

SANCHO R. JACINTO, SUBSTITUTED BY HIS HEIRS, NAMELY ERNESTO AND RUBEN JACINTO, AND DOMINGO C. BASCARA, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, PILAR T. DEL ROSARIO AND MA...

G.R. No. 66478. August 29, 1988

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FERNAN, J.:

Petition for review on certiorari of the decision of the then Intermediate Appellate Court (now Court of Appeals) which affirmed an Order of the Court of First Instance (now Regional Trial Court) of Rizal, denying a motion for second alias writ of execution dated September 28, 1980 on the ground that it was filed beyond the five-year period provided in Section 6, Rule 39 of the Revised Rules of Court.

Dispute arose from an action for forcible entry and detainer filed by herein petitioner Sancho R. Jacinto (who died during the pendency of the case in the Court of First Instance and was substituted by his heirs Ernesto Jacinto and Ruben Jacinto) and Domingo Bascarra as plaintiffs against herein private respondents Pilar T. del Rosario and Mariano del Rosario as defendants before the Municipal Trial Court (changed to City Court, now Metropolitan Trial Court), Branch III of Quezon City with plaintiffs as the prevailing parties.

Defendants-private respondents interposed an appeal before the Court of First Instance of Rizal, Branch IV in Civil Case No. Q-7613. To abbreviate the proceedings in said appeal, the parties entered into an amicable settlement concerning the reasonable rental adjudged by the lower court in the forcible entry case to be paid by defendants for having illegally occupied the lots in question for a period of six (6) years and one (1) month plus attorney's fees.

Consequently, or on March 17, 1971, a judgment approving the compromise agreement was rendered by the Court of First Instance. The terms and conditions of the aforesaid agreement read:

"1. That the defendants, jointly and severally agreed to pay the plaintiffs thru their undersigned counsel in the office of the latter the sum of P100,000.00 plus P5,000.00 as and for attorney's fees on installment basis, as follows:

- a) Upon signing of this agreement, the sum of Four Thousand Pesos (P4,000.00) corresponding to the installments for January and February, 1971;
- b) On or before March, 1971, the sum of Ten Thousand Pesos (P10,000.00);
- c) On or before April 1, 1971, and every 1st of the month thereafter until fully paid the sum of Two Thousand Pesos (P2,000.00).

"2. That in case defendants fail to pay any installment, immediate execution shall follow without the necessity of separate action and the original amount awarded which is P117,936.54 plus P5,000.00 for attorney's fees shall automatically be revived and shall be the basis of the payment with interest at eight percent (8%) per annum on the effective balance until fully paid."[1]

It appears that petitioners first filed their motion for execution in 1972 and this was granted by the trial court in an order dated August 26, 1972. Subsequently, private respondents entered into an agreement with petitioners agreeing to continue paying the installments due, thus stalling the enforcement of the writ of execution secured in 1972. However, when private respondents again defaulted in the payment of certain installments, petitioners sought anew the issuance of an alias writ of execution which was granted by the trial court in its Order dated January 2, 1973.[2]

On March 26, 1973, an alias writ of execution was issued for the then balance of P85,180.12 with interest at 8% plus P5,000.00 as attorney's fees, in respect of which the corresponding Sheriff's Return dated February 26, 1974 indicated partial satisfaction.[3]

In addition to the foregoing, the record[4] discloses that petitioner sought the issuance of an alias writ of execution in a motion dated September 20, 1980 stating, among others, that:

"7. That on August 10, 1979, the balance due from the defendant was P35,472.45 but from said date up to the present, the defendants failed to pay further installments notwithstanding repeated reminders by the plaintiffs, thru counsel, the last being August 12, 1980 by registered mail."

This motion was denied by the lower court as was the motion for reconsideration of said denial on the ground that the judgment based on compromise agreement sought to be enforced by mere motion had become final and executory for more than five (5) years and plaintiff's recourse would have to be through the filing of a separate action under the second sentence of Section 6, Rule 39 of the Rules of Court.

Petitioners' main contention in elevating the case to the Intermediate Appellate Court and to this Court is that the five (5) year period provided in Section 6, Rule 39 was suspended by agreement of the parties under which they desisted from enforcing the alias writ of execution. Petitioners premise their argument on a statement in the case of *Romana Torralba v. Hon. Walfrido de los Angeles, et al.*[5] that "the agreement of the parties to defer or suspend the enforcement of the judgment interrupts the period of limitations prescribed." Petitioners consequently contend that their motion for second alias writ of execution was filed within the five-year period.

Decisive, therefore, in this petition for review is the issue of whether or not the motion for alias writ of execution dated September 20, 1980 was filed within the five (5) year period provided for the execution of judgment by mere motion.

Respondent appellate court in affirming the decision of the lower court ruled in the negative, stating thus:

"Even by agreement of the parties, the court cannot legally take cognizance of such notion for execution filed beyond the five (5) year period. Thus the Supreme Court has said:

'A writ of execution issued after five (5) years is void, and failure to object thereto does not validate it, for the reason that jurisdiction of courts is solely conferred by law and not by express or implied will of the parties.' (*Ramos v. Garciano*, L-22341, April 29, 1969, 27 SCRA 1190)."

As provided under Section 6, Rule 39 of the Rules of Court, a judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.

According to the foregoing provision, the prevailing party is entitled to a writ of execution of the final judgment he obtained by filing a motion within five (5) years either from the date the judgment is entered or from the date it becomes final and executory. After the lapse of five years and before it is barred by the statute of limitations, the judgment may be enforced by instituting an ordinary civil action because then the judgment is reduced to a mere right of action, which judgment must be enforced as in all other ordinary actions, by the institution of a complaint

in the regular form. Such action must be filed within ten (10) years from the date the judgment becomes final.[6]

Applying Section 6, Rule 39 to the facts of the present case, the reckoning point of the five (5) year period would basically depend on the terms and conditions agreed upon by the parties in the compromise agreement approved in the judgment of the Court of First Instance of Rizal (Quezon City) dated March 19, 1971.

As a general rule, a judgment based upon a compromise is by its nature, final and immediately executory.[7] For this reason, prescription tolls not from the date of its entry but from the date of its rendition.[8]

The general rule cannot however be fully applied to the case at bar. The terms and conditions of the compromise agreement entered into by the parties in this case contain two (2) sections, the enforceability of which are not identical. Section 1 stipulating on the manner by which the judgment obligation is to be paid was immediately executory because upon signing of said agreement, private respondents obligated themselves to pay the sum of P4,000.00 corresponding to the installments for January and February 1971; on or before March 1971, the sum of P10,000.00 followed by the monthly installment of P2,000.00 to commence on April 1971 until the entire obligation shall have been fully paid. On the other hand, Section 2 constituting an acceleration clause was not immediately executory because its enforceability was dependent upon the occurrence of default which may or may not happen. In said section it was provided:

"2. That in case defendants fail to pay any installment, immediate execution shall follow without necessity of separate action and the original amount awarded which is P117,936.54, plus P5,000.00 attorney's fees shall automatically be revived and shall be the basis of the payment with interest at eight (8%) percent per annum on the effective balance until fully paid."

In petitioners' motion for issuance of an alias writ of execution filed on September 20, 1980, it was precisely this section of the compromise agreement which petitioners sought to enforce in the lower court the denial of which is presently the subject of the instant controversy. Being so, the issue of enforceability of the judgment of the lower court in Civil Case No. Q-7613 is thus limited only to the provisions of Section 2 of the aforesaid agreement.

Petitioners under Section 2 of the compromise agreement were given the right to demand payment of the entire unpaid obligation upon default of private respondents in the payment of any installment. It naturally follows that without default, Section 2 remains dormant in the sense that petitioners cannot demand payment of the entire obligation while private respondents were religiously complying with their monthly obligation. Having remained dormant, the tolling of the prescriptive period does not commence unless the activating factor of default occurs.

The question of default in this petition is not so much as to its existence or non-existence but more on which of the several defaults by private respondents is to be the reckoning period for the tolling of the period provided in Section 6, Rule 39 of the Rules of Court. Admittedly, there were several defaults as evidenced by previous unsatisfied or partially satisfied writ/alias writs of execution issued by the lower court.

The Court however finds that previous defaults became immaterial when petitioners, through the pleas and entreaties of private respondents for a chance to continue paying the obligation by monthly installments, consequently and compassionately allowed the latter to resume as in fact did resume paying the unpaid obligation by monthly installments. Having become immaterial, it was as though no default previously occurred leaving Section 2 of the compromise agreement still dormant and unenforceable thus having the effect of stalling the running of the five (5) year prescriptive period.

Granting for the sake of argument that the motion for an alias writ of execution filed on September 20, 1980 was beyond the five (5) year limitation within which a judgment may be executed by mere motion, still under the circumstances prevailing wherein all the delay in the execution of the judgment lasting for more than eight (8)

years was beneficial to private respondents, this Court for reasons of equity is constrained to treat the motion for execution as having been filed within the reglementary period required by law. Since the object of the motion in question was merely for the issuance of an alias writ of execution of a judgment which had been the object of a writ and alias writs of execution within the five years from supposed enforceability but were not so enforced due perhaps to the poor financial condition of private respondents and due to the agreement of the parties to defer or suspend the enforcement of said writ/alias writs of execution, and because the deferment or suspension was granted upon the request and for the benefit of private respondents, the counting of said period should commence to run only after August 10, 1979, allegedly the time when private respondents totally stopped paying the monthly installments due.

In computing the time limited for suing out an execution, the time during which execution is stayed should be excluded, and the time will be extended by any delay occasioned by the debtor.[9] There has been no indication that petitioners had ever slept on their rights to have the judgment executed by mere motions within the reglementary period based on the circumstances earlier discussed. The statute of limitations has not been devised against those who wish to act but cannot do so for causes beyond their control.[10]

WHEREFORE, in view of the foregoing, the decision appealed from is hereby REVERSED and SET ASIDE, and a new one is hereby entered ordering the proper Regional Trial Court of Quezon City where Civil Case No. Q-7613 is now assigned to issue an alias writ of execution to enforce the judgment in said civil case.

SO ORDERED.

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

[1] Compromise Agreement, Annex "F", Petition, Rollo, pp. 70-71

[2] Order, Annex "H", Petition, Rollo, p. 74

[3] Court of Appeals Decision, Rollo, pp. 8-9

[4] Order, September 14, 1981

[5] 96 SCRA 69, 74

[6] Articles 1144 and 1152, Civil Code of the Philippines

[7] Republic v. Estenzo, 25 SCRA 122

[8] Dirige v. Biranya, 17 SCRA 840

[9] Blouse Potenciano v. Mariano, 96 SCRA 463, 1980

[10] Lancita, et al. v. Magbanua, 117 Phil. 39, 1963

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