

KAWASAKI PORT SERVICE CORPORATION, NAIKAI SHIPPING CO. LTD., NAIKAI TUG BOAT SERVICE CO., THE PORT SERVICE CORPORATION, LICENSED LAND SEA PILOTS ASSOCIATION, HAYAKOMA UNYU K.K.,...

G.R. No. 58340. July 16, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for certiorari seeking to set aside the orders of the then Court of First Instance of Manila*, Branch XXIV in Civil Case No. 132077: (a) dated July 13, 1981 denying the special appearances of petitioners as defendants in said case to question the court's jurisdiction over the persons of the defendants and (b) dated September 22, 1981 denying the motion for reconsideration of said order.

The antecedents of this case are as follows:

On May 7, 1980, the private respondent C.F. Sharp & Co., Inc. filed a complaint for injunction and/or declaratory relief in the then Court of First Instance of Manila against seventy-nine (79) Japanese corporations as defendants, among which are the petitioners herein. Said complaint was docketed as Civil Case No. 132077. The complaint alleges, among others, that the plaintiff is a corporation organized and existing under the laws of the Philippines; that there is another corporation organized under the laws of Japan with the corporate name C.F. Sharp Kabushiki Kaisha; that the plaintiff and C.F. Sharp Kabushiki Kaisha are in all respects separate and distinct from each other; that C.F. Sharp Kabushiki Kaisha appears to have incurred obligations to several creditors amongst which are defendants, also foreign corporations organized and existing under the laws of Japan; that due to financial difficulties, C.F. Sharp Kabushiki Kaisha failed and/or refused to pay its creditors; and that in view of the failure and/or refusal of said C.F. Sharp Kabushiki Kaisha to pay its alleged obligations to defendants, the latter have been demanding or have been attempting to demand from C.F. Sharp & Co., Inc., the payment of the alleged obligations to them of C.F. Sharp Kabushiki Kaisha, notwithstanding that C.F. Sharp & Co., Inc. is a corporation separate and distinct from that of C.F. Sharp Kabushiki Kaisha and that the former had no participation whatsoever or liability in connection with the transactions between the latter and the defendants.

As alleged in the complaint, the private respondent prayed for injunctive relief against the petitioners' demand from the private respondent for the payment of C.F. Sharp Kabushiki Kaisha's liabilities to the petitioners.

As an alternative to injunction, the private respondent prayed that a judicial declaration be made that, as a separate and independent corporation, it is not liable for the obligations and liabilities of C.F. Sharp Kabushiki Kaisha.

Since the defendants are non-residents, without business addresses in the Philippines but in Japan, the private respondent prayed for leave of court to effect extraterritorial service of summons.

On June 11, 1980, the respondent judge issued an order authorizing the private respondent to effect extraterritorial service of summons on defendants therein.

Subsequently, private respondent filed an urgent ex-parte motion dated June 23, 1980 for Extraterritorial Service of Summons Upon Defendants by registered mail with return cards pursuant to Section 17 of Rule 14 of the Rules of Court.

Acting on said motion, the respondent judge issued an order dated June 30, 1980 granting the motion and authorizing extraterritorial service of summons upon defendants to be effected by registered mail with return cards.

On March 11, 1981, five of the petitioners, Kawasaki Port Service Corporation, Naikai Shipping Co., Ltd., Naikai Tug Boat Service Co., Ltd., The Port Service Corporation and Licensed Land Sea Pilots Association filed their "Special Appearance to Question Jurisdiction of This Honorable Court Over Persons of Defendants" contending that the lower court does not and cannot acquire jurisdiction over the persons of defendants on the grounds that private respondent's action does not refer to its personal status; that the action does not have for subject matter, property contemplated in Section 17 of Rule 14 of the Rules of Court, that the action does not pray that defendants be excluded from any interest or property in the Philippines; that no property of the defendants has been attached; that the action is in personam; and that the action does not fall within any of the four cases mentioned in Section 17, Rule 14 of the Rules of Court.

On March 17, 1981, another three of herein petitioners, Hayakoma Unyu, K.K., Tokyo Kisen Company, Ltd. and Omori Kaisoten, Ltd. also filed their special appearance adopting the same arguments as that of the first five.

On April 28, 1981, the two other petitioners, Tohoku Unyu Co., Ltd. and Seitetsu Unyu Co., Ltd., filed their "Special Appearance to Question the Jurisdiction of the Honorable Court" over their persons adopting in toto as theirs the "Special Appearance" dated March 11, 1981 of Kawasaki Port Service.

On July 13, 1981, the respondent Court issued its order denying said special appearances. The motion for reconsideration of said order filed by the petitioners was also denied on September 22, 1981.

Hence, the present petition.

After the required pleadings were filed, the First Division of this Court, in the resolution of April 14, 1982, gave due course to the petition and required both parties to submit simultaneous memoranda within thirty (30) days from notice. Both parties complied by submitting the required memoranda.

The main issue in this case is whether or not private respondent's complaint for injunction and/or declaratory relief is within the purview of the provisions of Section 17, Rule 14 of the Rules of Court.

The petitioners contend that the respondent judge acted contrary to the provisions of Section 17 of Rule 14 for the following reasons: (1) private respondent's prayer for injunction, as a consequence of its alleged non-liability to the petitioners for debts of C.F. Sharp Kabushiki Kaisha of Japan, conclusively establishes that private respondent's cause of action does not affect its status; (2) the respondent court cannot take jurisdiction of actions against the petitioners as they are non-residents and own no property within the state; (3) the petitioners have not as yet claimed a lien or interest in the property within the Philippines at the time the action was filed which is a requirement under Section 17 of Rule 14; (4) extra-territorial service on a non-resident defendant is authorized, among others, when the subject of the action is property within the Philippines in which the relief demanded consists in excluding defendant from any interest therein; and (5) inasmuch as the reliefs prayed for by the private respondent in the complaint are in personam, service by registered mail cannot be availed of because Section 17 of Rule 14 authorized this mode of service only in actions in rem or quasi in rem.

For its part, the private respondent countered that (1) the action refers to its status because the basic issue

presented to the lower court for determination is its status as a corporation which has a personality that is separate, distinct and independent from the personality of another corporation, i.e., C.F. Sharp Kabushiki Kaisha of Japan; (2) under Section 17 of Rule 14, the subject matter or property involved in the action does not have to belong to the defendants. The provisions of said section contemplate of a situation where the property belongs to the plaintiff but the defendant has a claim over said property, whether that claim be actual or contingent; (3) the prayer of the plaintiff that the defendants be excluded from any interest in the properties of the plaintiff within the Philippines has the effect of excluding the defendants from the properties of the plaintiff in the Philippines for the purpose of answering for the debts of C.F. Sharp Kabushiki Kaisha of Japan to the defendants in accordance with Section 17 of Rule 14; and (4) the action before the lower court is an action quasi in rem as the remedies raised in the complaint affect the personal status of the plaintiff as a separate, distinct and independent corporation and relates to the properties of the plaintiff in the Philippines over which the petitioners have or claim an interest, actual or contingent.

The petition is impressed with merit.

Section 17, Rule 14 of the Rules of Court provides:

"Section 17. Extraterritorial service. - When the defendant does not reside and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 7; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer."

This Court had ruled that extraterritorial service of summons is proper only in four (4) instances, namely: "(1) when the action affects the personal status of the plaintiffs; (2) when the action relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; (3) when the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; and (4) when the defendant non-resident's property has been attached within the Philippines." (De Midgely v. Ferandos, 64 SCRA 23 [1975]; The Dial Corporation v. Soriano, 161 SCRA 737 [1988]).

In the case at bar, private respondent has two (2) alternative principal causes of action, to wit: either for declaratory relief or for injunction. Allegedly, in both cases, the status of the plaintiff is not only affected but is the main issue at hand.

As defined, "Status means a legal personal relationship, not temporary in nature nor terminable at the mere will of the parties, with which third persons and the state are concerned" (Holzer v. Deutsche Reichsbahn Gesellschaft, 290 NYS 181; cited in 40 Words and Phrases, 129, Permanent Edition).

It is easy to see in the instant case, that what is sought is a declaration not only that private respondent is a corporation for there is no dispute on that matter but also that it is separate and distinct from C.F. Sharp Kabushiki Kaisha and therefore, not liable for the latter's indebtedness. It is evident that monetary obligations does not, in any way, refer to status, rights and obligations. Obligations are more or less temporary, but status is relatively permanent. But more importantly, as cited in the case of Dy Poco v. Commissioner of Immigration, et. al., 16 SCRA 618 [1966]), the prevailing rule is that "where a declaratory judgment as to a disputed fact would be

determinative of issues rather than a construction of definite stated rights, status and other relations, commonly expressed in written instrument, the case is not one for declaratory judgment." Thus, considering the nature of a proceeding for declaratory judgment, wherein relief may be sought only to declare rights and not to determine or try issues, there is more valid reason to adhere to the principle that a declaratory relief proceeding is unavailable where judgment would have to be made, only after a judicial investigation of disputed issues (ibid). In fact, private respondent itself perceives that petitioners may even seek to pierce the veil of corporate identity (Rollo, p. 63).

Private respondent alleges that most if not all, of the petitioners have merely demanded or have attempted to demand from the former the payment of the obligations of C.F. Sharp K.K. (Rollo, p. 63). Otherwise stated, there is no action relating to or the subject of which are the properties of the defendants in the Philippines for it is beyond dispute that they have none in this jurisdiction nor can it be said that they have claimed any lien or interest, actual or contingent over any property herein, for as above stated, they merely demanded or attempted to demand from private respondent payment of the monetary obligations of C.F. Sharp K.K. No action in court has as yet ensued. Verily, the fact that C.F. Sharp Philippines is an entity separate and distinct from C.F. Sharp K.K. is a matter of defense that can be raised by the former at the proper time.

Finally, the alternative relief sought is injunction, that is to enjoin petitioners from demanding from private respondent the payment of the obligations of C.F. Sharp K.K. It was not prayed that petitioners be excluded from any property located in the Philippines, nor was it alleged, much less shown, that the properties of the defendants, if any, have been attached.

Hence, as ruled by this Court, where the complaint does not involve the personal status of plaintiff, nor any property in the Philippines in which defendants have or claim an interest, or which the plaintiff has attached, but purely an action for injunction, it is a personal action as well as an action in personam, not an action in rem or quasi in rem. As a personal action, personal or substituted service of summons on the defendants, not extraterritorial service, is necessary to confer jurisdiction on the court. In an action for injunction, extra-territorial service of summons and complaint upon the non--resident defendants cannot subject them to the processes of the regional trial courts which are powerless to reach them outside the region over which they exercise their authority. Extraterritorial service of summons will not confer on the court jurisdiction or power to compel them to obey its orders (*Dial Corporation v. Soriano*, 161 SCRA 738 [1988] citing Section 3-a Interim Rules of Court, Section 21, subpar. 1, BP Blg. 129).

Considering that extraterritorial service of summons on the petitioners was improper, the same was null and void.

WHEREFORE, the petition is Granted and the questioned orders dated July 13, 1981 and September 22, 1981 of the respondent Judge, are Reversed and Set Aside.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Davide, Jr., JJ., concur.

Fernan, C.J., (Chairman), no part, related to counsel for petitioner.

* Judge Augusto M. Amores issued the orders.

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