

TOMASITA AQUINO, PETITIONER, VS. HON. PEDRO T. SANTIAGO AND SPOUSES EUFEMIA R. ROXAS, AND FLORO ROXAS, RESPONDENTS.

G.R. No. 56362. May 28, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.

On April 22, 1980, a complaint for the collection of a sum of money was filed by spouses Eufemia Roxas and Floro Roxas against Tomasita Aquino in the Court of First Instance of Bataan with a prayer for preliminary attachment docketed as Civil Case No. 4627. A writ of preliminary attachment was issued on April 30, 1980 by the trial court as prayed for upon a bond filed by the plaintiffs in the amount of P20,000.00 which was enforced by the sheriff by levying and placing under custodio legis certain properties of the defendant. An answer was filed by defendant with counterclaim alleging as defense compensation with the claim of plaintiffs. On July 11, 1980, pre-trial briefs were filed by the parties and on July 22, 1980 plaintiffs filed a motion for a judgment on the pleadings to which an opposition was filed by defendant. On December 17, 1980, a decision was rendered by the trial court, the dispositive part of which reads as follows:

"WHEREFORE, premises above considered, judgment is hereby rendered in favor of the plaintiffs and against the defendant, ordering the latter to pay the former, the sum of P53,280, with legal rate of interest thereon from the date of filing of the instant complaint; further, to pay the attorney's fee of plaintiffs in the amount of P2,000.00 and" cost of this suit."

The appeal was seasonably filed by defendant on January 26, 1981 by filing a notice of appeal, appeal bond and record on appeal stating therein that she was appealing to the Supreme Court. On February 6, 1981, a motion for the issuance of a writ of execution pending appeal was filed by plaintiff, to which an opposition was filed by the defendant. In an order of February 16, 1981, the trial court granted the motion.

On February 25, 1981, the trial court issued an order disapproving the notice of appeal for "want of ground to appeal the decision to the Supreme Court."

Hence on March 9, 1981, the defendant filed the herein petition for prohibition and mandamus with prayer for a writ of mandatory preliminary injunction alleging, among others, that the respondent judge committed a grave abuse of discretion and acted in excess of jurisdiction in granting the execution pending appeal of its decision; that petitioner has a good defense of compensation against the claim of private respondents; that the disapproval of the notice of appeal on technical ground deprived petitioner of her right to appeal which is a great injustice and thus petitioner prays that a writ of preliminary injunction be issued restraining respondent judge and sheriff from implementing the writ of execution pending appeal, petitioner offering to file a bond, and to order the trial court to elevate the records of the case for a review of the decision being appealed from.

In a resolution of March 13, 1981, this Court resolved, without giving due course to the petition, to require respondents to comment within ten (10) days from receipt thereof and issued a temporary restraining order enjoining respondents from implementing the writ of execution pending appeal dated February 16, 1981 or any

other writs which may be issued thereafter in Civil Case No. 4627.

The required comment having been filed by private respondents on July 13, 1981, this Court gave due course to the petition and required both parties to submit their simultaneous memoranda within thirty (30) days from notice. The memorandum of the parties have all been filed, and so the case is now submitted for decision.

The applicable provision on execution pending appeal is Section 2, Rule 39 of the Rules of Court as follows:

"Execution pending appeal. — On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein.

From the foregoing provision an order of execution pending appeal maybe issued by the trial court before the expiration of the time to appeal but not after the appeal is perfected. Under Section 9, Rule 41 of the Rules of Court, an appeal is deemed perfected if the notice of appeal, appeal bond and record on appeal are filed within the reglementary period and upon approval of the record on appeal and appeal bond other than a cash bond.[1] Thereafter, the trial court loses its jurisdiction over the case.[2]

In the present case the notice of appeal, record on appeal and appeal bond were filed by petitioner on January 26, 1981, within the period of appeal. The respondent court however. after it issued the order of execution pending appeal of February 16, 1981, issued an order disapproving the petitioner's notice of appeal on February 25, 1981 for alleged want of ground to appeal the decision with the Supreme Court. However, on March 11, 1981, after the herein petition was filed, respondent court issued another order setting aside its previous order of Februar)1 25, 1981 and approving the appeal.

No doubt respondent court committed a grave abuse of discretion in disapproving the notice of appeal to this Court. Its role under the law is to approve or disapprove the record on appeal and the appeal bond but not a notice of appeal.[3] A notice of appeal does not require the approval of the trial court. Obviously, realizing his error, the respondent judge recalled and set aside the said order disapproving the notice of appeal. Thus, this issue is now moot and academic.

The next issue that should be resolved is the validity of the order of execution pending appeal. Section 2, Rule 39 of the Rules of Court is explicit when it required that such an order should be based upon good reasons to be stated in a special order. The compelling circumstances warranting the prompt execution of the judgment is that it may become illusory or the prevailing party may be unable to enjoy it.[4] A good reason for ordering advance execution is that the appeal is being taken for purposes of delay:[5] or that the defeated party is in imminent danger of insolvency[6] or when defendants failed to file a supersedeas bond to forestall the immediate execution of the decision.[7]

In the present case, the petitioner opposed the motion for execution pending appeal on the ground that certain properties belonging to petitioner consisting of machineries in her printing shop have been attached and are now in custodia legis which is sufficient guaranty to protect the rights of private respondents. However, in the questioned order of February 16. 1981, the trial court observed that the attachment bond was only in the amount of P20.000.00 but the judgment in favor of private respondents was -P53.280.00.

In resolving the incident, the trial court in the same order evaluated the merit of the appeal and after the discussion of the defense arrived at the conclusion that "defendant's appeal is nothing more than just lor the sole purpose of delay, and besides, if the extraordinary motion of plaintiffs is not given due course, the P53.000.00 worth justly due to them would be very much less, unjustly, in the years to come when the appeal may eventually be decided."

We find that the respondent judge committed a grave abuse of discretion in issuing the questioned order. The respondent judge did not even care to verify the claim of petitioner that the properties that were levied upon by way of attachment were more than sufficient to satisfy the judgment rendered in favor of private respondents. He just assumed that because the bond for the attachment filed by respondents was only P20,000.00 the properties of plaintiffs in custodia legis must be of the same value. He should have verified the real worth of the properties attached which may render execution pending appeal unnecessary.

Moreover, the reason of the petitioner that the appeal was only for the purpose of delay as there is no merit in the same is also devoid of merit. It is not for the trial judge to determine the merit of a decision he rendered. That is the role of the appellate court.⁸ It is inconceivable that the judge would not sustain an appeal from a resolution or decision penned by him.

WHEREFORE, the herein petition is hereby GRANTED and the questioned Order of the respondent judge of February 16, 1981 is hereby REVERSED and SET ASIDE as null and void and the restraining order of this Court issued on March 13, 1981 against the implementation of the said order is hereby made permanent. Let the records of this case be remanded to the Court of Appeals for further proceedings on the appeal of petitioner on the merits of the decision of the respondent court of December 17, 1980. This decision is immediately executory and no motion for extension of time to file a motion for reconsideration shall be entertained.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino, and Medialdea, J.J., concur.

[1] Sections 3 and 9, Rule 41. Rules of Court, under Bams Pambansa Big. 129. Sec. 39. the record on appeal had been dispensed with except in special proceeding or multiple appeals under applicable provision of (he Rules of Court.

[2] Sumulong v. Imperial, 51 Phil. 251 ; De Leon v. Delos Santos 78 Phil. 461; Vda de Sy Quia v. Concepcion & Palma. 60 Phil. 186; Conejero et al. v. CA. L.-6522. August 25, 1954; LVM Transportation Co., et al. v. Hon. Enrique Fernando. G.R. No. L-9136. May 31, 1958 and Aguirre v. Macadaeg. 55 O.G. 2088.

[3] Section 9. Rule 41. Rules of Court.

[4] Crisanto S. Borja v. Encarnacion. L-1479. May 30, 1951; De Leon v. Soriano, L-7648. September 17, 1954.

[5] Iloilo Trading Center & Exchange v. Rodas. 73 Phil. 527; Presbitero v. Rodas. 73 Phil. 300. 303; Rodriguez v. CA. G.R. No. L-125.54. May 23, 1959; Javellana v. Querubin. L-26166. JuK 30. 1960; Devera v. Santos. L-24351. September 22, 1957.

[6] Baldisimo v. Court of First Instance of Capiz, L-22261. September 29, 1967; Lao v. Mencias, L-23554, November 25, 1967, Santos v. Mojica, 26 SCRA 607, 610-611.

[7] Javellana v. Querubin, supra; Haw pia vs. San Jose, 78 Phil. 238; Santos v. CA, 95 Phil 360; David v. Miranda. L-3215. Sept. 28, 1954; Danz v. L. Cosida, L-15950, April 20, 1961; Balingot v. Mascardo, 58 O.G. 8239 and Santos v. Mojica, supra 611.

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