

RODOLFO R. PAULINO, PETITIONER, VS. THE COURT OF APPEALS AND ASTERIA S. CHUNACO, RESPONDENTS.

G.R. No. 110271. February 28, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

This is a petition for review of the decision of the Court of Appeals dated February 19, 1993, granting the petition for certiorari against the decision of the Regional Trial Court of Legaspi City, Branch I, on December 18, 1991.

Petitioner Rodolfo R. Paulino served as counsel for the oppositor in Special Proceeding No. 1450 entitled "In the Matter of the Guardianship of Socorro Chunaco, et al. - Heracles P. Chunaco, petitioner," by virtue of a contract of services signed by him and the mother of the private respondent who was then a minor. The contract provided for the payment to the petitioner of a contingent fee of 35% of the amount received, recovered or obtained by the private respondent from said or related cases, either in settlement or by court action.

On September 24, 1990, Paulino filed a petition to confirm payment to him of attorney's fees in the amount of P72,638.78. In a supplemental motion for justification of payment of attorney's fees, he alleged that the private respondent had already received P207,539.39 from the above-stated cases and that he was entitled to 35% of such amount in the sum of P72,638.78. He further averred that there were other partible assets due to the private respondent and that he was also entitled to 35% thereof.

An opposition was filed on the ground that there was no attorney-client relationship between the parties and the contract for services was unenforceable because it was signed by the private respondent's mother, Lilian Sambitan, who was not her legal guardian.

After rejecting this objection (for reasons not disputed in this petition), Judge Eugenio G. Guan, Jr. of the Regional Trial Court of Legaspi City, Branch I, issued an order on August 12, 1991, awarding to the petitioner the amount of P52,958.98 as attorney's fees.[1] The private respondent moved for reconsideration, reiterating the arguments earlier raised in her opposition.

On November 6, 1991, the petitioner filed an urgent motion to resolve all pending motions, including: a) the motion for reconsideration of the order dated August 12, 1991; b) the motion for reconsideration of the order of September 3, 1991, denying execution before appeal; and c) the motion for payment of attorney's fees in the sum of P52,532.83 dated August 25, 1991.

On December 4, 1991, the trial judge denied the motions for reconsideration and granted the motion for payment of attorney's fees in the total amount of P105,491.81.[2] The private respondent filed a notice of appeal on December 13, 1991, but later withdrew it on December 17, 1991. She subsequently filed a petition for certiorari with the Court of Appeals on December 31, 1991.

On December 18, 1991, an ex parte motion for execution was granted by the trial court and a writ of execution was issued for the payment of the attorney's fees in the amount of P105,491.81.[3] The private respondent

objected on the ground that the motion for reconsideration of the first award had not yet been resolved.

On February 19, 1993, the Court of Appeals granted the petition for certiorari and set aside the order of the trial court. It ruled that as the order of December 4, 1991 awarded attorney's fees in the amount of only P52,958.98, the writ of execution in the amount of P105,491.81 was issued with grave abuse of discretion.[4]

In this petition for review of that decision, it is alleged that the respondent court erred:

- 1) in not dismissing the petition outright;
- 2) in concluding that the amount awarded to herein petitioner was only P52,958.98;
- 3) in not considering the orders of respondent judge as final and executory after the appeal was withdrawn;
- 4) in giving due course to the petition as a substitute for an appeal that had been withdrawn; and
- 5) in still entertaining issues on attorney's fees and order of execution in the petition.

The petitioner claims that the case should have been dismissed outright because of the failure of the private respondent to submit a certified true copy of the challenged order as required by Rule 65, Section 1 of the Rules of Court. We are not persuaded. The fact that the Court of Appeals acted on the petition suggests that the objection was untenable and that the petition was not insufficient in form. At any rate, this is a question of fact that this Court will not review.

The allegation that the writ of execution was premature because the motion for reconsideration of the order of August 12, 1991, had not yet been resolved is also unacceptable. That motion was denied in the order of the trial court dated December 4, 1991.

On the appropriateness of the petition for certiorari, we are guided by the following rulings of the Court:

Ordinarily, an order of execution of a final and executory judgment is not appealable because otherwise, there would be no end to a case. However, if in the opinion of the defeated party, such order of execution varies the terms of the judgment and does not conform to the essence thereof, or the terms of the judgment allow room for interpretation and the interpretation given by the trial court as contained in its order of execution is wrong, the latter may appeal the order so that the Appellate tribunal may pass upon its legality and correctness.

The rule that appeal lies to question an order or writ which varies the terms of the decision being executed is not, however, meant to constitute the appeal as the sole and exclusive remedy in such instances. Any other proceeding appropriate and allowable under the Rules may be pursued by the aggrieved party. Petitioner in this case availed of the special civil action of certiorari under Rule 65 of the Rules of Court.[5]

x x x

There are, to be sure, instances when an error may be committed in the course of execution proceedings prejudicial to the rights of the party. These instances, rare though they may be, do call for correction by a superior court, as when: 1) The writ of execution varies the judgment.

In these exceptional circumstances, considerations of justice and equity dictate that there be some mode available to the party aggrieved of elevating the question to a higher court. That mode of elevation may be either by appeal (writ of error or certiorari, or by a special civil action of certiorari, prohibition or mandamus).[6]

We find that there was no inconsistency between the order of December 4, 1991 and the writ of execution dated December 18, 1991, because the order called for the payment of all the attorney's fees due to petitioner, including those awarded on August 12, 1991. The mistake of the Court of Appeals was in holding that the writ of execution

was intended to implement only the order of August 12, 1991, disregarding the later order of December 4, 1991, which also granted the motion for another award of attorney's fees in the amount of P52,532.83.

It would appear, however, that there was a slight error in the sum of the two awards, as the records will clearly show.

On August 12, 1991, the trial court awarded P52,958.98 as attorney's fees based on the following computation:

Cash Received by Asteria

35%

P106,687.55 (bank deposits of Charles P. Chunaco)

P37,340.57

P 44,625.04 (dollar deposits of Charles P. Chunaco at PNB)

P15,618.41

P151,312.39

P52,958.98

However, a re-computation will show a slight discrepancy, thus:

Cash Received by Asteria

35 %

P106,687.55 (bank deposits of Charles P. Chunaco).

P37,340.642

P 44,625.04 (dollar deposits of Charles P. Chunaco at PNB).

+ 15,618.764

P151,312.59

P52,959.406

On December 4, 1991, the trial court awarded P52,532.83 for attorney's fees.

However, a re-computation will show that the award should be slightly amended thus:

Cash Received by Asteria

35%

P122,400 (1/2 share of the purchase price of Lot 185-A-2A as evidenced by a Deed of Sale)

P42,840.00

P 21,839.53 (cash given to Asteria by Heracles Chunaco upon the termination of guardianship)

P 7,643.8355

+P 3,000.00 (cash received as her ¼ share in the P12,000 dividend due to the estate of Charles P. Chunaco for the year 1990)

P 1,050.00

P147,239.53

P51,533.8355

The sum of the two awards is thus not P105,491.81 as indicated in the writ of execution but P104,493.24. This is the amount the Court of Appeals should have recognized as due to the petitioner under the orders dated August 12, 1991, and December 4, 1991.

WHEREFORE, the petition is GRANTED and the decision of the Court of Appeals dated February 19, 1993 is SET ASIDE. The writ of execution is REINSTATED but the total award of attorney's fees is reduced to P104,493.24. No costs.

SO ORDERED.

Davide, Jr., Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Annex "B," Records, pp. 10-13.

[2] Annex "3," Records, p. 66.

[3] Annex "A," Records, p. 9.

[4] Decision penned by Associate Justice Justo P. Torres, Jr., February 19, 1993.

[5] *Reas v. Bonife*, 190 SCRA 493.

[6] *Limpin, Jr. v. Intermediate Appellate Court*, 147 SCRA 516.

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