

**PHILIPPINE MARKETING & MANAGEMENT CORPORATION,
PETITIONER, VS. HON. ANDRES REYES, AS JUDGE OF THE COURT OF
FIRST INSTANCE OF RIZAL, BR. VI, CONVERSE RUBBER
CORPORATION AND EDWAR...**

G.R. No. L-27195. March 30, 1970

Ponente: FERNANDO, J.

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FERNANDO, J.:

The jurisdiction of the then Judge Andres Reyes of the Court of First Instance of Rizal, now a Justice of the Court of Appeals, to act on a contempt charge, is challenged in this prohibition proceeding. Petitioner Philippine Marketing & Management Corporation contends that it could not thus be cited as it is not a party to the case out of which the contempt incident arose and that, moreover, the decision having been rendered and an appeal having been perfected, respondent Judge was thus bereft of authority to inquire into such alleged contumacious incident. Neither ground for assailing the jurisdiction of respondent Judge appears tenable. Nor is the invocation by petitioner of the due process clause any more persuasive, its right to be heard, far from having been disregarded, accorded respect. Prohibition does not lie.

A case for unfair competition filed by private respondents Converse Rubber Corporation and Edwardson Manufacturing Corporation against Jacinto Rubber and Plastics Co., Inc. and Ace Rubber & Plastics Corporations, was decided favorably by respondent Judge in a decision dated November 2, 1966. Its dispositive portion contains the following: "Permanently restraining the defendants, their agents, employees and other persons acting in their behalf from manufacturing and selling in the Philippines rubber shoes having the same or confusingly similar appearance as plaintiff Converse Rubber's 'Converse Chuck Taylor All Star' rubber shoes, particularly from manufacturing and selling in the Philippines rubber shoes with (a) ankle patch with a five-pointed blue star against a white background, (b) red and blue bands, (c) white toe patch with raised diamond shaped areas, and (d) brown sole of the same or similar design as the sole of 'Converse Chuck Taylor All Star' rubber-soled canvas footwear; * * *." [1]

Thereafter, in an urgent ex-parte motion requiring petitioner as well as the defendants in such unfair competition case to explain why they should not be held in contempt of court, it was alleged: "In defiance of this Court and disobedience of and resistance to the permanent injunction, the defendants and the Philippine Marketing & Management Corporation, their exclusive distributor, continue to manufacture, advertise, and sell in the Philippines their 'Custombuilt rubber shoes with (a) an ankle patch with five-pointed blue star against a white background, (b) red and blue bands, (c) a white toe patch with raised diamond shaped areas, and (d) brown sole of the same or similar design as the sole of a 'Converse Chuck Taylor All Star' rubber canvas footwear.'" [2]

Such conduct on the part of defendants as well as petitioner was characterized in such petition as "a willful and concerted disobedience of, and resistance to, the permanent injunction and constitutes a direct challenge of the authority of this Court which tends to degrade the administration of justice. The wilfulness and contumacious

conduct of defendants and Philippine Marketing & Management Corporation are underscored by their conduct throughout the proceedings of this Court." [3]

Then came the challenged order. Thus: "Considering the urgent ex-parte motion to require defendants Jacinto Rubber & Plastics Co., Inc. and Ace Rubber & Plastics Corporation together with the Philippine Marketing & Management Corporation, their respective presidents and general managers, to explain why they should not be held in contempt of court, this Court resolves to set the said motion for hearing with notice to the respondents in this contempt complaint on [December] 23, 1966, at 8:30 A. M., and the said respondents are hereby ordered to explain and show cause why they should not be declared in contempt of this Court for having allegedly committed the acts set forth in the motion on or before the hearing of this incident as aforesated." [4]

It should be stated likewise that as early as December 14, 1966 the appeals on the part of plaintiffs in that case, now private respondents, as well as defendants therein, were approved in an order of respondent Judge, the opening paragraph of which reads: "Both plaintiffs and defendants have filed their notice of appeal and record on appeal, as well as deposited a cash appeal bond in the sum of P120.00, the former taking their appeal to the Honorable Supreme Court and the latter to the Honorable Court of Appeals, * * *." [5]

On the above undeniable facts and considering the applicable principles of law, petitioner has not made out a case for prohibition.

1. The first point raised by petitioner is that respondent Judge acted without and in excess of his jurisdiction in citing and ordering it to appear before him and explain why it should not be held in contempt of court as it is "an entity distinct and separate from the defendants in the case, * * *." [6] It would thus argue that for a contempt charge of disobedience to a writ, process, order, judgment, or command of a court to prosper, the individual or entity thus proceeded against should have previously been a party to such case or controversy. That is not the law. We have categorically declared otherwise. As held by us in *Ferrer v. Rodriguez*: [7] "Nevertheless, persons who are not parties in a proceeding may be declared guilty of contempt for willful violation of an order issued in the case if said persons are guilty of conspiracy with any of the parties in violating the court's order."

It was alleged in the urgent motion to require petitioner to show cause why it should not be held in contempt of court that it is the exclusive distributor of the defendants against whom the injunction was ordered by the lower court. [8] In the answer of respondents to such petition, a transcript of the stipulation of facts was set forth in which counsel for petitioner made the express admission that it takes care of the advertisement of defendant Jacinto Rubber and Plastic Co., Inc., of which it is the exclusive distributor and that it had the same stockholders and incorporators. [9] All that is alleged in the memorandum for petitioner is that it "is a corporation duly organized and with distinct and separate personality from the two defendants" Jacinto Rubber and Plastic Co., Inc. and Ace Rubber and Plastic Corporation." It would stress further that there is no proof of its being their agent. It would appear obvious, therefore, that the doctrine in *Ferrer v. Rodriguez* calls for application. While we do not prejudge the guilt of petitioner for contempt, enough has been shown for the lower court to take action on a motion requiring it to show cause why it should not be so punished.

2. Petitioner, in its attempt to show absence of jurisdiction, would call attention to the challenged order having been issued after the approval of the appeal bonds and records on appeal on December 14, 1966. [10] The argument does not impress us. While it is true that according to the Rules of Court, upon perfection of an appeal, the lower court loses its jurisdiction over the case, it retains, however, the power "to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal." [11] Moreover, it is not to be lost sight of that where the judgment is for injunction, the appeal does not stay its execution unless otherwise ordered by the court. [12] As correctly noted in the answer of respondents: "To this

date, [not one of] the defendants in Civil Case No. 9380 nor the petitioner herein has moved for the suspension of the injunction during the pendency of the appeal. Hence the said defendants and 'their agents, employees and other persons acting in their behalf, 'like the petitioner, are bound to obey the injunction and to desist from doing that which was absolutely prohibited.'"[13]

Our ruling in *Manila Railroad Company v. Yatco*[14] furnishes an analogy. While in that case the decision had become final and executory, still, as is made clear by the above provision of the Rules of Court, a judgment of injunction is not stayed during the pendency of the appeal unless otherwise ordered by the court. It is thus executory in character. In the *Manila Railroad Company* case, the argument about lack of jurisdiction was unavailing. "The contention that respondent judge had lost jurisdiction over the case is without merit. True, there is a judgment which is final and executory. But this does not mean that the court has lost any and all power regarding the case. By the finality of the judgment, what the lower court lost is its jurisdiction to amend, modify, or alter the same. It, however, retains its jurisdiction to enforce said judgment 'even after the judgment has become final for the purpose of execution and enforcement of the judgment.' Petitioner's June 3 motion does not seek to amend, alter or modify the judgment. It merely asks for the lower court's assistance because its officers, the special sheriff and other law enforcing agencies, have been enforcing the judgment in a way not in accord with its terms."[15]

3. In its memorandum, petitioner would complain that to subject it to contempt proceedings would be to deny it the fundamental right to procedural due process. A reading of the challenged order would indicate that such objection is without basis. It was therein explicitly provided that the urgent motion on the part of private respondents to require petitioner to explain why it should not be held in contempt of court was set for hearing so that it may have the opportunity of meeting such a charge. That is all that procedural due process requires. There is here no possible condemnation without a hearing, the inquiry is to be conducted according to the regular procedure, and whatever conclusion may be arrived at would appear to be not in defiance of but precisely according to the legal requisites. To allege under these circumstances that the safeguard of due process has been ignored is to close one's eyes to the realities of the situation.

WHEREFORE, this petition for prohibition is denied. With costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Teehankee, Barredo, and Villamor, JJ., concur.

[1] Petition, Annex B.

[2] *Ibid.*, Annex D, par. 3.

[3] *Ibid.*, par. 4.

[4] *Ibid.*, Annex C.

[5] *Ibid.*, Annex F.

[6] *Ibid.*, par. 9.

[7] L-17507, August 6, 1962, 5 SCRA 854.

[8] Petition, Annex D, par. 3.

[9] Annex 1, Answer of Respondents.

[10] Petition, par. 8.

[11] Rule 41, Section 9, Rules of Court.

[12] Rule 39, Section 4, *ibid.*

[13] Answer of Respondents, par. 5.

[14] L-23056, May 27, 1968, 23 SCRA 735.

[15] *Ibid.*, pp. 751-752.

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