

**LOURDES T. VALERO, PETITIONER, VS. COURT OF APPEALS,
GENOVEVA ALDANA, ASSISTED BY HER HUSBAND, GRACIANO
ALDANA, RESPONDENTS.**

G.R. No. L-36667. June 29, 1973

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for review of the resolutions of the Court of Appeals issuing a writ of preliminary injunction in relation to an appeal pending therein in CA-G.R. No. 51801-R, considered by the Court as an original special civil action of certiorari and declared submitted for decision on the basis of the petition and the comment of respondents, considered as their answer, the issues being simple and the same being adequately discussed already in said pleadings.

After judgment was rendered against petitioner in an action for payment of a promissory note, sentencing her to pay private respondents P17,000 with 6% interest from the filing of the complaint and P3,000 as attorney's fees, petitioner filed her notice of appeal and appeal bond within the reglementary period, but, with respect to the record on appeal, she filed the same within an extended period given her upon motion filed before the expiration of said reglementary period but acted upon after said period. In view of this last circumstance, upon motion of private respondents, the vacation judge declared the judgment final and ordered execution, by virtue of which P18,541.92 representing petitioner's savings deposit in the Far East Bank & Trust Company were actually withdrawn and paid to private respondents by order of said judge. Upon the return of the regular judge, and on motion for reconsideration of petitioner, the order of execution was set aside, the judge holding that the granting of the extension of the time to file record on appeal beyond the reglementary period was in order inasmuch as the motion therefor was filed within said period.

Accordingly, the restoration of the money thus withdrawn was ordered, and when there was reluctance to comply therewith, he threatened to issue a writ of execution. Acting on the motion for reconsideration of respondents, the judge issued an order on September 29, 1972 granting said respondents the alternative to file a bond to secure restoration so that the court may consider the payment of the amount in question as an execution pending appeal.

Upon these facts, the Court of Appeals rendered the impugned resolution enjoining the enforcement of the order of restoration, pending its decision of the appeal on the merits. Hence, this petition, which We consider as a special civil action.

There is merit in the petition. Indubitably, petitioner is entitled to the restoration of the amount taken from her savings deposit under a voided writ of execution. Respondents would do well to take the option given to them by the trial judge in the order of September 29, 1972. Otherwise, the order of restoration may be enforced by the corresponding writ of execution.

WHEREFORE, the impugned resolutions of the Court of Appeals are set aside, and the trial court may proceed consistently with the foregoing opinion. Costs against respondents.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Makasiar, and Antonio, JJ., concur.

Teehankee, J., concurs and adds that any bond filed for restoration should include the interests that would have been earned by petitioner's savings deposit.

Esguerra, J., concurs in a separate opinion.

CONCURRING:

ESGUERRA, J.,

I concur, this case being distinguishable from that of Reyes, et al. vs. Hon. Sta. Maria, et al., G.R. No. L-29554, November 20, 1972,⁴⁸ SCRA p. 1, where the motion for extension of the period for filing the record on appeal, although filed within the reglementary period, was not acted upon before the lapse of said period and was thereafter denied by the same Judge. Hence there is no inconsistency between the result of this case and the rule established in the Reyes case that when no action is taken on the motion for extension of the period for filing the record on appeal and the period asked for lapses, the motion is deemed denied.

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