HEIRS OF KISHINCHAND HIRANAND DIALDAS, PETITIONERS, VS. COURT OF APPEALS AND NARI ASANDAS, DOING BUSINESS UNDER THE NAME AND STYLE OF EXPOCRAFT INTERNATIONAL, RESPONDENTS.

G.R. No. 112563. June 28, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us are two (2) consolidated Petitions for Review on Certiorari of the Decision[1] dated June 18, 1993 and Resolution[2] dated November 5, 1993 in CA G.R. SP. No. 301107 of the Court of Appeals[3] which nullified the Order[4] dated October 7, 1992 of the Regional Trial Court of Manila, Branch 40 as well as the Order,[5] dated November 6, 1992, denying respondent's motion for reconsideration.

The undisputed facts are as follows:

On April 18, 1979, Kishinchand Hiranand Dialdas, the deceased father of the petitioners, filed against respondent Nari Asandas before the Court of First Instance (now Regional Trial Court) of Manila a complaint docketed therein as Civil Case No. 123013. It prayed for an audit of the books and records of the business enterprise known as "Expocraft International" from October 15, 1972 up to December 31, 1977 to be conducted by an independent auditor for the purpose of determining Dialdas' one-third (1/3) share in the business. It likewise prayed that the respondent be ordered to pay Dialdas such amount as shall pertain to him in liquidation of his one-third (1/3) share with interest at the legal rate from December 31, 1977 until full payment.

Due to the death of Kishinchand Hiranand Dialdas on November 22, 1984, the petitioners herein substituted their said deceased father in the case.

On August 28, 1986, the trial court rendered a Decision in favor of the petitioners by holding that Kishinchand Hiranand Dialdas was a partner of the respondent in "Expocraft International." The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered in plaintiff's favor against defendant, and it is hereby ordered that:
>
> (1) An immediate independent audit of the books and records of `EXPOCRAFT INTERNATIONAL' for the period from October 15, 1972 to December 31, 1977, be conducted for the purpose of determining plaintiff's 1/3 share in the said business;
>
> (2) After plaintiff's share has been so determined, defendant shall immediately pay and/or deliver to plaintiff such amount equivalent to the value of plaintiff's aforesaid share, with interest at the legal rate computed from December 31, 1977, until this obligation is fully complied with;
>
> (3) To pay plaintiff the following amounts:

(a) P50,000.00 as moral damages;

(b) P30,000.00 as attorney's fees and expenses of litigation; and

(b) The cost of the suit.

SO ORDERED.[6]

On appeal, the Court of Appeals rendered a Decision dated May 31, 1990 affirming the decision of the trial court. The respondent appealed the appellate court's Decision to this Court, but on October 15, 1990 we denied the petition for review. On November 7, 1990, the judgment became final.

On March 21, 1991, upon motion of the petitioners, the trial court issued an Order granting the writ of execution of its Decision. On May 14, 1991, the sheriff served upon the respondent a notice of the issuance of the writ giving the latter five (5) days from receipt thereof to comply with the judgment which ordered the respondent to produce the books and records necessary for an independent audit. However, the respondent failed to produce the same inasmuch as said documents were allegedly burned by the fire that engulfed respondent's business establishment sometime before the service of the writ of execution.

On June 28, 1991, the petitioners filed a "motion to authorize the plaintiff to determine 1/3 share under Section 10, Rule 39 of the Rules of Court". Respondent filed a manifestation to the effect that his "failure was not due to his deliberate refusal to submit the books of account but because said books had been lost, due to circumstances not of his will or desire." On July 17, 1991, the respondent filed a letter informing the trial court that "despite all efforts exerted we were unable to locate the records treated in the (instant) case." On October 14, 1991, the petitioners submitted their computation of their father's one-third (1/3) share in "Expocraft International" for the given period. After filing his comment, the respondent offered to deliberate with the trial court and the petitioners on other ways of determining the share of the petitioners' father. However, the respondent, acting through a new counsel, withdrew his offer to sit down in conference and opted to assume the position that the trial court would be acting without or in excess of jurisdiction.

On October 7, 1992, the trial court issued an Order in favor of the petitioners. It made a determination of the one-third (1/3) share due to the petitioners as follows:

> There is no question that plaintiff is entitled to 1/3 portion of the EXPOCRAFT International. From the decision rendered in this case, it is clear that an amount was determined as a starting point as to how much the plaintiff's 1/3 share is.
>
> The Court, in its decision, stated:
>
> xxx xxx xxx
>
> "(8) In August, 1976, Balani separated from the business, apparently because of a "little misunderstanding" with the defendant, and subsequently filed a court action against the defendant before this Court (Civil Case No. 109818). Later, on the basis of a compromise agreement (Exh. "8"), a decision was rendered by the Court (Exh. "C"), wherein defendant agreed to pay Balani the sum of P210,000.00 "as liquidation of his one-third (1/3) share in the business known "Expocraft International" up to 31 August 1976."
>
> xxx xxx xxx
>
> `When Balani separated from Expocraft in August of 1976, it was determined in the court action he successfully pursued against defendant that he still had as unpaid share in the partnership; and in the decision rendered by the Court based on the compromise agreement reached between Balani and the defendant, Balani agreed to accept P210,000.00 "as liquidation of his one-third (1/3) share in the business known as

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> "EXPOCRAFT INTERNATIONAL" up to 31 August 1976." (Exh. "C"). If Balani was entitled to the amount mentioned as his share in the business by August 31, 1976, undoubtedly, plaintiff should be entitled to at least the same amount as of that date, being an equal partner with plaintiff and defendant. If plaintiff continued the partnership with the defendant up to December 31, 1977 then, considering that the partnership must be assumed to be making profits yet, then plaintiff should be entitled to a share substantially more than what Balani got.'
>
> Exh. "D-2" of the plaintiff shows that the plaintiff has a net equity of P324,344.75 as of August 31, 1976. From what has been submitted by the plaintiff, the estimated monthly income of the net equity for the plaintiff is P9,248.32, which is roughly as income of 2.85% per month. In short, the net equity earns around 34.21% per annum. This estimated income of the net equity of the plaintiff as of August 31, 1976, appears to be reasonable as this is even less than the interest rates extended by banks.
>
> This Court rules that the 1/3 portion share of the plaintiff in the EXPOCRAFT INTERNATIONAL as of December 31, 1977 is P472,367.85.[7]

With his motion for reconsideration thereto denied, the respondent filed a petition for certiorari before the Court of Appeals docketed therein as CA G.R. SP. No. 301107. On June 18, 1993, the appellate court rendered a decision reversing the Order of the trial court, the dispositive portion of which reads:

> WHEREFORE, the petition is given due course, and the case is remanded to the court a quo for further proceedings. The petitioner is ordered to pay P8.80 as costs within five (5) days from receipt of notice.
>
> SO ORDERED.

When the petitioners' motion for reconsideration was denied, they filed before this Court the instant petition for review on certiorari, docketed as G.R. No. 112563, seeking the reversal of the decision of the appellate court. In the meantime, the case was consolidated with the respondent's own petition for review, docketed as G.R. No. 110647, of the appellate court's decision in CA G.R. SP. No. 301107. The respondent's petition was based on the ground that the appellate court failed to find the trial court judgment as null and void for being conditional.

The petitioners submit the following assignment of errors:

> I
>
> RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN ALLOWING PRIVATE RESPONDENT TO ESCAPE EXECUTION THROUGH THE SIMPLE EXPEDIENT OF DECLARING THAT THE BOOKS OF ACCOUNT OF EXPOCRAFT INTERNATIONAL HAD BEEN LOST.
>
> II
>
> RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN NOT FINDING THAT THE ORDER OF THE TRIAL COURT WAS BASED ON SUBSTANTIATED AND UNREBUTTED EVIDENCE.

On account of the loss of the books and records of the partnership, the dispositive portion of the judgment in Civil Case No. 123013 ordering the production of the books and records has been rendered impossible to execute. As a result, upon motion of the petitioners, the trial court made its own findings of Dialdas' share. For this reason, the respondent appealed to the appellate court which found the findings of the trial court based solely on the petitioners' computation and thus required another hearing to afford the respondent to present his side.

The petitioners seek the reversal of the appellate court's decision which ordered the reception by the trial court of evidence to determine the one-third (1/3) share that is due to their deceased father in the partnership venture. They claim that there is no more need to remand the same to the trial court for further hearing for the reason that,

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despite the opportunity given to rebut the petitioners' evidence of their father's share in the business, respondent Asandas failed to oppose the same. Moreover, the loss of the books and records was not duly proven by respondent Asandas. They contend that respondent Asandas has successfully frustrated the execution of the judgment in their favor by resorting to dilatory appeals.

Respondent Asandas, on the other hand, maintains that the judgment of the trial court has become conditional, and therefore void, as a result of the impossibility of performing the dispositive portion thereof, that is, the independent accounting by a third person of the books and records of the partnership. Thus, the trial court is without jurisdiction to determine by other means the one-third (1/3) share due to the petitioners. The respondent impresses upon this Court that inasmuch as the judgment has become void on account of the loss of the books and records, it is necessary to file another suit for purposes of claiming said one-third (1/3) share. Furthermore, the petitioners should be blamed for the loss inasmuch as they should have anticipated such unfortunate event by availing of the modes of the discovery under the Rules of Court during the hearing of the case.

In Cu Unjieng v. The Mabalacat Sugar Co.,[8] this Court ruled that judgments which are subject of a condition precedent are not final until the condition is performed. In that case, the trial court order was conditioned upon a contingency, namely, the outcome of the Berkenkotter case that was then pending appeal in this Court. It did not dispose definitely of the issue as to who was entitled to the amount of P36,793.99. According to the order - the sum should be awarded to the appellee if Berkenkotter should win the case, or to the appellant should Berkenkotter lose the case in this Court. A judgment must therefore be definitive. By this is meant that the decision itself must decide with finality the rights of the parties upon the issue submitted, by specifically denying or granting the remedy sought by the action.

Considering our ruling in the Cu Unjieng case, respondent Asandas' claim that the judgment of the trial court has been rendered void due to the loss of the books and records is unconvincing. In the case at bar, what has been finally adjudicated in the decision of the trial court is the right of the petitioners' father to receive the one-third (1/3) share in the partnership. There was a definitive judgment that Dialdas was a partner of respondent in the business and thus entitled to a one-third (1/3) share in the partnership. This legal conclusion was not conditioned upon any event. The independent accounting of the books and records was merely a means to determine the exact amount to be paid to the petitioners. Just because the means provided for by the trial court has been rendered allegedly impossible to accomplish due to the loss of the books and records does not mean that the judgment itself is null and void for being conditional.

As aptly ruled upon by the appellate court, the loss of the books and records does not prevent the trial court to resort to other means to execute the decision. In cases similar to the instant petition, where the execution of a decision has been rendered impossible due to an event or circumstance that would change or affect the rights of the parties, this Court did not nullify the judgment for being conditional. Instead, we ruled that the trial court should be allowed to admit evidence of such new facts and circumstances, and thereafter suspend its execution and grant relief as the new facts and circumstances warrant,[9] and require the court to modify or alter the judgment to harmonize the same with justice and the facts.[10] No beneficial purpose would be served to the winning party as well as to the losing party if decisions have to be nullified merely because the means of execution have become impossible to perform. It would only cause unjust delay and added expense for both parties and waste of the time of the court if, upon the annulment of the judgment, the case should be re-litigated.

We therefore affirm the decision of the appellate court ordering the trial court to receive evidence from both petitioners and private respondent for the determination of the amount corresponding to the one-third (1/3) share due to the petitioners. The dispositive portion of the decision of the trial court ordering the independent audit of the books and records of the partnership known as "Exportcraft International" has been rendered impossible to

execute due to the alleged fire that destroyed the said documents. Thus, it is only proper to order the reception of evidence of the facts and circumstances that transpired, and grant relief in accordance therewith.

In this reception of evidence, it must be proven that a fire in fact occurred and that the said fire destroyed the documents relevant for the execution of the judgment. If the trial court should be convinced that the pertinent documents were indeed destroyed in the fire without bad faith on the part of the respondent, secondary evidence of the same may be presented; the trial court shall receive evidence from both parties to determine the amount corresponding to the one-third (1/3) share of petitioners. However, if the trial court should find that there was in fact no fire that destroyed the subject documents or that the loss thereof could not be satisfactorily explained by respondent Asandas, then, considering the procedural rule that evidence willfully suppressed would be adverse if produced, it must weigh the evidence accordingly.

We also affirm the appellate court's ruling that the trial court erred in determining the one-third (1/3) share based solely on petitioners' evidence without considering the respondent's objection over its taking of jurisdiction on the matter. Indeed, the respondent could have been placed in estoppel had he attempted to rebut the evidence presented by the petitioners and at the same time dispute the trial court's jurisdiction on the matter on the ground that the judgment sought to be executed had become conditional and void. By presenting his own evidence then, he would in effect be submitting himself to the jurisdiction of the trial court to hear the matter - a stance he precisely avoided. Consequently, the trial court must receive evidence from both parties to determine the amount of the said one-third (1/3) share of petitioners in the partnership considering that the issue raised by respondent on the jurisdiction of the trial court has now been resolved by this Court.

The petitioners contend that there is no other way to determine the share of Dialdas in the partnership other than the evidence they presented. Inasmuch as the trial court already received their evidence, a remand of the case for reception of evidence would defeat rather than promote the speedy disposition of the case. We disagree. As found by the courts a quo, the petitioners' evidence is diametrically opposed to the respondent's computation of Dialdas' one-third (1/3) share. Since the private respondent was not given an opportunity to rebut the same and present his side on account of his jurisdictional objection, it is but just that the trial court be ordered to receive further evidence, this time, from both parties. To quote from the appellate court decision:

> It is believed that a more judicious or circumspect manner of arriving at a correct determination of the 1/3 share of private respondent could have been arrived at if both parties were allowed to present evidence of their respective allegations. The court notes that the petitioner has objected to the adoption of net equity as a gauge of a partner's share in the business, and has alleged that the business was on the decline after September 1976; whereas the trial court stated in its decision that "the partnership must be assumed to be making profits yet up to December 31, 1977." Clearly, the issue is one of fact that can only be justly resolved by receiving evidence to support either proposition. And as stated earlier, the court, for the purpose of the execution and enforcement of the judgment, is not powerless to grant relief, in the higher interest of justice, in order to carry out the final and executory judgment despite a supervening circumstance that renders impossible the execution of the specific act ordered in the judgment to carry out the verdict in favor of the private respondent Dialdas that he is entitled to his 1/3 share as partner in Expocraft from December 15, 1972 to December, 1977.[11]

To justify their stance that private respondent is not entitled to a stay of execution on account of the supervening events that happened, the petitioners quote Valenzona v. Court of Appeals[12] where we ruled that a stay of execution in case of a change in situation cannot be invoked when the supposed change in the circumstances of the parties took place while the case was pending, the reason being that there was then no excuse for bringing to the attention of the court the facts or circumstances that affect the outcome of the case. However, we find this ruling inapplicable to the instant case where the decision has been rendered unenforceable on account of the undetermined amount to be awarded. To have the judgment executed in the case at bar, the trial court must

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receive evidence from both parties to determine the exact amount due to the petitioners, as heirs of the deceased Dialdas, corresponding to their one-third (1/3) share in the business of the partnership, Exportcraft International. In the meantime, a stay of execution of the trial court's decision is inevitable.

In view of the foregoing, we find that respondent Court of Appeals did not commit any grave abuse of discretion in rendering its subject Decision.

WHEREFORE, the appealed Decision dated June 18, 1993 of the Court of Appeals is hereby AFFIRMED, and the case at bar is remanded to the court a quo for further proceedings.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.
Quisumbing, J., no part, due to close relationship to counsel of a party.

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[1] Penned by Associate Justice Minerva P. Gonzaga-Reyes and concurred in by Associate Justices Consuelo Ynares-Santiago and Bernardo P. Pardo (now all Associate Justices of the Supreme Court); Rollo pp. 37-48.

[2] Rollo of G.R. No. 112563, pp. 50-51.

[3] Special Fifth Division.

[4] Penned by Judge Felipe Pacquing; supra, note 2, pp. 101-103.

[5] supra, note 2, p. 107.

[6] Id., p. 66.

[7] Court of Appeals Rollo, pp. 13-14.

[8] 70 Phil 380.

[9] Abellana v.. Dosdos, 13 SCRA 244, 248 (1965) citing Candelario v.. Cañizares, 114 Phil. 672, 679 (1962) in turn citing City of Butuan v.. Ortiz, L-18054, December 22, 1961.

[10] The City of .Cebu v.. Mendoza, 66 SCRA 174, 177 (1975) citing De La Costa v.. Cleofas, 67 Phil 686, 692 (1939).

[11] CA Decision, p. 11; supra, note 2, p. 47.

[12] 226 SCRA 306.

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