

BF CORPORATION, PETITIONER, VS. EDSA SHANGRI-LA HOTEL AND RESORT, INC., RUFO B. COLAYCO, RUFINO T. SAMANIEGO, CYNTHIA DEL CASTILLO, KUOK KHOON CHEN, AND KUOK KHOON TSEN, RESPOND...

G.R. No. 132655. August 11, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

On July 26, 1993, petitioner BF Corporation brought suit to collect from respondents EDSA Shangri-La Hotel and Resort, Inc. (ESHRI), Rufo B. Colayco, Rufino T. Samaniego, Cynthia del Castillo, Kuok Khoon Chen, and Kuok Khoon Tsen the sum of P31,791,284.72, plus damages. The amount represents the alleged liability of respondents to petitioner for the construction of the EDSA Shangri-La Hotel on St. Francis Street, Mandaluyong City.

The case was assigned to Branch 162 of the Regional Trial Court, Pasig City. After trial, the said court rendered judgment ordering respondents to pay petitioner P24,780,490.00 for unpaid construction work accomplishments under petitioner's Progress Billings Nos. 14 to 19; to return to petitioner the retention sum of P5,810,000.00, with legal interest on both amounts; and to pay petitioner the sums of P1,000,000.00 as moral damages, P1,000,000.00 as exemplary damages, P1,000,000.00 as attorney's fees, and the costs.

Private respondents moved for a reconsideration of the decision. However, their motion was denied whereupon they appealed. Pending disposition of the appeal, petitioner filed a motion for the execution of the decision in its favor which the trial court granted in its order dated January 21, 1997.

Private respondents assailed the order of execution pending appeal in a petition for certiorari which they filed in the Court of Appeals. In due time, petitioner filed a "Comment with Opposition to Preliminary Injunction."

On March 7, 1997, the Court of Appeals issued a writ of preliminary injunction enjoining the trial court from carrying out its order of execution, upon the filing by respondents of a bond in the amount of P1 million.[1] In a supplemental resolution issued on the same day, the appellate court issued a writ of preliminary mandatory injunction ordering that:

A. Respondent Judge and his branch sheriff acting under him LIFT all garnishments and levy made under the enjoined order of execution pending appeal.

B. Said Sheriff desist from delivering to private respondent [herein petitioner] all his garnishments on petitioners' bank deposits and, instead, immediately return the same to PNB, Shangri-la Plaza Branch.

C. If the garnished deposits have been delivered to private respondent [herein petitioner], the latter should forthwith return them to petitioners' [herein respondents] deposit accounts.[2]

Petitioner moved for a reconsideration of the two resolutions. On June 30, 1997, the Court of Appeals rendered a decision[3] setting aside the trial court's order of execution pending appeal and denying petitioner's motion for

reconsideration of its two resolutions dated March 7, 1997. The appellate court held that the trial court's reason for ordering execution pending appeal, that "(petitioner's) viability as a building contractor is being threatened by (respondents') continued refusal to pay their obligations," did not justify such an order. The appellate court noted that -

Contrary to the ordinary run of things it is the prevailing party in the trial court who admits to be in financial straits and cites his threatened insolvency, not that of [the] defendant, as a good reason for execution pending appeal.

Normally, we would expect a losing defendant's impending insolvency or dangerous tendency to dispose or dissipate his properties to frustrate future execution, as the logical, good reason for plaintiff to ask for advanced execution.

In addition, the appellate court found that the order of execution pending appeal was not in the form of a special order as required by Rule 39, §2 of the Rules of Civil Procedure.

Petitioner moved for reconsideration, but this motion was denied by the Court of Appeals in its resolution dated February 11, 1998.[4] Hence, this petition for review on certiorari.

Petitioner contends:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT HELD THAT PETITIONER'S SERIOUS FINANCIAL DISTRESS AND URGENT NEED OF FUNDS WERE NOT GOOD REASON TO JUSTIFY EXECUTION PENDING APPEAL IN UTTER DISREGARD OF WELL-FOUNDED AND ESTABLISHED JURISPRUDENTIAL PRECEPTS.

II

THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE LOWER COURTS WRIT OF EXECUTION PENDING APPEAL WAS DEFECTIVE FOR NOT HAVING COMPLIED WITH THE PRESCRIBED FORM CONSIDERING THAT SECTION 2 OF RULE 39 DOES NOT PRESCRIBE FORMAL REQUIREMENTS.

III

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO CONSIDER THAT OTHER GOOD REASONS WARRANTING EXECUTION PENDING APPEAL EXISTED IN THE CASE AT BAR, TO WIT:

(A) THE APPEAL FROM THE TRIAL COURT'S DECISION DATED 23 SEPTEMBER 1996 IS OBVIOUSLY FRIVOLOUS AND UNCONSCIONABLY DILATORY.

(B) THE POSTING OF A BOND BY PRIVATE RESPONDENT IS AN ADDED JUSTIFICATION FOR EXECUTION PENDING APPEAL.

IV

THE COURT OF APPEALS ERRED IN ISSUING THE ASSAILED INJUNCTIONS CONSIDERING THAT BY DOING SO IT RESOLVED THE MERITS OF THE MAIN CASE WITHOUT AFFORDING THE PETITIONER DUE PROCESS OF LAW.

V

THE COURT OF APPEALS ERRED IN GRANTING RESPONDENTS' MOTIONS FOR PRELIMINARY INJUNCTIONS WHEN PRIVATE RESPONDENTS WERE CLEARLY NOT ENTITLED TO SAID RELIEF.

VI

THE COURT OF APPEALS ERRED IN IMPROVIDENTLY ISSUING A PRELIMINARY MANDATORY INJUNCTION BASED ON A FORMALLY AND SUBSTANTIALLY DEFECTIVE MOTION.

VII

THE COURT OF APPEALS GRAVELY ERRED IN GRANTING THE PRELIMINARY INJUNCTIONS WITHOUT AFFORDING PETITIONER THE OPPORTUNITY TO BE HEARD THEREBY DENYING IT DUE PROCESS OF LAW.

VIII

THE COURT OF APPEALS GRAVELY ERRED IN ISSUING A MANDATORY INJUNCTION ORDERING THE RETURN OF GARNISHED FUNDS WHICH IS CLEARLY OUTSIDE THE PROVINCE OF AN INJUNCTION.

Petitioner filed a supplemental petition to enjoin the trial court from enforcing the writ of execution it had issued pursuant to the decision of the Court of Appeals.

The issue in this case is whether the Court of Appeals erred in setting aside the trial court's order granting execution pending appeal. We hold that it did not.

First. Execution pending appeal is not to be granted except for good reason to be stated in a special order. For the general rule is that only judgments which have become final and executory may be executed.[5] In this case, the issuance of an order granting execution pending appeal is sought to be justified on the plea that the "[r]espondents' dilatory appeal and refusal to pay petitioner the amount justly due it had placed petitioner in actual and imminent danger of insolvency."

The contention is without merit. As we recently held in *Philippine Bank of Communications v. Court of Appeals*:[6]

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 basis for finding good reasons 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 cases 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.

Nor does the fact that petitioner filed a bond in the amount of P35 million justify the grant of execution pending appeal. We have held in a number of cases[7] that the posting of a bond to answer for damages is not alone a sufficient reason for ordering execution pending appeal. Otherwise, execution pending appeal could be obtained through the mere filing of such a bond.

Second. The foregoing reason justifies the issuance by the Court of Appeals of writs of preliminary prohibitory and mandatory injunction against the trial court, the sheriff, and petitioner.

Petitioner assails the issuance of the writs, claiming that the same had been issued on the basis of motions which had no verification and without affording it due process.

The motions referred to by petitioner merely sought the expeditious resolution of respondents' application for a writ of preliminary injunction as contained in their verified petition for certiorari. This petition contained the necessary factual averments justifying the grant of injunction. Nor was petitioner denied the right to be heard before the writs were issued. Petitioner filed a comment which controverted the allegations of the petition, including its prayer for a writ of preliminary injunction. There is, therefore, no basis for its claim that it was denied due process.

Be that as it may, this question became moot in view of the appellate court's decision rendered on June 30, 1997, permanently enjoining the trial court from enforcing its order of execution pending appeal and ordering petitioner to return the amounts paid to it by virtue of the garnishment of respondents' bank deposits.

Petitioner argues that, instead of being required to make restitution, the bond for P35 million, which it had posted, should have been proceeded against. It cites the case of *Engineering Construction Inc. v. National Power Corp.*,^[8] where this Court, instead of ordering the judgment creditor to return funds that had been improperly garnished pursuant to an order of execution pending appeal, directed the judgment debtor to proceed against the bond filed by the judgment creditor. We find this contention correct. Rule 39, §5 of the Rules of Civil Procedure provides that "Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances."

As garnishment is a specie of attachment,^[9] the procedure provided in Rule 57, §20 of the Rules of Court for the recovery of damages against a bond in case of irregular attachment should be applied. This means that notice should be given to petitioner's surety and that there should be a hearing before it is held liable on its bond.^[10]

Third. In its supplemental petition, petitioner contends that the propriety of the issuance of the writ of execution pending appeal is an ancillary issue which should have been raised by respondents in their appeal from the trial court's decision on the merits instead of in a separate petition for certiorari.

The contention is also without merit. Certiorari lies against an order granting execution pending appeal where the same is not founded upon good reasons. Appeal is not a speedy and adequate remedy that can relieve the losing party from the immediate effects of an improvident execution pending appeal.^[11]

WHEREFORE, the decision of the Court of Appeals dated June 30, 1997 and its resolutions dated March 7, 1997 are AFFIRMED with the MODIFICATION that recovery of the garnished deposits delivered to petitioner shall be against the bond of petitioner BF Corporation.

SO ORDERED

Regalado (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] Rollo, pp. 68-71.

[2] *Id.*, pp. 73-77.

[3] Per Justice Ruben T. Reyes and concurred in by Justices Fermin A. Martin, Jr. (Chairman) and Omar U. Amin, *id.*, pp. 53-66.

[4] *Id.*, pp. 79-80.

[5] *Ortigas and Co., Ltd., Partnership v. Velasco*, G.R. No. 109645 and G.R. No. 112564, August 15, 1997.

[6] G.R. No. 126158, Sept. 23, 1997 (emphasis added).

[7] E.g., *David v. Court of Appeals*, 276 SCRA 424 (1997); *Roxas v. Court of Appeals*, 157 SCRA 370 (1980).

[8] 163 SCRA 9 (1988).

[9] See *id.*

[10] See *Luzon Surety Co. v. Beson*, 31 SCRA 315 (1970).

[11] *David v. Court of Appeals*, 276 SCRA 424 (1997); *Provident International Resources Corp. v. Court of Appeals*, 259 SCRA 510 (1996); *Jaca v. Davao Lumber Co.*, 113 SCRA 107 (1982).

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