

THERESE VILLANUEVA, PETITIONER, VS. THE HON. PANTALEON A. PELAYO, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO AND PEDRO CASIPE, RESPONDENTS.*G.R. No. L-16035. December 31, 1960*

Ponente: BENGZON, J.

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Sued for debt and unpaid rentals, Pedro Casipe failed to make answer. Wherefore, he was defaulted by the Iloilo court of first instance, which, after receiving the evidence of plaintiff Therese Villanueva, sentenced him on November 29, 1958, to pay her P4,697.80 with legal interest, plus P500.00 as attorney's fees, plus costs.

On December 26, 1958, Casipe's counsel filed a verified petition to set aside the default and the adverse judgment, alleging that the summons had not been validly served at his residence, and that he came to know of the complaint against him only when a writ of garnishment and execution had been issued. Casipe further alleged he had a good defense, because the amount of P4,697.80 claimed by plaintiff was not due, but only the total sum of P75.00 representing three monthly instalments. Over the opposition of plaintiff, the court on March 21, 1959, revoked its default order and judgment, required defendant to answer in five days after notice, and directed the Clerk of Court to set the case for trial in due course.

On March 30, 1959, Casipe answered and admitted a debt of about P87.50 for back accounts and unpaid rentals—not P4,697.80 as claimed by the plaintiff. And on May 5, 1959, he submitted a motion to lift execution asserting that on December 2, 1958, an order of execution had been issued on the default judgment against him; that pursuant thereto, the Sheriff had garnished and levied on the proceeds of some fire insurance policies payable to him; that inasmuch as said default judgment had been set aside, it was just and proper to quash the execution. It appearing later that pursuant to the execution, plaintiff had received from the Sheriff the amount of P5,327.32 from the proceeds of insurance policies of defendant which the Sheriff had garnished, defendant prayed on May 26, 1959, that said plaintiff be ordered to return the money to him.

The plaintiff did not object, (apparently because it had not received copy of these petitions on time). So the court on May 26, 1959, annulled the writ of execution and required plaintiff to return to defendant the money she had received from the Sheriff (P5,327.32). Later plaintiff explained her silence and objected to the annulment for two reasons: (a) the execution had been levied in compliance with the decision of the court; and (b) plaintiff had spent the money "in the honest belief that the same is due her by virtue of the court's orders." On July 20, 1959, the court overruled plaintiff's objection saying "a person who received money which is not due him has the obligation to return it to the one who is entitled to it. No one shall enrich himself at the expense of another." Then it reiterated the order requiring plaintiff "to deliver to defendant the amount of P5,327.32" she had received from the Sheriff.

Wherefore, plaintiff resorted to this Court with a petition for certiorari with preliminary injunction. She charged the respondent judge with abuse of discretion and lack of jurisdiction in revoking the default and the judgment,

and in requiring the return of the money. She argued the judgment had already been executed, and was no longer subject to the control of the court below.

Pursuant to her request, a writ of preliminary injunction was issued here, even as respondents were summoned to explain.

Respondent's subsequent answer fully disclosed the circumstances under which the judge had lifted the order of default. We are now convinced there was no such abuse of discretion or want of jurisdiction.' On the contrary, the petition for relief having been filed within thirty days, the interests of justice demanded the grant of an opportunity to the defense, it appearing from the document (Appendix 1) on which plaintiff's case rested, that the amount of indebtedness acknowledged by defendant, was payable by installments of P25.00 every month, beginning February 1958, so that on November 1958, when the action began, defendant owed at most about P250.00. (Defendant asserts his debt was only P87.50) By the way, said document contained no acceleration clause.

Probably due to defendant's default, plaintiff secured execution on December 2, 1958, even though the judgment had been rendered only three days before.[1] As at that time, the possibility of defendant's obtaining relief was not foreclosed[2], plaintiff obviously calculated defendant would never get it. So, the writ was either premature, or at least precarious, i.e., subject to a resolatory contingency. On the other hand, it might have been issued as "execution pending appeal" under Rule 39, section 2.

Now then, if issued under the first assumption, the subsequent lifting of the default and judgment thereon, invalidated the execution, because based on a voided judgment. The Court had authority to rectify the error or miscalculation.[3] If under the second, the Rule itself provides" for measures to restore the status quo ante (see sec. 5).[4] That the execution has been carried out does not paralyze the court's power to direct the return of what had been prematurely or unduly received.[5]

In the light of the foregoing, we see no reason to interfere with the lower court's orders. Petition dismissed, with costs. The writ of preliminary injunction heretofore issued is hereby dissolved. So ordered.

Padilla, Bautista Angelo, Barrera, Paredes, and Dizon, JJ., concur.

Reyes, J.B.L., J., concurs in the result.

Petition dismissed.

[1] Defendant had no right to appeal. But Sec. 1, Rule 39 might mean; execution after thirty days. No opinion is now expressed on this point.

[2] *Lim Toco vs. Go Fay*, 80 Phil., 166.

[3] *Dimayuga vs. Raymundo*, 76 Phil., 143; 42 Off. Gaz., 2121; *Garcia vs. Munoz*, 103 Phil., 628; Off. Gaz., [33] 7727.

[4] *Molina vs. Somes*, 24 Phil., 49; *Naredo vs. Yatco*, 80 Phil., 220.

[5] See *Mortera vs. West of Scotland*, 36 Phil., 994.

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