

**IN RE PETITION FOR VOLUNTARY INSOLVENCY. MONICO A. DIA,
PETITIONER, VS. FINANCE & MINING INVESTMENTS
CORPORATION, CREDITOR AND APPELLEE. GENEROSA A. DIA,
CLAIMANT AND APPELLANT.**

G.R. No. 47772. March 13, 1941

Ponente: LAUREL, J.

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LAUREL, J.:

This is an appeal from an order of the Court of First Instance of Laguna, dated November 5, 1938, disapproving the sale by the assignee in favor of the appellant and authorizing said assignee to sell the properties involved to the creditor-appellee, Finance and Mining Investments Corporation.

On June 13, 1938, Monico A. Dia filed a petition for voluntary insolvency in the Court of First Instance of Laguna, his petition being accompanied by a duly subscribed schedule of debts and liabilities and an inventory of assets, respectively. On June 20, 1938, the court issued an order declaring him to be in a state of insolvency and commanding the provincial sheriff to take charge and possession of all properties, real and personal, and of all the effects, books and documents of the insolvent, and to keep them in his custody until the appointment of an assignee. Said order likewise set for August 5, 1938, the meeting of the creditors for the election of an assignee. On July 27, 1938, the Finance and Mining Investments Corporation submitted a petition for appraisal, stating, among other things, that it is a creditor of the insolvent in the sum of P25,573.65 and that said debt was in part secured by a pledge on certain shares of stock, and praying that the value of said stock be summarily determined. The lower court, on August 3, 1938, fixed the fair and reasonable value of the stock at P3,000 as prayed for by the creditor.

On August 1, 1938, Maria Gana, Francisco Vergel de Dios and Soledad Gonzales Vda. de Carteciano filed their respective claims against the insolvent in the amounts of P2,000, P400 and P300, respectively. The Finance and Mining Investments Corporation opposed the admission of these claims, and, on August 8, 1938, the court rejected the claim of Maria Gana and approved, for the purpose of electing an assignee, those presented by the Finance and Mining Investments Corporation, Francisco Vergel de Dios and Soledad Gonzales Vda. de Carteciano.

Upon the nomination of the Finance and Mining Investments Corporation, the other two creditors not having taken part in the deliberations, the court appointed Nazario G. Cruz assignee and, on August 19, 1938, the clerk of court conveyed to him all the property and effects, deeds, and books and papers of the insolvent. On October 3, 1938, the court upon application of the assignee, entered an order authorizing him "to sell privately the said properties of the insolvent at the highest price obtainable and to execute the corresponding deeds therefor, subject to the approval of the court." The assignee, on October 18, 1938, submitted for approval an "Escritura de Venta Real" executed by him in favor of Generosa A. Dia, to which petition the Finance and Mining Investments Corporation interposed a written opposition and offered the sum of P600 per hectare. On November 5, 1938, the

lower court disapproved the sale in favor of Generosa A. Dia and ordered the assignee to accept the offer made by the Finance and Mining Investments Corporation. Generosa A. Dia moved for a reconsideration of this order, which was denied on February 24, 1939. Hence, this appeal originally made to the Court of Appeals and later certified to this Court.

The incidental question raised with reference to the dismissal of the appeal may be overlooked and the case now decided on the merits. Under section 39 of Act No. 1956, popularly known as the Insolvency Law, no private sale of any property of the estate of an insolvent debtor shall be valid unless made under the order of the court, upon a petition in writing, which shall set forth the facts showing the sale to be necessary. In the case at bar, the assignee. was authorized to conduct a private sale of certain properties of the insolvent debtor, subject to the following conditions, to wit: (1) to sell "at the highest price obtainable" and (2) the sale and the execution of the corresponding deeds shall be "subject to the approval of the court." The sale made by the assignee to Generosa A. Dia, however, did not satisfy the first condition because, in the language of the court below, "the price of P500 per hectare to which the lands were sold to the movant is not the highest price obtainable, if the Finance and Mining Investments Corporation is willing to pay a price of P600 per hectare." It results, therefore, that the lower court committed no error in disapproving said sale and in ordering the assignee to accept the offer made by the creditor-appellee.

The judgment appealed from should be, as it is hereby, affirmed, with costs against the appellant. So ordered.

Imperial, Diaz, Moran, and Horrilleno, JJ., concur.

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