

**E.C. DE LUNA CONSTRUCTION CORPORATION, PETITIONER, VS.
HON. AFABLE E. CAJIGAL, IN HIS CAPACITY AS THE PRESIDING
JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH
96, CHRI...**

Ponente: REYES, JR., J., J.

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REYES, JR., J., J.:

For consideration of this Court is a Petition for Certiorari and Mandamus filed by petitioner E.C. De Luna Construction Corporation from the Order (Rollo, pp. 30-31) dated August 8, 2005 of public respondent Judge Afable E. Cajigal which denied petitioner's Motion to File Supersedeas Bond (Rollo, pp. 101-102). Also being assailed is the Order (Rollo, pp. 32-33) of the same date which granted private respondents' Motion to Order the Land Bank of the Philippines to Release Deposits in the name of petitioner (Rollo, pp. 91-93). Petitioner also assails the Order dated August 24, 2005 which denied petitioner's Consolidated Motion for Reconsideration (Rollo, pp. 135-139).

The present case arose out of a Complaint for damages (Rollo, pp. 37-44) filed by private respondents Christine A. Samson-Rodriguez and Geraldine Challa S. Rodriguez against petitioner and one Romeo Castro. The complaint alleged that: private respondents are the wife and child of Gerardo C. Rodriguez (Gerardo, for brevity). On December 7, 2000, Gerardo's car was hit by petitioner's truck which was at the time being driven by Romeo Castro. As a result of the accident, Gerardo died. Private respondents prayed for the award of actual and compensatory damages, indemnity, funeral and burial expenses, litigation expenses and attorney's fees. After trial, the court below ruled in favor of private respondents.

Naturally, petitioner and Romeo Castro filed a Notice of Appeal (Rollo, p. 62). However, in the meantime, private respondents, on April 16, 2005, filed a Motion for Execution Pending Appeal (Rollo, pp. 65-71) which was granted in the Order of May 5, 2005 where the trial court held that:

“Considering the Court's finding, in its questioned decision that the case of the plaintiffs is clearly meritorious, it now becomes more apparent upon this Court that the appeal taken from the decision by the defendants is just intended by the latter to further delay the final and effective disposition of this case.

The foregoing holding is in line with the ruling enunciated in the case of *RCPI v. CA, et al., and Engineering Construction, Inc. vs. NPC*, wherein it was held that where from the decision of and the evidence presented before the trial court, the judgment creditor is clearly entitled to actual damages, the same can be the subject of execution pending appeal, but not the other awards for moral and exemplary damages and attorney's fees.

The Court hastens to add that the grant of the execution pending appeal may be a matter of survival to the plaintiffs who had already suffered emotionally and financially with the loss of their breadwinner, who during his lifetime had provided them not only a subsistence but a comfortable living as well. If the Court can grant the relief of 'support pendent elite' in other cases, with more reasons can the Court also, in the interest of higher justice, allows the execution of actual and proven damages in this case.

Finally, to guarantee the rights of the defendants appurtenant to the execution of the case pending appeal, the Court is of the sound discretion to require the plaintiffs to secure first a bond equal to the awards made in the Decision for indemnity for the loss of the net earning capacity, indemnity for the death of Gerardo Rodriguez and compensatory damages.” (Rollo, pp. 82-83)

In an attempt to prevent the execution of the decision pending appeal, petitioner and Romeo Castro filed a Motion to File Supersedeas Bond dated May 29, 2005 (Rollo, pp. 84-86) which was denied in the above-mentioned Order of August 8, 2005. On June 16, 2005 private respondents filed a Motion to Order Land Bank of the Philippines (LBP) to release bank deposits held in the name of petitioner which was granted in the questioned Order of August 8, 2005. Petitioner's Motion for Reconsideration was denied on August 24, 2005, hence, the present petition for certiorari and mandamus alleging that:

“PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION:

A) IN FAILING TO APPROVE PETITIONER'S SUPERSEDEAS BOND NOTWITHSTANDING THAT THE RULES OF COURT CLEARLY MANDATE PUBLIC RESPONDENT TO STAY THE EXECUTION PENDING APPEAL UPON THE FILING BY THE LOSING PARTY OF A SUFFICIENT SUPERSEDEAS BOND, AND CONSIDERING THAT THERE WAS NO SPECIAL OR COMPELLING REASON TO ALLOW EXECUTION PENDING APPEAL.

B) WHEN HE ALLOWED THE EXECUTION PENDING APPEAL DESPITE THE PENDENCY OF PETITIONER'S MOTION FOR RECONSIDERATION.

C) WHEN HE DISMISSED PETITIONER'S MOTION FOR RECONSIDERATION BASED ON A TECHNICALITY AFTER HE HAS GIVEN DUE COURSE THERETO.

D) WHEN PUBLIC RESPONDENT RAILROADED THE EXECUTION PENDING APPEAL AND MANIFESTLY SHOWED BIAS AND PARTIALITY.

PUBLIC RESPONDENT UNLAWFULLY AND OPPRESSIVELY REFUSED TO GRANT PETITIONER'S SUFFICIENT, VALID AND LAWFUL SUPERSEDEAS BOND, A DUTY SPECIFICALLY ENJOINED BY LAW DESPITE THE CLEAR MANDATE OF SECTION 3, RULE 39 OF THE RULES OF COURT, THEREBY RESULTING TO SUBSTANTIAL DAMAGE AND PREJUDICE TO PETITIONER.” (Rollo, p. 12)

Before proceeding further it should be noted that the Order of May 5, 2005 of the trial court which granted private respondents' Motion for Execution Pending Appeal is not being questioned in the present case. What petitioner is attacking at this point is the refusal of public respondent to admit the supersedeas bond it wanted to file in order to stop the execution pending appeal. Very briefly, petitioner claimed that the acts committed by public respondent showed bias against it and because of this bias public respondent committed grave abuse of discretion.

Petitioner first claimed that it was public respondent's ministerial duty to stay the execution pending appeal upon filing of supersedeas bond.

The Court does not agree. Section 3 of Rule 39 of the 1997 Rules of Court provides:

“SEC. 3. Stay of discretionary execution.- Discretionary execution issued under the preceding section may be stayed upon approval by the proper court of a sufficient supersedeas bond filed by the party against whom it is directed, conditioned upon the performance of the judgment or order allowed to be executed in case it shall be finally sustained in whole or in part. The bond thus given may be proceeded against on motion with notice to the surety.”

It should be noted that the rule provides that the execution may be stayed, it did not use the word shall. As in the case of Republic Planters Bank v Agana, Sr., et al. (269 SCRA 1 [1997]) the use of the word may denotes discretion, to wit:

“xxx It is a settled doctrine in statutory construction that the word 'may' denotes discretion, and cannot be construed as having a mandatory effect.” (269 SCRA at 12)

Petitioner further alleged that when it filed the Motion for Reconsideration, public respondent should have stayed execution pending appeal citing the cases of Eternal Gardens Memorial Park v Court of Appeals (164 SCRA 421 [1998]) and the case of Joy Mart Consolidated Corp. v Court of Appeals (209 SCRA 738 [1992]).

The Court is not persuaded. It should first be considered that the rules allow execution pending appeal (See: Section 2 Rule 39), hence, no grave abuse of discretion can be ascribed to public respondent by the mere fact that he allowed execution pending appeal. Moreover, the rules do not provide that the mere filing of a supersedeas bond would be a ground to stay said execution. The Court also finds that the cases cited are not in point. The Eternal Garden case refers to a certiorari filed before the Court of Appeals while the Joy Mart case refers to a preliminary injunction filed with the Court of Appeals. Neither of the case involves a motion for reconsideration filed before the same court.

Petitioner also argued that the trial court gravely abused its discretion in dismissing the motion for reconsideration on a mere technicality. The Court, however, finds that this matter is better threshed out with the merits of the case in the appeal, if petitioner choose to file one.

As to the assertion that public respondent failed to timely act on petitioner's notice of appeal, the Court finds that this action, if there indeed was delay, would not affect the validity of the Order granting the motion for execution pending appeal and the subsequent Order denying petitioner's motion to admit supersedeas bond.

Coming now to petitioner's Petition for Mandamus, as noted above, the admission of a supersedeas bond to stay execution pending appeal is not a ministerial duty on the part of the respondent judge, hence, not subject to a writ of mandamus. It is settled that a discretionary act cannot be controlled by a writ of mandamus.

WHEREFORE, the Petitions for Certiorari and Mandamus are hereby DENIED.

SO ORDERED.

Reyes, (Chairman) and Lanzanas, JJ., concur.

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