, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for Certiorari and Prohibition with prayer for Preliminary Injunction and/or Restraining Order filed as a special civil action under Sections 1 and 2, Rule 65 of the Revised Rules of Court, seeking: (1) the annulment or setting aside of the order of respondent court[*] dated February 25, 1977 and its subsequent orders in Civil Case No. C-6131, issued prior to the filing of the instant petition; and (2) a judgment ordering respondent court to desist from further proceeding in the said case now pending before it (Court of First Instance, Branch XXXIII, Caloocan City), meantime praying for the immediate issuance of a writ of preliminary injunction and/or restraining order to preserve the rights of the parties pending resolution and decision of the instant petition.

The dispositive portion of the questioned order of February 25, 1977 (Rollo, p. 32) reads as follows:

"WHEREFORE, let a writ of preliminary prohibitory and mandatory injunction restraining defendants from pulling out or removing any such property of the plaintiff from its compound, and ordering defendants to return immediately upon receipt of copy of the writ of preliminary prohibitory and mandatory injunction, such equipments and properties now in their possession which were removed or hauled by them by virtue of the sale allegedly had between them, upon the filing by plaintiff of a bond in the sum of P80,000.00 duly approved by the court, conditioned to answer for any and such damages that the defendant shall suffer if it will be found after trial that the plaintiff was not entitled to the said writ."

As gathered from the record, the factual background of this case, is as follows:

Sometime on February 23, 1976, the Court of First Instance of Manila, Branch XIII rendered a decision in a civil action entitled Caltex (Phil.) Inc. vs. Pilares Construction Co. docketed as Civil Case No. 96351, ordering among others, the payment by the defendant to the plaintiff of the sum of P67,052.32 plus interests, attorney's fees and costs.

The decision having become final and executory, the court a quo issued a Writ of Execution on August 20, 1976 and an "Alias Writ of Execution" on December 6, 1976 to collect the balance of the judgment debt (Rollo, p. 9).

However, prior to the issuance of the "Alias Writ of Execution," private respondent filed with the same court an "Opposition to the Motion for Writ of Execution" and a "Motion for Reconsideration and To Set Aside Decision." Both motions were denied by the Court a quo as well as its motion for new trial filed later. On certiorari and mandamus in the Court of Appeals, the petition was dismissed in the resolution of October 21, 1976, in C.A. G.R. No. SP-05893, as follows:

"The defendant (herein petitioner) being validly declared as in default, it is then proper for the respondent court, as it had correctly done, to allow plaintiff (private respondent) to submit evidence 'ex-parte' (Second sentence, Section 1, Rule 18, Rules of Court). Consequently, the decision rendered by the respondent court on the basis of the evidence presented is valid and whether or not the trial court had committed errors of judgment is not a proper subject matter of herein petition for certiorari and mandamus.

"With respect to the issuance of the writ of execution, the petition failed to show to this Court by what manner did the respondent court commit any grave abuse of discretion amounting to lack of jurisdiction.

"WHEREFORE, for the reasons herein-before-stated, the petition for certiorari and mandamus is hereby DISMISSED." (Rollo, pp. 40-41, L-45443)

Meanwhile, on January 6, 1977 Deputy Sheriff Emilio Z. Reyes served a notice of levy and a copy of the Alias Writ of Execution on Galauran and Pilares Construction. After due posting of notices of sale, a Certificate of Sale was issued to the petitioner who was the highest bidder for P80,000.00, on January 26, 1977.

On review by certiorari of the above-quoted decision of the Court of Appeals, this Court denied the petition in L-45443 in the resolution of the First Division on January 31, 1977 which reads:

"L-45443 (Galauran and Pilares Construction Company vs. Court of Appeals, et al). — The petition for review on certiorari of the decision and resolution of the Court of Appeals with preliminary injunction, is DENIED for having been filed late and for late payment of the legal fees both on January 25, 1977, due date being December 29, 1976." (Rollo, p. 129)

Before the issuance of the above resolution and despite the pendency of the aforementioned case before this Court, private respondent on January 26, 1977 filed a complaint with the Court of First Instance of Rizal, Branch XXXIII, Caloocan City, against herein petitioner and Emilio Z. Reyes for "Declaration of Nullity of the Auction Sale and Damages," docketed as Civil Case No. 6131 and on April 27, 1977 a Motion to Annul Certificate of Sale and to declare alleged auction sale with the Court of First Instance of Manila, Branch XIII, Civil Case No. 96351, as null and void.

On the same date, January 26, 1977, the Court of First Instance, Caloocan, Branch XXXIII issued a temporary restraining order enjoining defendants therein, Emilio Reyes and Ngo Bun Tiong, and all other persons acting for and in their behalf, from taking out any equipment from Galauran & Pilares Construction Company, and from moving out the equipment which are already in their possession, further enjoining them from selling or otherwise encumbering the same equipment until further orders from this Court, pending the hearing on the prayer for the issuance of a writ of preliminary injunction (Rollo, p. 31).

Finally, on February 25, 1977 respondent court issued the questioned order.

A motion for reconsideration of the order of February 25, 1977 was filed by petitioner on March 4, 1977 (Rollo, p. 39). In its order of March 7, 1977, respondent court declared the motion moot and academic "in view of the manifestation and assurance made by defendant Ngo Bun Tiong on the witness stand during the hearing on the motion to hold him in contempt that he is returning the equipment now in his possession subject of the writ of mandatory preliminary injunction issued on March 1, 1977." (Rollo, p. 42)

Two other orders were issued by respondent court on March 7, 1977, to wit: (1) An order declaring petitioner in contempt of court for his contumacious disobedience and disrespect to the respondent court in view of his refusal to return the properties of plaintiff now in his possession, which are subject of the writ of preliminary mandatory injunction issued by that court on March 1, 1977, notwithstanding his assurance while on the witness stand, that he is ready to comply with the aforesaid court order. Accordingly, a warrant of arrest was issued against him

(Rollo, p. 43); and (2) An order declaring Emilio Reyes and petitioner herein Ngo Bun Tiong, in default, for their failure as defendants to file any responsive pleading within the reglementary period (Rollo, p. 45).

The instant petition was filed with this Court on March 24, 1977 (Rollo, p. 2). On March 30, 1977, the Second Division of this Court resolved, without giving due course to the petition, to require the respondents to comment thereon and to issue a temporary restraining order, restraining the further hearing on the annulment of the execution sale of the properties subject of Civil Case No. C-6131 (Rollo, p. 64).

The case was considered submitted for decision as of December 29, 1977.

The lone issue raised by petitioner is whether or not a Court of First Instance or a branch thereof, has jurisdiction to annul or set aside, for alleged irregularities an execution sale, held by virtue of a decision rendered by another Court of First Instance or a branch thereof, and subsequently to order the return of the properties sold at public auction to the judgment debtor.

Private respondents contend that it filed Civil Case No. C-6131 before the Court of First Instance of Caloocan where private respondent has its residence, as "a desperate attempt to stave off the grave and irreparable injury it has already suffered by virtue of the premature, improper and illegal execution" of the decision of the Court of First Instance of Manila, Branch XIII, in Civil Case No. 96351 which it maintains has not yet become final and executory (Rollo, p. 112).

This contention is untenable.

The records show that Pilares Construction Co., private respondents here, was declared in default for failure of its counsel to appear at the scheduled date of pre-trial. After Caltex (Phil.), plaintiff in Civil Case No. 96351, presented its evidence ex-parte, judgment was rendered ordering private respondent to pay Caltex (Phil.) the sum of P67,052.32 with interest at the stipulated rate of 12% per annum from August 1, 1974 until fully paid and 20% of the total amount due as stipulated, for attorney's fees (Rollo, p. 140). On March 26, 1976, defendant company filed a motion for reconsideration and to set aside the decision (Rollo, p. 79). On May 3, 1976, the Court of First Instance of Manila denied the motion for lack of merit (Rollo, p. 141). It is, therefore, beyond dispute that the decision in Civil Case No. 96351 had already become final and executory when the writ of execution was issued.

Hence, private respondent's opposition to motion for writ of execution and motion for reconsideration and to set aside decision on July 6, 1976 (Rollo, p. 172), and its motion for new trial on July 31, 1976, have all been filed after the decision had become final and executory.

Still further, the Court of First Instance of Manila had already granted the issuance of a writ of execution, when private respondent filed with the Court of Appeals a petition for certiorari and mandamus docketed as CA-G.R. No. SP-05993 with prayer for a writ of preliminary injunction, seeking to set aside the judgment of the Court of First Instance of Manila, Branch XIII, for being null and void. As above-stated, the petition was dismissed by the Court of Appeals (Rollo, p. 140) and the petition for review on certiorari of the said decision was also dismissed by this Court in L-45443 (Rollo, p. 120).

It has long been settled that no court has the power to interfere by injunction, with the judgments or decrees of a court of concurrent or coordinate jurisdiction having equal power to grant the relief sought by injunction (Cabigao vs. del Rosario and Lint, 44 Phil. 182 [1922] reiterated in National Power Corporation vs. de Veyra, 3 SCRA 645 [1961]; Hachang vs. Diaz, 8 SCRA 103 [1963]). Even more emphatically, this Court ruled that "Pursuant to the policy of judicial stability, the judgment of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction. For the simple reason that the power to open, modify or vacate a judgment is not only possessed by, but is restricted to the court in which the judgment was rendered." (Mas vs. Dumara-og, 12

SCRA 37 [1964])

But private respondent insists that the Court of First Instance or a branch thereof has the authority and jurisdiction to take cognizance of and to act in, a suit to annul a final and executory judgment or order rendered by another court of first instance or by another branch of the same court, citing *Dulap vs. Court of Appeals*, 42 SCRA 537 [1971]; *Gianan vs. Imperial*, 55 SCRA 755 [1974]; *Francisco vs. Aquino*, 72 SCRA 140 [1976]).

However, a careful scrutiny of this argument, reveals a misconception of the process. It is noteworthy, that what is , being sought in the case at bar is not the annulment of the final and executory judgment of the Court of First Instance of Manila, Branch XIII but to set aside for alleged irregularities the execution sale held on January 14, 1977 by virtue of said decision (Rollo, p. 121).

Aside from the fact that, as found by the Court of Appeals in SP-05893, the petition failed to show in what manner did the respondent court commit any grave abuse of discretion amounting to lack of jurisdiction in this regard, it is readily apparent that the cases abovesited by private respondent are not applicable.

More than that, a writ of execution is a matter of right in favor of a prevailing party once a judgment becomes final and executory (*Garcia vs. Echiverri*, 132 SCRA 631 [1984]; *Pamantasan ng Lunsod ng Maynila vs. Intermediate Appellate Court*, 143 SCRA 311 [1986]). A court cannot refuse to issue a writ of execution upon a final and executory judgment, except when certain facts and circumstances transpired after the judgment becomes final and which could render the execution of the judgment unjust (*Caboñas vs. Adil*, 135 SCRA 354 [1985]).

That the exceptions to the general rule do not obtain in this case cannot be reasonably disputed. The records show that subject judgment has been fully satisfied upon the issuance of a Certificate of Sale for the full amount of the judgment on January 26, 1977, and therefore, as stated by this Court, it is "when the judgment has been satisfied that the same passes beyond review, for satisfaction thereof is the last act and end of the proceedings." (*Seavan Carrier, Inc. vs. G.T.I. Sportswear Corporation*, 137 SCRA 587 [1985])

But just as important is the fact, that the allegations of private respondent in the case at bar are the very same issues raised by it as petitioner in CA-G.R. No. SP-05893 which were already settled when the Court of Appeals dismissed the petition for Certiorari and Mandamus before it, in the resolution of October 21, 1976[**] (Rollo, pp. 33-34, L-45343) the review of which (before this Court in L-45443) was denied in the resolution of January 31, 1977 (Rollo, p. 19, L-45443).

For obvious reasons, the matter should have been laid to rest, but private respondent instead again filed a complaint with the Court of First Instance of Rizal, Branch XXXIII against petitioner and Sheriff Emilio Z. Reyes, raising the very same issues which eventually found their way again to this Court for another adjudication.

This practice has long been censured by this Court in a line of decisions. We have ruled that the filing of several cases against the same party over the same issue, after the appellate court has decided adversely against them, constitutes contumacious defiance of the authority of and flagrant imposition on the courts and impedes the speedy administration of justice (*Pacquing vs. Court of Appeals*, 115 SCRA 117 [1982]; *Ferinion vs. Sta. Romana, et al.*, 16 SCRA 370, 374; 375 [1966]; *Gabriel vs. Court of Appeals*, 72 SCRA 273 [1976]).

More specifically, this Court explained:

"It is an important fundamental principle in Our judicial system that every litigation must come to an end. Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed by subsequent suits. For, if endless litigations were to be encouraged, unscrupulous litigants will multiply in number to the detriment of the

administration of justice." (Pacquing vs. Court of Appeals, *supra*)

However, in the case at bar, the records do not show that private respondent and its counsel were required to explain why they should not be cited in contempt of court for relitigating the same issues which have already been resolved.

PREMISES CONSIDERED, 1) the order of respondent court dated February 25, 1977 and all subsequent orders in Civil Case No. C-6131 are hereby ANNULLED and SET ASIDE; and 2) the temporary restraining order issued by the Court on March 30, 1977 is hereby made permanent.

SO ORDERED.

Yap, C. J., Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

[*] Presided over by Judge Marcelino M. Sayo.

[**] Second Division of the Court of Appeals; Ponente: Justice Andres Reyes; Concurred in by: Justices Godofredo P. Ramos and B.S. de la Fuente.

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