

ONG SIT, RECURRENTE, CONTRA EDMUNDO S. PICCIO, JUEZ DE PRIMERA INSTANCIA DE CEBU, JOAQUIN MAAMBONG Y VICENTE UY ABATAYO, RECURRIDOS.

G.R. No. L-1287. July 30, 1947

Ponente: PABLO, J.

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PABLO, J.:

El 5 de Noviembre de 1941 el recurrente presento en el Juzgado de Primera Instancia de Cebu una demanda contra Vicente Uy Abatayo, causa civil No. 1906, pidiendo el pago de P530, interes y costas. El 25 del mismo mes el demandado presento su contestacion con una contrademanda pidiendo el pago de P6,000 por daños y perjuicios. El dia 23 de Octubre de 1945, el Hon. Juez Martinez, porque el demandante no habia sido notificado de la vista, instruyo al Escribano que para el siguiente señalamiento deben ser notificados "no solamente los abogados sino tambien los demandantes y demandados personalmente." El 23 de Octubre de 1946 el Hon. Juez Piccio sobreseyo la demanda por no haber comparecido el demandante "a pesar de haber sido debidamente notificado de la vista." El demandado presento sus pruebas en apoyo de su contrademanda, y el 21 de Noviembre el Juzgado dicto sentencia condenando al demandante a pagar al demandado la cantidad de P6,000 menos P530, que es el importe del cheque en cuestion con las costas. A peticion del demandado, el Juzgado ordeno el 24 de Diciembre la ejecucion de la sentencia. El 16 de Enero de 1947 el demandante presento su aviso y expediente de apelacion, y supersedeas bond para responder del pago de toda la suma reclamada con todos los intereses y costas.

El recurrente (demandante en la causa citada) acude a este Tribunal en un recurso original de certiorari y pide que la orden de ejecucion dictada por el Juez recurrido "sea anulada o temporalmente suspendida por telegrafo." Como fundamento, alega que el Juez recurrido sin buenas razones y con manifiesto abuso de discrecion, ordeno la ejecucion. Como otra razon, el recurrente alega que "tiene fuertes fundamentos para interponer su apelacion," y que "no tiene otro remedio facil, expedito y adecuado en el curso ordinario de la ley para impedir la ejecucion de la sentencia del juez recurrido." La solicitud fue registrada en la Escribania de este Tribunal el 3 de Febrero de 1947. El 5 del mismo mes el recurrente satisfizo el importe de la sentencia en cumplimiento de la ejecucion efectuada por el sheriff provincial. La orden de interdicto prohibitorio preliminar expedida por este Tribunal ha sido recibida por el Juez recurrido el 11 de Febrero, a los 6 dias despues de pagado el importe de la sentencia.

Si estaba pendiente aun la aprobacion del expediente de apelacion cuando el Juez recurrido ordeno la ejecucion de la sentencia no es razon para que sea anulada; precisamente en ese periodo de tiempo es cuando el Juez tiene discrecion para ordenar o no la ejecucion de la sentencia. (Regla 39, articulo 2.) Aprobado el expediente de apelacion, ipso facto el Juzgado pierde su jurisdiccion.

La cuestion a resolver es si el Hon. Juez recurrido abuso de su discrecion al ordenar la ejecucion. El articulo 2 de la Regla 39 dispone que antes de la expiracion del tiempo para apelar, una ejecucion puede expedirse a discrecion del Juez, fundada en buenas razones que se han de expresar en una orden especial. Discrecion es la facultad que la ley confiere a los funcionarios publicos para obrar oficialmente bajo ciertas circunstancias, segun los dictados de

su propio criterio o conciencia sin imposicion del criterio o conciencia de otros. (Farrelly vs. Cole, 60 Kan., 356; 44 L. R. A., 464; State vs. Hultz, 106 Mo., 41; Oneida Common Pleas vs. People, 18 Wend., 79; Rio Grande County vs. Lewis, 28 Colo., 378; Lamb contra Phipps, 22 Jur. Fil., 471; Pueblo contra Ramos, pag. 392, ante.)

La razon que tuvo el Juez recurrido al ordenar la ejecucion es la siguiente:

"This Court's findings (decision of November 21, 1946) have established that for a claim of a little over five hundred pesos defendant's store with all its stock of goods valued at about P6,000 was attached—which goods were later lost during the last war and defendant's business was entirely wiped out—for which said defendant was to recover damages from plaintiff for said wrongful attachment;

"After hearing the arguments of both parties in connection with this Court's order of January 15, 1947, reaffirming its decision of November 21, 1946, this Court is of the opinion and so holds that, inasmuch as to stay the order of execution in favor of the defendant would further work injustice upon said party after the loss of his business since 1941; upon said defendant's filing a bond covering the amount adjudged in his favor and approved by this Court, the order of execution against the plaintiff may proceed, notwithstanding plaintiff's appeal from said decision."

Despues de oir a las partes, a raiz de una peticion en que el demandante pedia la revocacion de la sentencia, el Juez recurrido en su orden de 15 de Enero de 1947, dijo:

"Furthermore, the said plaintiff could not now attack defendant's counter-claim as he has had notice of the same in defendant's answer dated November 19, 1941 to plaintiff's complaint. And, as well argued by the defendant, plaintiff's petition setting aside the judgment does not allege, much less establish sufficient ground therefor. First, because the said petition admits the receipt of the notice of the hearing of the case for October 23, 1946; second, because no affidavit of merits as required by section 3, Rule 32, Rules of Court supports it. This requires that there must be a sufficient showing on petitioner's part that in case of setting aside a judgment, a new trial under all probabilities would reverse the conclusion of the Court (Philippine Engineering Company vs. Argosino, 49 Phil., 983; Philippine Guaranty Co. vs. Belando, 53 Phil., 410). For it would be futile to undo what have already been done under the circumstances, granting plaintiff's petition to be justified, if, after all, the aforementioned decision would be in favor of the defendant just the same."

Cuando estaba aun en vigor elCodigo de Procedimiento Civil, este Tribunal sento la doctrina en los asuntos de Calvo contra De Gutierrez (4 Jur. Fil., 206), Macke contra Camps (5 Jur. Fil., 192), y Gutierrez Hermanos contra Oria Hermanos y Cia. (39 Jur. Fil., 99), de que "no intervendra al objeto de modificar, dirigir o inquirir acerca del ejercicio de la discrecion del Juzgado de Primera Instancia para acordar por medio de orden especial que se expida ejecucion de una sentencia definitiva antes de que haya transcurrido el plazo para la presentacion de la pieza de excepciones." Esta doctrina se reafirmo en los asuntos de Lusk contra Stevens (64 Phil., 154), y Hacienda. Navarra, Inc. contra Labrador y Singson (65 Phil., 536).

El articulo 2 de la Regla 39 es mas claro que la seccion 144 delCodigo de Procedimiento Civil. Concede poder discrecional al Tribunal para expedir orden de ejecucion, fundada en buenas razones que se expresaran en una orden especial. Este Tribunal respeto el libre ejercicio de esta discrecion, no quiso "modificar, dirigir o inquirir" la discrecion conferida al Juez, y sobreseyo las solicitudes de certiorari que pedian la anulacion de las ordenes de ejecucion expedidas por el Juez recurrido en las causas de Presbitero vs. Rodas and Financing Corporation of the Philippines (73 Phil., 300), e Iloilo Trading Center and Exchange vs. Rodas and Manila Trading and Supply Co. (73 Phil., 327).

Creemos que el Hon. Juez recurrido no abuso de su discrecion. Las razones en que baso su orden son buenas. Si erro o no en sus conclusiones de hecho y de derecho o si sus conclusiones estan apoyadas por las pruebas o no son cuestiones que deben resolverse en apelacion y no en un recurso de certiorari. En una larga serie de decisiones,

este Tribunal sento la doctrina de que no se expedira mandamiento de certiorari a menos que resulte de una manera clara que el Juez contra el cual se dirige procedio sin jurisdiccion o se excedio en ella o abuso gravemente en el ejercicio de su discrecion; no se expedira para subsanar errores de procedimiento o enmendar conclusiones de hecho o de derecho erroneas. Si el Juez tiene jurisdiccion sobre la materia litigiosa y sobre las partes, todo cuanto decida sobre las cuestiones pertinentes a la causa son resoluciones que estan dentro de su jurisdiccion y por irregulares o erroneas que sean no pueden corregirse mediante certiorari. (Herrera contra Barretto y Joaquin, 25 Jur. Fil., 253; Gala contra Cui y Rodriguez, 25 Jur. Fil., 540; Provincia de Tarlac contra Gale, 26 Jur. Fil., 356; Napa contra Weissenhagen, 29 Jur. Fil., 188; Gobierno de las Islas Filipinas contra Juez de Primera Instancia de Iloilo y Bantillo, 34 Jur. Fil., 166; Ello contra Juez de Primera Instancia de Antique, y Valdevin, 49 Jur. Fil., 160; Santos contra Juzgado de Primera Instancia de Cavite, 49 Jur. Fil., 416; Regala contra Juez de Primera Instancia de Bataan, 77 Phil., 684.)

Por otra parte, la ejecucion ha sido consumada ya porque el recurrente pago ya el importe de la sentencia. No cabe suspender la orden ya ejecutada.

Que el recurrente tiene remedio facil, expedito y adecuado es evidente: la apelacion.

Se deniega la solicitud con las costas contra el recurrente.

Moran, Pres., Paras, Hilado, Bengzon, Hontiveros, Padilla, y Tuason, MM., estan conformes.

DISSENTING

PERFECTO, J.:

Petitioner seeks relief against the following order of respondent judge:

"A motion praying for execution of the judgment rendered in the above entitled case having been presented and the plaintiff having been in default, let the judgment be executed in accordance with law.

"So ordered.

"Cebu City, December 24, 1946.

(Sgd.) "EDMUNDO S. PICCIO

"Judge"

The judgment ordered to be executed not having become final, it is evident that the order was issued purportedly under the authority of the following provision of section 2 of Rule 39:

"Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order. * * *"

The only reason alleged in the order is that plaintiff has been in default. Upon the facts in this case, the allegation is not a good reason under the purview of section 2 of Rule 39.

It appears that the case was initiated by a complaint filed by petitioner on November 5, 1941, for the collection of the amount of P530. On October 23, 1945, the hearing which apparently was set for said day was transferred, because plaintiff was not notified. At the hearing which took place on October 23, 1946, the complaint was dismissed because plaintiff failed to appear. The defendant was allowed to present evidence. On November 21, 1946, decision was rendered ordering plaintiff to pay defendant P5,470.

Plaintiff appealed on January 16, 1947, alleging that he has good grounds for appeal, i. e., (1) because his attorney in Cebu, Eugenio Perez, was decapitated by the Japanese in 1943; (2) because plaintiff, who had been residing and continues to reside in Manila was not aware of the death of his attorney; (3) because defendant never furnished copy of his counterclaim either to plaintiff or his attorney; and (4) because, for the above facts, plaintiff was precluded from appearing at the hearing and had no chance of taking another attorney to assist him in the case.

It appearing that the order for the execution of the judgment, issued on December 24, 1946, is violative of section 2 of Rule 39, we are of opinion that the same should be set aside, and so we vote.

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