

BISAYA LAND TRANSPORTATION CO., INC., MANUEL CUENCO, LOURDES CUENCO, JOSE P. VELEZ, FEDERICO A. REYES AND JESUS P. VELEZ, PETITIONERS, VS. HON. FRANCISCO GERONIMO, AS PRESIDING ...

G.R. No. L-29618. August 28, 1969

Ponente: DIZON, J.

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DIZON, J.:

Before Us is petitioners' motion filed on June 4, 1969 praying that a resolution be issued "declaring respondent court with jurisdiction to act on petitioners' motion 're-receiver's abusive and illicit withdrawals' and ordering said Court to proceed and resolve petitioners' said motion".

It appears that on April 2, 1969, during the pendency of the appeal interposed by respondent Miguel Cuenco from the respondent judge's order of April 3, 1968 dismissing the quo warranto proceedings on motion of the Republic of the Philippines, petitioners filed a motion related to the re-ceiver's alleged abusive and illicit withdrawals, praying for the issuance of the following orders:

- "(1) An order immediately stopping the with-drawal by the receiver of any money for fees or salaries pending complete accounting of his pre-vius receipts of such salaries and fees;
- (2) An order fixing the fee of the receiver in such amount as would take into consideration the fact that it is Mr. Ismael Alvarez who actually performs his work;
- (3) An order that will impute against or deduct from the fee or salary of the receiver the salaries of the members of his staff which he had brought into the manage-ment;
- (4) An order disallowing the transpor-tation expenses both by plane and taxi of the receiver in going back to his hometown;
- (5) An order disallowing the receiver's expenses and per diems for fictitious field inspection trips;
- (6) An order stopping the receiver from offering the services of the corporate coun-sel of the company to his friends."

On May 9, 1969, the respondent judge issued an order ruling that, as all the records of the case had already been elevated to the Supreme Court in connection with the appeal of Miguel Cuenco, he no longer had jurisdiction to act on the motion mentioned above. The motion for recon-sideration filed by petitioners on May 17, 1969 was denied on May 24 of the same year.

Pertinent to the question before Us are the provisions of Section 9, Rule 41 of the Rules of Court substantially to the effect that notwithstanding the perfection of an appeal, the trial court may still "issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, etc.". This provision has been construed in the sense that, during the pendency of an appeal, the trial court retains jurisdiction

to appoint a receiver (Velasco etc. vs. Gochuico, 28 Phil. 39; Government vs. de Asis, 68 Phil. 718), and to make any order for the protection and preservation of the rights of the parties which do not affect the issue involved in the appeal (Dizon vs. Moir 36 Phil. 759, 760-761; Canafe vs. Caluag 78 Phil. 836).

The jurisdiction thus retained by the trial court - to appoint a receiver - necessary includes the authority to control and supervise the latter's actuations as an officer of the Court. The reliefs prayed for in the motion filed by petitioners on April 2, 1969 are only for the protection and preservation of the rights of the parties and of the properties under receivership and are not intended to render nugatory any decision that might be rendered in the appeal from the order of dismissal nor in the present action for certiorari.

WHEREFORE, we rule that the court presided by the respondent Judge Francisco Geronimo may proceed to act in the premises in accordance with this resolution.

Concepcion, C.J., Makalintal, Sanchez, Castro, Capistrano and Teehankee, JJ., concur.

Fernando and Barredo, JJ., did not take part.

Reyes and Zaldivar, JJ., are on leave.

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