

UNIVERSAL FAR EAST CORPORATION, PETITIONER, VS. COURT OF APPEALS AND EMILIO CHING, RESPONDENTS.

G.R. No. 64931. August 31, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about an execution pending appeal under the Interim Rules and the Judiciary Reorganization Law. The lower court rendered a decision dated December 28, 1982, ordering Emilio Ching to pay Universal Far East Corporation P162,978.12 plus 14% interest per annum from November, 1977 and P10,000 as attorney's fees (p. 43, Rollo).

The corporation received a copy of the decision on January 14, 1983. Three days later, or on January 17, it filed a motion for execution pending appeal on the ground that Ching was insolvent and his appeal would be dilatory. It offered to post a bond.

The motion was served on Ching on January 17. It was set for hearing on January 19, 1983 but it was not then heard because on that date the Presiding Judge and other Judges were in conference with the Chief Justice regarding the judiciary revamp (p. 230, Record). It was reset for March 4, 1983. Ching asked for 15 days extension from January 19 to file his opposition.

In the meantime, Ching, who received a copy of the decision on January 12, 1983, filed his notice of appeal on January 27 or on the 15th day. He mailed his opposition on February 3, 1983. On March 4, the motion was heard. Ching was given five days to file a rejoinder to the corporation's reply but he did not file any rejoinder (p. 248, Record).

Instead, he filed on March 23 a manifestation wherein he contended that under section 9, Rule 41 of the Rules of Court the trial court had no more jurisdiction to grant execution pending appeal because his appeal had long been perfected (pp. 254-5, Record).

The trial court granted the execution pending appeal on May 30, 1983, or more than four months after Ching's appeal was perfected, on the ground of Ching's insolvency. It required the corporation to post a bond in the sum of P280,866.72 (p. 260, Record).

The trial court ordered execution in its order of June 4, 1983 (p. 272, Record). Acting on Ching's notice of appeal dated January 27, 1983, the trial court in its order of June 10, 1983 directed the elevation of the record to the Intermediate Appellate Court. The record was actually elevated on August 30, 1983 (p. 135, Rollo).

Ching assailed the execution pending appeal in a petition for certiorari, prohibition and mandamus filed on June 13, 1983 in the Appellate Court, which in a decision dated July 8, 1983, set aside the order of execution on the ground that, having been issued after the perfection of the appeal, the trial court had no more jurisdiction over the case. The corporation appealed to this Court.

We hold that the trial court had jurisdiction to issue the order of execution pending appeal because the motion for execution was filed before Ching had perfected his appeal and it was resolved before the trial court had acted on Ching's appeal and elevated the record to the Appellate Court (See sec. 23, Interim Rules). The execution pending appeal has to be a part of the records to be elevated to the Appellate Court.

Said motion could not have been dispatched by the trial court within the reglementary fifteen-day period for appeal because respondent Ching himself asked for an extension of fifteen days to file his opposition. As already noted, he filed his opposition on February 3, 1984 after the perfection of his appeal. He did not question the trial court's jurisdiction.

It may be argued that the trial court should dispose of the motion for execution within the reglementary fifteen-day period. Such a rule would be difficult, if not impossible, to follow. It would not be pragmatic and expedient and could cause injustice. Hurried justice is not always authentic justice.

The motion for execution has to be set for hearing. The judgment debtor has to be heard. The good reasons for execution pending appeal have to be scrutinized. These things cannot be done within the short period of fifteen days. The trial court may be confronted with other matters more pressing that would demand its immediate attention.

The revamp law and its Interim Rules do not require that the motion for execution be resolved within the fifteen-day period. It should be noted that under the Rules of Court, where appeal is by record on appeal, the trial court loses jurisdiction upon approval of the record on appeal and appeal bond (Sec. 9, Rule 41, Rules of Court). That may take place long after the expiration of the thirty-day reglementary period for appeal.

WHEREFORE, the decision of the Appellate Court is reversed and set aside. The execution pending appeal is affirmed.

SO ORDERED.

Teehankee, Acting C.J., Concepcion, Jr., Melencio-Herrera, Plana, Relova, and De La Fuente, JJ., concur.

Escolin, J., see attached concurrence.

Guerrero, J., see certification below as Justice Guerrero's concurrence.

Aquino, J., certifies that Justice Guerrero concurred in this opinion.

Gutierrez, Jr., J., in the result.

Cuevas, J., see attached dissent.

Abad Santos, J., reserved his vote.

Fernando, C.J., and Makasiar, J., on leave.

CONCURRING OPINION

ESCOLIN, J.:

I agree. Paragraph 1, Section 23 of the Interim Rules provides:

"In cases where appeal is taken, perfection of the appeal shall be upon the expiration of the last day to appeal by any party." [Italics supplied].

Under this section, the mere filing of the appellant's notice of appeal does not divest the trial court of its jurisdiction over the case. The court may still take cognizance of the other party's motion for new trial under Rule 37, if he should opt to file one, or, as in the instant case, a motion for execution pending appeal, provided such motions are filed within 15 days from said party's notice of the decision. Upon this premise, respondent Ching may not foreclose the petitioner's right to ask for immediate execution by the simple expedient of immediately filing a notice of appeal. This consequence finds no justification in the Interim Rules.

In the case at bar, petitioner filed the motion for immediate execution within the reglementary period. The fact that the motion was resolved after the said period is of no moment. As pointed out by Justice Aquino in his ponencia, to require the trial court to dispose of such motion within the reglementary period for appeal "would be difficult, if not impossible, to follow."

DISSENTING OPINION

CUEVAS, J.:

The issue involved in this Certiorari case is whether or not execution pending appeal may be issued even after the perfection of the appeal.

Respondent Emilio Ching, defendant in the collection case before the trial court, was served with a copy of the judgment which is sought to be executed, on January 12, 1983. On January 17, 1983, petitioner, plaintiff in the said collection case and who was served with copy of the decision on January 14, 1983, filed a motion for execution pending appeal. On January 27, 1983, Ching filed a notice of appeal. Petitioner's motion for execution pending appeal was granted but only on May 30, 1983, or four (4) months after the appeal has been perfected.

Rule 41, Sec. 9 of the Rules of Court provides:

"SEC. 9. When appeal deemed perfected; effect thereof. - If the notice of appeal, the appeal bond and the record on appeal have been filed in due time, the appeal is deemed perfected upon the approval of the record on appeal and of the appeal bond other than a cash bond, and thereafter the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court, and to permit the prosecution of pauper's appeals."

Under the old procedure as laid down in the aforequoted provision, mere filing of the notice of appeal, record on appeal and appeal bond does not suffice for the perfection of an appeal. It is the filing within the reglementary period, and approval by the Court of the record on appeal and appeal bond which perfect the appeal.

Under the present procedure for appeal, as spelled out by the Ad Interim Rules and Guidelines promulgated by this Court, the filing of a record on appeal, except in cases of multiple appeals, (Sub-Par. B. Par. 19) is dispensed with (Par. 18). Likewise there is no more necessity for the filing of an appeal bond. The appeal is perfected upon the expiration of the last day to appeal (Par. 23, Ad Interim Rules and Guidelines) and the filing and/or pendency of a motion for execution pending appeal does not suspend nor interrupt the period for the perfection of the appeal.

Once the appeal is perfected, whether under the Rules of Court or under the present procedure and guidelines, the trial court loses jurisdiction over the case except (1) to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal; (2) to approve compromises submitted by the parties; and (3) to permit the prosecution of pauper's' appeal. (*Gosiengfiao vs. Yatco*, 1 SCRA

358; Cabilao vs. Judge of the CFI of Zamboanga, 17 SCRA 992, August 29, 1966). The trial court also loses jurisdiction to issue an order of execution pending appeal. (Basco vs. CA, 81 SCRA 726, February 28, 1978).

Thus what is decisive is the time when the appeal is perfected and not when the motion for execution pending appeal was filed. For an execution pending appeal to be valid, not only must the motion for that purpose be filed within the period for appeal but the grant thereof must also be made within the time for the perfection of the appeal since the authority to act thereon by way of approving it is lost the moment the appeal is perfected. Aware of the foregoing consequences, movant must now act earlier in order to give the Court enough opportunity to resolve his motion before the period of appeal expires. For if he dilly-dally the filing of said motion and the Court fails to act thereon for lack of sufficient time, then he has nobody to blame and must therefore be made to suffer the consequences of his inaction.

It is true, under the old procedure where the motion for execution of judgment pending appeal was filed before the final approval of the Record on Appeal, the trial court still retains jurisdiction to resolve and grant the motion. (Laurelia vs. Uichangco, 104 Phil. 17) Under the present Rules and Guidelines, however that ruling no longer applies since there is no more Record on Appeal that will have to be approved in order that the appeal maybe perfected. The mere lapse of the fifteen day period to appeal perfects the appeal. But even under the old procedure if the approval of the record on appeal is final and not provisional, the trial court can no longer issue even partial execution of its judgment. (Alcober vs. Garciano, 23 SCRA 676, May 23, 1968)

The fact that the trial court has but only fifteen (15) days or even lesser in certain cases, which it may be argued is not enough to act upon the motion, is no excuse for allowing issuance of execution pending appeal even after the perfection of the appeal. For while the rule requires that the reasons in support of execution pending appeal should be stated in a special order, this is not to be strictly construed if it would defeat the interest of justice. That such reasons are not expressed in a special order will not nullify immediate execution, provided these reasons may be found somewhere in the record. (Borromeo Bros. Estate, Inc. vs. Court of Appeals, 105 Phil. 466; Alcasid vs. Samson, 102 Phil 735; Del Rosario vs. Sandico, 97 Phil 172; People's Bank & Trust Co. vs. San Jose, 96 Phil 895; Joven vs. Boncan, 67 Phil 252). It is sufficient that good reasons are stated in the motion for execution to which the order of execution makes reference. (Dela Rosa vs. City of Baguio, 90 Phil 720; Joven vs Boncan, 67 Phil 252; Lusk vs Stevens, 64 Phil 154). In fact the Supreme Court has affirmed execution pending appeal in a case where the trial judge merely wrote the words "motion granted" at the foot of the second page of the motion for execution. (Buenaventura vs. Peña, 78 Phil. 795)

If the rule is otherwise, the trial court may just sit on the motion and act thereon only when it pleases, thus delaying the transmission of the entire record of the case to the appellate court thereby forestalling earlier disposition of the appeal which is far from the intent and purpose of the new appeal procedure.

IN VIEW OF THE FOREGOING CONSIDERATIONS, I vote to affirm the decision of the Intermediate Appellate Court.

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