SWIRE AGRICULTURAL PRODUCTS, INC., PETITIONER, VS. HYUNDAI CORPORATION, RESPONDENT.

G.R. NO. 163934. June 09, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari under Rule 45 of the Revised Rules of Civil Procedure assails the November 24, 2003 decision of the Court of Appeals in CA-G.R. SP No. 76877, nullifying and setting aside the November 26, 2002 order of the Regional Trial Court of Makati City, Branch 150 in Civil Case No. 91-1353; and its resolution dated June 4, 2004 denying reconsideration thereof.

The antecedent facts are as follows:

Petitioner Swire Agricultural Products, Inc. (Swire) ordered 13,000 metric tons of fertilizer from respondent Hyundai Corporation (Hyundai). Upon delivery of the order, however, Swire unduly delayed the discharge of the vessel hired by Hyundai to transport the cargo. Hence, the latter filed a case for damages and collection of US$118,864.58 demurrage charges before the Regional Trial Court of Makati City, Branch 150 docketed as Civil Case No. 91-1353.

On April 22, 1993, the trial court rendered a decision[1] holding Swire liable to pay the amounts claimed by Hyundai, thus:

> Wherefore, judgment is hereby rendered in favor of the plaintiff ordering defendant to pay plaintiff the sum of US$118,864.58 or its peso equivalent at the current exchange rate with interest at the prevailing rate;
>
> - the sum of P250,000.00 by way of exemplary damages;
>
> - the sum of P200,000.00 by way of attorney's fees; and cost of suit.
>
> SO ORDERED.[2]

On appeal,[3] the Court of Appeals affirmed the decision of the trial court but deleted the award for exemplary damages and attorney's fees for lack of legal basis.[4] A petition for review on certiorari was filed by Swire before this Court. However, the same was denied in a Resolution dated April 16, 2001 which became final and executory and was recorded in the Book of Entries of Judgment on September 7, 2001.[5]

Hyundai moved for the issuance of a writ of execution which was granted on August 2, 2002. A writ of execution was issued on August 22, 2002.[6]

When the writ was being implemented by the sheriff, however, the parties disagreed on the interpretation of the dispositive portion of the trial court's decision. Hence, Swire filed an Urgent Omnibus Motion[7] for clarification and suspension of the implementation of the writ pending resolution thereof. Hyundai opposed[8] arguing that there was no ambiguity in the trial court's decision.

Meanwhile, on October 9, 2002, Swire consigned with the trial court Equitable PCIBank Manager's Check No. 0145-069525 in the amount of P5,296,386.28 in favor of Hyundai.[9]

On November 26, 2002, the trial court issued an order[10] clarifying the dispositive portion of its decision. It also declared as valid the consignation previously made by Swire and granted the prayer to garnish the manager's check.

After its receipt of the clarificatory order on December 13, 2002,[11] Hyundai filed a Motion for (Partial) Reconsideration[12] on December 17, 2002 which was however denied on February 5, 2003.[13] The order of denial was received by Hyundai on March 13, 2003.[14]

A petition for certiorari[15] under Rule 65 of the Revised Rules of Civil Procedure was filed by Hyundai before the Court of Appeals on May 9, 2003.

When required[16] to comment, Swire argued that the trial court's clarificatory order dated November 26, 2002 was a final order considering that it settled definitely and disposed of with finality the issue raised in the motion for clarification.[17] As such, Hyundai should have filed an appeal and not a petition for certiorari on or before March 24, 2003, the period to appeal having been tolled by the filing of the motion for reconsideration.

On November 24, 2003, the Court of Appeals granted Hyundai's petition for certiorari,[18] the dispositive portion of which reads:

> WHEREFORE, the petition for certiorari is GRANTED and the Order of November 26, 2002 issued in Civil Case No. 91-1353 entitled Hyundai Corporation v. Swire Agricultural Products, Inc. of the Regional Trial Court (RTC) of Makati City, Branch 150 is NULLIFIED AND SET ASIDE.
>
> The petition for mandamus is GRANTED and, accordingly, the Regional Trial Court (RTC) of Makati City, Branch 150 is REQUIRED TO DIRECT the execution of the judgment in Civil Case No. 91-1353 entitled Hyundai Corporation v. Swire Agricultural Products, Inc. to be based on the U.S. dollar-to-Philippine peso rate of exchange prevailing at the time of payment.
>
> SO ORDERED.[19]

Swire's motion for reconsideration[20] was denied in a resolution dated June 4, 2004.

Hence, this petition for review on certiorari[21] under Rule 45 of the Revised Rules of Civil Procedure.

Basically, Swire argues that the Court of Appeals erred (a) in holding that the trial court exceeded its jurisdiction in issuing the November 26, 2002 decision and February 5, 2003 resolution clarifying the dispositive portion of its decision; (b) in holding that the clarification by the trial court altered the April 22, 1993 decision but nevertheless, substituted it with its own opinion; (c) in not holding that the November 26, 2002 decision and the February 5, 2003 resolution have become final and executory and can no longer be reversed or set aside; (d) in not holding that certiorari is not a substitute for lost appeal; (e) in not holding that Swire's obligation has been extinguished by the consignation made by the petitioner.[22]

We find merit in the petition.

In De Ocampo v. Republic,[23] we defined a final order, to wit:

> 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

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> 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).[24]

On the other hand, 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.[25]

Indeed, the November 26, 2002 decision of the trial court is a final order having disposed with finality the issues raised therein. Nothing is left to be done by the trial court except to enforce its judgment. Being a final order, Hyundai's remedy should have been an appeal[26] on or before March 28, 2003, or within fifteen (15) days after its receipt of the denial of the motion for reconsideration on March 13, 2003, but it did not. Instead, it filed a petition for certiorari on May 9, 2003, long after the November 26, 2002 decision had attained finality.

The time honored doctrine of immutability of judgments states that except for correction of clerical errors, final and executory judgments can neither be amended nor altered. Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, except to correct clerical errors or mistakes, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[27] Otherwise, there would be no end to litigation and would set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[28] Any amendment or alteration which substantially affects a final and executory judgment, is null and void for lack of jurisdiction.[29]

Certiorari is not available where the proper remedy is an appeal in due course and such remedy was lost because of respondent's failure to take an appeal. The special civil action of certiorari is not and can not be made a substitute for appeal or a lost appeal.[30]

The Court of Appeals thus erred in declaring null and void the November 26, 2002 order of the trial court.

WHEREFORE, the petition is GRANTED. The November 24, 2003 decision and the June 4, 2004 resolution of the Court of Appeals in CA-G.R. SP No. 76877 are REVERSED and SET ASIDE. The November 26, 2002 order of the Regional Trial Court of Makati City, Branch 150 is REINSTATED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

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[1] CA Rollo, pp. 26-34. Penned by Judge Zeus C. Abrogar.

[2] Id. at 34.

[3] Docketed as CA-G.R. CV No. 43475.

[4] CA Rollo, pp. 35-44. Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Ruben T. Reyes and (now Court Administrator) Presbitero J. Velasco, Jr.

[5] CA Rollo, p. 46.

[6] Id. at 45-46.

[7] Id. at 47-50.

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[8] Id. at 51-53.

[9] Id. at 87-91.

[10] Rollo, pp. 68-80.

[11] CA Rollo, p. 72.

[12] Id. at 54-58.

[13] Id. at 25.

[14] Id. at 3.

[15] Id. at 2-11. Docketed as CA G.R. SP No. 76877.

[16] Id. at 64.

[17] Id. at 69.

[18] Id. at 107-112. Penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Renato C. Dacudao and Elvi John S. Asuncion.

[19] CA Rollo, p. 111.

[20] Id. at 113-132.

[21] Rollo, pp. 3-36.

[22] Id. at 10-12.

[23] No. L-19533, 31 October 1963, 9 SCRA 440.

[24] Id. at 443.

[25] Diesel Construction Company, Inc. v. Jollibee Foods Corp., 380 Phil. 813, 824 (2000).

[26] Section 1, Rule 41 of the Revised Rules of Civil Procedure.

[27] Abalos v. Philex Mining Corporation, G.R. No. 140374, 27 November 2002, 393 SCRA 134, 139-140.

[28] Jose Clavano, Inc. v. Housing & Land Use Regulatory Board, G.R. No. 143781, 27 February 2002, 378 SCRA 172, 192.

[29] Flores v. Court of Appeals, 328 Phil 992, 995 (1996).

[30] Salva v. Court of Appeals, 364 Phil. 281, 298 (1999).

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