

PHILIPPINE BANKING CORPORATION, PETITIONER, VS. THE HON. INTERMEDIATE APPELLATE COURT, HON. ROQUE A. TAMAYO, JUDGE, REGIONAL TRIAL COURT, BRANCH CXXXII (132), NATIONAL CAPITAL J...

G.R. No. 66510. July 06, 1990

Ponente: PARAS, J.

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PARAS, J.:

In this petition for review by way of certiorari, the petitioner seeks -

- (a) to set aside and reverse the Decision of respondent Intermediate Appellate Court in AC-G.R. SP No. 01919, promulgated on December 15, 1983 dismissing petitioner's Petition for Certiorari and the Resolution dated January 24, 1984 denying the petitioner's Motion for Reconsideration;
- (b) to nullify and set aside the Orders of respondent Judge Roque A. Tamayo, dated August 12, 1983, dismissing petitioner's complaint for sum of money (Civil Case No. 4058), discharging the writ of attachment therein issued and denying the motion for reconsideration;
- (c) to admit petitioner's amended complaint and to proceed with the trial of Civil Case No. 4058 on the merits, to reinstate and restore the Order of Attachment and Writ of Attachment dated June 22, 1983, together with the Notice of Levy of Attachment on the real and personal properties of the herein private respondents, as contained in the Notice of Levy dated June 23, 1983.

The pertinent facts that gave rise to this petition are as follows:

On May 26, 1983, petitioner Philippine Banking Corporation filed a complaint against the private respondents for a sum of money with prayer for preliminary attachment, predicated allegedly on the latter's refusal and failure to pay the stipulated installments as provided for in the promissory note (Nos. 16-10418 and 16-10539) evidencing an outstanding obligation of P3,290,000.00 borrowed by the private respondent from the petitioner. This was guaranteed by a continuing Surety Agreement whereby the private respondents-spouses acted as surety for the above-mentioned loans, binding themselves jointly and solidarily with the principal, the Pennel Commercial Co., Inc. The case was docketed as Civil Case No. 4058 of the Regional Trial Court of Makati, Metro Manila, Branch 13, presided over by respondent Judge Roque A. Tamayo.

On June 2, 1983, finding the verified complaint to be sufficient in form and substance and considering that the petitioner is willing to put up an attachment bond in the amount of P3,094,587.74 which is petitioner's principal claim, respondent Judge Tamayo issued an Order: "xxx let a writ of preliminary attachment be issued against the properties of defendants, not exempt from execution xxx" (Annex F, p. 27, Rollo).

On June 13, 1983, the petitioner filed an attachment bond in the aforesaid amount so that on June 21, 1983, summonses were issued to the defendants, now private respondents, which were received by the latter on June 29, 1983. By virtue of the preliminary attachment issued on June 2, 1983, the real and personal properties of private

respondents were attached and the request for the corresponding annotation on their titles was served upon the Register of Deeds for Antipolo, Rizal and Marikina, Metro Manila. Also, on July 1, 1983, Notices of Levy on Execution /Attachment dated June 29, 1983 were served upon the Registrars of the Bureau of Land Transportation of San Juan & Malabon Agencies, requiring them to record in their respective books the motor vehicles mentioned in the name of the said private respondents. The Deputy Sheriff filed his Report dated July 12, 1983 stating that on June 22, 1983 and July 1, 1983, levy was made on the real and personal properties of the defendants and the summons with copy of the complaint and the Writ of Attachment were served personally upon them at their given address thru their Secretary Y. V. Borja.

On July 6, 1983, the private respondents filed a Motion for Extension of Time to File Answer. On July 19, 1983, they (private respondents) filed a Motion to Discharge Attachment alleging that the said writ was issued without basis which is tantamount to lack of jurisdiction. On July 21, 1983, again private respondents filed a Motion for Another Extension of Time within which to file Answer but on July 27, 1983, instead of filing an answer as prayed for in their previous motions, filed a Motion to Dismiss on the ground that the complaint states no cause of action which motion petitioner received on July 20, 1983.

On August 3, 1983, petitioner filed an Opposition to the Motion to Dismiss with a Motion to Declare Defendants in Default.

On August 12, 1983, respondent Judge Tamayo issued an Order, the dispositive portion of which reads -

"WHEREFORE, premises considered:

"1) The Motion to Declare Defendants in Default incorporated in the Opposition to the Motion to Dismiss is denied for lack of merit.

"2) The Motion to Dismiss is hereby granted and this case, ordered dismissed without pronouncement as to costs.

"3) Consequently, the Motion to Discharge Attachment filed by defendants is hereby granted, and the order of attachment is set aside and the Writ of Attachment issued by this Court on June 22, 1983, discharged and declared of no further force and effect. The Sheriff is ordered to return to the plaintiff all the properties levied by him in this case. The Notice of Levy of Attachment issued by the Sheriff to the Register of Deeds of Rizal is also recalled and the said Register of Deeds is hereby ordered to cancel the notice of levy on attachment on the real properties of defendant as contained in the Notice of Levy dated June 23, 1983." (p. 103, Rollo)

A certified true copy of the said Order was received by petitioner on September 14, 1983.

Meanwhile, on September 5, 1983, the petitioner filed an Urgent Motion to Admit Amended Complaint together with a copy of the Amended Complaint. This was opposed by the private respondents on September 8, 1983. Petitioner claims that its Motion to Admit Amended Complaint has not yet been resolved by the lower court.

Likewise, petitioner filed a Motion to Reconsider the August 12, 1983 Order but the same was denied. Consequently, petitioner went to the Court of Appeals on a petition for certiorari (AC-GR SP No. 01919) challenging the validity of the August 12, 1983 Order dismissing the complaint and discharging the writ of attachment as well as the September 29, 1983 Order denying the Motion for Reconsideration, pointing out that the same were issued with grave or serious abuse of discretion.

The Court of Appeals dismissed the petition ruling in part as follows:

"We resolved to deny due course to the petition.

"From the facts, it is clear that the proper remedy available to the herein petitioner is ordinary appeal to this

Court and not by way of the present petition for certiorari. The challenged Order of August 12, 1983, sustaining the motion to dismiss filed by the herein private respondents on the ground of lack of cause of action is a final disposition of the case insofar as the respondent Court is concerned. Since there is the remedy of appeal, this bars the filing of any petition for certiorari for the reason that one of the requisites for said remedy is that there is no appeal, nor any adequate and speedy remedy in the ordinary course of law (Sec. 1, Rule 65, Rules of Court; *Silvestre v. Torres*, 57 Phil. 885).

"Moreover, we find that respondent Judge did not commit a grave abuse of discretion in dismissing the complaint. In the disputed order, the respondent Judge explained his reasons for dismissing the complaint, to wit:

'On the Motion to Dismiss, the ground relied upon the defendants is that the complaint states no cause of action considering that Annex C and, the promissory notes sued upon, have due dates of December 31, 1985, Annex C and December 30, 1984, Annex D. These facts were not stated in the complaint, and neither was it alleged that said notes have become due and payable by reason of defendants' default in the payment of several installments due on the notes, which fact was only mentioned in the opposition to the motion to dismiss.

'It could not, therefore, be true that defendants have failed and refused and still refuse and fail without justifiable cause to pay their obligation despite repeated demands from the plaintiff, because mere demand on defendants for the payment of obligations that are not yet due does not constitute a cause of action, there being no showing on the face of the complaint that the obligations were to be paid in installments which would make the acceleration clause on Annex D, the Continuing Surety Agreement, come into play in order to make the whole obligation due and payable even before their due dates as reflected in the promissory notes, Annexes C and D.'

"From the foregoing, it cannot be gainfully said therefore that the exercise of discretion or judgment by the respondent Judge was capricious or whimsical amounting to lack of jurisdiction." (pp. 104-105, Rollo)

Hence, the present recourse.

Petitioner claims that there was grave abuse of discretion on the part of the lower court in dismissing the complaint and in failing to resolve its motion to admit amended complaint. Thus, resort to the extraordinary remedy of certiorari is proper.

A perusal, however, of the said motion and a consideration of the stage of the proceedings during which said motion was filed yield a finding contrary to that asserted by petitioner.

As a general policy, liberality in allowing amendments is greatest in the early stages of a lawsuit, decreases as it progresses, and changes at times to a strictness, amounting to a prohibition. (*Torres v. Tomacruz*, 49 Phil. 413, cited in *Garcia Jr. v. Ranada, Jr.* 166 SCRA 9) This is further restricted by the condition that the amendment should not prejudice the adverse party or place him at a disadvantage. (*Shaffer v. Palma*, 22 SCRA 934, also cited in *Garcia, Jr. v. Ranada, supra*)

There is no denying that an amendment could be introduced during the pendency of a Motion to Dismiss. Petitioner's insistence on this point is not controverted. But this is not the situation obtaining in the case at bar. Records show that when petitioner filed on September 15, 1983 its Motion to Admit Amended Complaint, the original complaint sought to be amended had already been dismissed on August 12, 1983. Therefore, there was no more complaint to be amended. In other words, the original complaint no longer exists, it has lost its standing and could not be amended unless its status is restored. Moreover, an amendment at this stage of the proceeding, when the complaint had already been dismissed, the writ of attachment discharged and declared of no further force and effect will definitely work to the prejudice and disadvantage of the private respondent. It has been ruled that amendment will not be allowed when the same will prejudice the adverse party or place him at a disadvantage.

(Shaffer v. Palma, supra)

In this regard, We find no grave abuse of discretion on the part of the lower court in not granting and/or in failing to act on petitioner's motion to admit amended complaint.

"On the issue of whether the lower court's wisdom in allowing or disallowing amendments may be the subject of a special civil action for certiorari, We held in *Philippine Surety and Insurance Co. v. Jacale, et al.* that where the issue or question involved affects the wisdom or legal soundness of the decision, not the jurisdiction of the court to render said decision or its validity, the same is beyond the province of a special civil action for certiorari. For it is too well-settled that the office of the writ of certiorari has been reduced to the correction of defects of jurisdiction solely and cannot legally be used for any other purpose. It is truly an extraordinary remedy and, in this jurisdiction, its use is restricted only to extraordinary cases--cases in which the action of the inferior court is wholly void; where any further steps in the case would result in a waste of time and money and would produce no result whatever, where the parties, or their privies would be utterly deceived; where a final judgment or decree would be naught but a snare and delusion, deciding nothing, protecting nobody, a judicial pretension, a recorded falsehood, a standing menace." (*Garcia, Jr. v. Ranada, Jr. supra*)

It also bears stressing that, as correctly ruled by the respondent Court of Appeals, the proper remedy available to herein petitioner from the order dismissing the complaint is appeal, not a petition for certiorari. And when the remedy of appeal is available, the extra ordinary remedy of certiorari cannot be resorted to because the availability of appeal proscribes recourse to the special civil action of certiorari. (*Del Pozo v. Penaco*, 167 SCRA 577, 589)

Accordingly, the respondent Court of Appeals was correct in dismissing the special civil action of certiorari filed by the petitioner.

WHEREFORE, the petition is hereby DENIED and the questioned decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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