

DIESEL CONSTRUCTION COMPANY, INC., PETITIONER, VS. JOLLIBEE FOODS CORPORATION, RESPONDENT.

G.R. No. 136805. January 28, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The execution of a judgment pending appeal is an exception to the general rule that only a final judgment may be executed. An exceptional execution must be founded on "good reason," which rests on sound judicial discretion. The alleged financial distress of the prevailing juridical entity is not, by itself, a "good reason."

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the September 21, 1998[1] and the December 22, 1998[2] Resolutions of the Court of Appeals in CA-GR CV No. 59486. The first Resolution disposed as follows:[3]

"WHEREFORE, premises considered, the court a quo is hereby directed to issue the corresponding writ of execution upon the posting by [petitioner] and its approval of a bond in the sum of P10,000,000.00 which writ of execution shall however be stayed upon x x x filing [by the respondent] of a supersedeas bond in the amount of P15,000,000.00 conditioned upon the performance of the judgment in case it shall be finally sustained in whole or in part."

The second assailed Resolution denied petitioner's Motion for Reconsideration.[4]

The Facts

On December 18, 1991, Petitioner Diesel Construction Company, Inc. (DCCI) instituted before the Regional Trial Court (RTC) of Makati City, Branch 61,[5] an action[6] for the recovery of escalated construction costs in the aggregate sum of P4.3 million, which it had allegedly incurred in the construction of buildings located in Batangas City and in the Municipality of Calamba, Laguna, owned by Respondent Jollibee Food Corporation (JFC). For the alleged failure of petitioner to complete these projects on time, JFC counterclaimed, in its Answer, recovery of damages and attorney's fees in the sum of P2.7 million.

At the pretrial, the parties agreed to reduce the issues to (1) whether DCCI had completed the Calamba and the Batangas City projects on time, and (2) whether DCCI was entitled to escalated construction costs.

After trial, the RTC rendered its judgment dated May 13, 1997, ruling that DCCI had completed both projects on time and was entitled to escalated construction costs. The dispositive portion of the judgment reads:

"WHEREFORE, premises considered, judgment is hereby rendered for [petitioner] as against [respondent which] x x x is hereby ORDERED, as follows:

1)

For the Calamba project, to pay [petitioner] the amount of P899,940.45 with interest of twelve (12%) per centum per annum computed from the time of the filing of the case;

2)

For [the] Batangas City project, the amount of P3,000,677.28 with interest at the rate of twelve (12%) per centum per annum computed from the time of filing of this case;

3)

To pay x x x the sum of P400,000.00 as and by way of attorney's fees; and,

4)

To pay the cost of suit."^[7]

Contending that the RTC failed to order payment of extra work done, DCCI filed on July 14, 1997, a Notice of Appeal; and on July 7, 1997, a Motion for Execution Pending Appeal. In said Motion, it cited as "good reasons" its financial distress as a small business and -- to answer for damages JFC might sustain by reason of the grant of the Motion -- the posting of a bond equivalent to 20 percent of the total amount due. Respondent likewise filed its own Notice of Appeal on July 31, 1997, and actively opposed petitioner's prayer for execution pending appeal.

In a Special Order dated December 4, 1997, the trial court nevertheless allowed execution pending appeal on the finding that (1) DCCI was, as a matter of right, entitled to the payment of escalation cost; (2) JFC's appeal was interposed only to delay payment; and (3) petitioner would post a bond equivalent to 150 percent of the total amount of the judgment.^[8]

On January 16, 1998, JFC filed a Motion for Reconsideration with an alternative prayer that it be permitted to post a supersedeas bond pursuant to Section 3, Rule 39 of the Rules of Court. In its Order dated March 19, 1998, the RTC denied the Motion for Reconsideration on the ground that the filing of a counterbond was premature, as DCCI had yet to file its own bond.^[9] In view of both parties' appeals, the trial court forwarded the original records of the case to the appellate court for further proceedings.^[10]

On August 12, 1998, DCCI filed with the Court of Appeals a "Motion for Issuance of Premature Writ of Execution"^[11] grounded on the arguments that (1) the Special Order of December 5, 1997 had become final and executory for failure of JFC to seasonably question its propriety; and (2) DCCI was ready to file the required bond. In petitioner's own words, it was "[r]eady, willing and able to post a surety bond to be issued by Development Surety and Insurance Company, Incorporated in favor of [respondent] in the sum of P10.6 million or equivalent to 150% of the judgment award amounting to P7,079,038.07 to answer for any damages-that may be caused to [respondent] by the wrongful issuance thereof."^[12] In response to DCCI's Motion, JFC filed a Comment With Motion to Stay Execution By The Posting Of Supersedeas Bond.^[13]

As earlier adverted to, the CA, in its assailed Resolution of September 21, 1998,^[14] directed the RTC to issue a writ of execution upon petitioner's posting of a P10 million bond, and to stay execution upon respondent's filing of a supersedeas bond of P15 million. DCCI filed a Motion for Reconsideration of this Resolution insofar as it allowed a stay of execution, which Motion the CA denied for lack of merit in the questioned Resolution of December 22, 1998.^[15]

Ruling of the Court of Appeals

In the first assailed Resolution, the Court of Appeals ordered immediate execution because JFC had failed to question by certiorari the Special Order granting it. However, as the liability of the respondent was yet to be

determined on appeal, the CA granted a stay of execution upon respondent's posting of a supersedeas bond.

In the second assailed Resolution, the appellate court denied petitioner's Motion for Reconsideration of the stay of execution, because of "attendant circumstances x x x recited in the assailed resolution, viz." [16]

"x x x Firstly, [respondent] first addressed [its] motion to stay execution to the court a quo which considered it as premature because [petitioner] has not as yet posted the required bond. Secondly, by the time [petitioner] was ready to post the bond, the records had already been transmitted to this Court. x x x [Petitioner] filed with this Court its 'Motion for Issuance of Premature Writ of Execution', dated July 28, 1998. And this probably prompted [respondent] to reiterate its motion to stay execution by posting of supersedeas bond. Having thus prodded this Court to act on its motion of July 28, 1998, it could not prevent it from acting on [respondent's] motion to stay execution, which is but an offshoot of its own motion."

The CA also rejected the imputation of forum-shopping. It held that when the petitioner posted the bond, the respondent could not file with the trial court its own motion to post a supersedeas bond since the records had already been elevated to the CA.

Hence, this Petition. [17]

The Issues

In its Memorandum, [18] the petitioner raises the following issues: [19]

- Whether or not under Section 3, Rule 39, of the Rules of Court an appellate court like the Honorable Court of Appeals has discretionary power to stay the discretionary execution issued by the trial court;
- Whether or not a party in whose favor the discretionary execution was issued may be estopped by attendant circumstances from assailing the lack of authority/discretionary power of the appellate court to stay the discretionary execution issued by the trial court;
- Whether or not the pendency of the appeal is a just and proper ground to stay the discretionary execution of a judgment under Section 3, Rule 39 of the Rules of Court;
- Whether or not the holding of the trial court that the Motion to Stay Execution by the Posting of A Supersedeas Bond is prematurely filed constitutes a denial thereof; and,
- Whether or not the re-filing of the immediately preceding Motion with the Honorable Court of Appeals constitutes forum-shopping."

In its own Memorandum, [20] respondent raises the procedural issue of whether recourse under Rule 45 is the proper remedy to question an Order granting a stay of execution pending appeal.

In sum, the parties raise the following issues: (1) whether a petition for review under Rule 45 is the proper remedy to question an order staying execution pending appeal; (2) whether the CA has jurisdiction to issue such order, and whether estoppel barred petitioner from questioning the former's jurisdiction; (3) whether the pendency of an appeal or the posting of a supersedeas bond justifies a stay of execution pending appeal; and (4) whether respondent is guilty of forum-shopping.

The Court's Ruling

We find no reason to grant execution pending appeal.

First Issue:

Interlocutory Orders

A petition for review under Rule 45 is the proper remedy to question final judgments, not interlocutory orders, of the Court of Appeals. We agree with respondent that the assailed Resolutions granting a stay of execution are interlocutory orders; therefore, Rule 45 is not the proper vehicle to assail them before this Court.[21] The RTC Decision, which has ruled on petitioner's entitlement to escalated construction cost, was challenged in the original appeal before the CA, where the case is still pending.

On the other hand, the subjects of this Petition are the Resolution dated September 21, 1998, insofar as it granted a stay of execution pending appeal; and that of December 22, 1998, which denied reconsideration of the first order. These Resolutions do not constitute "final orders or resolutions," as explained in *De Ocampo v. Republic*, from which we quote:

"An order is deemed final when it finally disposes of the pending action so that nothing more can be done with it in the lower court (*Mejia v. Alimorong*, 4 Phil. 572; *Insular Government v. Roman Catholic Bishop of Nueva Segovia*, 17 Phil. 487; *People v. Macaraig*, 54 Phil. 904). In other words, a final order is that which gives an end to the litigation (*Olsen & Co. v. Olsen*, 48 Phil. 238). The test to ascertain whether an order is interlocutory or final is: does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final (*Moran*, *Comments on the Rules of Court*, Vol. 1, 3rd ed. pp. 806-807). A final order is that which disposes of the whole subject-matter or terminates the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined (2 Am. Jur., section 22, pp. 861-862). (*Reyes v. De Leon*, G.R. No. L-3720, June 24, 1952)."[22]

Interlocutory orders are those that determine incidental matters which do not touch on the merits of the case or put an end to the proceedings. It is well-settled that a petition for certiorari under Rule 65,[23] not Rule 45, is the proper remedy to question an improvident order granting execution pending appeal and thereby relieve the adverse party from the immediate effects thereof. The same principle applies to a stay of such execution.

Under Rule 45 of the Rules of Court, review by this Court of a judgment, a final order or a resolution is discretionary.[24] It is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons for it. Some of these reasons are: (1) when the court a quo has decided a question of substance, which has not theretofore been determined by the Supreme Court, or when it has decided it in a way probably not in accord with law or with the applicable decisions of the Court; or (2) when the court a quo has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.[25]

Before granting a petition due course or outrightly striking it down, the Court reserves the right to hear the side of the adverse party(ies). For this purpose, it may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within periods and under conditions which it may consider appropriate.[26]

Hence, in its Resolution of March 10, 1999, this Court required the respondent to comment on the Petition and expunged the latter's Motion to Dismiss and petitioner's Comment/Opposition to the said Motion. Section 5 of Rule 56 allows the filing of a motion to dismiss, but such motion may not be entertained if this Court, in the exercise of its sound discretion, requires respondent to comment.

Be that as it may, in the exercise of our judicial discretion, we shall treat this matter as a petition for certiorari under Rule 65 of the Rules of Court, in order to resolve the substantive and important issues being raised.

Second Issue:

Discretionary Jurisdiction

Petitioner argues that under Section 3 of Rule 39, the discretionary power to order a stay of execution is "compartmentalized" in the court that granted execution pending appeal. Petitioner further contends that when it

filed its Motion for Issuance of Premature Execution, it effectively asked the CA to perform a ministerial duty to implement the trial court's Special Order.

We disagree. The CA may not be compelled to enforce a Special Order issued by the trial court.[27] The CA has its own separate and original discretionary jurisdiction to grant or to stay execution pending appeal, except in civil cases decided under the Rules on Summary Procedure and in other cases when the law or the Rules provide otherwise.[28] This writ of execution is similar to that which a regional trial court may issue for the protection and the preservation of the parties' rights that do not involve any matter being litigated in the appeal pursuant to Section 2, Rule 39 of the Rules.[29]

Rule 39 of the 1997 Rules states:

"SEC. 2. Discretionary execution.—

"(a) Execution of a judgment or 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.

"x x x x x x x x.

"SEC. 3. Stay of discretionary execution.—Discretionary execution issued under the preceding section may be stayed upon approval by the proper court of a sufficient supersedeas bond filed by the party against whom it is directed, conditioned upon the performance of the judgment or order allowed to be executed in case it shall be finally sustained in whole or in part. The bond thus given may be proceeded against on motion with notice to the surety."

The foregoing sections mean that after the perfection of the appeal and the transmittal of the records, the trial court loses jurisdiction over the case. Henceforth, it may no longer grant a motion for, or issue a writ of immediate execution;[30] to do so would be an abuse of discretion.

While it is true that the trial court granted the Motion of the petitioner for execution pending appeal, it did not actually issue a writ of execution, because the latter had failed to comply with the Special Order proviso requiring the posting of a bond. Eventually, two separate appeals filed by both parties were perfected, and the records of the case were transmitted by the RTC to the CA. From then on, the trial court lost jurisdiction to issue the said writ. When the petitioner asked the CA for the issuance of the writ at the time, it thereby invoked the original discretionary jurisdiction of the latter to grant execution pending appeal.

Petitioner argues that its filing with the CA of the Motion for Issuance of Premature Execution did not bar it from questioning the appellate court's jurisdiction to order a stay of execution. Petitioner may be correct, but it is equally true that, as previously stated, the law vests the CA with jurisdiction to grant or deny discretionary execution, with or without estoppel on the part of the former.[31]

Petitioner argues that the questioned CA Resolution granting a stay of execution pending appeal violates the judicial policy against the splitting of jurisdiction, because the execution had already been granted by the trial court. This contention is untenable. The wrong notion arises from the mistaken insistence that the CA must

implement the RTC Order. In this light, it becomes clear that the appellate court committed no splitting of jurisdiction. Verily, it used its own authority under the Rules to issue the said Resolution.

Third Issue:

Discretionary Execution Pending Appeal

In its assailed September 21, 1998 Resolution, the Court of Appeals ordered the stay of execution pending appeal upon the filing of a supersedeas bond on the ground that respondent's liability still has to be determined. It held: "Considering however that [respondent's] liability, if any, still has to be determined in this appeal, the Court deems it just and proper to allow [respondent] to post a bond to stay the discretionary execution pursuant to Section 3, Rule 39 of the 1997 Rules of Civil Procedure." [32]

In challenging this ruling, petitioner reasons that "the uncertainty of the outcome of the appeal cannot be deemed a just and proper ground to stay the immediate execution of the judgment appealed from." [33] Citing *Mapua v. David*, [34] it posits that the manifest validity or frivolity of the appeal are of no moment in the determination of whether execution should be stayed or not. In that case, this Court held that "the merits of the case should not be determined at this stage of the proceedings, in advance of the appeal taken by both parties from the judgment rendered by respondent court in the principal case." [35] Petitioner further maintains that "the immediate execution of the judgment appealed from is founded on paramount and compelling reasons of urgency and justice that outweigh the security offered by the supersedeas bond x x x." [36] Otherwise stated, petitioner's contention is that the order of the CA cannot be grounded on the bare allegations (1) that an appeal is pending and (2) that respondent will file a supersedeas bond.

In addressing this issue, the Court must stress that the execution of a judgment before its finality must be founded upon good reasons. The yardstick remains the presence or the absence of good reasons consisting of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later. Good reason imports a superior circumstance that will outweigh injury or damage to the adverse party. [37] In the case at bar, petitioner failed to show "paramount and compelling reasons of urgency and justice." Petitioner cites as good reason merely the fact that "it is a small-time building contractor that could ill-afford the protracted delay in the reimbursement of the advances it made for the aforesaid increased costs of x x x construction of the [respondent's] buildings." [38]

Petitioner's allegedly precarious financial condition, however, is not by itself a jurisprudentially compelling circumstance warranting immediate execution. The financial distress of a juridical entity is not comparable to a case involving a natural person -- such as a very old and sickly one without any means of livelihood, [39] an heir seeking an order for support and monthly allowance for subsistence, [40] or one who dies.

Indeed, the alleged financial distress of a corporation does not outweigh the long standing general policy of enforcing only final and executory judgments. Certainly, a juridical entity like petitioner corporation has, other than extraordinary execution, alternative remedies like loans, advances, internal cash generation and the like to address its precarious financial condition.

Having come to the conclusion that extraordinary execution is not proper, the Court finds no more need to determine whether the filing of a supersedeas bond is, by itself, sufficient reason to stay the execution of a judgment pending appeal, because such issue has become moot. As a rule, "courts will not determine a moot question or abstract proposition or express an opinion in a case in which no practical relief can be granted." [41] While there are exceptions to this general principle, none exists in the factual milieu of the present controversy.

Fourth Issue:

Forum-Shopping

The trial court denied respondent's Motion for a stay of execution; hence, petitioner avers that the re-filing of a similar Motion before the CA constituted forum-shopping.

This allegation is incorrect. The trial court did not pass upon the merits of the Motion for a stay of execution filed by the respondent. In its Order dated March 19, 1998, it held that respondent's offer to file a counterbond was premature, inasmuch as the petitioner had yet to file its own bond. Instead of resolving the Motion on its merits, the RTC elected to forward the records of the case to the CA. As a consequence, the denial of JFC's Motion for Reconsideration of the RTC's Special Order granting immediate execution cannot be construed as a denial of the Motion to Stay Execution.

In the appellate court, the respondent cannot be faulted for moving for a stay of the execution, because the petitioner had submitted the issue of immediate execution for the CA's consideration. This was not a willful act of shopping for a responsive forum, as the respondent was not initiating in another forum an action or motion designed to trifle with the orderly administration of justice. Rather, it was an act of protecting its own interest at the proper time and opportunity.

As already stated, the appellate court is authorized by the Rules to order or to stay execution pending appeal upon good reason. DCCI's alleged financial distress, by itself, is not a compelling reason to order immediate execution. On the other hand, mere filing by JFC of a supersedeas bond does not automatically entitle it to a stay of execution.

WHEREFORE, the assailed Resolutions are SET ASIDE. This Court finds no "good reasons" to grant extraordinary execution in the context of the present case. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 45-46. Penned by J. Artemio G. Toquero and concurred in by JJ. Arturo B. Buena (now a member of this Court) and Eubolo G. Verzola.

[2] Rollo, pp. 49-50. Penned by J. Toquero and concurred in by JJ. Verzola and Renato C. Dacudao.

[3] Rollo, p. 46.

[4] Rollo, p. 50.

[5] Presided by Judge Fernando V. Gorospe Jr.

[6] Docketed as Civil Case No. 91-3480.

[7] Rollo, p. 14.

[8] Rollo, pp. 15-16.

[9] Rollo, p. 58.

[10] The trial court forwarded the records to the CA on May 27, 1998.

[11] Rollo, pp. 51-57.

[12] Rollo, p. 56.

[13] Rollo, p. 19.

[14] Rollo, p. 46.

[15] Rollo, p. 50.

[16] Rollo, p. 49.

[17] The case was deemed submitted for decision upon this Court's receipt of the Memorandum for the Petitioner on October 27, 1999. Respondent's Memorandum had been filed earlier.

[18] Signed by Atty. Antonio G. Conde of Conde and Associates, counsel for the petitioner.

[19] Rollo, pp. 239-240.

[20] Signed by Atty. Romarico I. Gatchalian of Alampay Gatchalian Mawis & Alampay, counsel for the respondent.

[21] *Romualdez v. Sandiganbayan*, 244 SCRA 152, 159, May 16, 1995.

[22] 9 SCRA 440, 443, October 31, 1963, per Bautista Angelo, J.

[23] *BF Corporation v. EDSA Shangri-La Hotel & Resort, Inc.*, 294 SCRA 109, 117-118, August 11, 1998; *David v. Court of Appeals*, 276 SCRA 424, 430, July 28, 1997; *Provident International Resources Corporation v. Court of Appeals*, 259 SCRA 510, 522, July 26, 1996.

[24] Section 6, Rule 45 of the 1997 Rules of Court.

[25] *Ibid.*

[26] Section 7, Rule 45, Rules of Court.

[27] See Section 6, Rule 135, Rules.

[28] Rule 51 of the Rules of Court provides:

"Sec. 11. Execution of judgment.—xxx.

"x x x x x x x x

"In appealed cases, where the motion for execution pending appeal is filed in the Court of Appeals at a time that it is in possession of the original record or the record on appeal, the resolution granting such motion shall be transmitted to the lower court from which the case originated, together with a certified true copy of the judgment or final order to be executed, with a directive for such court of origin to issue the proper writ for its enforcement."

Likewise, Rule 42 of the Rules reads:

"SEC. 8. Perfection of appeal; effect thereof.—x x x

"The Regional Trial Court loses jurisdiction over the case upon the perfection of the appeal filed in due time and the expiration of the time to appeal of the other parties.

"However, before the Court of Appeals gives due course to the petition, the Regional Trial Court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with section 2 of Rule 39, and allow withdrawal of the appeal.

"(b) Except in civil cases decided under the Rule on Summary Procedure, the appeal shall stay the judgment or final order unless the Court of Appeals, the law, or these Rules shall provide otherwise."

[29] Section 8(a), Rule 42, Rules of Court.

[30] *Abrasaldo v. Fernandez*, 97 Phil. 964, 964-965, May 30, 1955; *Viuda de SyQuia v. Concepcion*, 60 Phil. 186, 192, May 26, 1934; *De la Fuente v. Jugo*, 76 Phil. 262, 264-265, March 12, 1946. Cf. *Sonida Industries, Inc. v. Wasan Sr.*, 179 SCRA 763, 768, December 4, 1989; *Belgado v. Intermediate Appellate Court*, 147 SCRA 258, 261, January 12, 1987; *Abe Industries, Inc. v. Intermediate Appellate Court*, 162 SCRA 48, 50, June 8, 1988; *Universal Far East Corp. v. Court of Appeals*, 131 SCRA 642, 646, August 31, 1984.

[31] Section 8(a), Rule 42, Rules of Court.

[32] *Rollo*, p. 46.

[33] *Rollo*, p. 254.

[34] 77 Phil. 131, 132-133, August 30, 1946.

[35] *Mapua v. David*, *ibid.*, per Moran, CJ.

[36] *Rollo*, p. 254.

[37] *Sanz Maceda Jr. v. Development Bank of the Philippines*, GR No. 135128, August 25, 1999, pp. 10-11.

[38] Memorandum for the Petitioner, p. 32; *Rollo*, p. 255.

[39] *De Borja v. Encarnacion*, 89 Phil. 239, 244-245, May 30, 1951; *De Leon v. Soriano*, 95 Phil. 806, 815, September 17, 1954.

[40] *People's Bank & Trust Co. v. San Jose*, 96 Phil. 895, 898-899, April 29, 1955.

[41] *City Sheriff, Iligan City v. Fortunado*, 288 SCRA 190, 195, March 27, 1998, per Martinez, J.

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