

**ISABELO ASTRAQUILLO AND JUANITA J. ASTRAQUILLO,
PETITIONERS, VS. PRIMITIVO JAVIER, AMPARO S. JAVIER, COURT
OF APPEALS, JUDGE NICASIO YATCO, IN HIS CAPACITY AS JUDGE
OF THE COURT...**

G.R. No. L-20034. January 30, 1965

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

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

Petitioners-spouses Isabelo and Juan Ha Astraquillo prosecuted before this Court the instant petition to review on certiorari a resolution of the Court of Appeals (Special Fourth Division), in its CA-G. R. No. 30249-R, which, upon motion for reconsideration of respondents-spouses Primitivo and Amparo Javier (defendants-appellees below), reversed its original decision granting herein petitioners' petition for certiorari, and upheld a special order of execution of the decision pending appeal issued by respondent Judge of the Court of First Instance of Rizal (Quezon City, Branch V) in its Civil Case No. Q-2276.

After a protracted trial, the Court of First Instance of Rizal (Quezon City, Branch V) had rendered a decision in its case No. 2276, dated 23 August 1961, the dispositive portion of which read as follows:

"In view of the foregoing considerations, judgment is hereby rendered in this case in favor of the defendants Primitivo Javier and Amparo S. Javier and against the plaintiffs Isabelo Astraquillo and Juanita J. Astraquillo, as follows:

- (a) Ordering the dismissal of the complaint;
 - (b) Declaring the real estate mortgage marked in evidence in this case as Exhibit K or K-l, inexistent and void;
 - (c) Ordering the plaintiffs to vacate the premises in question and surrender possession thereof to the defendants;
 - (d) Ordering the plaintiffs to pay the defendants the sum of P250.00 in the form of rentals from April 1956 up to the time the possession of the premises in question is surrendered to the defendants;
 - (e) Ordering the plaintiffs to pay the defendants the sum of P200.00 a month from September, 1956 until the possession of the Premises in question is delivered to the defendants, by way of actual damages;
 - (f) Ordering the plaintiffs to pay the defendants the sum of P2,240.00 which the former received from Patrocino Evalle but was not turned over to the latter;
 - (g) Ordering the plaintiff's to pay the defendants the sum of P2.789.48 which the plaintiffs received from the PHHC by way of condonation of delinquency interests and which was not turned over to the defendants;
- All the foregoing to bear interest at the rate of 6% per annum from the date of the filing of the complaint, until fully paid; and
- (h) Ordering the plaintiffs to pay the defendants the sum of P5.000.00 as moral damages;

- (i) Ordering the plaintiffs to pay the defendants, the sum of P2,000.00 by way of exemplary damages;
- (j) Ordering the plaintiffs to pay the defendants the sum of P3,000.00 as attorney's fees; and
- (k) Ordering the plaintiffs to pay the costs.

As above stated, the plaintiffs are entitled to be reimbursed in the sum of P19,587.26 and P12,464.24. It is understood, however, that these amount should be reimbursed to the plaintiffs after they have surrendered the possession of the premises in question to the defendants and the same to be deducted from the respective amounts to be paid by said plaintiffs to the defendants."

From the unfavorable decision, plaintiffs Astraquillo filed on 27 September 1961 their notice of appeal, appeal bond, and record on appeal. Upon defendants' objection to the approval of said record on the ground that it was incomplete and defective, the plaintiffs were ordered by the trial court to amend the same to conform to said opposition. Plaintiffs submitted their amended record on appeal, and set it for approval on 11 October 1961, which was later reset for 28 October 1961. In the meantime, defendants Javier filed on 10 October 1961 their motion for execution pending appeal based on the alleged insolvency of the plaintiffs, which motion was amended on 25 October 1961 substantially alleging the same ground. Plaintiffs opposed said motion.

On 28 October 1961, the trial court granted defendants' motion and issued an order which we deem pertinent to quote hereunder because it discusses the respective contentions of the parties relative to the disputed issue in the present petition. Said order reads:

"Before the Court for resolution is an Amended Motion for Execution Pending Appeal, dated October 25, 1961, filed by counsel for the defendants. Counsel for the plaintiffs filed an opposition on October 28, 1961.

"The special reasons set forth in the instant motion is that, plaintiffs in this case are insolvent. To substantiate their claims, defendants allege that : (a) as early as March 1955, the PHUC had attempted to eject plaintiffs from the property in question for nonpayment of the installments due thereon, which attempt was not carried out only because defendants stepped in and paid the balance due to said PHUC; (b) plaintiffs Isibelo Astraquillo himself admitted on the witness stand that he was in need of funds; that (c) plaintiffs' gross income for the year 1959 amounted to only P4,400.00 of which sum P1,500.00 was the total income of plaintiff Isibelo Astraquillo, while the balance was the salary of plaintiff Juanita J. Astraquillo from her teaching position.

"The main argument advanced by the plaintiff in support of their opposition to the issuance of the writ of execution prayed for herein by the defendant is that, 'the mere allegation that plaintiffs are insolvent without the corresponding finding of proof to that effect is not special or good reason that will justify the issuance of execution pending appeal. Plaintiffs further contend that the discretion of the trial court in issuing an immediate execution is to be reckoned from the circumstances obtaining after the decision has been rendered and not from the circumstances that took place during the period of trial.

"Needless to state in this connection, that among other things, the plaintiffs were ordered to pay the defendants the sum of P250.00 in the form of rentals from April 1956 up to the time possession of the premises in question is surrendered to the defendant. Apparently, as to this date, the total of the accrued rentals amounts to some P16,000.00 more or less. As the years go by pending appeal of this case, the accrued rentals would gradually increase as a matter of course, and there are strong indications, as pointed to by the defendants, that plaintiffs are not in a position to pay the same. Should it be the case, as there are well founded reasons to believe that it would be, such circumstances would undoubtedly render the decision nugatory. This to the Court, is sufficient reason to justify the issuance of the writ of execution prayed for.

"In fine the primordial reason that impels the Court to grant the motion of defendants is because, plaintiffs are insolvent. If they were not in such situation or if they are now better off than they were during the pendency of this case for trial, said plaintiffs have no proof on that score.

Wherefore, for the special reasons set forth above, the Court orders the issuance of a writ of execution in this case pending appeal, unless the plaintiffs file a supersedeas bond in the sum of P20,000.00 within a period of ten (10) days from receipt of this order.. It is understood that if after the period of ten (10) days as aforesated, plaintiffs have not filed the supersedeas bond, the Clerk of Court is directed to issue the writ of execution in this case pending appeal. Counsel for both parties notified hereof in open court."

Plaintiffs filed on 28 November 1961 a motion to reconsider the above-quoted order which the trial court denied on 2 December 1961, and for failure to post the supersedeas bond required in the same order trial court also directed, on 28 November 1961, respondent Sheriff to enforce the corresponding writ of execution.

Plaintiffs went to the Court of Appeals on a petition for certiorari to annul and set aside said writ of execution pending appeal, which, as intimated at the beginning of this opinion, was ultimately denied by said appellate court. However, before petitioners herein could seek a reconsideration of said resolution, and before the same could become final and executory, respondents Javier secured on 14 July 1962 an alias writ of execution in the trial court, and, pursuant thereto, respondent Sheriff levied on the personal properties of the petitioners herein and set the sale thereof for 25 July 1962. Respondent Sheriff also threatened to eject petitioners herein from the property in question. Petitioners herein therefore presented on 23 July 1962 the instant petition to review on certiorari with a prayer for a writ of preliminary injunction before this Court. We gave due course to the petition, and issued the corresponding writ upon the filing of a bond in the amount of P10,000.00f which the petitioners posted in due time.

The sole issue for determination in, the present petition is whether respondent Court of Appeals correctly upheld the order of the trial court in executing its decision pending appeal. In other words, the only issue is whether respondent trial judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the special order of execution in question.

Petitioners herein question the propriety of the conduct of the Court of Appeals in completely reversing its original decision granting their petition for certiorari and setting aside and annulling the order of execution of the decision of the trial court pending appeal. They contend that respondents Javier, in their motion to reconsider, raised substantially the very same issues and grounds alleged in their answer to the petition; hence, there was no justification for respondent appellate court to change its original decision.

Petitioners herein also contend that respondents Javier as the prevailing parties and movants for executing the decision pending appeal in the trial court, had the burden to prove the former's alleged insolvency, and since no evidence was submitted to substantiate such claim of insolvency, the issuance of said special order was not warranted under the circumstances.

On the other hand, respondents Javier maintain that respondent Court of Appeals correctly upheld the disputed special order of the trial court, the same being conformable to the law and jurisprudence on the matter.

It is already well-settled that under Section 2, Rule 30, of the Rules of Court,

"The power to grant or deny a motion for execution is discretionary with the court (Federal Films vs. Quimpo, 78 Phil. 479). Accordingly, the appellate court will not interfere to modify, control, or inquire into the exercise of this discretion, unless it be shown that there has been an abuse thereof (Calvo vs. Gutierrez, 4 Phil. 203; Case vs. Metropole Hotel, 5 Phil. 49; Gamay vs. Gutierrez David, 48 Phil 768; Buenaventura vs. Pena, 78 Phil. 795; Ong Sit vs. Piccio, 78 Phil. 785; Naredo vs. Yatco, 80 Phil. 220)." (Federation of United Namarco Distributors vs. National Marketing Corp., et al., & National Marketing Corp. vs. Tan, et al., G. It. Nos. Lr-17819 & 16678, March 31, 1962)

It is not disputed that respondents Javier filed their Motion for execution pending appeal in the trial court before

petitioners Astraquillos perfected their appeal, and averred the insolvency of the latter as the special and good reason for such execution specifying and citing the facts appearing in the records of the case upon which such claim is based. Respondent trial judge, in granting the motion, seemed to have been satisfied that the evidence already submitted did warrant such execution pending appeal. This finding was confirmed by the Court of Appeals in its disputed resolution.

Under the circumstances prevailing in the case at bar, we are constrained not to disturb the disputed ruling of the Court of Appeals.

Coming to the first contention of the petitioners herein, suffice it to state that it is one of the inherent powers of the court "to amend and control its process and orders so as to make them conformable to law and justice" (Sec. 5, Rule 135, Revised Rules of Court). This power includes the right to reverse itself, specially when in its honest opinion it has committed an error or mistake in judgment, and that to adhere to its decision will cause injustice to a party-litigant. This appears to have been what happened in the case at bar; hence respondent Court of Appeals perfectly acted within its prerogatives in reversing itself.

With respect to the second contention of the petitioners herein, the records of this case belie their claim. In its resolution, the Court of Appeals concluded that there was sufficient evidence to confirm the order of the trial court executing its decision pending appeal. Thus, it ruled that the insolvency of the petitioners herein has been clearly shown, which is a good and special reason for the immediate execution of the decision, to wit:

"1. The petitioners owe in back rentals alone to the respondents, as per decision of respondent Judge the sum of P250.00 monthly from April, 1956 to the present or roughly P18,000.00;

"2. Petitioners Isabelo Astraquillo admitted during the trial of the civil case, his need of funds several times;

"3. As per notice of the Sheriff's sale, dated December 4, 1961, respondent Sheriff could levy only on household effects of the petitioners, mostly furniture items, to satisfy the judgment;

"4. Petitioners could have stayed the writ of execution by filing the P20,000.00 supersedeas bond required by respondent judge, which they did not do;"

Considering that we are bound by the above-quoted factual findings, since in appeals by certiorari under Rule 45 (formerly Rule 46 of the old Rules)of the Revised Rules of Court "the judgment of the Court of Appeals is conclusive as to facts, and cannot be reviewed by the Supreme Court" [11 Moran, Comments on the Rules of Court (1963 ed.), 413], we see no way to hold that the Court of Appeals committed any grave abuse of discretion in ultimately affirming the special order of execution issued by the trial-court. Anyway, insolvency of a party (in the sense of inability to show apparent assets adequate to meet its obligations) need not be proved directly, but may be inferred, as the appellate Court did, from a number of circumstances appearing of record.

Wherefore, the instant petition should be, as it is hereby, dismissed, and the writ of preliminary injunction heretofore issued ordered dissolved. With costs against the petitioners.

Bengzon, C. J., Bautista Angelo, Barrera, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar JJ., concur

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