

ERNESTO V. RONQUILLO, PETITIONER, VS. HONORABLE COURT OF APPEALS AND ANTONIO P. SO, RESPONDENTS.

G.R. No. 55138. September 28, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

This is a petition to review the Resolution dated June 30, 1980 of the then Court of Appeals (now the Intermediate Appellate Court) in CA-G.R. No. SP-10573, entitled "Ernesto V. Ronquillo versus the Hon. Florellana Castro-Bartolome, etc." and the Order of said court dated August 20, 1980, denying petitioner's motion for reconsideration of the above resolution.

Petitioner Ernesto V. Ronquillo was one of four (4) defendants in Civil Case No. 33958 of the then Court of First Instance of Rizal (now the Regional Trial Court), Branch XV filed by private respondent Antonio P. So, on July 23, 1979, for the collection of the sum of P117,498.98 plus attorney's fees and costs. The other defendants were Offshore Catertrade, Inc., Johnny Tan and Pilar Tan. The amount of P117,498.98 sought to be collected represents the value of the checks issued by said defendants in payment for foodstuffs delivered to and received by them. The said checks were dishonored by the drawee bank.

On December 13, 1979, the lower court rendered its Decision[1] based on the compromise agreement submitted by the parties, the pertinent portion of which reads as follows:

"1. Plaintiff agrees to reduce its total claim of P117,498.95 to only P110,000.00 and defendants agree to acknowledge the validity of such claim and further bind themselves to initially pay out of the total indebtedness of P110,000.00 the amount of P55,000.00 on or before December 24, 1979, the balance of P55,000.00, defendants individually and jointly agree to pay within a period of six months from January 1980, or before June 30, 1980; (*Italics supplied*)

x x x x

4. That both parties agree that failure on the part of either party to comply with the foregoing terms and conditions, the innocent party will be entitled to an execution of the decision based on this compromise agreement and the defaulting party agrees and hold themselves to reimburse the innocent party for attorney's fees, execution fees and other fees related with the execution.

x x x x."

On December 26, 1979, herein private respondent (then plaintiff) filed a Motion for Execution on the ground that defendants failed to make the initial payment of P55,000.00 on or before December 24, 1979 as provided in the Decision. Said motion for execution was opposed by herein petitioner (as one of the defendants) contending that his inability to make the payment was due to private respondent's own act of making himself scarce and inaccessible on December 24, 1979. Petitioner then prayed that private respondent be ordered to accept his payment in the amount of P13,750.00.[2]

During the hearing of the Motion for Execution and the Opposition thereto on January 16, 1980, petitioner, as one of the four defendants, tendered the amount of P13,750.00, as his pro-rata share in the P55,000.00 initial payment. Another defendant, Pilar P. Tan, offered to pay the same amount. Because private respondent refused to accept their payments, demanding from them the full initial installment P55,000.00, petitioner and Pilar Tan instead deposited the said amount with the Clerk of Court. The amount deposited was subsequently withdrawn by private respondent.[3]

On the same day, January 16, 1980, the lower court ordered the issuance of a writ of execution for the balance of the initial amount payable, against the other two defendants, Offshore Catertrade, Inc. and Johnny Tan,[4] who did not pay their shares.

On January 22, 1980, private respondent moved for the reconsideration and/or modification of the aforesaid Order of execution and prayed instead for the "execution of the decision in its entirety against all defendants, jointly and severally".[5] Petitioner opposed the said motion arguing that under the decision of the lower court being executed which has already become final, the liability of the four (4) defendants was not expressly declared to be solidary, consequently each defendant is obliged to pay only his own pro-rata or 1/4 share of the amount due and payable.

On March 17, 1980, the lower court issued an Order reading as follows:

" O R D E R

Regardless of whatever the compromise agreement has intended the payment whether jointly or individually, or jointly and severally, the fact is that only P27,500.00 has been paid. There appears to be a non-payment in accordance with the compromise agreement of the amount of P27,500.00 on or before December 24, 1979. The parties are reminded that the payment is condition sine qua non to the lifting of the preliminary attachment and the execution of an affidavit of desistance.

WHEREFORE, let writ of execution issue as prayed for."

On March 17, 1980, petitioner moved for the reconsideration of the above order, and the same was set for hearing on March 25, 1980.

Meanwhile, or more specifically on March 19, 1980, a writ of execution was issued for the satisfaction of the sum of P82,500.00 as against the properties of the defendants (including petitioner), "singly or jointly liable." [6]

On March 20, 1980, Special Sheriff Eulogio C. Juanson of Rizal, issued a notice of sheriff's sale, for the sale of certain furnitures and appliances found in petitioner's residence to satisfy the sum of P 82,500.00. The public sale was scheduled for April 2, 1980 at 10:00 a.m.[7]

Petitioner's motion for reconsideration of the Order of Execution dated March 17, 1980 which was set for hearing on March 25, 1980, was upon motion of private respondent reset to April 2, 1980 at 8:30 a.m.. Realizing the actual threat to his property rights poised by the re-setting of the hearing of his motion for reconsideration for April 2, 1980 at 8:30 a.m. such that if his motion for reconsideration would be denied he would have no more time to obtain a writ from the appellate court to stop the scheduled public sale of his personal properties at 10:00 a.m. of the same day, April 2, 1980, petitioner filed on March 26, 1980 a petition for certiorari and prohibition with the then Court of Appeals (CA-G.R. No. SP-10573), praying at the same time for the issuance of a restraining order to stop the public sale. He raised the question of the validity of the order of execution, the writ of execution and the notice of public sale of his properties to satisfy fully the entire unpaid obligation payable by all of the four (4) defendants, when the lower court's decision based on the compromise agreement did not specifically state the liability of the four (4) defendants to be solidary.

On April 2, 1980, the lower court denied petitioner's motion for reconsideration but the scheduled public sale in that same day did not proceed in view of the pendency of a certiorari proceeding before the then Court of Appeals.

On June 30, 1980, the said court issued a Resolution, the pertinent portion of which reads as follows:

"This Court, however, finds the present petition to have been filed prematurely. The rule is that before a petition for certiorari can be brought against an order of a lower court, all remedies available in that court must first be exhausted. In the case at bar, herein petitioner filed a petition without waiting for a resolution of the Court on the motion for reconsideration, which could have been favorable to the petitioner. The fact that the hearing of the motion for reconsideration had been reset on the same day the public sale was to take place is of no moment since the motion for reconsideration of the Order of March 17, 1980 having been seasonably filed, the scheduled public sale should be suspended. Moreover, when the defendants, including herein petitioner, defaulted in their obligation based on the compromise agreement, private respondent had become entitled to move for an execution of the decision based on the said agreement.

WHEREFORE, the instant petition for certiorari and prohibition with preliminary injunction is hereby denied due course. The restraining order issued in our resolution dated April 9, 1980 is hereby lifted without pronouncement as to costs.

SO ORDERED."

Petitioner moved to reconsider the aforesaid Resolution alleging that on April 2, 1980, the lower court had already denied the motion referred to and consequently, the legal issues being raised in the petition were already "ripe" for determination.^[8] The said motion was however denied by the Court of Appeals in its Resolution dated August 20, 1980.

Hence, this petition for review, petitioner contending that the Court of Appeals erred in -

- (a) declaring as premature, and in denying due course to the petition to restrain implementation of a writ of execution issued at variance with the final decision of the lower court filed barely four (4) days before the scheduled public sale of the attached movable properties;
- (b) denying reconsideration of the Resolution of June 30, 1980, which declared as premature the filing of the petition, although there is proof on record that as of April 2, 1980, the motion referred to was already denied by the lower court and there was no more motion pending therein;
- (c) failing to resolve the legal issues raised in the petition and in not declaring the liabilities of the defendants, under the final decision of the lower court, to be only joint;
- (d) not holding the lower court's order of execution dated March 17, 1980, the writ of execution and the notice of sheriff's sale, executing the lower court's decision against "all defendants, singly and jointly". to be at variance with the lower court's final decision which did not provide for solidary obligation; and
- (e) not declaring as invalid and unlawful the threatened execution, as against the properties of petitioner who had paid his pro-rata share of the adjudged obligation, of the total unpaid amount payable by his joint co-defendants.

The foregoing assigned errors maybe synthesized into the more important issues of -

1. Was the filing of a petition for certiorari before the then Court of Appeals against the Order of Execution issued by the lower court, dated March 17, 1980, proper, despite the pendency of a motion for re-consideration of the same questioned Order?
2. What is the nature of the liability of the defendants (including petitioner), was it merely joint, or was it

several or solidary?

Anent the first issue raised, suffice it to state that while as a general rule, a motion for reconsideration should precede recourse to certiorari in order to give the trial court an opportunity to correct the error that it may have committed, the said rule is not absolute^[9] and may be dispensed with in instances where the filing of a motion for reconsideration would serve no useful purpose, such as when the motion for reconsideration would raise the same point stated in the motion^[10] or where the error is patent for the order is void^[11] or where the relief is extremely urgent, as in cases where execution had already been ordered^[12] where the issue raised is one purely of law.^[13]

In the case at bar, the records show that not only was a writ of execution issued but petitioner's properties were already scheduled to be sold at public auction on April 2, 1980 at 10:00 a.m. The records likewise show that petitioner's motion for reconsideration of the questioned Order of Execution was filed on March 17, 1980 and was set for hearing on March 25, 1980 at 8:30 a.m., but upon motion of private respondent, the hearing was reset to April 2, 1980 at 8:30 a.m., the very same day when petitioner's properties were to be sold at public auction. Needless to state that under the circumstances, petitioner was faced with imminent danger of his properties being immediately sold the moment his motion for reconsideration is denied. Plainly, urgency prompted recourse to the Court of Appeals and the adequate and speedy remedy for petitioner under the situation was to file a petition for certiorari with prayer for restraining order to stop the sale. For him to wait until after the hearing of the motion for reconsideration on April 2, 1980 before taking recourse to the appellate court may already be too late since without a restraining order, the public sale can proceed at 10:00 that morning. In fact, the said motion was already denied by the lower court in its order dated April 2, 1980 and were it not for the pendency of the petition with the Court of Appeals and the restraining order issued thereafter, the public sale scheduled that very same morning could have proceeded.

The other issue raised refers to the nature of the liability of petitioner, as one of the defendants in Civil Case No. 33958, that is whether or not he is liable jointly or solidarily.

In this regard, Article 1207 and 1208 of the Civil Code provides –

"Art. 1207. The concurrence of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.

Art. 1208. If from the law, or the nature or the wording of the obligation to which the preceding article refers the contrary does not appear, the credit or debt shall be presumed to be divided into as many equal shares as there are creditors and debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits."

The decision of the lower court based on the parties' compromise agreement, provides:

"1. Plaintiff agrees to reduce its total claim of P117,498.95 to only P110,000.00 and defendants agree to acknowledge the validity of such claim, and further bind themselves to initially pay out of the total indebtedness of P110,000.00, the amount of P55,000.00 on or before December 24, 1979, the balance of P55,000.00, defendants individually and jointly agree to pay within a period of six months from January 1980 or before June 30, 1980." (Italics supplied)

Clearly then, by the express term of the compromise agreement and the decision based upon it, the defendants obligated themselves to pay their obligation "individually and jointly".

The term "individually" has the same meaning as "collectively", "separately", "distinctively", respectively or "severally". An agreement to be "individually liable" undoubtedly creates a several obligation,[14] and a "several obligation" is one by which one individual binds himself to perform the whole obligation.[15]

In the case of *Parot vs. Gemora*[16] We therein ruled that "the phrase *juntos* or *separadamente* used in the promissory note is an express statement making each of the persons who signed it individually liable for the payment of the full amount of the obligation contained therein." Likewise in *Un Pak Leung vs. Negorra*[17] We held that "in the absence of a finding of facts that the defendants made themselves individually liable for the debt incurred they are each liable only for one-half of said amount".

The obligation in the case at bar being described as "individually and jointly", the same is therefore enforceable against one of the numerous obligors.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the instant petition is hereby DISMISSED. Cost against petitioner.

SO ORDERED.

Makasiar (Chairman), Abad Santos, and Escolin, JJ., concur.

Aquino, J., in the result.

Concepcion, Jr., and Guerrero, JJ., on leave.

[1] Annex "B".

[2] Annex "C".

[3] Annex "D".

[4] Annex "E".

[5] Annex "D".

[6] Annex "G".

[7] Annex "H".

[8] Annex "J".

[9] *Vda. de Sayman vs. Court of Appeals*, 121 SCRA 650.

[10] *Fortich-Celdran, et al vs. Celdran, et al*, 19 SCRA 502.

[11] *Iligan Electric Light Co. vs. Public Service Commission*, 10 SCRA 46; *Matute vs. Court of Appeals*, 26 SCRA 768; *Locsin vs. Limaco*, 26 SCRA 816.

[12] *Suco vs. Vda. de Leary*, 12 SCRA 326.

[13] *Central Bank of the Philippines vs. Cloribel*, 44 SCRA 307.

[14] 21 Words & Phrases, Permanent Ed., p. 194.

[15] 39 Words & Phrases, Permanent Ed., p. 72.

[16] 7 Phil. 94, 97.

[17] 9 Phil. 381.

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