

EMBASSY OF THE ISLAMIC REPUBLIC OF IRAN AND SIROS SOLATI, PETITIONERS, VS. FOP CORPORATION, FELIX O. PONTINO, AND JOVER D. PONTINO, RESPONDENTS.D

G.R. No. 145043. February 13, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari to set aside the Resolutions of the Court of Appeals dated August 8, 2000 and September 27, 2000 in CA-G.R. SP No. 59781 entitled Embassy of the Islamic Republic of Iran and Siros Solati, petitioners versus The Hon. Jose S. Majaducon, FOP Corporation, Felix O. Pontino, and Jover D. Pontino.

The present action stemmed from a Fishery and Management Contract entered into by the Industrial Fishing Company of Iran (IFCO) and respondent FOP Corporation (FOP) on March 8, 1996. The contract provides for the delivery of two (2) Tuna Purse Seiner Vessels, the F/V Azadegan 1 and the F/V Azadegan 2, by IFCO to FOP. The latter shall have full control and management over the fishing vessels for a period of forty-eight (48) months. In return, FOP will guarantee at least 5,000 tons of tuna per vessel and IFCO shall be entitled to forty percent (40%) of the proceeds of the sale thereof.

On January 6, 1997, FOP and IFCO executed a Memorandum of Agreement terminating the Fishery and Management Contract, paragraph 4 of which provides:

4. FOP shall immediately remit the money due to IFCO equivalent to 40% of the proceeds of the fishing venture through the account in Manila which will be nominated by IFCO, with best efforts commitment on FOP to transfer half of the said money within ten (10) days after the signing of this Agreement and the balance will be transferred within 10 days thereafter.[1]

In accordance with the aforementioned provision, IFCO nominated the Embassy of the Islamic Republic of Iran as payee. Petitioners herein allege before this Court that respondent FOP issued checks to the Iranian Embassy, but said checks were dishonored upon presentment for payment.[2] On the other hand, in their Memorandum,[3] respondents aver that FOP, through its manager, Jover Pontino, already paid IFCO, through its representative, Siros Solati. Allegedly, Jover Pontino paid Siros Solati on January 14, 1997 the amount of P2.5 million, representing fifty percent (50%) of IFCO's share in the fish gross sales of F/V Azadegan 1 and F/V Azadegan 2. Respondents further claim that on the same date, Siros Solati requested Jover Pontino that payment of the remaining balance of P2.5 million be made to the Embassy of the Islamic Republic of Iran in Manila. Jover Pontino allegedly complied with the request and on the very same day, went to the PCI Bank in General Santos City to make arrangements for a telegraphic transfer of the remaining balance of P2.5 million to the account of the Iranian Embassy in Manila. Respondent herein Jover Pontino claims that he completed payment of P5 million pesos on that day.

Respondents also allege that on February 10, 1997, petitioner herein, Siros Solati returned to General Santos City

and informed Jover Pontino that IFCO, with the assistance of the Iranian Embassy, will demand from Philippine government agencies that respondents herein be prosecuted for failing to secure the necessary permits for the Fishery and Management Contract. Allegedly, petitioner Solati refused to leave respondents alone unless Jover Pontino issue two (2) postdated checks in favor of the Iranian Embassy. Hence, Jover Pontino allegedly buckled under such pressure and issued the two checks just so that petitioner Solati would not pursue any criminal action against FOP.

On September 23, 1997, the Iranian Embassy served upon respondents a letter of demand which stated that it will file a criminal action against respondents for ordering to stop the payment on the abovementioned checks. On August 4, 1998, the Iranian Embassy filed with the City Prosecutor's Office in Makati City a criminal complaint against Jover Pontino for violation of Batas Pambansa Blg. 22 or the Bouncing Checks Law. Meanwhile, on October 14, 1998, respondents filed a complaint for Annulment of Document and/or Negotiable Instrument with Damages against the Iranian Embassy and Siros Solati with the Regional Trial Court (RTC) of General Santos City. On October 26, 1998, two informations for violation of BP 22 were filed before the MTC of Makati City against Jover Pontino, who in turn, filed a Motion to Suspend the proceedings before it on the ground that prejudicial questions are being raised in the case pending before the RTC of General Santos City. On January 12, 1999, the Iranian Embassy and Siros Solati filed their Answer with Counterclaim before the RTC of General Santos City. Subsequently, respondents herein filed before the RTC of General Santos City an Amended Complaint[4] dated March 25, 1999 impleading IFCO as an indispensable party. The trial court ordered petitioners herein to file their Answer to the Amended Complaint. However, the Iranian Embassy and Siros Solati filed instead a Motion to Dismiss alleging that the Iranian Embassy is immune from suit and that the trial court did not acquire jurisdiction over the person of Siros Solati since summons were improperly served upon him.[5] The trial court, in an Order dated February 16, 2000, denied the said motion. The pertinent portion of the said Order states:

Under the law[,] when a foreign government enters into a contract with a person, it waives its immunity from suit. In the instant case, defendant Embassy of Iran waived its immunity from suit when it became the payee of a check. Besides, defendants have already filed an answer to the original complaint. The amended complaint merely added a new defendant, the Industry Fishing Company of Iran.

WHEREFORE, the motion to dismiss is DENIED.[6]

Petitioners herein received a copy of the Order on March 15, 2000. They filed a Motion for Reconsideration on March 24, 2000, but the same was denied in an Order dated April 19, 2000. Petitioners herein received the denial of the Motion for Reconsideration on May 22, 2000.

On July 19, 2000, petitioners herein filed a Petition for Certiorari under Rule 65 of the Rules of Court with the Court of Appeals (CA), which dismissed the said petition in a Resolution dated August 8, 2000 on the ground that it was filed beyond the reglementary period. Petitioners filed a timely Motion for Reconsideration on August 17, 2000. However, the motion was still denied by the CA in another Resolution dated September 27, 2000.

Hence, the present petition raising the following issues:

1. WHETHER OR NOT THE RULES OF PROCEDURE CAN BE RELAXED TO ATTAIN SUBSTANTIAL JUSTICE.
2. WHETHER OR NOT THE COURT A QUO ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED THE MOTION TO DISMISS AND THE MOTION FOR RECONSIDERATION FILED BY PETITIONERS-DEFENDANTS.
3. WHETHER OR NOT THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION

AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT THE EMBASSY OF THE ISLAMIC REPUBLIC OF IRAN WAIVED ITS IMMUNITY FROM SUIT.

4. WHETHER OR NOT THE LOWER COURT ACQUIRED JURISDICTION OVER THE PERSON OF SIROS SOLATI.

5. WHETHER OR NOT THE ORIGINAL COMPLAINT WAS NOT SUPERSEDED BY THE AMENDED COMPLAINT.[7]

We must first resolve the threshold issue of whether or not the rules of procedure may be given retroactive effect so that petitioners herein may be deemed to have filed their Petition for Certiorari before the Court of Appeals within the reglementary period.

Originally, Section 4, Rule 65 of the 1997 Rules of Procedure provided:

Sec. 4. Where and when petition to be filed. — The petition may be filed not later than sixty (60) days from notice of judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its jurisdiction or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

This Court later issued a Resolution en banc dated July 21, 1998 wherein the aforementioned provision was amended by adding the following paragraph:

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

This Court further amended the same provision in A.M. No. 00-2-03-SC, which took effect on September 1, 2000. The provision now reads:

Sec. 4. When and where petition filed. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. [Emphasis supplied]

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

In *Systems Factors Corporation v. NLRC*,^[8] this Court declared that the amendment introduced under A.M. No. 00-2-03-SC is procedural or remedial in character, as it does not create new or remove vested rights, but only operates in furtherance of the remedy or confirmation of rights already existing. Procedural laws may be given

retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure. In the present case, when the amendment providing that when a motion for reconsideration or new trial is filed, the sixty (60) day period shall be counted from notice of the denial of said motion took effect on September 1, 2000, the petition for certiorari before the CA was still pending and undetermined.

Having thus concluded, the Court need not take up the other issues raised.

WHEREFORE, the Resolutions of the Court of Appeals on August 8, 2000 and September 27, 2000 in CA-G.R. SP No. 59781 are hereby SET ASIDE, and the case is REMANDED to the Court of Appeals for further proceedings. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Carpio, JJ., concur.

- [1] Memorandum of Agreement, p. 2; Rollo, pp. 52-53.
- [2] Petitioners' Memorandum, p. 143; Rollo, pp. 140-159.
- [3] Respondents' Memorandum, pp. 171-172; Rollo, pp. 161-182.
- [4] Annex "G" of the Petition; Rollo, pp. 66-77.
- [5] Annex "I" of Petition; Rollo, pp. 79-88.
- [6] Annex "L" of the Petition; Rollo, p. 94.
- [7] Petition for Review on Certiorari, p. 9; Rollo, p. 17.

[8] 346 SCRA 149 (2000).

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