

LUZON SURETY COMPANY, INC., PETITIONER, VS. HON. POTENCIANO PECSON, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, MACARIO M. OFILADA, SHERIFF OF THE CITY OF MANILA, AND CASIMI...

G.R. No. L-4416. May 12, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Sometime in April, 1938, Casimiro Tamparong filed an action in the Court of First Instance of Manila against Mariano A. de Castro and Luzon Surety Company, Inc. to recover the sum of P8,239.18 as damages.

After trial on the merits, the court rendered judgment ordering the defendants to pay to the plaintiff, jointly and severally the sum of P7,346.07, with legal interests thereon from the filing of the complaint, plus the costs of action.

On appeal to the Court of Appeals, the latter affirmed the judgment of the lower court in a decision rendered on May 17, 1944.

On June 24, 1944, Mariano A. de Castro filed a petition for review with the Supreme Court, whereas on June 25, 1944, Luzon Surety Company, Inc., filed a similar petition for review, which petitions were given due course separately the first having been docketed as G. R. No. 49160, and the second as G. R. No. 49161.

Subsequently, a decision was rendered in case No. 49160, which was promulgated on July 30, 1947, affirming in toto the decision of the Court of Appeals, and after said decision had become final the case was remanded to the court of origin. On August 12, 1950, plaintiff filed a petition for a writ of execution. To this the Luzon Surety Company, Inc. objected setting up the defense of moratorium under Republic Act No. 342. This opposition having been overruled, the court granted the petition for a writ of execution.

On November 8, 1950, the Luzon Surety Company, Inc. filed a motion for reconsideration, and the same having been denied, it filed a second motion for reconsideration, this time alleging as additional ground that there is no final judgment yet against it for the reason that its petition for review then pending in the Supreme Court has not as yet been decided.

This second motion having been denied, the Luzon Surety Company, Inc. filed this petition for certiorari imputing abuse of discretion to the respondent Judge.

With regard to the claim that the decision rendered in case No. 49160 cannot be executed in so far as petitioner is concerned because its petition for review in case No. 49161 has not yet been decided by the Supreme Court, the same is now moot, it appearing that this Court has already promulgated its decision on December 29, 1950, affirming in toto the judgement of the Court of Appeals.

With regard to the defense of moratorium set up by petitioner, we find that, while G. R. No. 49160 was pending in

this Court by virtue of a petition for review filed by defendant Mariano A. de Castro, the latter after decision has been rendered therein, filed a motion for reconsideration invoking in his favor the privilege of moratorium embodied in Executive Order No. 32, and this Court, in a resolution issued on September 5, 1947, denied him that privilege for the reason that he failed to invoke it before the promulgation of the decision, although he knew the reconstitution of the record had been completed in October, 1946; and what is worse, he asked through counsel, in January, 1947, that the case be set for hearing, and this took place on March 3, 1947. The Court, however, added that "this is without prejudice to any petition for suspension of the execution, a matter not herein decided". It should be here stated that the petitioner in that case, Mariano A. de Castro, never impugned the writ of execution. The only one who objected to it is his co-defendant, now petitioner herein, Luzon Surety Company, Inc.

In our opinion the same ruling equally applies to the herein petitioner, firstly, because it never invoked in its favor the debt moratorium embodied in Executive Order No. 32, and secondly, because in spite of the fact that Republic Act No. 342, which it now invokes, was approved on July 20, 1948, said petitioner never invoked the benefit of said Act during all the time its appeal was pending in this Court, or for a period of over two years. We have said in a number of cases that this privilege is waivable and the Conduct shown by petitioner in this case indicates that it has waived it.

Wherefore, the petition is denied with costs against petitioner.

The writ of preliminary injunction issued is hereby dissolved.

Paras, Feria, Pablo, Bengzon, Tuason, Montemayor, and Labrador, JJ., concur.

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