

VIVA PRODUCTIONS, INC., PETITIONER, VS. COURT OF APPEALS AND HUBERT J.P. WEBB, RESPONDENTS.*G.R. No. 123881. March 13, 1997*

Ponente: MELO, J.

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Assailed in the petition before us are the decision and resolution of respondent Court of Appeals sustaining both the order of the Regional Trial Court of the National Capital Judicial Region (Parañaque, Branch 274 — hereinafter referred to as the Parañaque court) restraining "the exhibition of the movie 'The Jessica Alfaro Story' at its scheduled premiere showing at the New Frontier Theater on September 11, 1995 at 7:30 in the evening and at its regular public exhibition beginning September 13, 1995, as well as to cease and desist from promoting and marketing of the said movie" (Order; p. 96, Rollo); and the order of the Regional Trial Court also of the National Capital Judicial Region (Makati, Branch 58 — hereinafter referred to as the Makati court) issuing a writ of preliminary injunction "enjoining petitioner from further proceeding, engaging, using or implementing the promotional, advertising and marketing programs for the movie entitled 'The Jessica Alfaro Story' and from showing or causing the same to be shown or exhibited in all theaters in the entire country UNTIL after the final termination and logical conclusion of the trial in the criminal action now pending before the Parañaque Regional Trial Court" (Order; p. 299, Rollo).

Without filing any motion for reconsideration with the two regional trial courts, petitioner elevated the matter to respondent Court of Appeals via a petition for certiorari, with an urgent prayer for the issuance of a temporary restraining order and a writ of preliminary injunction, thereafter docketed and consolidated as C.A. G.R. No. SP-38407 and SP-38408. The factual antecedents were summarized by respondent court in this manner:

Both petitions are inexorably linked to the Rape with Homicide case, in connection with what is now known as the "Vizconde Massacre". On June 19, 1995, after the dismissal of two (2) sets of suspects, another group of nine (9), private respondent Hubert J.P. Webb included were charged by the National Bureau of Investigation (NBI) with the crime of Rape With Homicide, on the strength of a sworn statement of Ma. Jessica M. Alfaro, which complaint was docketed as I.S. No. 95- 402 before the Department of Justice.

It is of public knowledge, nay beyond cavil, that the personalities involved in this development of the Vizconde Massacre engendered a media frenzy. For at least two successive months, all sorts of news and information about the case, the suspects and witnesses occupied the front pages of newspapers. Focus of attention was Ma. Jessica M. Alfaro (Alfaro, for short), alluded to as the NBI star witness. Offered a movie contract by Viva Productions, Inc. for the filming of her life story, she inked with the latter the said movie contract while the said case (I.S. 95-402) was under investigation by the Department of Justice.

On August 10, 1995, after the conclusion of preliminary investigation before the Department of Justice, an Information for Rape With Homicide was filed against Hubert J.P. Webb and eight (8) others, docketed as Criminal Case No. 95-404 before the Regional Trial Court of Parañaque, Branch 274.

On August 25, 1995, the private respondent sent separate letters to Viva Productions, Inc. and Alfaro, warning

them that the projected showing of subject movie on the life story of Alfaro would violate the sub judice rule, and his (Hubert J.P. Webb's) constitutional rights as an accused in said criminal case. But such letters from private respondent notwithstanding, petitioner persisted in promoting, advertising and marketing "The Jessica Alfaro Story" in the print and broadcast media and, even on billboards. Premier showing of the movie in question was then scheduled for September 11, 1995, at the New Frontier Theater, with regular public exhibition thereof set for September 13, 1995, in some sixty (60) theaters.

And so, on September 6, 1995, Hubert J.P. Webb, the herein private respondent, filed a Petition for Contempt in the same Criminal Case No. 95-404; complaining that the acts of petitioner and Alfaro concerning "The Jessica Alfaro Story" movie were contumacious, within the contemplation of Section 3, Rule 71 of the Revised Rules of Court. Following the full day of hearing on September 8, 1995, and viewing of the controversial movie itself, the respondent Regional Trial Court of Parañaque came out with its Cease and Desist Order aforequoted.

On September 8, 1995, respondent Hubert J.P. Webb instituted a case for Injunction With Damages, docketed as Civil Case No. 951365 before the Regional Trial Court of Makati City, Branch 58, which court issued, ex parte, before the matter could be heard on notice, the Temporary Restraining Order under attack.

(pp. 61-62, Rollo.)

On December 13, 1995, respondent court dismissed the consolidated petitions.

Following the denial of petitioner's motion for reconsideration, the instant petition was filed wherein the following issues are ventilated:

I

WHETHER OR NOT THE PARAÑAQUE COURT CAN TOTALLY DISREGARD AND INDISCRIMINATELY CURTAIL PETITIONER'S CONSTITUTIONAL RIGHT TO FREEDOM OF EXPRESSION AND OF THE PRESS WITHOUT THE PRESENCE OF A CLEAR AND PRESENT DANGER.

II

WHETHER OR NOT THE MAKATI COURT HAS JURISDICTION TO TAKE COGNIZANCE OF THE INJUNCTION CASE FILED BEFORE IT WHICH IS IDENTICAL TO THE CASE PENDING BEFORE THE PARAÑAQUE COURT WHICH HAS ALREADY ACQUIRED JURISDICTION OVER THE ACT COMPLAINED OF.

III

WHETHER OR NOT PRIVATE RESPONDENT COMMITTED FORUM SHOPPING BY FILING TWO (2) CASES WITH EXACTLY THE SAME FACTUAL SET-UP, ISSUES INVOLVED AND RELIEFS SOUGHT BEFORE TWO (2) DIFFERENT COURTS OF COORDINATE JURISDICTION.

(p. 20, Rollo.)

We rule to grant the petition, reversing and setting aside the orders of respondent Court of Appeals, thus annulling and setting aside the orders of the Makati court and lifting the restraining order of the Parañaque court for forum shopping.

The key issue to be resolved is whether or not respondent court ruled correctly in upholding the jurisdiction of the Makati court to take cognizance of the civil action for injunction filed before it despite the fact that the same relief, insofar as preventing petitioner from showing of the movie is concerned, had also been sought by the same

private respondent before the Parañaque court in proceedings for contempt of court. Corollarily, it may be asked if private respondent and/or his counsel can be held guilty of forum shopping.

Petitioner contends that the Makati court has no jurisdiction to take cognizance of the action for damages because the same had been impliedly instituted in the contempt proceedings before the Parañaque court, which after acquiring and exercising jurisdiction over the case, excludes all other courts of concurrent jurisdiction from taking cognizance of the same. Moreover, citing Circular No. 28-91, petitioner accuses private respondent of forum shopping.

Private respondent, on the other hand, posits that the Makati court's jurisdiction cannot be validly and legally disputed for it is invested with authority, by express provision of law, to exercise jurisdiction in the action for damages, as may be determined by the allegations in the complaint. The temporary restraining order and writ of injunction issued by the Makati court are mere provisional remedies expressly sanctioned under Rule 58 of the Revised Rules of Court. He also maintains that there is no forum shopping because there is no identity of causes of action. Besides, the action for damages before the Makati court cannot be deemed instituted in the contempt proceedings before the Parañaque court because the rightful parties therein are only the court itself, as the offended party, and petitioner and witness Jessica Alfaro, as accused.

We find the shrewd and astute maneuverings of private respondent ill- advised. It will not escape anybody's notice that the act of filing the supposed action for injunction with damages with the Makati court, albeit a separate and distinct action from the contempt proceedings then pending before the Parañaque court, is obviously and solely intended to obtain the preliminary relief of injunction so as to prevent petitioner from exhibiting the movie on its premiere showing on September 11, 1995 and on its regular showing beginning September 13, 1995. The alleged relief for damages becomes a mere subterfuge to camouflage private respondent's real intent and to feign the semblance of a separate and distinct action from the contempt proceedings already filed and on-going with the Parañaque court.

Significantly, the primordial issue involved in the Makati court and the Parañaque court is one and the same — whether or not the showing of the movie "The Jessica Alfaro Story" violates the sub-judice rule. Should the Parañaque court find so, it would have no alternative but to enjoin petitioner from proceeding with the intended contumacious act lest it may be cited for contempt. In the case of the Makati court, if it finds such violation, it will have to enjoin petitioner from proceeding with the prejudicial act lest it may be held liable for damages.

The query posed before respondent court, simply stated, is whether or not the Parañaque court and the Makati court, obviously having concurrent jurisdiction over the subject matter, can both take cognizance of the two actions and resolve the same identical issue on the alleged violation of the sub judice rule. Respondent court erred in ruling in the affirmative. This is the very evil sought to be avoided by this Court in issuing Circular No. 28-91 which pertinently reads:

The attention of the Court has been called to the filing of multiple petitions and complaints involving the same issues in the Supreme Court, the Court of Appeals or different Divisions thereof, or any other tribunal or agency, with the result that said tribunals or agency have to resolve the same issues. (Emphasis supplied.)

On February 8, 1994, this was magnified through Administrative Circular No. 04-94, effective on April 1, 1994, to include all courts and agencies other than the Supreme Court and the Court of Appeals, to prevent forum shopping or the multiple filing of such pleadings even at that level. Sanctions for violation thereof are expressly stated as follows:

(2) Any violation of this Circular shall be a cause for the dismissal of the complaint, petition, application or other initiatory pleading, upon motion and after hearing. However, any clearly willful and deliberate forum

shopping by any party and his counsel through the filing of multiple complaints or other initiatory pleadings to obtain favorable action shall be a ground for summary dismissal thereof and shall constitute direct contempt of court. Furthermore, the submission of a false certification or non-compliance with the undertaking therein, as provided in Paragraph 1 hereof, shall constitute indirect contempt of court, without prejudice to disciplinary proceedings against counsel and the filing of a criminal action against the guilty party.

Private respondent's intention to engage in forum shopping becomes manifest with undoubted clarity upon the following considerations. Notably, if not only to ensure the issuance of an injunctive relief, the significance of the action for damages before the Makati court would be nil. What damages against private respondent would there be to speak about if the Parañaque court already enjoins the performance of the very same act complained of in the Makati court? Evidently, the action for damages is premature if not for the preliminary injunctive relief sought. Thus, we find grave abuse of discretion on the part of the Makati court, being a mere co-equal of the Parañaque court, in not giving due deference to the latter before which the issue of the alleged violation of the sub-judice rule had already been raised and submitted. In such instance, the Makati court, if it was wary of dismissing the action outrightly under Administrative Circular No. 04-94, should have, at least, ordered the consolidation of its case with that of the Parañaque court, which had first acquired jurisdiction over the related case in accordance with Rule 31 of the Revised Rules of Court (*Superlines Trans. Co. vs. Victor, et al.*, 124 SCRA 939 [1983]; *Vallacar Transit Inc. vs. Yap*, 126 SCRA 500 [1983]), or it should have suspended the proceedings until the Parañaque court may have ruled on the issue (*Salazar vs. CFI of Laguna*, 64 Phil. 785 [1937]).

Ordinarily, where a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief or reliefs is or are still pending, any one action may be dismissed on the ground of *litis pendentia* and a final judgment in any one case would constitute *res judicata* on the other. In either instance, there is a clear and undeniable case of forum shopping, another ground for the summary dismissal of both actions, and at the same time an act of direct contempt of court, which includes a possible criminal prosecution and disciplinary action against the erring lawyer (*Buan vs. Lopez, Jr.*, 145 SCRA 34 [1986]).

In *First Philippine International Bank vs. Court of Appeals* (252 SCRA 259 [1996]), this Court, through the same herein Division, per Justice Panganiban, found therein petitioner bank guilty of forum shopping because—

. . . the objective or the relief being sought, though worded differently, is the same, namely, to enable the petitioner Bank to escape from the obligation to sell the property to respondent. In *Danville Maritime vs. Commission on Audit*, this Court ruled that the filing by any party of two apparently different actions, but with the same objective, constituted forum shopping:

"In the attempt to make the two actions appear to be different, petitioner impleaded different respondents therein — PNOC in the case before the lower court and the COA in the case before this Court and sought what seems to be different reliefs. Petitioner asks this Court to set aside the questioned letter-directive of the COA dated October 10, 1988 and to direct said body to approve the Memorandum of Agreement entered into by and between the PNOC and petitioner, while in the complaint before the lower court petitioner seeks to enjoin the PNOC from conducting a rebidding and from selling to other parties the vessel "T/T Andres Bonifacio," and for an extension of time for it to comply with the paragraph 1 of the memorandum of agreement and damages. One can see that although the relief prayed for in the two (2) actions are ostensibly different, the ultimate objective in both actions is the same, that is, the approval of the sale of vessel in favor of petitioner, and to overturn the letter directive of the COA of October 10, 1988 disapproving the sale."

(p. 285)

In *Palm Avenue Realty Development Corporation vs. PCGG* (153 SCRA 579 [1987]), we have these words from

then Justice, now Chief Justice Narvasa:

. . . the filing by the petitioners of the instant special civil action for certiorari and prohibition in this Court despite the pendency of their action in the Makati Regional Trial Court, is a species of forum shopping. Both actions unquestionably involve the same transactions, the same essential facts and circumstances. The petitioners' claim of absence of identity simply because the PCGG had not been impleaded in the RTC suit, and the suit did not involve certain acts which transpired after its commencement, is specious. In the RTC action, as in the action before this Court, the validity of the contract to purchase and sell of September 1, 1986, i.e., whether or not it had been efficaciously rescinded, and the propriety of implementing the same . . . were the basic issues. So, too, the relief was the same: the prevention of such implementation and/or the restoration of the status quo ante. When the acts sought to be restrained took place anyway despite the issuance by the Trial Court of a temporary restraining order, the RTC suit did not become functus officio. It remained an effective vehicle for obtention of relief; and petitioners' remedy in the premises was plain and patent; the filing of an amended and supplemental pleading in the RTC suit, so as to include the PCGG as defendant and seek nullification of the acts sought to be enjoined but nonetheless done. The remedy was certainly not the institution of another action in another forum based on essentially the same facts. The adoption of this latter recourse renders the petitioner amenable to disciplinary action and both their actions, in this Court as well as in the Court a quo dismissible.

(pp. 591-592)

Thus, while we might admit that the causes of action before the Makati court and the Parañaque court are distinct, and that private respondent cannot seek civil indemnity in the contempt proceedings, the same being in the nature of criminal contempt, we nonetheless cannot ignore private respondent's intention of seeking exactly identical reliefs when it sought the preliminary relief of injunction in the Makati court. As earlier indicated, had private respondent been completely in good faith, there would have been no hindrance in filing the action for damages with the regional trial court of Parañaque and having it consolidated with the contempt proceedings before Branch 274, so that the same issue on the alleged violation of the sub judice rule will not have to be passed upon twice, and there would be no possibility of having two courts of concurrent jurisdiction making two conflicting resolutions.

Yet from another angle, it may be said that when the Parañaque court acquired jurisdiction over the said issue, it excluded all other courts of concurrent jurisdiction from acquiring jurisdiction over the same. To hold otherwise would be to risk instances where courts of concurrent jurisdiction might have conflicting orders. This will create havoc and result in an extremely disordered administration of justice. Therefore, even on the assumption that the Makati court may acquire jurisdiction over the subject matter of the action for damages, without prejudice to the application of Administrative Circular No. 04-94, it cannot nonetheless acquire jurisdiction over the issue of whether or not petitioner has violated the sub judice rule. At best, the Makati court may hear the case only with respect to the alleged injury suffered by private respondent after the Parañaque court shall have ruled favorably on the said issue.

In fine, applying the sanction against forum shopping under Administrative Circular No. 04-94, the action filed by private respondent with the Makati court, may be ordered summarily dismissed. Considering the nature and purpose of contempt proceedings before the Parañaque court and the public policy of protecting the integrity of the court, we reserve the imposition of a similar sanction to dismiss the same and leave that matter to the discretion of the presiding judge concerned, although it is worthy to stress that insofar as injunctive relief against the showing of the movie before the Parañaque court is concerned, we resolved to also dismiss the same by reason of forum shopping. The sanction of twin dismissal under *Buan vs. Lopez* is applicable. This, however, is without prejudice to the other aspects of the contempt proceedings which may still be pending before the Parañaque court.

In view of the foregoing disposition, we find no further need to resolve the issue of whether or not there was valid and lawful denial by both lower courts of petitioner's right to free speech and expression. Suffice it to mention, however, that the Court takes note of the rather unreasonable period that had elapsed from the time of the issuance of the restraining order by the Parañaque court up to the writing of this decision. The Court also notes that the order of the said court specifically failed to lay down any factual basis constituting a clear and present danger which will justify prior restraint of the constitutionally protected freedom of speech and expression save its plea for time to hear and resolve the issues raised in the petition for contempt.

WHEREFORE, the assailed decision and order of respondent court are hereby SET ASIDE, and a new one entered declaring null and void all orders of Branch 58 of the Regional Trial Court of the National Capital Judicial Region stationed in Makati City in its Civil Case No. 95-1365 and forthwith dismissing said case, and declaring the order of the Regional Trial Court of the same National Capital Judicial Region stationed in Parañaque (Branch 274), functus officio insofar as it restrains the public showing of the movie "The Jessica Alfaro Story."

Private respondent and his counsel are admonished to refrain from repeating a similar act of forum shopping, with the stern warning that any repetition of similar acts will be dealt with more severely. SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Francisco, and Panganiban, JJ., concur.

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