

ILOILO TRADING CENTER AND EXCHANGE, PETITIONER, VS. HONORABLE JUDGE SOTERO RODAS, ETC., AND MANILA TRADING AND SUPPLY CO., RESPONDENTS.

G.R. No. 48468. October 24, 1941

Ponente: OZAETA, J.

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OZAETA, J.:

This is an original petition for certiorari to annul an order of the respondent judge which reads as follows:

"* * * * *

"With regard to the motion for the issuance of the writ of execution, the court is of the opinion that the purpose of the appeal is just to delay and hence, it would be prejudicial to the plaintiff to stay execution of the judgment rendered herein during the pendency of said appeal, and hereby grants said motion and orders that the corresponding writ be issued, unless a supersedeas bond is posted for the amount of said judgment with interest thereon for one year.

"Let this order be made a part of the record on appeal as required by the Rules of Court.

"* * * * *

The judgment referred to in the above-quoted order was entered on March 31, 1941, against the herein petitioner and in favor of the respondent Manila Trading and Supply Co. for the sum of P1,677.22 with interest on P1,239.02 at 12 per cent per annum from the date of the filing of the complaint, plus the costs.

The petitioner contends that the respondent judge committed a grave abuse of discretion in declaring that its appeal was taken for the purpose of delay, and that that is not a good reason for ordering the execution of the judgment pending appeal.

The question raised herein has been decided by us adversely to the petitioner in the recent case of Jacinto Presbitero et al. vs. Judge Sotero Rodas et al. (October 11, 1941), G. R. No. 48121, 40 Off. Gaz., 3673, wherein we held that section 2 of rule 39 empowers the Court of First Instance, in its discretion, to order the execution of its judgment pending appeal provided it states good reasons for so doing; and that the statement of the court in its order that the appeal was being taken for the purpose of delay is good and sufficient reason upon which to issue execution of the judgment pending appeal, because dilatory tactics constitute a great drawback to the administration of justice and cannot be countenanced by the courts. Petitioner herein impugns the correctness of the respondent judge's statement that the appeal was being taken for the purpose of delay. It has not, however, adduced facts and figures to show that such conclusion of the trial judge was arbitrary and without any basis.

Petitioner further argues that there is no indication so far that it is in a state of insolvency or that it intends to defraud its creditors, particularly the plaintiff (respondent corporation), by encumbering, mortgaging, selling, or in any other manner disposing of its properties; and that, being capitalized at P50,000 more or less, it "can vouch for its sound financial foundation that can withstand any business

adversities." Such argument is beside the point. The issuance of a writ of execution pending appeal is not predicated on the same grounds as the issuance of a writ of preliminary attachment. Indeed, if the petitioner is in a buoyant financial condition and is confident that its appeal will prosper, it can well afford to file the supersedeas bond required by the trial court to stay the execution.

The writ of preliminary injunction heretofore issued by this Court is hereby dissolved, and the order of the respondent judge complained of is affirmed, with costs. So ordered.

Abad Santos, Diaz, Moran, and Horrilleno, JJ., concur.

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