

LUZON CONCRETE PRODUCTS, INC., SALVADOR F. CUNANAN, CESAR S. GOPES, VITALI H. DE GUZMAN, LEOPOLDO V. BERNABE, ALEJANDRO Q. TABLANTE, VICTORIO L. PUNLA, AND ANGEL VIRI, PETITIONE...

G.R. No. L-38276. March 20, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a special civil action for Certiorari, Prohibition and Mandamus primarily praying for the allowance of petitioners' appeal in Civil Case No. 2988, which was dismissed by respondent Trial Court, and which ruling was upheld by respondent Appellate Court in CA-G.R. No. SP-01854-R.

Briefly, the facts are as follows: On June 29, 1966, private respondents Eutiquiano M. Baula and twelve others (hereinafter referred to as the Heirs) filed a Complaint for rescission of contract before the then Court of First Instance of Pampanga (respondent Trial Court) against Luzon Concrete Products, Inc., and its incorporators, all petitioners herein (Civil Case No. 2988).

The agreement sought to be rescinded, as alleged in paragraph 4 of the Complaint, was represented to be:

"That prior to July 17, 1963, plaintiffs and defendants incorporators agreed as follows: the defendant incorporators would organize a corporation for the purpose of engaging in the business of manufacturing and selling concrete products, like hollow blocks, tiles, pipes, etc.; the plaintiffs would later on turn over to the corporation the above-enumerated properties which they purchased from ALEGRE-GUZMAN & CO., INC., and in addition, the plaintiffs would mortgage to the DEVELOPMENT BANK OF THE PHILIPPINES, as additional collaterals for the obligation of P165,000.00 their four (4) parcels of land (fishpond) with a total area of almost thirteen (13) hectares, situated at Minalin, Pampanga; in turn, the corporation would issue shares of stocks to the plaintiffs the value of which would be commensurate to the contribution of the plaintiffs to the corporation, and in addition, the corporation would assume the payments and amortizations on the obligation of the plaintiffs to the DEVELOPMENT BANK OF THE PHILIPPINES in the amount of P165,000.00; as soon as the shares of stocks are issued to the plaintiffs, the latter would execute a deed of assignment in favor of the defendant corporation over the said properties purchased from ALEGRE-GUZMAN & CO., INC.; the foregoing agreement was subsequently ratified by defendant corporation."

Petitioners-defendants moved to dismiss for lack of cause of action stating that any liability pursuant to the agreement sought to be rescinded must only be borne by the corporation and not by the individual incorporators. The Trial Court denied the Motion to Dismiss for lack of merit except as to defendant Ignacio Pamintuan, who was found to be not an incorporator so that the complaint was dismissed as against him.

In their Answer, petitioners-defendants denied the existence of any pre-incorporation agreement, much less a commitment to issue corporation shares in favor of the Heirs contending that petitioners-defendants bought the machineries in question for themselves but that the same were bought in the name of the Heirs as "nominal

vendees" only and "as a matter of accommodation and expediency".

Issues having been joined, trial proceeded, and on November 29, 1971, the Trial Court, with Judge Honorio Romero presiding, rendered a Decision in favor of the Heirs, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered, rescind-ing the agreement made between plaintiffs, Heirs of Baula, and the defendants incorporators as appearing in paragraph 4 of the complaint and sentencing the defendants jointly and severally:

"1. to pay to the plaintiffs the sum of P880,000.00 as reasonable compensation or rent for the use of the said properties from August, 1964 to date, and the sum of P10,000.00 monthly thereafter, until actual physical possession of the same is delivered to the plaintiffs;

"2. to pay to the Development Bank of the Philippines within a period of sixty (60) days from receipt of this Decision, the obligations now pending, otherwise, their properties shall be attached to protect the rights and interests of the plaintiffs, Heirs of Baula;

"3. to return to the plaintiffs the actual physical possession of the properties described in the complaint, particularly in paragraph 3 of the complaint, in the same good operating condition that they were at the time the defendants took possession of them, upon the payment of the indebtedness to the Development Bank of the Philippines;

"4. to pay the plaintiffs the sum of P5,000.00 as and for attorney's fees;

"5. to pay the legal rate of interest on the sums herein adjudged until the termination of the case;

"With costs against the defendants.

"SO ORDERED."

Petitioners-defendants were served a copy of the Decision on December 21, 1971.

On January 20, 1972 (the last day for appeal) petitioners-defendants filed a first Motion for Reconsideration contending that the Heirs' version of the pre-incorporation verbal agreement was of doubtful validity, and that the latter's conduct prior to the controversy militated against their viewpoint. Judge Romero having passed away in the meantime, he was replaced by Judge Fernando M. Bartolome (respondent Trial Judge) who summarily denied the Motion for Reconsideration, stating that "the Court after examining the grounds raised by the defendants in their Motion for Reconsideration finds no cogent reason to disturb, alter and/or modify its Decision of November 29, 1971".

The foregoing Order was served on petitioners' counsel on February 28, 1972. On the following day, February 29, 1972, petitioners filed a second Motion for Reconsideration on the following grounds:

"One. That contemporaneous and subsequent acts militate against notion of pre-incorporation agreement.

"Two. That the agreement is not binding upon corporate defendant for being illegal and contrary to public policy.

"Three. That plaintiffs are estopped from asserting ownership of Besser Vibrapac Machine, Accessories and Equipment.

"Four. That payment of obligations to Development Bank of the Philippines is not within the issues raised by the pleadings. So ordering defendants to pay jointly and severally all and any obligations thereto within sixty days, otherwise their properties will be attached is with all due respect whimsical, arbitrary and in violation of due process.

"Five. That damages awarded to plaintiffs of P10,000.00 monthly are speculative, arbitrary, contrary to principles of sound management and constitute unjust enrichment."

On March 27, 1972, respondent Judge Bartolome, in a reasoned Order, denied the second Motion for Reconsideration, after a "detailed study" thereof.

The denial of the second Motion for Reconsideration was served on petitioners' counsel on April 5, 1972, and on that same day, petitioners-defendants filed a Notice of Appeal but moved for an extension of thirty (30) days within which to submit the Record on Appeal and Appeal Bond, stating:

"2. That the period within which to file appeal bond, notice of appeal and record on appeal expires today;

"3. That due to the fact that the records of the above-entitled case are voluminous, the undersigned counsel cannot possibly file the record on appeal today;

"4. That a longer period of time is needed to prepare and file the said record on appeal;

"5. That inasmuch as the order denying the second motion for reconsideration was received by the undersigned counsel only this afternoon, the defendants have not yet been duly informed thereof, the appeal bond cannot be possibly filed today;

"6. That the undersigned counsel still has to secure the required amount of appeal bond from the defendants."

On April 8, 1972, petitioners-defendants filed the Appeal Bond, which was approved on May 17, 1982. The Record on Appeal was filed on May 17, 1982 within the additionally requested extension period, followed by an Amended Record on Appeal on May 26, 1972.

On June 5, 1972, the Heirs moved to disallow petitioners-defendants' appeal on the following grounds.

"1st - Because the record on appeal does not show when the decision of this Court on November 29, 1971 was received by the defendants;

"2nd - Because the record on appeal does not show when the order denying the first motion for reconsideration was received by the defendants; and

"3rd - Because the second motion for reconsideration filed by the defendants did not suspend the running of the period to appeal."

On September 21, 1972, the Trial Court disallowed petitioners' appeal, which would be the basis for enforcement of the judgment against petitioners-defendants in said Court. The bases for the disallowance of the appeal were: (a) that the first Motion for Reconsideration was filed on January 21, 1972, or thirty-one days after receipt of the Decision; (b) that the second Motion for Reconsideration was pro-forma; and (c) that even if the second Motion for Reconsideration were not pro-forma "but as it was filed on February 29, 1972, a day after defendants received a copy of the Order denying their first Motion for Reconsideration which was February 28, 1972", it was filed beyond the period for appeal.

On December 16, 1972, petitioners-defendants filed before this Court a Petition for Certiorari, Prohibition and Mandamus (L-35977), which was, however, remanded to the then Court of Appeals as in aid of its appellate jurisdiction.

On January 14, 1974, the Appellate Court denied the Petition mainly on the ground that the second Motion for Reconsideration filed by petitioners-defendants in the case below was pro-forma and did not suspend the running of the period for appeal. The Appellate Court further stated that the Record on Appeal "did not show when the decision of the lower Court dated November 29, 1971 was received by said defendant and likewise did not show

when the Order denying the first new trial was served to them (defendants)."

Hence, the instant Petition, also for Certiorari, Prohibition and Mandamus, raising the following:

"QUESTIONS OF LAW

"(A) Where the records in the Trial Court unquestionably show that the Motion for Reconsideration of the Decision rendered therein was filed within the reglementary period, may the Trial Court disregard such fact and hold that said Motion for Reconsideration was filed out of time using as basis a clear typographical error made in the amended record on appeal?

"(B) Where a new ground is raised in a second Motion for Reconsideration, is said second Motion for reconsideration pro-forma?

"(C) Where the Trial Court's decision is patently unjust, will the aggrieved party be precluded from bringing an appeal on a ground involving a mere technicality? (p. 13, Rollo).

It is then prayed:

"1. That a RESTRAINING ORDER be issued immediately, enjoining the respondent Trial Judge and the respondent Court of Appeals from ordering the execution of the Trial Court's Decision, dated November 29, 1971, in Civil Case No. 2988 and the respondent Court of Appeal's Decision, dated January 14, 1974 CA-G.R. SP-01854-R; x x

"2. That the Orders, dated September 21, 1972, October 30, 1972, November 7, 1972 and November 9, 1972 in Civil Case No. 2988, and the Decision, dated January 14, 1974 and Order, dated February 8, 1974, in CA-G.R. No. SP 01854-R, be ANNULLED;

"3. That the respondent Trial Judge and the respondent Court of Appeals be ordered to immediately approve the herein petitioners' Amended Record on Appeal in Civil Case No. 2988, allow the appeal and forthwith forward all the records of the case to the Honorable Court of Appeals, in accordance with the provisions of the Rules of Court;

"4. That thereafter, the respondent Trial Judge be ordered to permanently desist from further proceeding with and exercising jurisdiction in said Civil Case No. 2988 except as above-provided.

"It is further respectfully prayed that the petitioners be granted such other relief as this Honorable Court may deem just and equitable." (pp. 25-27, *ibid.*)

On March 4, 1974, we issued a Temporary Restraining Order enjoining respondent Appellate Court from ordering the execution of the Trial Court's Decision dated November 29, 1971.

On May 10, 1974, we dismissed the Petition for lack of merit but reconsidered the dismissal on November 14, 1974.

The first issue, procedural in nature, is whether or not petitioners-defendants' appeal was correctly disallowed.

We reverse. As found by the Appellate Court, after examining the records, petitioners-defendants actually filed their first Motion for Reconsideration on January 20, 1972. However, due to a typographical error, the date was indicated as January 21 in the Record on Appeal (page 144). January 20 being the correct date, the first Motion for Reconsideration was filed on the last day of the thirty-day reglementary period obtaining at that time, since petitioners-defendants received the Decision on December 21, 1971. A clerical error cannot prevail over what actually appears on the records.

And in respect of the failure of the Record on Appeal to show when petitioners-defendants received the Decision

of the Trial Court nor when the Order denying the first Motion for New Trial was served on them, suffice it to state that the Court had long discarded the rigid application of the material data rule in appeals from Courts of First Instance to the Appellate Court (*Berkenkotter vs. CA*, 53 SCRA 228 [1973]; *Abando vs. CA*, 83 SCRA 511 [1978]; *Saura Import & Export Co., Inc. vs. CA, et al.*, 83 SCRA 275 [1978]).

As to the pivotal question of whether the second Motion for Reconsideration filed by petitioners was pro-forma or not, we hold that under the circumstances in the case at bar where (1) a first Judge who has rendered the judgment vacated his post, (2) a second Judge summarily denied the first Motion for Reconsideration on a patently erroneous ground, (3) but after a second Motion for Reconsideration decides the same on the merits, the second Motion for Reconsideration can hardly be deemed pro-forma even if it was ultimately denied.

In the case of *Francisco, et al. vs. Hon. Hermogenes Caluag, et al.*, 3 SCRA 694 [1961], this Court held that a second Motion for Reconsideration was pro-forma if it merely repeated the allegations of the first Motion for Reconsideration.

In the case at bar, petitioners-defendants' second Motion for Reconsideration added three new issues, namely: the issue of estoppel on the part of the Heirs regarding ownership of the machines in question; the issue of payment of obligations to the Development Bank of the Philippines, which petitioners-defendants claimed were not raised in the pleadings; and finally, the issue of excessive damages awarded to private respondents.

In allowing the appeal, there is the added consideration that an aggrieved party should not be denied the right of appeal on the basis of a mere technicality. There is need for appellate review of whether or not there was really a pre-incorporation agreement; and whether it had been violated by petitioners-defendants. These are questions of fact determinable by respondent Appellate Court since the agreement is not evidenced by any written document but only testified to orally by the parties.

The fairness of the award made by the Trial Court in favor of the Heirs also calls for appellate determination, for, with the "reasonable compensation" of P880,000.00 ordered paid for the period from August, 1964 to November, 1971, plus the monthly rentals of P10,000.00 required to be paid thereafter until physical possession is delivered to the Heirs, the total collectible amount would reach the staggering amount of P2,450,000.00 as of December 1984 (245 months from August, 1964, excluding interest, for machineries originally worth P165,000.00 and which must have outlived their lifetime). The judgment also orders the return of the machineries to the Heirs "in the same good operating condition" that they were at the time petitioners-defendants took possession thereof, or approximately 20 years ago, which is an impossible condition.

All told, in addition to procedural considerations, the broader interests of substantial justice would be better subserved if the appeal were allowed.

ACCORDINGLY, the Petition is granted and this case is hereby ordered remanded to the now Intermediate Appellate Court for determination of petitioners-defendants' appeal on the merits.

No costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Plana, Escolin, Relova, Gutierrez, Jr., De La Fuente, Cuevas, and Alampay, JJ., concur.

Abad Santos, J., no part.

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