

**FORTUNE GUARANTEE AND INSURANCE CORPORATION,
PETITIONER, VS. HONORABLE COURT OF APPEALS, HONORABLE
JUDGE HENEDINO P. EDUARTE, RTC, BRANCH 20, CAUAYAN,
ISABELA, EGDONA R. MADRIAG...**

G.R. No. 110701. March 12, 2002

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a Petition for Certiorari under Rule 65[1] of the Rules of Court which seeks to annul the twin Resolutions of the Court of Appeals in CA-GR SP No. 30430[2] dated April 19, 1993[3] and dated June 16, 1993,[4] respectively, which ultimately dismissed the petition for certiorari of petitioner Fortune Guarantee and Insurance Corporation that assailed the Special Order dated February 12, 1993 of respondent Judge Henedino P. Eduarte of the Regional Trial Court of Cauayan, Isabela, granting execution pending appeal of his Decision in Civil Case No. Br. 20-436.

The facts are as follows:

On November 11, 1988, Isabela 1 Electric Cooperative, Inc. (ISELCO-I) secured Fire Insurance Policy No. 9216 from petitioner for Two Million (P2,000,000.00) Pesos. This was later on changed to Policy No. 9218[5] with expanded coverage to include typhoons and floods. The period covered by the said amended insurance policy is from 4:00 o'clock p.m. of November 11, 1988 to 4:00 o'clock p.m. of November 11, 1989. The properties covered are all of ISELCO-I's distribution lines, electric posts/poles, transformers and its accessories, towers and fixtures installed and/or specifically situated in the towns of Alicia, Angadanan, Cabatuan, Cauayan, Cordon, Echague, Jones, Luna, Ramon, San Isidro, San Mateo, Santiago, Reina Mercedes, San Guillermo and San Agustin all in the Province of Isabela.[6]

During the subsistence of the insurance policy, the insured properties of ISELCO-I were destroyed by two (2) typhoons in 1989; first by typhoon "ELANG" on July 9 and second by typhoon "TACING" on October 19 of the same year. ISELCO-I filed successive claims with petitioner. Notwithstanding the several demands made by ISELCO-I, however, petitioner refused to pay the claims.

On March 19, 1990, ISELCO-I, through its representative, filed a complaint against petitioner for a sum of money in the amount of Two Million (P2,000,000.00) Pesos with damages before the Regional Trial Court of Cauayan, Isabela. The case which was assigned to Branch 20 presided by respondent Judge Henedino P. Eduarte, was docketed as Civil Case No. Br. 20-436. In answer thereto, petitioner claimed, among others, that since the total value of the entire properties insured was Thirty-Six Million (P36,000,000.00) Pesos, it thereby rendered ISELCO-I's properties underinsured by the Two Million (P2,000,000.00) Pesos insurance policy. Thus, according to petitioner, ISELCO-I was entitled to payment of only a fraction of the policy's face value or only One Hundred Eighty-Three Thousand Seven Hundred Eighty-Five Pesos and Seventy-Three Centavos (P183,785.73) instead of the Two Million (P2,000,000.00) Pesos claimed by ISELCO-I.

On June 17, 1992, after trial on the merits, the trial court rendered a decision in favor of ISELCO-I, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the defendant Fortune Guarantee and Insurance Corporation to pay to the plaintiff Isabela- 1 Electric Cooperative, Inc., (ISELCO I) TWO MILLION (P2,000,000.00) PESOS with interest at the rate of 14% per annum from March 19, 1990 up to and until said amount shall have been fully paid, attorney's fees in the amount of P200,000.00 plus P2,500.00 honorarium. Costs against defendant.

SO ORDERED.[7]

On June 22, 1992, ISELCO-I filed a Motion for Execution Pending Appeal[8] alleging good reasons for its allowance.

On July 13, 1992, petitioner filed a motion for reconsideration[9] of the Decision of the trial court. On July 23, 1992, ISELCO-I filed its Opposition to the said Motion for Reconsideration;[10] and on November 13, 1992, petitioner filed its Opposition[11] to ISELCO-I's Motion for Execution Pending Appeal on the ground that ISELCO-I had no good reasons and no clear right to a writ of execution pending appeal as the subject amount is enormous.

On October 7, 1992, the trial court denied the said motion for reconsideration filed by the petitioner. Thereafter, on November 3, 1992, petitioner seasonably filed its Notice of Appeal with the trial court.

On February 12, 1993, the trial court resolved in a Special Order[12] the Motion for Execution Pending Appeal in favor of ISELCO-I, the dispositive portion of which reads:

WHEREFORE, finding the motion for execution pending appeal to be meritorious as there are good and valid reasons in support thereof, let a writ of execution of the decision of the Court for the principal claim of P2,000,000.00 be issued upon plaintiff's filing a bond in favor of defendant in the amount of P1,817,742.8 to answer for damages that defendant may suffer by reason of the writ if it is later on adjudged that plaintiff was not entitled thereto.

SO ORDERED.[13]

Aggrieved by such Special Order, petitioner filed a Petition for Certiorari, Preliminary Injunction with Temporary Restraining Order,[14] with the Court of Appeals, alleging grave abuse of discretion on the part of respondent Judge in issuing the Special Order granting execution pending appeal.

On April 19, 1993, the Court of Appeals issued a Resolution[15] dismissing the said petition. The motion for reconsideration of petitioner was likewise denied for lack of merit in a Resolution dated June 16, 1993.[16]

Hence, this petition.

Petitioner assigns the following as errors, to wit:

I

RESPONDENT COURT OF APPEALS ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION OR IN EXCESS THEREOF AMOUNTING TO LACK OF JURISDICTION IN AFFIRMING THE ACTUATIONS OF RESPONDENT JUDGE WHO, KNOWING THAT THE EVIDENCE BEFORE HIM CLEARLY PROVED THAT THE SUBJECT INSURED PROPERTIES OF PRIVATE RESPONDENT IS VALUED AT P36,052,061.15, AND NOT P2,000,000.00, HENCE UNDERINSURED, HE BIASLY AND IMPROPERLY APPLIED JUDICIAL NOTICE AND PIERCED THE SAID AMOUNT OF P36,061,052.15 (SIC) BY DIVIDING IT INTO TWO AND DECLARED THAT P2,000,000.00 PORTION THEREOF

REFERS TO THE VALUE OF THE INSURED PROPERTIES AND THE P34 M COVERS OTHER PROPERTIES, TO MAKE IT APPEAR THAT THE INSURED PROPERTIES WERE NOT UNDERINSURED AND THEREFORE PRIVATE RESPONDENT CAN CLAIM THE WHOLE INSURANCE COVERAGE OF P2,000,000.00 WHICH IS CONTRARY TO THE EVIDENCE AND THE LAW.

II

RESPONDENT COURT OF APPEALS ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION IN HASTILY DENYING PETITIONER'S MOTION FOR RECONSIDERATION BY DELIBERATELY IGNORING PETITIONER'S REJOINDER TO PRIVATE RESPONDENT'S COMMENT ATTACHING THERETO (REJOINDER) TWO SETS OF DOCUMENTS TO CORROBORATE THE JUDICIAL ADMISSION OF PRIVATE RESPONDENT THAT ITS INSURED PROPERTIES WERE VALUED AT P36,061,052.15 AND NOT P2,000,000.00, HENCE, UNDERINSURED. THUS, THE APPEAL OF PETITIONER IS NOT DILATORY.

III

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE SPECIAL ORDER OF RESPONDENT JUDGE GRANTING EXECUTION PENDING APPEAL AGAINST PETITIONER FOR AN ENORMOUS SUM OF P2,000,000.00 WITHOUT GOOD REASONS THEREFOR.

At the outset, it must be pointed out that petitioner adopted the wrong mode of appeal in bringing this case before us. The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for certiorari under Rule 65 of the Rules of Court.[17] This was clearly addressed by this Court in *Heirs of Marcelino Pagobo vs. CA*[18] where we held that as provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45.[19]

Accordingly, when a party adopts an improper remedy, as in this case, his petition may be dismissed outright. However, in the interest of substantial justice, the strict application of procedural technicalities should not hinder the speedy disposition of this case on the merits.[20] Thus, while the instant petition is one for certiorari under Rule 65 of the Rules of Court, the assigned errors are more properly addressed in a petition for review under Rule 45.

First of all, It is at once apparent that the first two (2) assignments of errors in this petition behoove this Court to review the finding made by the appellate court that the properties of ISELCO-I were not underinsured. This we cannot do for the simple reason that it would require us to go into the merits of the decision rendered by respondent Judge in Civil Case No. Br. 20-436, which decision in the main case is now subject of a separate appeal by petitioner to the Court of Appeals. Thus, despite the parties' insistent submission of the question of underinsurance for our resolution in this petition, we must reiterate the well-established rule that the merits of the case should not be determined at this stage of the proceedings, in advance of the main appeal taken by the aggrieved party from the judgment rendered by respondent court.[21]

It is unfortunate that the Court of Appeals, in resolving the petition for certiorari imputing grave abuse of discretion to respondent Judge in granting execution pending appeal per his said Special Order, dwelt on the merits of the principal action, and held in part that:

On the central issue of whether there was underinsurance, the respondent judge made the following findings which we sense to be persuasive:

The third issue is whether or not the properties of the plaintiff are underinsured. It is the contention of the defendant that because the total value of the properties of the plaintiff is P36,000,000.00 but the insurance taken is only P2,000,000.00, its properties are under insured. The contention is not well taken. In the first place, while the total value of the properties of the plaintiff is P36,000,000.00, not all its properties were insured with the defendant. The only properties of the plaintiff insured with the defendant are its distribution lines, electric posts/poles, transformers and its accessories, towers and fixtures installed and/or situated in the covered areas. Its buildings, vehicles (which the court takes judicial notice of) and other properties are not insured with defendant. The value of the properties insured is only P2,282,765.00, more or less, as may be seen from the summary of claims filed by the plaintiff dated November 21, 1989 and marked as Exhibit "C". The properties insured are not under insured. (Annex "G" of Petition) [Underscoring supplied][22]

The above-quoted obiter dictum of the Court of Appeals with respect to the issue of underinsurance must be disregarded as the ruling of the Court of Appeals cannot be duly extended to expand the main thrust of its subject Resolutions beyond their true import.[23]

It is imperative that we allow the main appeal to take its normal course. In the case before us, therefore, we shall purposely limit ourselves to resolving only the wisdom of the trial court's exercise of discretion in ordering the execution pending appeal.[24]

The assailed Special Order of respondent Judge granting execution pending appeal reads as follows:

For resolution is a motion to execute the decision pending appeal filed by the plaintiff, through counsel, based on the following good reasons:

'x x x that the withholding of payment by the defendant is fraudulent and malicious in that it delayed payment and made business with the money due to the plaintiff while the case was pending.

That since the happening of the event insured against in June 1989 and October 1989, the consumer-members which include the municipalities of Alicia, Angadanan, Cabatuan, Cauayan, Cordon, Santiago, Reina Mercedes, San Guillermo and San Agustin all in the province of Isabela have suffered untold sufferings because while the lines were repaired the repairs made on the damage on (sic) transmission lines and backbone lines of the plaintiff were not repaired as desired for lack of funds;

That the plaintiff need badly the amounts adjudged in the decision for the use of said plaintiff in the repairs of its transmission lines, electric posts, transformers and its accessories, towers and fixtures within its area of coverage;

That to delay the payment of the claims of the plaintiff which is valid will cause irreparable injury and sufferings to the consumer-member who expect the best service from the plaintiff; xxx that the plaintiff is willing to put up a bond to be fixed on the discretion of the court to guarantee payment of damages to the defendant if the court finds that it was wrongly issued.'

In the joint affidavit of Rolando P. Garcia and Lyn M. Octubre, OIC General Manager and Chief Management Internal Auditor, respectively, of the plaintiff submitted in support of plaintiff's motion, declared, among others, that:

'4. That the destruction had to be repaired immediately and as the cooperative had no money at the time, the cooperative had to borrow cash from private persons and entities;

5. That up to the present the indebtedness of the cooperative aforecited is not fully paid to the present.'

xxx xxx xxx

After a careful consideration of the case, the Court arrived at the conclusion that the grounds relied upon by the plaintiff constitute good and valid reasons for the execution of the decision pending appeal. It must always be borne in mind that the plaintiff is a cooperative of the people within the area of its coverage. It is engaged in the business of retailing electricity to its members - a commodity basic to the welfare and vital to the industries of the people. Its business is thus impressed with public interest.

To deliver electricity to the people, its electric lines, posts, transmissions, transformers and other accessories must always be maintained in good order and condition. This entails big amount of money. Thus, plaintiff must have insured its properties against the risk of their being damaged or destroyed by typhoons so that it shall have sufficient funds for their repair. But when the plaintiff went to the defendant to demand payment of the proceeds of its insurance, it refused to pay. It wanted to pay only partially.

Plaintiff had to repair its properties because it can not escape its duties and responsibilities to the people. It borrowed money to make the repairs which for lack of funds leave much to be desired. Plaintiff needs the amount adjudged for the repair of its transmission lines, electric posts, transformers and accessories, towers and fixtures.

Posting of a bond by the plaintiff to secure payment of damages to the defendant should the appellate court later on adjudge that plaintiff was not entitled to the execution pending appeal, is a good reason as held by the Supreme Court in several cases (*Lu vs. Valeriano*, 111 SCRA 87; *Delos Reyes vs. Capulong*, 122 SCRA (631; *Roxas vs. CA*, 157 SCRA 370; *City of Manila vs. CA*, 72 SCRA 98).[25]

Petitioner claims that the respondent Judge abused his discretion in issuing a writ of execution pending appeal despite the fact that its appeal is clearly not dilatory. It likewise argued that since the evidence shows that electricity was immediately restored in the affected localities, the reasons posited by ISELCO-I are not the good reasons contemplated by law for the extraordinary grant of execution pending appeal.

We disagree.

As a general rule, the execution of a judgment should not be had until and unless the judgment has become final and executory, i.e., the period of appeal has lapsed without an appeal having been taken, or appeal having been taken, the appeal has been resolved and the records of the case have been returned to the court of origin, in which event, execution "shall issue as a matter of right." Execution pending appeal in accordance with Section 2 of Rule 39[26] of the Rules of Court is, therefore, the exception.[27]

The requisites for the grant of a motion for execution pending appeal are: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and (c) the good reason must be stated in a special order.[28]

Being an exception to the general rule, the requisites of execution pending appeal must, therefore, be strictly construed.[29] Thus, anent the requisite that there must be good reason justifying the execution of the judgment pending appeal, we have consistently held that such good reason must constitute superior circumstances demanding urgency which will outweigh the injury or damage should the losing party secure a reversal of the judgment.[30] Beyond the guideline set by jurisprudence, however, statute does not determine, enumerate, or give examples of what may be considered good reasons to justify execution pending appeal. What these good reasons are must, therefore, necessarily be addressed to the discretion of the court, and in the case of *City of Manila vs. Court of Appeals*[31] we said that:

"xxx If in the mind of the court, taking into consideration the facts and circumstances surrounding the case, good reasons exist, the exercise of the power to issue immediate execution of the judgment cannot be considered as grave abuse of discretion. Provided there are good reasons for execution according to the

judgment of the trial judge, such judgment should generally not be interfered with, modified, controlled, or inquired into by the appellate court; the latter should generally not substitute its way of thinking for that of the trial court, otherwise, the discretionary power given to the trial court would have no meaning. The appellate court may, however, interfere with that discretion lodged in the trial court only in case of grave abuse or in case conditions have so far changed since the issuance of the order as to necessitate the intervention of the appellate court to protect the interests of the parties against contingencies which were not or could have not been contemplated by the trial judge at the time of the issuance of the order.”[32]

We find that there is neither grave abuse of discretion on the part of respondent Judge nor a change in circumstances so as to warrant a setting aside of the assailed Special Order granting execution pending appeal.

Respondent judge exercised sound discretion in granting execution pending appeal on the grounds that: (1) ISELCO-I is a cooperative of the people within the area of coverage that is engaged in the business of retailing electricity to its members - a commodity basic to their welfare and vital to the industries of the people; and (2) to deliver electricity to the people, its electric lines, posts, transmissions, transformers and other accessories must always be maintained in good order and condition.

To restore electricity in the areas affected, ISELCO-I had to borrow money from private persons and entities, which money, however, was insufficient to repair all the damage that had been caused to ISELCO-I’s properties. Hence, while it is true that ISELCO-I was able to immediately repair its lines and restore electricity to the areas affected by the typhoons, the damage to its transmission lines and backbone lines was not repaired due to lack of funds. But it is not the fact of ISELCO-I’s indebtedness that is propounded as the good reason for execution pending appeal but the fact that, as correctly pointed out by the trial court, to delay payment of the claims of ISELCO-I would cause irreparable injury to the consumers-members of the cooperative who expect the best service from ISELCO-I.

Finally, it must be stressed here that respondent Judge granted execution pending appeal based upon the evidence of those factual circumstances mentioned above. Furthermore, the Court of Appeals affirmed those factual findings and respondent Judge’s conclusion that the same constitute good reasons contemplated by law for granting execution pending appeal.

It bears reiterating, therefore, that it is not the function of this Court to analyze and weigh evidence all over again unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute grave abuse of discretion. In the same vein, the findings of fact of the Court of Appeals supported by substantial evidence are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the recognized exceptions to the rule, and this, petitioner has failed to prove.[33]

WHEREFORE, the instant petition is hereby DENIED for lack of merit, and the assailed Resolutions of the Court of Appeals dated April 19, 1993 and June 16, 1993 are AFFIRMED without prejudice to the resolution of the appeal on merits now pending in the Court of Appeals; and for that purpose, let the record of this case be remanded to the Court of Appeals.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Captioned as a Petition for Review on Certiorari under Rule 45 of the Rules of Court but alleging grave abuse of discretion in its Assignment of Errors.

[2] Penned by Associate Justice Alfredo L. Benipayo, and concurred in by Associate Justices Fermin A. Martin,

Jr. and Serafin E. Camilon, Chairman, Fourth Division.

[3] CA Rollo, pp. 64-67.

[4] CA Rollo, p. 88.

[5] Records, pp. 25-26.

[6] Records, p. 24.

[7] Records, pp. 176-180.

[8] Records, pp. 181-182.

[9] Records, pp. 187-202.

[10] Records, pp. 211-212.

[11] Records, pp. 221-227.

[12] Records, pp. 252-254.

[13] Records, p. 254.

[14] Records, pp. 255-276.

[15] CA Rollo, pp. 64-67.

[16] CA Rollo, p. 88.

[17] *Linzag v. CA*, 291 SCRA 304, 321 (1998).

[18] 280 SCRA 870 (1997).

[19] *Id.*, p. 883.

[20] *Caraan v. CA*, 289 SCRA 579, 583 (1998).

[21] *Mapua v. Gutierrez David, et al.*, 77 Phil. 131, pp. 132-133, (1946); *Silverio v. Court of Appeals*, 141 SCRA 527, pp. 545-546, (1986).

[22] Rollo, pp. 49-50.

[23] *David v. Court of Appeals*, 276 SCRA 424, 430 (1997).

[24] *Ibid.*

[25] Records, pp. 252-253.

[26] "SEC. 2. Discretionary execution.-

"Execution of a judgment or a final order pending appeal .- On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

"After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate

court.

“Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

“xxx xxx xxx.”

[27] Roxas v. Court of Appeals, 157 SCRA 370, 377 (1988).

[28] Provident International Resources Corporation v. CA, 259 SCRA 510 (1996).

[29] Planters Products, Inc. v. Court of Appeals, 317 SCRA 195, 204 (1999).

[30] Supra note 27, p. 527; Diesel Construction Company, Inc. v. Jollibee Foods Corporation, 323 SCRA 844, 859 (2000).

[31] 72 SCRA 98 (1976).

[32] Id., pp. 104-105

[33] Francisco v. Francisco-Alfonso, G.R. No. 138774, March 8, 2001.

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