

ROQUE JAVELLANA, PETITIONER, VS. JUDGE JOSE QUERUBIN, ET AL., RESPONDENTS.

G.R. No. L-26166. July 30, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Roque Javellana petitions for a writ of certiorari to annul certain orders of the Court of First Instance of Negros Occidental, Branch II, issued in its Civil Case No. 7350, granting execution pending appeal.

We glean from the record that the respondent court had rendered a decision against herein petitioner in the civil case aforementioned, and petitioner had filed due notice that it was appealing to the Supreme Court. Before appeal was perfected, and upon motion of the prevailing party (private respondent VMC Sugar Planter's Cooperative Marketing Association, Inc.) the court below, by order of May 28, 1966, directed that a writ of execution be issued pending appeal, on the ground that the repeated continuances asked and obtained by defendant Javellana showed that "he does not intend to terminate this case as expeditiously as possible" (Petition, Annex E). His motion for reconsideration having been denied on June 9, 1966, Roque Javellana resorted to this Court, alleging that intent to delay was merely inferred and does not justify the immediate execution of the appealed judgment.

The petition must be denied.

First, it has been repeatedly ruled that the finding that the appeal is being taken for purposes of delay is good and sufficient reason for issuing a writ of execution despite the pendency of the appeal,[1] "because dilatory tactics constitute a great drawback to the administration of justice, and can not be countenanced by the Courts", and this is truer now than ever before. While intention to delay is not susceptible of direct proof, it can be inferred from the surrounding circumstances, and, in the present case, the Court properly so deduced from the repeated continuances sought by the petitioner, as enumerated in order now complained of. The argument that if the continuances asked had been dilatory, the court below should not have granted them, disregards the fact that trial courts have many cases demanding attention, so that the intent to delay in one case often becomes apparent only upon an overall review of the entire proceedings, from complaint to judgment. It may be observed, in passing, that with the resources placed at the disposition of trial attorneys by the Revised Rules (pre-trials, requests for admissions, discovery, interrogatories and depositions), there is much less reason now to delay trials in order to ready a party's evidence.

Petitioner invokes our rulings in *Ledesma vs. Judge Teodoro*, 98 Phil. 232, and *City of Bacolod vs. Judge Enriquez*, 101 Phil., 644. But the factual background in both cases is entirely different from the one at bar. In the *Ledesma* case the execution pending appeal was set aside because, on the face of the pleadings, the plaintiffs' action for quo warranto was already barred, and what is more, the defendant had offered to put up a supersedeas bond but the trial court refused to allow him to do so. In *Bacolod vs. Enriquez*, supra, this Court expressly found that "the assertion that it (the appeal) was intended merely for delay appears to be deduced only from the belief

that the appeal was untenable". Contrariwise, the finding of intent to delay in the present case is amply supported by the numerous continuances secured by petitioner.

Then again, it is well-established that certiorari, being an extraordinary remedy, can not be resorted to whenever another adequate remedy is available.[2] In the case at bar, the petitioner, as would be appellant, could have stayed execution by tendering a supersedes bond, as provided by section 3 of Rule, 39 of the Revised Rules of Court, that would have enabled the trial court to stay execution, without prejudice to attacking the issuance of the execution in his brief on appeal. Having failed to avail himself of that remedy, the petitioner is not entitled to certiorari.

In view of the foregoing, the writ of certiorari prayed for is denied, with costs against petitioner.

Concepción, C. J., Barrera, Dizon, Regala, Bengzon, J. P., Sanchez and Ruiz Castro, JJ., concur.

Writ denied.

[1] *Presbitero vs. Rodas*, 73 Phil. 300; *Iloilo Trading Center Rodas*, 73 Phil. 327; *Rodriguez vs. Court of Appeals*, 105 Phil. 777.

[2] *Claudio vs. Zandueta*, 64 Phil. 812; *Haw Pia vs. San Jose*, 78 Phil. 238; *Santos vs. Court of Appeals*, 95 Phil. 360, 364; *David vs. Miranda*, L-6215, Sept. 28, 1954; *Dans vs. CA*, 49 Off. Gaz. 2753; *Dauz vs. Elcosida*, L-15950, April 20, 1961; *Paringit vs. Masakayan*, 58 Off. Gaz., (No. 50) 8239.

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