

FILIPINAS MILLS, INC., BUENAVENTURA TAN AND VIRGINIA DUMLAO-TAN, PETITIONERS, VS. HON. ABELARDO M. DAYRIT, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF M...

G.R. No. 56620. December 10, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari with prayer for preliminary injunction and restraining order seeking to annul the order of the Court of First Instance (now Regional Trial Court) of Manila dated March 31, 1981.

The antecedent facts, as culled from the pleadings, are as follows:

On December 15, 1975, petitioners Filipinas Mills, Inc., Buenaventura Tan and Virginia Dumlao-Tan obtained a loan from Citizens Bank and Trust Company (CBTC) in the amount of P70,000.00 with interest at the rate of 14% per annum to be paid on or before March 16, 1976, as evidenced by a promissory note. However, despite repeated demands, said loan remained unpaid. Consequently, private respondent Associated Citizens Bank (ACB), which acquired all the assets and obligations of CBTC by virtue of an Agreement of Merger, filed a complaint before the Court of First Instance of Manila for collection of the indebtedness of petitioners. Although notice was sent to petitioners, they failed to appear at the scheduled pre-trial and trial on July 11, 1980. Thus, they were considered in default and ACB was allowed to present its evidence *ex parte* (p. 18, Rollo).

On August 26, 1980, the trial court ruled in favor of ACB, the dispositive portion of which, reads (*ibid*):

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter to pay the former, jointly and severally, the sum of P70,000.00, with interest at the rate of 14% per annum from March 16, 1976, the maturity date of the promissory note, until fully paid, plus the sum of P3,000.00 for attorney's fees, and the costs of suit.

"SO ORDERED."

On January 13, 1981, a writ of execution was issued pursuant to the aforementioned decision (p. 19, Rollo).

On February 10, 1981, the Deputy Sheriff levied on the personal properties of petitioners (p. 20, Rollo). On the same date, petitioner Buenaventura Tan directed the Deputy Sheriff in writing to levy first on their shares of stocks at ACB before levying on their other personal properties (p. 21, Rollo). On February 16, 1981, a notice of garnishment was issued on the goods, effects, interests, credits, moneys, stocks, shares, any interests in stocks and shares, and any other personal property in the possession or under the control of ACB belonging to petitioners; all debts owed by ACB to petitioners; and specially the shares of stocks, savings accounts, current accounts, time deposits and all money placements belonging to petitioners (p. 22, Rollo). On February 23, 1981, a notice of sale on execution of personal properties of petitioners was issued but their (petitioners) shares of stocks were not included in the items for sale. The date of the public auction was set on March 5, 1981 (pp. 23-24, Rollo).

On March 4, 1981, petitioners filed an urgent motion to cancel the scheduled public auction sale alleging: 1) that they have the right to direct the Deputy Sheriff that their shares of stocks be levied and sold first, citing Section 21, Rule 39 of the Rules of Court and *People v. Hernandez*, 59 Phil. 343; and 2) that the notice of public auction did not comply with the requirements of publication (pp. 25-28, Rollo). On March 8, 1981, ACB filed an opposition to petitioners' motion contending that: 1) Section 21, Rule 39 of the Rules of Court is inapplicable because it refers to actual execution sale as distinguished from levy; 2) the case of *People v. Hernandez*, supra, applies only where there is no legal justification on the part of the judgment creditor to accept; and 3) the shares of stocks cannot be included in the items to be sold or first to be levied upon as it is prohibited under Section 24 of the General Banking Act (p. 31-33, Rollo).

On March 31, 1981, the trial court issued an order denying petitioners' motion (p. 17, Rollo).

On April 8, 1981, a notice of sale on execution of personal properties of petitioners was issued anew setting the date of the public auction on April 22, 1981 (pp. 34-35, Rollo). Hence, the present petition.

On April 20, 1981, We issued a temporary restraining order enjoining the enforcement of the March 31, 1981 order and the conduct of the public auction sale (pp. 37-38, Rollo).

The issue is whether or not the trial court acted with grave abuse of discretion in having issued the questioned order.

In this petition, the parties reiterate their arguments before the trial court, except with respect to the issue on non-compliance with the requirements of publication of the notice of public auction sale.

We sustain petitioners based on the following grounds: 1) Section 21, Rule 39 of the Rules of Court, as construed in *People v. Hernandez* supra; and 2) non-applicability of Section 24 of the General Banking Act.

Section 21, Rule 39 of the Rules of Court provides:

"SEC. 21. How property sold on execution. Who may direct manner and order of sale. -- All sales of property under execution must be made at public auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. When the sale is of personal property capable of manual delivery, it must be sold within view of those attending the sale and in such parcels as are likely to bring the highest price. The judgment debtor, if present at the sale, may direct the order in which property, real or personal shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer holding the execution, nor his deputy, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale." (underscoring supplied)

No doubt, this section grants to a judgment debtor the right to direct the order in which real or personal property shall be sold, during the public auction sale. But, interpreting this particular provision in the case of *People v. Hernandez*, supra, We expanded the scope of said right of a judgment debtor to include the case of attachment/levy (or prior to the public auction sale):

"x x x. There is no question that a sheriff may attach the property of a judgment or execution debtor if he is clothed with the necessary authority under a judicial writ, as provided for in section 453 of Act No. 190. However, it should not be construed to mean that, having discretion in choosing the property to be attached, he should necessarily levy upon such property as is valued by the execution debtor, particularly when the latter places other property at his disposal, as was done herein, the value of which is greatly in excess of the amount of the judgment under execution. The aforesaid provision does not forbid the execution debtor, in case he has

sufficient property to answer for the payment of the judgment, to point out to the sheriff which of such property should be attached and sold to satisfy the judgment with the proceeds thereof. On the contrary, it may be inferred from the provisions of section 457 of the aforesaid Act that there would be no irregularity committed by such procedure. It should be noted that, after describing the manner in which the personal property of the execution debtor should be sold at public auction, the last sentence of the afore-cited section reads as follows:

"The judgment debtor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels of articles which can be sold to advantage separately, and the officer must follow such directions.'

"If this is permissible, and it is being followed in all cases, why may not the same be done in the case of an attachment when there are several properties that may be attached and, furthermore, their value is sufficient to answer for the amount of the judgment?" (underscoring supplied) (pp. 353--354, *ibid*)

Section 24 of the General Banking Act (Republic Act No. 337) provides:

"SEC. 24. No commercial bank shall make any loan or discount on the security of shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase be necessary to prevent loss upon a debt previously contracted in good faith, and the stock so purchased or acquired, or purchased or acquired for any other reason in the course of its operations, shall, within six months from the time of its purchase or acquisition, be sold or disposed of at public or private sale, or in default thereof, a receiver shall be appointed to close up the business of the bank in accordance with law." (underscoring supplied)

ACB must have misread this provision. It is plain enough that there is a "specific" exception ("unless such security or purchase be necessary to prevent loss upon a debt previously contracted in good faith") and a "general" exception ("or purchased or acquired for any other reason in the course of its operations") mentioned therein. Thus, if and when ACB decide to purchase those shares of stocks in the public auction sale definitely, this circumstance will not result in a violation of Section 24 of the General Banking Act as it is allowed under the "general" exception.

It was, therefore, a grave abuse of discretion on the part of the trial court for having denied the motion filed by petitioners. A court of law is competent to control the acts of its officers in the execution of its process and when an officer has been guilty of irregularities in connection therewith, to the injury of parties having an interest in the action, it should correct such irregularities. In this case, the trial court should have cancelled the scheduled public auction sale because the Deputy Sheriff defied the directive of petitioners to levy and sell first their shares of stocks.

ACCORDINGLY, the petition is hereby GRANTED. The order of the trial court dated March 31, 1981 is SET ASIDE. The trial court is directed to include petitioners' shares of stocks at Associated Citizens Bank in the public auction sale. The temporary restraining order is made PERMANENT.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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