

**WALTER ASCONA LEE, ESPIRITU TAN, BENITO CHIONGBIAN AND
HENRY CHIONGBIAN, PETITIONERS, VS. HON. MANUEL V. ROMILLO,
JR., PRESIDING JUDGE, COURT OF FIRST INSTANCE OF RIZAL,
BRANCH ...**

G.R. No. 60937. May 28, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review on certiorari seeks the reversal of the decision of the Court of Appeals affirming the order of the respondent judge who granted the private respondent's motion for a writ of execution of the lower court's judgment rendered against the petitioners for their failure to comply with their obligations under the arrastre contract entered into by the private respondent with William Lines, Inc.

On May 6, 1975, the private respondent filed a complaint for accounting with damages entitled "Leoncio C. Mendiore, doing business under the name and style 'Leoncio C. Mendiore Services' v. Walter Ascona Lee, Espiritu Tan and Benito Chiongbian." The Court of First Instance of Rizal at Pasay City docketed the case as Civil Case No. 4343-P. The complaint was based on a contract for arrastre services at Pier 14, North Harbor, Manila executed between respondent Mendiore and William Lines, Inc., represented by Benito Chiongbian as evidenced by the Memorandum Agreement dated July 28, 1973. Among the substantial allegations in the complaint were: (1) In the year 1973, specifically from August 1 up to November 30, plaintiff Mendiore conducted arrastre operations at Pier 14 as per arrastre contract with William Lines, Inc.; (2) All the income from the arrastre operations during the said period were received and held in trust for Mendiore by defendants Lee, Tan and Chiongbian who were also tasked with the disbursement of the said income for operational expenses; (3) Defendants Lee, Tan and Chiongbian were duty-bound to turn over to plaintiff Mendiore the income they held in trust for him; and (4) They failed to do so despite Mendiore's repeated demands.

On June 16, 1975, the defendants in Civil Case No. 4343-P filed a motion to dismiss the complaint. The motion was denied after which they filed an answer on July 28, 1975.

On January 28, 1977, the trial court granted the motion to include Jose Millares, Cesar Almario and Henry Chiongbian as indispensable parties. Millares did not file an answer. Almario voluntarily appeared and manifested that he was joining Mendiore as co-Plaintiff. Henry Chiongbian filed his answer with counterclaim on April 15, 1977.

At the pre-trial stage of the proceedings on December 12, 1977, the parties filed a partial stipulation of facts wherein they stated, among others, that: (1) plaintiff Mendiore operated the arrastre services from August 1, 1973 to November 30, 1973 at Pier 14 under a contract which he had with William Lines, Inc. (Exhibit A); (2) from said operations, a total gross income of P1,620,985.47 was derived and realized (Exhibit B); (3) defendants Lee, Tan and Benito Chiongbian were in-charge of collecting said income; (4) after November 30, 1973, P-14 Arrastre Services, Inc., a corporation registered on August 15, 1973 of which Mendiore was one of its incorporators, took

over the operations at Pier 14, and (5) Mendiolo assigned his shareholdings in P-14 Arrastre Services, Inc., to defendant Henry Chiongbian on December 20, 1974.

During the hearing on March 30, 1978, where the counsel for the petitioners failed to show up, Mendiolo was allowed to present evidence ex-parte.

On July 20, 1978, an amended order of the trial court granted the petitioners an opportunity to adduce their evidence. Protracted and lengthy trials were conducted until May 22, 1981.

On September 11, 1981, the trial court rendered its decision against the petitioners. It had the following dispositive portion:

"WHEREFORE, this Court hereby renders judgment in favor of plaintiff and against defendants, ordering the latter, jointly and severally, to deliver to the former the amount of P859,981.53 representing the unspent amounts for salaries and for rentals for handling equipment after deducting the actual and legitimate expenses for both items, with interests at the rate of 14% per annum from May 30, 1974 until such time as actual delivery of the same shall have been made by defendants to plaintiff and to pay such amounts as equivalent to 20% of the total amount due — principal and interests at the time of actual payment — for attorney's fees. The counterclaims of defendants are hereby dismissed for lack of merit. Defendants are, likewise, ordered to pay costs." (p. 277, Rollo)

On October 6, 1981, copies of the trial court's decision were mailed to the petitioners' counsel at William Lines Building, Pier 14, North Harbor, Manila. On October 9, 19 and 22, 1981, the first, second and third notices of the registered mail were delivered respectively to the guard-on-duty at counsel's offices but the mailed decision remained unclaimed at the post office despite the proper notices.

On November 26, 1981, an urgent ex -parte motion for execution was granted and the corresponding writ of execution was issued. A notice of garnishment was further issued to certain banks.

The petitioners' subsequent motion to set aside the judgment and to quash/recall the writ of execution with prayer for a restraining order dated December 1, 1981 was denied.

In a special civil action for certiorari and prohibition with restraining order and/or preliminary injunction filed with the Court of Appeals, the petitioners questioned the issuance by the respondent judge of the order dated November 26, 1981. The Court of Appeals dismissed the petition for lack of merit and set aside the writ of preliminary injunction it had earlier issued.

On July 10, 1982, the instant petition was filed which we, on October 4, 1982, initially resolved to deny for being unmeritorious.

On December 20, 1982, we reconsidered our resolution dated October 4, 1982 and gave due course to this petition requiring the parties to submit simultaneous memoranda.

The issues worthy of note as presented by the petitioners in their memoranda are as follows:

- Whether or not the parties in the case at bar are the real parties-in-interest.
- Whether or not petitioner Henry Chiongbian can be adjudged jointly and severally liable with the other co-petitioners despite the fact that in the original complaint he was not included as a party-defendant.
- Whether or not the judgment against the petitioners was premature in the absence of a formal accounting to be made by the petitioners.
- Whether or not the lower court's decision was validly served on the petitioners, and

- Whether or not the delegation of the reception of the evidence ex-parte to the lower court's legal researcher is illegal.

On the first issue, the petitioners maintain that the parties in the case before us are not the real parties-in-interest considering that on the one hand, as early as August 15, 1973, Mendioro ceased to be a real party-in-interest as he transferred and assigned all assets and liabilities of Leoncio C. Mendioro Services to P-14 Arrastre Services while on the other hand, petitioners Lee, Tan and Benito Chiongbian acted only in representation of P-14 Arrastre Services which is the real party-in-interest.

Rule 3, Section 2 of the Revised Rules of Court mandates that:

"Parties in interest.— Every action must be prosecuted and defended in the value of the real party in interest, xxx"

By "real party in interest" is meant such party who would be benefited or injured by the judgment or entitled to the avails of the suit (*Subido v. City of Manila, et al.*, 108 Phil. 462 and *Subido v. Sarmiento, et al.*, 108 Phil. 150, citing *Salonga v. Warner, Barnes & Co., Ltd.*, 88 Phil. 125). A real party in interest-plaintiff is one who has a legal right while a real party in interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal right of the former.

A careful examination of the records of the case at bar shows that private respondent Mendioro is a real party in interest-plaintiff in Civil Case No. 4343-P with respect to the amounts actually received by the petitioners and held in trust for him in relation to the arrastre services he rendered at Pier 14 for William Lines, Inc., from August 1, 1973 up to November 30, 1973. His interest arose from his ownership of the amounts paid by persons and firms for his arrastre services during the stipulated period. Likewise, petitioners Lee, Tan and Benito Chiongbian are real parties in interest-defendants inasmuch as by their act of receiving the income from the arrastre operations at Pier 14 where Mendioro contracted to conduct arrastre services for William Lines, Inc., they were obliged to turn over the said income to Mendioro or to account therefor in case certain amounts were used for operational expenses.

The claim of the petitioners that P-14 Arrastre Services should have been the real party in interest-defendant since it absorbed the assets and liabilities of Leoncio C. Mendioro Services is without merit. It is borne by the records that before August 1, 1973, William Lines, Inc., had three separate arrastre contracts, one with Mendioro and the two others with one Cesar Almario. It became the policy of the government thereafter to have only one contractor per shipping company so the contractors of William Lines, Inc., agreed to merge and form a corporation under the name P-14 Arrastre Services, Inc. However, pending the formation and operation of the new corporation, the arrastre contract was given to Mendioro alone by virtue of the Memorandum Agreement dated July 28, 1973 (Exhibit A). Even though the Articles of Incorporation of P-14 Arrastre Services were duly registered on August 15, 1973 with the Securities and Exchange Commission (Annex D-I of Petitioners' Memorandum), said corporation commenced its operations only on December 1, 1973 as manifested by petitioners' counsel during the hearing before us regarding this petition (TSN., September 12, 1984, p. 12).

The claim of the private respondent is limited to the arrastre services he rendered from August 1, 1973 up to November 30, 1973 under the business name Leoncio C. Mendioro, Inc. The fact that on December 20, 1974, Mendioro sold all his shareholdings in P-14 Arrastre Services to petitioner Henry Chiongbian is of no moment simply because the amount being claimed by the private respondent was already earned and collected during the four-month period in 1973 under consideration. Since P-14 Arrastre Services started its actual operations only on December 1, 1973, the same amount could not have been part of its assets or liabilities. With more reason could it not have been part of the shares of stock sold by Mendioro to petitioner Henry Chiongbian.

On the second issue, it is argued that since petitioner Henry Chiongbian was not included in the original complaint and no relief was sought against him therein, consequently, there can be no valid judgment making him jointly and severally liable with his co-parties. The argument standing by itself appears sound but the records clearly show that the petitioners' own counsel had Chiongbian impleaded as an indispensable party and he formally filed a motion to that effect.

We are in accord with the following manifestation which the private respondent made regarding this issue, to wit:

"By his own act petitioner Henry Chiongbian impleaded himself a party ostensibly to assure him a day in court. He was properly summoned and he seasonably filed his answer to the complaint and in his answer he interposed some counterclaims against herein respondent. In all stages of the proceedings before the lower court — except on two occasions when he and his lawyer did not appear in spite of due notice — he was always represented by his counsel. His counsel presented both testimonial and documentary evidence which were all admitted and considered by the lower court. However, he did not testify in his own behalf, although (here was nothing that prevented him. to do so had he desired or chosen to testify. His not having testified in his own behalf before the lower court, in spite of all the opportunities given to him. amounted to a waiver of that right. But, certainly, the protective mantle of due process of law has been fully accorded to, and fully enjoyed by, him. Hence, he could not validly and rightfully claim that he was denied of due process of law. Whatever the imperfection in form — although here there is no such imperfection — he was validly, legally and rightfully held as a party.

".... Since the purpose of formally impleading a party is to assure him a day in court, once the protective mantle of due process of law has in fact been accorded a litigant, whatever the imperfection in form, the real litigant may be held as a party. Jose M. Aruego definitely had his day in court, and due process of law was enjoyed by him as a matter of fact as revealed by the records of the case.' (Albert v. University Publishing Co., Inc., 14 SCRA 285. 289)

Henry Chiongbian's
liability pleaded
and proved:

"True, when petitioner Henry Chiongbian impleaded himself as an indispensable party defendant — not as unwilling co-plaintiff — the complaint was not ordered to be amended and it was not in fact amended. After summons and copy-of said complaint were validly served upon him. he seasonably filed his answer with counterclaims against herein respondent. By the filing of his answer, the issues were joined. Subsequently, pre-trial was had and followed by full-blown trial on the merits wherein all the petitioners voluntarily and freely participated. Therefore, all the allegations of the complaint were made applicable to all the petitioners, including Henry Chiongbian.

"There was no imperfection in form or substance in the above procedure applied by the lower court and accepted by the petitioners. including Henry Chiongbian. But. even assuming for the sake of argument, that there was something odd or imperfect in the above procedure, it was cured or considered as waived in view of petitioners' acceptance of the same, for the matter is merely procedure in nature.

"A perusal of the allegations and prayers in both the complaint and the answer of petitioner 1 Henry Chiongbian aptly and clearly shows that his liability for herein respondent's claims was succinctly pleaded, especially when the said allegation1- and prayers in the complaint were made applicable to 1 Henry Chiongbian. as already shown above." (pp. 153-155. Rollo)

On the third issue, the petitioners contend that since the complaint of the private respondent was one for accounting with damages, the lower court could not and should not have rendered a money judgment without first ordering them to submit a formal document captioned "Accounting."

The trial court found the amount due to Mendioro as P859,981.53 after deducting the actual and legitimate expenses for salaries and rentals of handling equipment. In lieu of the document referred to by the petitioners, the trial court relied on the evidence presented in court in a span of three years (from 1978 to 1981) during which time all the parties were afforded the chance to adduce their evidence. The absence of said formal document and the reliance on testimonial and documentary evidence adduced during trial are explained by the trial court as follows:

"This Court has noted that this action is one seeking for proper and accurate accounting of the incomes derived from plaintiff's operations of the arrastre services from August 1 to November 30, 1973. After hearing the testimony of defendants' witness Nestor Caylo who categorically stated that the documents, vouchers, receipt and other papers which are needed to substantiate the accounting he made were no longer available, to order defendants to render an accounting would be an exercise in futility. After all, plaintiff has, as already found above, satisfactorily established the amount which remained unspent after deducting the actual and legitimate expenses." (p. 277. Rollo)

We find no compelling reason that may warrant the setting aside of the aforequoted findings of the trial court sustained by the Court of Appeals. Once again we reiterate that the trial court's findings of fact are entitled to great weight on appeal and should not be disturbed except for strong and cogent reasons (*Municipality of Victorias v. Court of Appeals*, 149 SCR A 32; *Berenguel v. Republic*, 146 SCRA 235; and *Santos v. Intermediate Appellate Court*, 145 SCRA 238).

On the fourth issue, the petitioners dispute the application of Rule 13, Section 8 of the Revised Rules of Court to their case alleging that the public respondent gravely abused his discretion in issuing the questioned writ of execution on a mere technicality. They further allege that if, in any case the lower court's judgment is valid, the gross negligence and incompetence of their counsel then in failing to claim in the mails his claim of the decision should not be taken against them.

Rule 13, Section 8 of the aforecited law reads, in part:

"Completeness of service. — xxx Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such."

In the instant case, there is proof that copies of the lower court's decision were mailed to the petitioners' counsel at the address on record, the William Lines Building, Pier 14, North Harbor, Manila on October 6, 1981; that first, second and third notices of said registered mail were delivered on October 9, 19 and 22, 1981, respectively to the guard-on-duty at counsel's offices; and that petitioners' counsel failed to claim the mailed decision at the post office. These facts indicate a correct application of the aforequoted provision whereby the law creates a presumption of valid service once there is a failure on the part of the addressee to claim his mail as required despite the receipt of the proper notices.

The fact that the petitioners' allegedly negligent counsel, Atty. Abraham Drapiza, had resigned as counsel of William Lines, Inc., in the latter part of September 1981 and left his office at William Lines Building cannot justify the petitioners' claim of non-applicability of Rule 13, Section 8 in their case.

It is a well-settled rule that when a party is represented by counsel, notice should be made upon the counsel of record at his given address appearing in the counsel's entry of appearance, to which notices of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address (*Cubar v. Mendoza*, 120 SCR A 768; and *Lopez v. De los Reyes*, 31 SCRA 214). The court cannot be expected to take judicial notice of the new address of a lawyer who has moved or to ascertain on its own whether or not the

counsel of record has been changed and who the new counsel could possibly be or where he probably resides or holds office. It is logical to assume that processes mailed to petitioner Chiongbian and his group, addressed to their lawyer at the William Lines Building were in fact received, in the absence of a notice of change of address or counsel. Atty. Drapiza should have observed the legal formality required before a counsel of record may be considered relieved of his responsibility as such counsel on account of withdrawal. On their part, the petitioners themselves should have informed the court of the withdrawal of their counsel after the several reminders they made to him anent his withdrawal had allegedly been ignored.

On the last issue, the petitioners question the delegation of the reception of the evidence ex-parte in the lower court to its legal researcher invoking our ruling in *Lim Tanhu v. Ramolete* (66 SCRA 425). They argue that such practice does not have any basis in law. Their argument is not meritorious. In the case of *The National Housing Authority v. Court of Appeals* (121 SCRA 777, 781), we categorically stated that:

"The contention that the Trial Court cannot delegate the reception of evidence to its Clerk of Court, citing the case of *Lim Tanhu v. Ramolete* (supra) is not well taken. Suffice it to say, for purposes of this suit, that the said case referred to reception of evidence by a Clerk of Court after declaration of defendant's default. No default is involved herein. As held in the case of *Laluan v. Manalo* (65 SCRA 494 [1975]), no provision of law or principle of public policy prohibits a Court from authorizing its Clerk of Court to receive the evidence of a party litigant."

More important, however, is the fact that the trial court reconsidered its earlier order and allowed the petitioners to present their evidence. For almost three years, from July 20, 1978 to May 22, 1981, the petitioners participated in the protracted trials which followed.

WHEREFORE, PREMISES CONSIDERED, the judgment under review is hereby AFFIRMED. The instant petition is DISMISSED for lack of merit.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Fernan (Chairman), J., took no part.

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