

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSEPH ARCACHE, ET AL, DEFENDANTS AND APPELLANTS.

G.R. No. 15547. February 29, 1964

Ponente: DIZON, J.

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DIZON, J.:

On July 7, 1958, the Republic of the Philippines filed an action against Joseph Arcache and the Globe Assurance Company, Inc. for the forfeiture of the surety bond executed by them (Arcache, as principal, and the Globe Assurance Company, Inc., as surety) to secure payment of the sum of P22,241.41 representing Arcache's income tax for the year 1946 and surcharge, plus 1% monthly interest on the income tax proper amounting to P18,289.71, from June 21, 1954 to August 31, 1956.

Arcache, after admitting some of the averments made in the complaint and denying others, interposed the defense of prescription, and alleged further that he was "compelled against his will" to execute the surety bond sought to be forfeited, because the Bureau of Internal Revenue refused to issue him a tax clearance - which he needed to make a business trip abroad - unless he executed said bond to secure payment of his alleged tax obligation.

The separate answer filed by the Globe Assurance Company, Inc. likewise admitted some of the averments made in the complaint and denied the others, and further alleged that it adopted the defense of fact and law raised by its co-defendant; that the surety bond sought to be forfeited became null and void as against it after the lapse of one year from the date of its execution, for lack of consideration, Arcache not having paid the required premium thereon for the second year; and that, at any rate, it could not pay its obligation under the aforesaid surety bond because of the injunction issued against it by the Court of First Instance of Manila in Civil Case No. 30844. By way of cross-claim, it sought Judgment against its co-defendant for the entire amount that it might be sentenced to pay to the plaintiff by reason of the surety bond heretofore mentioned, plus the sum of P863.43 as unpaid premium on said bond.

Arcache was declared in default on the cross-claim, and after receiving cross-plaintiffs evidence thereon, the lower court rendered judgment as follows:

"WHEREFORE, the Court hereby renders judgment on the cross-claim filed by defendant Globe Assurance Company, Inc. against its co-defendant, Joseph Arcache, sentencing the cross-defendant to pay the cross-claimant whatever amount may be adjudged against it in favor of the plaintiff, with interest thereon at the legal rate from the date of payment by cross-claimant until fully paid by the cross-defendant; to pay the accrued premiums on the ordinary bond for payment of taxes at the rate of P450.49 per annum or fraction thereof, also with interest at the rate of 12% per annum from the time the same became due and payable; and to pay an amount equivalent to 15% of the total sum due to the Globe Assurance Company, Inc.. by way of attorney's fees. With costs against the cross defendant."

After trial on the issues arising from the main case, the lower court also rendered judgment on April 27, 1959, the dispositive part of which is as follows:

"WHEREFORE, the Court hereby renders judgment in favor of the plaintiff and against the defendants, ordering said defendants to pay plaintiff, jointly and severally, thru the Commissioner of Internal Revenue, the sum of P22,524.41, plus interest on the income tax proper of P18,289.81 at the rate of 12% per annum from September 1, 1956 until the same is fully paid, and to pay the costs."

From the judgment last mentioned, Arcache appealed claiming that (a) the lower court erred in not sustaining his defense of prescription and (b) in holding that, by executing the surety bond to secure the payment of the income tax allegedly due from him, he thereby acknowledged his tax liability.

The evidence discloses that on March 1, 1947, appellant filed his income tax return for the year 1946, which showed a loss in the amount of P2,272.23 (Exh. B). Subsequent investigations revealed, however, that in 1946 he had an unexplained increase in net worth, this prompting the Bureau of Internal Revenue to use the "net worth method" in determining his true income for said year. As a result, the corresponding assessment was issued against him in 1948. Upon his petition, several re-investigations of his income tax liability were thereafter made, until finally in 1952 an assessment for P63,536.40 was issued against him as income tax for 1946. (Exh. C) Not satisfied with the result, Arcache asked for a further re-examination of his case with a view to deducting the sum of P60,000—representing advances for goodwill, priority privilege etc— from his 1946 net income for that year amounting to P137,944.00. The Bureau of Internal Revenue obliged and made another re-investigation, this resulting in the finding that appellant's income in 1946, represented by his increase in net worth, amounted to P77,944.00. Accordingly, on September 16, 1953, the Bureau assessed against him the amounts of P19,080.96 and P9,540.48 as income tax, and 50% surcharge, respectively (Exh. D-1).

On October 29, 1953, appellant wrote a letter to the Collector of Internal Revenue thanking him and his staff "for having re-examined the assessments and having found that what he really owed the internal revenue office is P19,080.96 instead of previous assessments," adding that as already manifested in previous letters, he was "willing to pay the amounts stipulated above minus of course the P2,000 I already paid your office on account of said assessments". He, however, asked for the elimination of the 50% surcharge amounting to P9,540.48 on the ground that his refusal to pay the tax was due to a mere misunderstanding and not to any intention to defraud. Again, this request was granted, and on December 9, 1953, another demand was made upon him for the payment only of the sum of P19,080.96 representing the tax proper of. his income tax liability for 1946, plus "the delinquency penalties incident to late payment" and the additional sum of P133.501 as advertising expenses incurred by the Bureau in the publication of the notice of sale of his real properties (Exh. F-1).

On December 28 of the same year, appellant wrote another letter to the Deputy Collector of Internal Revenue reminding him of the previous payment of P2,000 on account of his 1946 income tax liability of P19,080.96, and requesting for an extension of one-hundred twenty days within which to pay the balance of P17,080.96 plus the 5% surcharge and the monthly interest of 1%. (Exh. F)" Although this request was also granted, appellant failed to pay within the extension granted. Instead, on June 17, 1954, he remitted to the Bureau of Internal Revenue a P1,000.00 check as partial payment of his tax liability "in sign of good faith", and requested another extension to pay the balance to give him time to sell any of his properties in order to "liquidate once and for all my obligations to the Internal Revenue". (Exh. H)

On August 23, 1955, appellant, as principal, and the Globe Assurance Company, Inc., as surety, executed the surety bond Exhibit A to secure payment of the former's tax liability then amounting to P22,524.41. They bound themselves, jointly and severally, to pay the aforesaid amount and "to cover full payment of the obligation of Joseph Arcache to the Bureau of Internal Revenue for income tax, surcharge and interest computed under the inventory method, to be paid on or before August 31, 1956", and to pay to the Republic of the Philippines whatever additional penalties may accrue on account of their failure to pay each installment as it falls due.

While appellant contends that the above mentioned bond was secured from him through coercion imposing its execution as a condition for the issuance to him of a tax clearance required in connection with a trip abroad he intended to make, the Bureau of Internal Revenue contends that the bond was required to get assurance of payment in view of appellant's repeated failure to comply with his promise to settle his tax liability. The issue thus arising is, however, immaterial because even assuming that the bond was filed for the reason alleged by petitioner, it seems obvious that the Bureau of Internal Revenue was perfectly within its right in demanding the filing of the bond as a condition for the issuance of the tax clearance for appellant.

Subsequently, that is on August 31, 1956, appellant proposed to assign to the Bureau of Internal Revenue his rights, title and interest in the amount of P20,713.00 allegedly due to him from the Department of Labor as rentals in arrears, in partial satisfaction of his tax obligation, but the proposition was rejected, the Bureau granting petitioner instead another extension provided he filed with, to ten days another surety bond with the conditions specified in its letter of September 4, 1956 (Exh. M). Appellant, after obtaining two extensions of time, failed to file the bond. Consequently, a final demand on him and his surety for the settlement of their obligation under the bond of August 23, 1955' (Exhibits 0-1 and P) was made, and when they both failed to do so, the present case was filed.

In the light of the undisputed facts stated heretofore we are of the opinion that¹ appellant is now barred from invoking the defense of prescription.

In the first place, it appears obvious that the delay in the collection of his 1946 tax liability was due to his own repeated requests for reinvestigation and similarly repeated requests for extension of time to pay. This case, therefore, falls clearly within the purview of our ruling in *Collector of Internal Revenue vs. Suyoc Consolidated Mining Company, et al.* (104 Phil., 819) to this effect:

"While we may argue with the Court of Tax Appeals that a mere request for re-examination or reinvestigation may net have the effect of suspending the running of the period of limitation for in such a case there is need of a written agreement to extend the period between the Collector and the taxpayer, there are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government. And when such situation comes to pass there are authorities that hold, based on weighty reasons, that such an attitude or behavior should not be countenanced if only to protect the interest of the Government."

"This case has no precedent in this jurisdiction for it is the first time that such has arisen, but there are several precedents that may be invoked in American jurisprudence. As Mr. Justice Cardoso has said: 'The applicable principle is fundamental and unquestioned. 'He who prevents a thing from being done may not avail himself of the non-performance which he has himself occasioned, for the law says to him in effect 'this is your own act and therefore you are damnified.' (R.H. Stearns Co. v. U.S., 78 L. ed., 647). Or, as was aptly said, 'The tax could have been collected, but the government withheld action at the specific request of the plaintiff. The plaintiff is now estopped and should not be permitted to raise the defense of the Statute of Limitations.' (Newport Co. v. U.S., (DC-WIS), 34 F. Supp. 588)".

In the second place, appellant admitted in writing his tax obligation and promised to pay the same, not once but several times even after the date when—according to him—the Government's right to collect had already prescribed. In fact, he not only made such repeated promises to settle his account but he actually made two partial payments, the first of P2,000 and the last of P1,000.

In the third place, it is to be noted that the present action was filed for the forfeiture of the bond Exhibit A in satisfaction of the tax obligation of appellant. Thus, the action is for the enforcement of a written contractual

obligation, for which the: prescriptive period is ten years —which in this case had not yet elapsed when the action was filed. It is already settled in this connection that the giving of a bond as a condition of an extension of time for the payment of income tax, even after the collection of the tax as such was barred by the statute of limitations, does not preclude recovery on the bond (*John Bart Company vs. U.S.*, 279 U.S. P. 370; 73 L. Ed. 743) ; *U.S. vs. E. Hogshire and Co.* (1930; D.C.) 37 F. (2d) 720; *U.S. vs. Ruth*, 62 (2d) 385 (CCA 5th, 1933).

Finally, to the same effect is our ruling in *Sembrano vs. the Court of Tax Appeals, et al.*, 101 Phil., 1, as follows:

"By virtue of this instrument, petitioner in fact acknowledged the existence of the tax liabilities * * * * *, and assumed the obligation to settle the same. Although the percentage taxes for the years 1939-1941 and 1945 may have been extinguished by prescription on account of the mandate of Sections 331 and 332, yet in the case at bar, petitioner's obligation to pay the percentage taxes for the years 1939-1941 and 1945, assessed on January 6, 1951, and re-assessed on April 28, 1951, as well as other tax deficiencies, was acknowledged by means of the chattel mortgage of, May 3, 1931. an act which amounts to a renewal (renovacion) of the obligation or a waiver of the benefit granted by law to the petitioner who is estopped from raising the question of prescription after having waived such defense by the execution of said mortgage."

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Regala, and Makalintal, JJ., concur.

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