

JACOBO I. GARCIA AND TERESITA GARCIA, PETITIONERS, VS. THE HONORABLE JUAN F. ECHIVERRI, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, SIXTH JUDICIAL DISTRICT, BRANCH...

G.R. No. L-44455. October 23, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

This is a petition for (a) CERTIORARI to annul and set aside the Order dated July 14, 1976, issued by the respondent Presiding Judge of the then Court of First Instance of Manila, Branch XIV, in Civil Case No. 99031; and (b) MANDAMUS to direct and order said respondent Presiding Judge to issue a writ of execution to enforce the decision rendered in the aforesaid case which has already become final and executory.

The pertinent antecedents are as follows:

On August 19, 1975, herein petitioners - spouses Jacobo I. Garcia and Teresita Garcia filed before the then CFI of Manila, a complaint for re-covery of jewelries and/or sum of money with prayer for the issuance of a writ of preliminary attachment against herein private respondents, spouses Antonina B. Jimenez and Leonardo B. Jimenez. The case was docketed in the said court as Civil Case No. 99031 and assigned to Branch XIV thereof. Upon approval of petitioners' (then plaintiffs) attachment bond filed on August 28, 1975, a writ of pre-liminary attachment was issued by the respondent Judge against the properties of private respondents (then defendants) pursuant to Rule 57, Section 1 of the Rules of Court.

Private respondents were served with summons and copy of the complaint on September 9, 1975. On September 24, 1975, through counsel, they filed an urgent motion for an extension of thirty (30) days within which to file their answer. This was fol-lowed by a second motion for another thirty (30) day-extension filed by private respondents on Octo-ber 8, 1975. Both motions were granted.

Despite two extensions, private respondents failed to file their Answer. Upon motion of petitioners through counsel, private respondents were declared in default in an Order dated November 11, 1975. Petitioners were then allowed to present their evidence ex-parte on November 11, 1975 and December 8, 1975.

On January 16, 1976, private respondents moved[1] to reconsider the order of default dated November 11, 1975. The said motion was denied in an Order dated February 18, 1976, which reads as follows:

" O R D E R

Considering the motion for reconsideration filed by counsel for defendants on January 16, 1976 is neither under oath nor accompanied by any affidavit of merit showing defendants' substantial and meritorious defenses, the said motion for reconsideration is hereby denied."

On February 24, 1976, judgment was rendered in favor of the petitioners, the pertinent portion of which reads -

"The total obligations of the defendants as evidenced by Exhibits A, E and E-1, and F and F-1 is P89,900.00. In fact, the plaintiffs filed a complaint (Exh. M) with the Public Information Unit of the Office of the President on December 9, 1974. Atty. Auxencio Lucero, the Junior Presidential Staff Assistant investigated the case and later on, the parties came into agreement (Exhibits D, D-1, D-2, and D-3). But unfortunately, the defendants failed to comply, so this case was filed with this Court. Defendant Antonina B. Jimenez issued several checks (Exhibits B, B-1, C, C-1, G, G-2, H, H-1, H-2, I, I-1, 1-2, J-1, J-2, K, K-1, K-2, L, L-1, and L-2) to the plaintiffs for the payment of the jewelries, but after the plaintiffs have deposited the checks in the bank referred to, all the checks bounced due to insufficiency of funds or a notation thereof "refer to drawer". No payment then was made.

In all these three causes of action, several demands were made by the plaintiffs upon the defendants, the latter have failed and refused to return the pieces of jewelry or the proceeds thereof to the former. As this is a default case, Attorney's fee is fixed at P500.00. No damages are recoverable.

WHEREFORE, judgment is rendered in favor of the plaintiffs ordering the defendants to pay the sum of eighty-nine thousand, nine hundred pesos (P89,900.00) with interest thereon at the legal rate from August 19, 1975 until fully paid, plus the sum of P500.00 as attorney's fee and costs of suit.

SO ORDERED."

A copy of the aforesaid decision was received by private respondents on March 9, 1976. On March 29, 1976, private respondents filed a motion for reconsideration[2] which was denied by respondent Judge on April 14, 1976. The Order reads as follows:

"After a careful study of the allegations incorporated in defendants' motion for reconsideration of the order of February 18, 1976 and decision dated February 24, 1976, as well as the arguments of the plaintiffs contained in their opposition to the above said motions, dated April 5, 1976, this court finds no cogent reason to set aside, alter or modify either its order, dated February 18, 1976 or its decision dated February 24, 1976.

WHEREFORE, defendants' motion for reconsideration dated March 29, 1976 is hereby denied for lack of merit.

SO ORDERED."

Private respondent received a copy of the afore-quoted order on April 29, 1976.

On May 6, 1976, private respondents filed a Second Motion for Reconsideration which was again denied by respondent Judge in his Order dated May 26, 1976 and which reads -

"Considering the second motion for reconsideration filed by defendants to be pro-forma in nature and the grounds cited therein are the same as the first motion for reconsideration which has been passed upon and resolved by this Court on April 14, 1976, said motion is hereby denied."

On June 3, 1976, petitioners filed a motion for Execution of Judgment, alleging therein that the last day for private respondents to perfect their appeal was on May 10, 1976, since the pro-forma second motion for reconsideration did not suspend the running of the period for appeal, and that as of this date, private respondents have not perfected any appeal from the decision of the court.[3]

On June 4, 1976, private respondents filed a Notice of Appeal.[4]

On June 17, 1976, petitioners filed a Motion to Dismiss Appeal[5] alleging mainly that the decision sought to be appealed has become final and executory on the basis of the following:

"March 9, 1976 - date when defendants received the decision rendered by the Honorable Court;

March 29, 1976 - date when defendants filed their motion for reconsideration;

April 29, 1976 - date when defendants received the Honorable Court's order denying the first motion for reconsideration;

The last day for defendants to perfect their appeal on the basis of the following dates was on May 10, 1976.

Defendants' notice of appeal was filed only on June 4, 1976 (25 days late) and therefore was filed out of time."

On June 24, 1976, private respondents filed a Memorandum[6] in support of their right to appeal. On July 6, 1976, an Urgent Omnibus Motion was filed by private respondents alleging among others that -

"During the hearing of Criminal Case Nos. 24136 - 38 wherein the subject matter in said case is the same subject matter in this instant case, evidence has been shown that on February 3, 1975, an agreement was reached that defendant Antonina B. Jimenez was only owing the plain-tiffs the amount of P72,648.00 and it was contained in a document made before an investigator in Malacañang."

Private respondents then prayed in said omnibus motion that the proceedings in this case be suspended until the evidence in the criminal cases against the defendant Antonina Jimenez shall have been submitted, considering that the subject matter of the civil and the criminal cases are the same; that the order of default and the judgment in this case be set aside and reconsidered and that in the event the above prayers cannot be granted, that the defendants be granted another thirty (30) days within which to file the record on appeal, said period to be counted from the date this motion for extension is granted.

The said Omnibus Motion was set for hearing on July 21, 1976.

On July 14, 1976, however, even prior to the date set by the defendants for the hearing of their omnibus motion, respondent Judge issued his now assailed Order which runs thus -

"Finding merit in the allegations contained in the memorandum of counsel for the defendants filed before this Court on June 28, 1976 as well as in the Urgent Omnibus Motion filed on July 6, 1976 and in the interest of justice, the order of default as well as the decision rendered in this case are hereby set aside. In view of the facts which have supervened after the denials of the motions for reconsideration, counsel for the defendants is allowed to cross-examine the witnesses presented by the plaintiffs during the ex-parte hearing on the basis of the transcript of stenographic notes taken in the proceedings and thereafter defendants are afforded the chance to present their evidence.

Considering however the interrelation of this civil case with that of Criminal Cases Nos. 24136-38 entitled "People of the Philippines versus Antonina Jimenez" which are also being tried before this Court, let the hearing in this civil case be suspended until the termination of the trial of the aforesaid criminal cases."

The motion for reconsideration filed by petitioners from the aforesaid Order having been denied, they now come before this Court, through the instant petition contending that respondent Judge committed grave and serious errors of law amounting to lack of jurisdiction or grave abuse of discretion (1) in setting aside the decision rendered in this case after it has become final and executory; (2) in setting aside its order of default on the basis of respondents' motion to lift the order of default which is not under oath and which did not contain any affidavit of merit; and (3) in suspending this case, an independent civil action, till after the termination of the criminal cases filed against the same respondent.

In our resolution dated September 16, 1976, We required the respondents to "file an answer within ten (10) days from notice and not to move to dismiss the petition." After private respondents had filed their Answer, We required the parties to file their respective memoranda.

The petition is impressed with merit.

Well-rooted is the principle that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory that deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal.[7]

In the case at bar, it is admitted that the decision of the lower court was received by private respondents on March 9, 1976. On March 29, 1976 (or on the 20th day) private respondents filed their first motion for reconsideration. On April 29, 1976, private respondents received the lower court's order denying the first motion for reconsideration, therefore, the last day for perfecting their appeal would be May 9, 1976. Since private respondents filed their notice of appeal only on June 4, 1976, the same was filed out of time. Consequently, the decision appealed from is already final and executory.

The motion for reconsideration which was correctly declared by the lower court to be pro-forma is of no moment. A pro-forma motion will not tell the running of the period for appeal.[8] And once a decision becomes final, the court can no longer amend or modify the same, much less set it aside, as was erroneously done by the respondent Judge in this case. For to allow courts to amend final judgments will result in endless litigations.[9]

It is likewise equally settled that once a judgment becomes final, the prevailing party is entitled as a matter of right, to a writ of execution and the issuance thereof is the court's ministerial duty compellable by mandamus.[10] In fact, it has been fittingly said that "an execution is the fruit and end of the suit, and is very aptly called the life of the law"[11] Petitioners therefore, as the prevailing party were entitled as a matter of right to the execution of the judgment in their favor that had become final and executory by the failure of private respondents to perfect their appeal within the reglementary period.[12]

Finally, We note that in the assailed Order, it was stated that "there were facts which supervened after the denial of the motion for reconsideration." The supervening facts referred to is the exhibit presented in the criminal cases which shows that in the confrontation between the parties at the Malacañang Legal Office, they have agreed to settle the case if private respondent can pay the amount of P72,648.00 on February 17, 1975. Respondent Judge claimed that this is a newly discovered evidence that can warrant reopening of the case. An examination of this document however shows that the same was already presented in this case and marked in evidence as Exhibit "D".[13] Decidedly then, this cannot be considered a newly discovered evidence that could warrant a reopening of the case.[14]

With the foregoing conclusion arrived at, We find no necessity in resolving the other issues raised.

WHEREFORE, the petition is GRANTED. The Order dated July 14, 1976 is declared null and void and hereby SET ASIDE. The respondent court or the particular branch of the Regional Trial Court to which Civil Case No. 99031 is now assigned is hereby ordered to enforce the decision dated February 24, 1976 rendered in the said case.

No costs.

SO ORDERED.

Makasiar (Chairman), Aquino, Guerrero, Abad Santos, and Escolin, JJ., concur.

Concepcion, Jr., J., no part.

[1] Annex G

[2] Annex I

[3] Annex L

[4] Annex K

[5] Annex M

[6] Annex N

[7] *Acda vs. Minister of Labor*, 119 SCRA 309; *Agricultural and Industrial Marketing, Inc. vs. CA*, 118 SCRA 49; *Santos vs. CA* 125 SCRA 22.

[8] *Llantero vs. CA* 105 SCRA 609; *Luzon Brokerage Co., Inc. vs. Maritime Bldg. Co., Inc.* 86 SCRA 305; *Jesena vs. Hervas*, 83 SCRA 799; *Crisostomo vs. CA*, 32 SCRA 54; *Dacanay vs. Alvendia*, 30 SCRA 31.

[9] *Villanueva vs. CFI of Oriental Mindoro* 119 SCRA 289.

[10] *Balintawak Construction Supply Corp. vs. Valenzuela*, 124 SCRA 331.

[11] *Carreon vs. Buisan*, 70 SCRA 57.

[12] *Gonzales vs. Sayo*, 122 SCRA 607; *RCBC vs. Dayrit*, 123 SCRA 203.

[13] P. 45, Annex F, Petition.

[14] *People vs. Delasa*, 115 SCRA 74; *People vs. Aleman*, 102 SCRA 765.

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