

FEDERICO AGUILAR, PETITIONER, VS. HON. HONORATO B. MASAKAYAN, JUDGE, COURT OF FIRST INSTANCE OF RIZAL, 7TH JUDICIAL DISTRICT BRANCH V, QUEZON CITY AND RENE KNECHT, RESPONDENTS.

G.R. No. L-27816. May 29, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Original action of certiorari to annul orders of respondent court of first instance.

Petitioner Federico Aguilar as Plaintiff in Civil Case No. Q-9812 of the respondent Court of First Instance of Quezon City obtained a money judgment from said court on September 10, 1966 against private respondent Rene Knecht as defendant (herein-after referred to simply as respondent) for the sum of P10,922.50, representing the unpaid balance of a 17th Century Flemish tapes-try entitled "The Dream of Solomon", with interests thereon at the rate of 12% per annum from February, 1966, P1,000.00-attorney's fees and costs of suit. The judgment having become final, upon a writ of execution issued by respondent court, real and personal pro-perties of respondent consisting of three polo horses stabled at the Manila Polo Club were levied upon and attached by the sheriff's office.

Before the shceduled sheriff's sale of the attached polo horses, respondent paid petitioner the sum of P13,511.65 on account of the total jugment debt which, including lawful expenses of execution consisting of sheriff's fees, publication and guards' expenses totaled P14,644.20 as of April 17, 1967, leaving an un-paid balance of P1,132.55 computed as follows:

"Principal obligation

P 10,922.50

Interest at 12% per annum

1,529.15

Attorney's fees

1,000.00

Cost of suit

62.00

Sheriff's fees and expenses as

of April 7, 1967

695.00

Sheriff's fees and expenses as

of April 17, 1967

360.00

Sheriff's Commission

75.00

T O T A L.....

P 14,644.20

Minus Partial Payment in the

sum of P13,511.65

13,511.65

Total Balance

P 1,132.55"[1]

Respondent questioned the sheriff's fees and expenses and filed on April 12, 195t 7 with respondent court a motion for the lifting of the attachment levy on the three polo horses and a cer-tain real property of his claiming that the expenses corresponding to the attachment of the real property should be excluded from the costs of suit and that the amount of P360.00 as guards' fees on the attachment of the horses should be reduced.

At the hearing of the motion on April 15, 1967, respondent court held a conference in chambers and petitioner's counsel agreed to the lifting of the attachment on respondent's properties should respondent pay on the same day the reduced sum of P500.00 by way of a compromise settlement, but counsel for respondent did not accept the proposal. Two days later, however, on April 17, 1967, respondent court issued its order relating what transpired at the conference held by it in chambers and stating further "that this morning the counsel for the (respondent) came to see this Presiding Judge and manifested that the (respondent) has agreed to pay the said sum of P500.00"; it therefore ordered that "let the attachment made on the horses and real properties of the (respondent) . . . be lifted and cancelled upon the (respondent's) payment to the (petitioner) of the sum of P500.00, and this case is declared terminated."

Upon learning of the order, petitioner immediately filed on April 19, 1967, a motion to set aside the same stating inter alia that his counsel had agreed to accept the reduced sum of P500.00 "upon earnest suggestion" of respondent court in a "spirit of coop-eration only to finally terminate the case" On the very day the motion was heard on April 15, 1967, but respondent's counsel had refused the proposal, which was therefore withdrawn and no longer binding on petitioner; that the court's order of April 17, 1967, reducing the balance due to petitioner to P500.00 compromise and abridge (petitioner's) rights without (petitioner's) consent to such compromise or abridgment;" and that the balance of P1,132.55 was practically the total amount of expenses in the sum of P1,130.55 which petitioner had avanced the sheriff in connection with the attachment and levy for which he was entitled to reimbursement. Petitioner further represented to the court that the original writ of execution dated February 11, 1967 had expired and prayed the court for the issuance of a second writ of execution for the satisfaction of the unpaid balance of his judgment.

On May 10, 1967, respondent court issued its order denying petitioner's motion on the ground that the reduced amount of P500.00 as stated in its order of April 17, 1967 had already been paid and receipted by the Sheriff and

that the levy on the personal properties of respondent had already been lifted by the sheriff.

Petitioner thereupon filed the present verified petition to annul said orders of respondent court and for the issuance of an order for the enforcement of the balance of his judgment credit against respondent in the sum of P1,132.55 as of April 17, 1967 with 12% interests and costs of suit.

The petition is meritorious. Petitioner's proposal to accept a reduced sum of P500.00 in satisfaction of his judgment credit was strictly conditioned upon respondent's acceptance thereof and payment of the amount on the day of the conference in respondent court's chambers. Respondent's non-acceptance of the offer there-fore entitled petitioner to consider the same withdrawn.[2]

Respondent court under such circumstances could not consider the rejected offer of petitioner still binding when respondent's counsel ex-parte belatedly manifested to it two days later that respondent had finally agreed to pay the said reduced sum. Respondent's allegation in his unverified answer that his counsel's refusal of petitioner's offer to accept the reduced sum of P500.00 was be-cause "he could not be contacted at that' time" and "it was only on the following morning that respondent was able to give his consent to accept the offer"[3] cannot alter or modify the condition --- which the petitioner had a perfect right to impose -- that his offer be accepted then and there so as to terminate the case once and for all. Not having chosen to accept petitioner's offer within the time limit given, respondent cannot be permitted thereafter to impose his change of mind on petitioner.

The balance due on the judgment in the sum of P1,132.55 was fully due from respondent to petitioner by virtue of a final judgment of respondent court, as itemized above. As already indicated, the said sum was being collected by petitioner merely by way of reimbursement of the advances Petitioner had made in practically the same amount to the sheriff as lawful expenses of execution. As between petitioner, the prevailing party who obtained a lawful judgment for a sum fully due him, and as against respondent who due to his default in the payment of his obligation compelled plain-tiff to go to court and to incur the expenses in question for enforce-ment of the judgment, respondent is clearly liable for payment of the expenses of lawful attachment and execution and should bear the same.[4]

The record shows that respondent court issued its questioned order of April 17, 1967 reducing the balance due on the judgment to P500.00, not on any finding that the expenses claimed by peti-tioner were no lawfully incurred or were unreasonable as claimed by respondent, but on the mistaken notion that petitioner had unqualifiedly agreed to such reduction, when this was but a limited proposal of petitioner valid only on the day of the hearing of April 15, 1967 and had been rejected then by respondent as stated in the order itself and was therefore no longer binding.

Petitioner, was entitled to recover fully the sheriff's fees he had paid for the attachment, since as held in the early case of Macondray & Co., Inc. vs. Bernabe,[5] "(W)ithin the aforesaid definition (of process) fall, in our opinion, all the proceedings for the execution of the order of attachment, with respect to personal property, from the time the sheriff attaches and takes possession of the attached properties by virtue of the order of the court and conserves and places the same under his custody until the attachment is lifted or the property is sold at a public auction upon a judgment or order of the same court which issued the attachment. The sheriff's or custodian's fees for his services from and during the attachment are consequently a part of the costs, and the plain-tiff is entitled to recover the same." The Court reaffirmed this ruling in Martin vs. Gomez,[6] where we held that "x x it is undeniable that the storage fees (of P1,840.50) constitute reason-able expenses necessarily incurred in caring for the automobile that was levied on execution and held by the Sheriff. The act of the Sheriff in having under his custody the automobile in question is 'service of any process in action' as construed by this Court in the Macondray case, and for this 'service' he is entitled to be paid the fees provided by law. The fees of the Sheriff in

having under his custody a property that is attached or levied on execution includes reasonable expenses in caring for the property. x x"

Respondent court therefore exceeded its authority in reducing in effect the balance due on the final judgment from respondent to petitioner by declaring the case terminated upon respondent's payment of the lesser sum of P500.00 and in denying petitioner's motion to set aside its order of April 17, 1967 and to issue a second writ of execution to satisfy the balance of P1,132.55 with the stipulated interests still due on the judgment. For the jurisdiction of the trial court over a given case after its judgment has become final and executory lies in the enforcement of such judgment and to alter or modify it for the purpose of avoiding its full enforcement against the judgment debtor is beyond its jurisdiction and authority.[7]

ACCORDINGLY, the writ of certiorari prayed for is hereby granted. The respondent court's orders of April 17, 1967 and May 10, 1967 are declared null and void and set aside. Respondent is declared still indebted to petitioner under the final judgment of the respondent court, in the sum of P1,132.55 with interests from April 17, 1967 at the rate of 12% per annum until the amount is fully paid and respondent court is directed to issue the corresponding writ of execution upon respondent's failure to satisfy the same. With costs against private respondent.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Fernando, Barredo, and Villamor, JJ., concur.
Castro, J., on leave.

[1] Rollo, p. 26.

[2] "Art. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer. x x "

See 8 Manresa 650 to the effect that an offer until accepted by the offeree, does not bind the offeror and such offer can therefore be withdrawn at any time before it is accepted.

[3] Rollo, p. 23.

[4] It is noted that the sum of P500.00 mentioned in the order of April 17, 1967 was not paid to petitioner as directed therein but was inofficiously paid to the sheriff. Annex D, Petition. And it has not been shown that the sheriff has turned over the amount to petitioner.

[5] 67 Phil. 658, 661 (1939), cit. Sec. 491 of Act 190, notes in parentheses supplied. See Rule 142, sec. 9 (i) and sec. 10 (g), providing that the prevailing party may recover as costs lawful fees paid by him for the service of any process in action.

[6] G.R. No. L-20394, May 31, 1965 (14 SCRA 233), cit. Rule 130 (now Rule 141) sec. 7 (b) of the Rules of Court, providing for the payment of sheriff's fees "(F)or serving an attachment against the property of defendant, four pesos together with a reasonable allowance to be, made by the court for expenses, if any, necessarily incurred in caring for property attached; x x ". Notes in parentheses supplied.

[7] Sabino vs. Cuba, G.R. No. L-18328, Dec. 17, 1966 (18 SCRA 981); Ocampo vs. Caluag, G.R. No. L-21113, Apr. 27, 1967 (19 SCRA 971); Phil. Eng. Corp. vs. Ceniza, G.R. No. L-17834, Sept. 29, 1962. (6 SCRA 194); and cases cited.

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