

MASTER TOURS AND TRAVEL CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS, (TWELFTH DIVISION), HON. LEONARDO I. CRUZ, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRA...

G.R. No. 105409. March 01, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

Basically, the question here involved is the propriety of a writ of preliminary attachment issued by the trial court *ex parte*, prior to notice and hearing but served on the defendant simultaneously with the summons.

The Facts:

On 28 February 1991, summons together with a copy of the complaint for sum of money filed by the private respondent Cathay Pacific Airways Ltd. (Cathay) and an Order of Attachment dated 21 February 1991 were served upon and received by the petitioner. Pursuant to the Order of Attachment, the sheriff immediately levied upon properties of the petitioner, with value equivalent to Cathay's claim.

On 25 March 1991, defendant therein (herein petitioner) moved to set aside the order of attachment on the grounds that there had been no prior notice or hearing before the issuance of the writ and that the averments of the complaint failed to satisfactorily allege the basis for attachment as required by the Rules of Court. Pending resolution of this motion, petitioner filed its answer to Cathay's complaint. On 29 April 1991, the trial court issued an order denying the petitioner's motion to set aside or discharge the attachment writ; petitioner thereupon moved for recon-sideration.

However, pending resolution of the incident, the respondent sheriff and Cathay's counsel, allegedly thru coercion and harassment, compelled the petitioner, thru its counsel and vice-president, to enter into a compromise agreement. Petitioner subsequently moved to withdraw the said compromise agreement before the trial court could approve the same. On 7 June 1991, petitioner's aforesaid motion for reconsideration and motion to withdraw compromise agreement were jointly heard and later submitted for resolution. Pending said resolution, respondent sheriff and Cathay's counsel allegedly continued to harass the petitioner and were able to effect garnishment of certain bank deposits of petitioner.

Faced with this predicament, the petitioner resorted to a petition for certiorari with the Court of Appeals, but the latter court denied due course to the same as the trial court had yet to rule on petitioner's twin motions for reconsideration and withdrawal of compromise agreement.

Finally, on 17 October 1991, the trial court issued an order denying petitioner's twin motions. Petitioner again took recourse to the respondent appellate court, but after hearing both parties, the appellate court ruled to dismiss the petition. Hence, this petition for review.

Petitioner principally contends that the respondent Court of Appeals committed a grave reversible error in not holding that the trial court had not yet acquired jurisdiction over the person of the petitioner for lack of notice and hearing when it issued ex-parte the writ of preliminary attachment, hence, this was a denial of due process.

Davao Light and Power, Co., Inc. vs. Court of Appeals (G.R. No. 93262, November 29, 1991, 204 SCRA 343) lays down the rules on the issuance of writs of attachment ex-parte:

"A preliminary attachment may be defined, paraphrasing the Rules of Court, as the provisional remedy in virtue of which a plaintiff or other proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party taken into the custody of the court as security for the satisfaction of any judgment that may be recovered. It is a remedy which is purely statutory in respect of which the law requires a strict construction of the provisions granting it. Withal no principle, statutory or jurisprudential, prohibits its issuance by any court before acquisition of jurisdiction over the person of the defendant.

Rule 57 in fact speaks of the grant of the remedy 'at the commencement of the action or at any time thereafter.' The phrase, 'at the commencement of the action,' obviously refers to the date of the filing of the complaint - which, as above pointed out, is the date that marks 'the commencement of the action;' and the reference plainly is to a time before summons is served on the defendant, or even before summons issues. What the rule is saying quite clearly is that after an action is properly commenced - by the filing of the complaint and the payment of all requisite docket and other fees - the plaintiff may apply for and obtain a writ of preliminary attachment upon fulfillment of the pertinent requisites laid down by law, and that he may do so at any time, either before or after service of summons on the defendant. And this indeed, has been the immemorial practice sanctioned by the courts: for the plaintiff or other proper party to incorporate the application for attachment in the complaint or other appropriate pleading (counter-claim, cross-claim, third-party claim) and for the Trial Court to issue the writ ex-parte at the commencement of the action if it finds the application otherwise sufficient in form and substance."

"x x x The only pre-requisite is that the Court be satisfied, upon consideration of 'the affidavit of the applicant or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in Section 1 xx (Rule 57), that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order (of attachment) is granted above all legal counterclaims.' If the court be so satisfied, the 'order of attachment shall be granted,' and the writ shall issue upon the applicant's posting of 'a bond executed to the adverse party in an amount to be fixed by the judge, not exceeding the plaintiff's claim, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.'"

Petitioner likewise raises the issue of the permis-sibility of withdrawing a compromise agreement which has not been approved by the court. The rule is that a judgment rendered in accordance with a compromise agreement is immediately executory unless a motion is filed to set aside the agreement on the ground of fraud, mistake or duress in which case an appeal may be taken against the order denying the motion. (Arkoncel, Jr. v. Lagamon, G.R. No. 50526, December 4, 1991, 204 SCRA 560)

In its order of 17 October 1991 (p. 249, Rollo), the Regional Trial Court said:

"The Court does not believe, so to speak, that the Executive Vice President, who signed the compromise agreement cannot bind the defendant for if it were otherwise, the defendant corporation's board as portrayed above, would have been on guard.

The compromise agreement, to say the least, in the contemplation of the law, is a valid document binding not

only on the Executive Vice President, but also on the defendant corporation itself. It is not vitiated by what the Executive Vice President of the defendant corporation and the lawyer representing both call -- lack of authority and threat and intimidation -- that compelled them (Executive Vice President and counsel) to sign it. This protestation, is amply refuted in the plaintiff's opposition ... x x x "

The propriety or impropriety of withdrawing the compromise agreement is more a question of fact than of law in this particular case.

ACCORDINGLY, the petition is DENIED, there being no reversible error committed by respondent appellate court.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Nocon, and Campos, Jr., JJ., concur.

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