

PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS. THE COURT OF APPEALS, HON. PEDRO T. SANTIAGO, AS JUDGE, RTC OF QUEZON CITY BRANCH 101, FALCON GARMENTS CORPORATION, QUALITY LA...

G.R. No. 126158. September 23, 1997

Ponente: MELO, J.

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MELO, J.:

Assailed and sought to be set aside in the instant petition is the decision of respondent Court of Appeals promulgated on September 13, 1996 dismissing herein petitioner Philippine Bank of Communications' petition for certiorari impugning an order granting the motion for the issuance of a writ of execution pending appeal issued by the Regional Trial Court of the National Capital Judicial Region (Branch 101, Quezon City), in Civil Case No. Q-95-22625, entitled "Falcon Garments Corporation, et al. vs. Philippine Bank of Communications".

The antecedent facts of the case as gathered from the record are as follows:

Sometime in 1989, private respondent Falcon Garments Corporation (Falcon) opened Current Account No. 25-00640-7 at BMA Quezon City Branch of petitioner Philippine Bank of Communications (PBCom). Subsequently, on November 27, 1992, private respondent Falcon obtained a loan from petitioner in the principal sum of Four Million Seven Hundred Thousand Pesos (P4,700,000.00) with interest at 17% per annum and penalty at 12% per annum in case of default. Falcon failed to pay its loan on due date and went in default in December, 1993.

On February 9, 1995, Falcon filed a complaint with the Regional Trial Court of Quezon City against PBCom which was docketed as Civil Case No. Q-95-22625 and raffled to Branch 78, presided over by Judge Percival Mandap-Lopez. The complaint prayed for the restoration to Falcon's current account of alleged unauthorized withdrawals totalling P12, 729,092.78 which were made from 1990 to 1992, plus interest, damages, and attorney's fees.

In its answer, PBCom denied liability and interposed a compulsory counterclaim in the sum of P4,700,000.00, plus the stipulated interest and penalty, damages, and attorney's fees.

On January 2, 1996, the trial court rendered a decision against PBCom the dispositive portion of which reads:

WHEREFORE, defendant is ordered to restore immediately to plaintiff's Current Account No. 25-006407 the sum of P12,729,092.78, plus interest at the rate of 12% per annum to commence from the date of the filing of the complaint until the said amount is fully restored and operate the said account in accordance with the instructions of plaintiff, acting through its board of directors. And to pay plaintiffs the following sums:

- a. P 500,000.00 as exemplary damages;
- b. P 500,000.00 as attorney's fees; and

c. P 200,000.00 as litigation expenses.

Plaintiff FALCON is ordered to pay defendant its loan at P 4,700,000.00 plus interest at the rate of 12% per annum to commence from the date of filing of the complaint. All other claims and counterclaims are dismissed for lack of merit.

(Rollo, p.34)

Petitioner PBCom seasonably filed a notice of appeal, while private respondent Falcon filed a Motion for Execution Pending Appeal dated February 7, 1996. However, before Branch 78 could resolve said motion, Judge Lopez inhibited himself and the case was re-raffled to Branch 101, presided over Judge Pedro T. Santiago.

Private respondent Falcon filed an Ex-Parte Manifestation and Motion dated May 7, 1996, claiming that with its strained relations with PBCom, it was no longer practicable to bank with petitioner, and prayed that the money judgement be not restored to its current account but instead be directly paid to it (Rollo, p. 132).

On the very same day of the filing of the motion, Judge Santiago granted the same and authorized the issuance of a writ of execution pending appeal. The dispositive portion of said order provides:

WHEREFORE, premises considered, finding merit and justification in plaintiff's motion, the Court hereby grants its motion for execution pending appeal hereby ordering defendant Bank to immediately pay the plaintiff the sum of P12,729,092.78 with 12% per annum and plaintiff's obligation to defendant Bank be likewise paid by plaintiff in the amount of P4,700,000.00 with interest also at 12% per annum, as well as the other damages stated in the decision of Branch 78 dated January 2, 1996, upon a plaintiff's bond of P5,000,000.00 conditioned to answer for whatever damages which defendants may suffer by virtue of this Order.

(Rollo, p. 41.)

The writ was issued on May 14, 1996, and on May 16, 1996, the writ was served upon PBCom which sought the intercession of the Court of Appeals (CA-G.R. SP No. 40636). On June 4, 1996, a writ of preliminary injunction was issued by the Court of Appeals restraining its implementation.

On September 13, 1996, the Court of Appeals eventually upheld the validity of the writ of execution pending appeal and forthwith dissolved the writ of preliminary injunction.

On the same day, private respondent Falcon obtained an alias writ of execution which served upon petitioner on the same afternoon.

On September 16, 1996, the present petition was filed, with prayer for a temporary restraining order, preliminary writ of injunction and mandatory injunction alleging that:

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE ORDER OF JUDGE PEDRO SANTIAGO GRANTING THE ISSUANCE OF A WRIT OF EXECUTION PENDING APPEAL CONSIDERING THAT GOOD REASONS DO NOT EXIST FOR THE ISSUANCE OF A WRIT OF EXECUTION PENDING APPEAL UNDER SECTION 2, RULE 39 OF RULES OF COURT.

(Rollo, p. 8.)

Petitioner further avers that:

3.01 The privelege respondents in this case ILLEGALLY and UNLAWFULLY implemented a writ of execution pending appeal on 13 September 1996 using an expired writ, and an Order of the Court of Appeal

subject of this petition which was promulgated only at 10 a.m. of 13 September 1996. On that day, herein petitioner has not receive copy of said decision which is not yet final.

3.02 PBCom and counsel became aware of the questioned Decision of the Court of Appeals when PBCom Ayala Branch, Makati City, called up and told them that private respondents with about 30 people, brandished the questioned writ and decision enabling private respondents to coerced, forced and intimidated the personnel of the said petitioner's branch resulting in the unlawful taking of about P1.7 million...

3.03 Private respondents have foisted to petitioner and counsel that they (private respondents) will again go to PBCom's other branches to "get" in full balance of the money judgement which is still on appeal.

(Rollo, pp. 92-93.)

Upon the above representation of petitioner duly verified by its counsel, Atty. Daniel Y. Laogan, of Laogan Silva Baeza & Llantino Law Offices, we issued a temporary restraining order at the same time requiring private respondents to comment.

On November 11, 1996, the Court issued a resolution, which among other things, noticed petitioner urgent manifestation and motion dated September 17, 1996, praying that (a) counsel for private respondent be required to explain why they claimed in their ex parte motio for issuance of an alias writ of execution pending appeal before respondent RTC that the Court of Appeals had already dissolved the injunction one hour before the promulgation of the Court of Appeals' decision in CA-G.R. SP No. 40636; (b) to require Judge Pedro T. Santiago of RTC Branch 101, Quezon City, to explain why he issued the order dated September 13, 1993 granting the alias writ of execution pending appeal prior to the court's receipt of its official copy of said decision dissolving the injunction and even before the finality of the same.

Judge Santiago submitted his explanation on December 11, 1996 which the Court noted on January 17, 1997.

With the filing of the memoranda of the parties, the petition is now ripe for resolution.

The pith of the matter before us is the existence of good reasons which would justify execution pending appeal. In the absence of such good reasons, it is incumbent upon the reviewing court, such as the Court of Appeals, to issue the writ of certiorari and failure to do so would constitute grave abuse of discretion on its part.

It is in this regard that we find that the Court of Appeals committed grave abuse of discretion in sustaining the trial court.

When Judge Santiago resolved the first ex parte manifestation and motion, the applicable provision was Section 2, Rule 39 of the former Rules of Court which provided –

Sec. 2. Execution pending appeal – On motion of the prevailing party with to notice to the adverse party, the court may, in is discretion, order the execution to issue, even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter the motion and the special order shall be included therein.

The prevailing doctrine an principle then – which continues to be the same as provided in Paragraph 2, Section 2, of Rule 39 of the 1997 Rules of Civil Procedure – is that discretionary execution is permissible only when good reasons exist for immediately executing the judgment before finality or pending appeal or even before the expiration of the time to appeal.

Good reasons consist of compelling circumstances justifying the immediate execution lest judgment becomes illusory, or the prevailing party may after the lapse of time become unable to enjoy it, considering the tactics of the adverse party who may apparently have no case except to delay. A long line of jurisprudence indicates what

constitute good reasons as contemplated by the Rules, the following being merely representative of the same:

1. When in an intestate proceeding which has been pending for almost 29 years, one group of heirs has not yet received the inheritance due them when the others have already received theirs, or are about to do so (*Borja vs. Encarnacion*, 89 Phil. 239 [1951]);
2. The advanced age of the prevailing party (*Borja vs. Court of Appeals*, 196 SCRA 847 [1991]; *De Leon vs. Soriano*, *supra*);
3. When the defeated party is in imminent danger of insolvency (*Hacienda Navarro vs. Sabrador*, 65 Phil. 536 [1938]; *Lao vs. Mencias*, 21 SCRA 1021 [1967]; *Santos vs. Mojica*, 26 SCRA 607 [1969]; *City of Manila vs. Court of Appeals*, 72 SCRA 98 [1976]; *De los Reyes vs. Capulong*, 122 SCRA 631 [1983]; *PVTA vs. Lucero*, 125 SCRA 337 [1983]);
4. When the appeal is dilatory and the losing party intends to encumber and/or dispose of the property subject of the case during the pendency of the appeal in order to defraud or deprive the plaintiff of proprietary rights and defeat the ends of justice (*Home Insurance Company vs. Court of Appeals*, 184 SCRA 318 [1990]); and
5. Deterioration of commodities subject to litigation (*Federation of United Namarco Distributors, Inc. vs. National Marketing Corp.*, 4 SCRA 867 [1962]).

The supposed good reasons relied upon by Judge Santiago to justify the discretionary execution pending appeal are spelled out in the May 7, 1996 Order, reading in relevant part as follows –

This Court has given serious thoughts on the restrictive application of Section 2, Rule 39 of the Rules of Court. Attached to the “Reply to the Opposition” filed by plaintiffs, are two public documents. As annex A, the original carbon copies of the summons and complaint in the case entitled *Solid Bank Corporation vs. Falcon Garment Corporation et al.*, in Civil Case No. 96-76567, a case for collection of sum of money and replevin (hereafter, referred to as Complaint). And as Annex B, the original copy of a police blotter of the Center Police District Command, Police Station No. 2, Baler St., Quezon City (hereafter referred to as police blotter). It is observed the complaint filed by Solidbank against Falcon supports the material allegations of plaintiffs in the hearing as reproduced above and as also quoted by defendant in its opposition. The threats of impending criminal and civil cases alleged by plaintiffs are now proven and established to be real. The complaint shows that Falcon is now being sued for non-payment of its loan with Solidbank. The checks issued by Falcon to Solidbank, forming part as Annexes D, E, F, G, H, and I of the complaint, bounced for being drawn against insufficient funds. Annexes J, J-1, J-2, J-3, and J-4 also for the complaint, are written with demands which carry the threat of criminal action for violation of Batas Pambansa Blg. 22 against Falcon Garment Corporation and/or its officers by Solidbank on February 14, 1996, seized the machineries, office and factory equipments of Falcon. The police blotter even enumerates these machines and office equipments. With the seizure of plaintiffs’ instruments in the operation of its business, the filing of collection cases against it, the threat of criminal prosecution against its officers, the imminent threat to its industrial peace, it is not remote that plaintiffs’ survival hangs on the balance. There is truth therefore to plaintiffs’ claim that “its only hope for survival and arresting threats of civil and criminal cases, is the immediate execution of the judgment.” This Court, also takes into consideration, that plaintiffs’ ownership over the funds sought to be reinstated to Current Account No. 25-00640-7, is not in dispute. All the circumstances enumerated by plaintiffs under par. 3 of its motion combined with the facts established by the complaint of Solidbank against Falcon and the police blotter, viewed from the above quoted opposition of defendant, to the mind of this Court, constitute a sufficient evidence of good reason in support of plaintiffs’ subject motion. Further and significantly taking into consideration plaintiffs’ readiness to pay defendant’s counterclaim of P4,700,000.00 by deducting the same from the principal account.

(Rollo pp. 40-41.)

The above stated order quotes the following transcribed testimony of Magin Tabuso, witness for private respondents, thus

ATTY. MAHINAY: (on direct examination)

QUESTION:

Now, as an overall effect of the unauthorized withdrawal or transfer of account of your corporation, can you tell what is its effect insofar as the operation of your corporation is concerned?

ANSWER:

It has great effect on the corporation as a whole, because as our credit today we have an amount of P12,000,000.00 plus and one of the prominent creditors of PBCom and also Solid Bank.

Q

Do you have complete list of those creditors which you mentioned you have not paid as a result of the unauthorized withdrawal or transfer of your account?

A

Yes, we were not able to pay them as a result of those unauthorized withdrawals.

Q

There are list of your creditors in paragraph 5.3 of your complaint, are they the same creditors you are talking about?

A

Yes, sir.

Q

Inasmuch as you said that these creditors were not paid, what particular action were undertaken by these creditors against your company?

A

Our credit lines from the banks and from the other creditors were closed, sir.

Q

What else?

A

And we were not able to serve orders of valued customers because we're not able to meet the production due to financial difficulties.

Q

Your claims of alleged illegal transfer of withdrawals, does this affect also the industrial peace of your company?

A

Yes, sir. There was a growing threat in the industrial peace of our company.

Q

How many employees are holding your staff?

A

We have about 200 workers, sir.

Q

What particular threat are you talking about?

A

Usually these workers are dependent from our production and so they started to feel restless and insecure sometimes and they feel demoralized, at times which led us to attack, it paralyzes the whole operations.

(Rollo, pp. 39-40.)

The trial court concluded that the foregoing statements presented during the hearing of the motion for execution pending appeal constitute good reasons for the discretionary execution. The Court of Appeals agreed, but this Court is of a different persuasion and view.

The reasons relied upon are not compelling and thus can not constitute good reasons.

It is significant to stress that private respondent Falcon is a juridical entity and not a natural person. Even assuming that it was indeed in financial distress and on the verge of facing civil or even criminal suits, the immediate execution of a judgment in its favor pending appeal cannot be justified as Falcon's situation may not be likened to a case of a natural person who may be ill or may be of advanced age. Even the danger of extinction of the corporation will not per se justify a discretionary execution unless there are showings of other good reasons, such as for instance, impending insolvency of the adverse party or the appeal being patently dilatory. But even as to the latter reason, it was noted in *Aquino vs. Santiago* (161 SCRA 570 [1988]), that it is not for the trial judge to determine the merit of a decision he rendered as this is the role of the appellate court. Hence, it is not within competence of the trial court, in resolving a motion for execution pending appeal, to rule that the appeal is patently dilatory and rely on the same as its bases for finding good reason to grant the motion. Only an appellate court can appreciate the dilatory intent of an appeal as an additional good reason in upholding an order for execution pending appeal which may have been issued by the trial court for other good reasons, or in case where the motion for execution pending appeal is filed with the appellate court in accordance with Section 2, paragraph (a), Rule 39 of the 1997 Rules of Court.

What is worse, only one case was actually filed against Falcon and this is the complaint for collection filed by Solidbank. The other case are "impending", so it is said. Other than said Solidbank case, Falcon's survival as a body corporate can not be threatened by anticipated litigation. This notwithstanding, and even assuming that there was a serious threat to Falcon's continued corporate existence, we hold that it is not tantamount nor even similar to an impending death of a natural person. The material existence of a juridical person is not on the same plain as that of human life. The survival of a juridical personality is clearly outweighed by the long standing general policy of enforcing only final and executory judgments.

In the recent case of *David vs. Court of Appeals* (G. R. No. 126556, July 28, 1997), we reiterated our pronouncement in *Roxas vs. Court of Appeals* (157 SCRA 370 [1988]) that --

Execution pending appeal in accordance with Section 2, of Rule 39 is, of course, the exception. Normally, execution of a judgment should not be had until and unless it has become final and executory -- i.e., the right to

appeal has been renounced or waived, the period for 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 case, execution "shall issue as a matter of right.

On the other hand, when the period of appeal has not expired, execution of the judgment should not be allowed, save only if there be good reasons therefor, in the court's discretion. As provided in Section 2 Rule 39 of the x x Rules x x, the existence of good reasons is what confers discretionary power on a Court x x to issue a writ of execution must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment.

(p. 377.).

Additionally, we cannot help observing that the May 7, 1996 order of execution issued by Judge Santiago deliberately modified and failed to conform to the dispositive portion of the January 2, 1996 decision rendered by Judge Percival Mandap-Lopez, which is the decision Judge Santiago's order intended to execute, and that this variance was upon express motion to Falcon (See: prayer of Falcon's Ex parte Manifestation & Motion, Annex 2-Comment, pp. 130-132, rollo.)

The January 2, 1996 decision ordered petitioner to "restore immediately to plaintiff's Current Account No. 25-00640-7 the sum of P12,729,092.78, plus interest at the rate of 12% per annum to commence from the date of the filing of the complaint until the said amount is fully restored, and to operate the said account in accordance with the instructions of plaintiffs, acting through its board of directors." In contrast, the May 7, 1996 order directed petitioner to "immediately pay the sum of P12,729,092.78," plus interest and other damages.

At first glance the order to restore private respondent's current account in the aforementioned amount and the order to immediately pay the same amount directly to private respondent may seem to be same, for, after all, upon restoring the said amount, what may prevent the depositor from withdrawing the entire amount?

However, after more careful and deliberate consideration, one will notice a whale of distinction between the two aforementioned orders. For one thing, if petitioner PBCom were ordered to credit the money judgment to Falcon's current account with its BMA Quezon City Branch and to operate said account in accordance with the instructions of the board of directors of Falcon, once credited, release of any amount from said account may be done only upon proper resolution of private respondent Falcon's board of directors. On the other hand, the order dated May 7, 1996 directed the immediate payment to Falcon of the corresponding money judgment which may thus be used or misused with or without proper instructions of Falcon's board of directors.

Besides, the harassment complained of by the petitioner bank would not have happened had respondent trial court issued a writ which faithfully conformed to the judgment sought to be enforced. If Falcon's current account were merely credited in accord with the judgment, a simple and orderly banking procedure may just have taken place. In fact, it would have been absolutely unnecessary to deputize anybody, other than the sheriff of the trial court concerned, to enforce the writ ordering petitioner bank to restore the current account of private respondent.

It is well-settled general principle that a writ of execution must conform substantially to every essential particular of the judgment promulgated. Execution which is not in harmony with the judgment is bereft of validity. It must conform particularly to that ordained or decreed in the dispositive portion of the decision (GSIS vs. Court of Appeals, 218 SCRA 233 [1993]). An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity (Foremost Farms, Inc. vs. Dept. of Labor and Employment, 251 SCRA 123 [1995]; Gamboa's Inc. vs. Court of Appeals, 72 SCRA 131 [1976]; Villoria vs. Piccio, 95 Phil. 802 [1954]).

Falcon has ignored and has remained silent in regard to PBCom's charge of harassment and irregular resort to armed policeman and civilians with acetylene torches in the enforcement of the writ of execution pending appeal,

thus lending credence to PBCom's complaint. However, it also appears that petitioner PBCom does not intend to pursue the administrative aspect of these alleged irregularities, its prayer in the petition being completely silent on these points. Nevertheless, we find necessary to exhort both private respondent and its counsel, as well as public respondent sheriffs not to resort to such forms of harassment by using the strong arms of the law to the prejudice of any party. Barbaric acts such as those complained of have no place in a civilized society. It is even more abhorrent when such acts are with the participation or at the very least the acceptance of a member of the bar who, under his oath, has sworn to uphold the rule of law.

WHEREFORE, premises considered, the instant petition is GRANTED. The decision of the Court of Appeals dated September 13, 1996 in CA-G.R. SP No. 40636 is hereby ANNULLED and SET ASIDE. The order of the Regional Trial Court of the National Capital Judicial Region, Branch 101, stationed at Quezon City, dated May 7, 1996 in Civil Case No. Q-95-22625 is likewise ANNULLED and SET ASIDE. Accordingly, the trial court is hereby ORDERED to determine the exact amount taken by private respondent by virtue of the writ or writs of execution issued pursuant to the annulled order dated May 7, 1996, which amount private respondent is hereby ORDERED to return to petitioner Philippine Bank of Communications. No special pronouncement is made as to costs.

SO ORDERED.

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

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