

PRUDENTIAL BANK AND BENJAMIN B. DEL ROSARIO, PETITIONERS, VS. HON. JOSE P. CASTRO, AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH LXXXV, MACRO TEXTILE MIL...

G.R. No. 69907. May 31, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

On November 16, 1984 respondent Regional Trial Court Judge Jose P. Castro of Quezon City rendered a decision in Civil Case No. Q-42349, entitled: Macro Textile Mills Corporation vs. Prudential Bank and Trust Co., et al., the dispositive portion of which reads:

"WHEREFORE, plaintiff's motion for Summary Judgment is GRANTED. It is hereby ADJUDGED AND ORDERED:

1. The Deed of Real Estate Mortgage dated January 26, 1983 over plaintiff's real property described and covered by TCT No. 261842, the supporting promissory note, the foreclosure of said mortgage, the notice of sale by notary, the certificate of sale and its attempted registration are all NULL and VOID;
2. The Register of Deeds of Quezon City to cancel immediately the registration and annotation of the Deed of Real Estate Mortgage dated January 26, 1983, as well as its foreclosure, notice of sale and certificate of sale on the Original Transfer Certificate of Title No. 261842;
3. The writ of preliminary injunction dated August 27, 1984 issued by the court is hereby made permanent;
4. Defendants Prudential Bank and Trust Company and Notary Public Benjamin Baens del Rosario, jointly and solidarity, to pay plaintiff,
 - a) The sum of Thirty Million (P30,000,000.00) Pesos as and for actual damages, less the outstanding balance of indebtedness of plaintiff to defendant in the amount of P2,346,953.52;
 - b) The sum of Three Million (P3,000,000.00) Pesos as exemplary damages;
 - c) A sum equivalent to 20% of the foregoing amounts as and for attorney's fees;
 - d) The costs of suit." (page 36-37, rollo)

On January 7, 1985, despite the pendency of a Motion for Reconsideration, dated December 6, 1984, filed by defendant-bank (herein petitioner), respondent judge issued an order directing the Register of Deeds of Quezon City —

"x x x to cancel immediately the registration of the Deed of real estate mortgage dated January 24, 1983 on the back of TCT No. 261842 pursuant to the aforesaid decision, and to issue in favor of the plaintiff another owner's copy of said transfer certificate of title after said cancellation, in lieu of the copy in the possession of the defendant-bank which is hereby deemed cancelled." (page 238, rollo)

Thereafter, on February 7, 1985, respondent judge issued an order denying the Motion for Reconsideration "not only for being pro forma but also for lack of merit." On the same day, defendant-bank (herein petitioner) filed its Notice of Appeal.

On February 13, 1985, respondent judge issued an order granting MACRO's prayer for issuance of a writ of execution of the judgment on the ground that the decision of November 16, 1984 has become final and executory.

Hence, this petition for mandamus and certiorari with prayer that judgment be rendered for the issuance of a writ "commanding respondent judge immediately to certify and elevate the appeal taken by petitioners from his summary judgment and x x x annulling the order and writ of execution of respondent judge's summary judgment, with costs against respondents" and a restraining order en-joining respondents from executing the summary judgment rendered by respondent judge.

On February 25, 1985, this Court required the respondents to comment on the petition and issued a temporary restraining order "enjoining the respondents from executing the summary judgment dated November 16, 1984, issued in Civil Case No. Q-42349 entitled: 'Macro Textile Mills Corporation, Plaintiff, versus Prudential Bank and Trust Co., et al., Defendants.' of the Regional Trial Court, National Capital Region, Branch LXXXV at Quezon City."

On March 13, 1985, without notice and surprisingly because of his February 13, 1985 order that the decision dated November 16, 1984 "has already become final and executory", respondent judge issued an order giving due course to the appeal interposed by the defendant-bank and directed the Officer-In-Charge "to elevate and transmit immediately the records of the above-entitled case to the Honorable Intermediate Appellate Court to which the defendant, thru their notice of appeal are appealing the decision dated November 16, 1984 and the order dated February 7, 1985." Further, he issued another order recalling the writ of execution dated February 14, 1985 and directing the sheriff "not to implement and/or enforce the same."

While it is true that the order giving due course to the appeal rendered moot and academic the petition for mandamus, it is a fact that respondent judge had issued the January 7, 1985 order long before he denied petitioners' Motion for Reconsideration on February 7, 1985 and which he did not set aside or cancel, unlike the other order which directed the sheriff not to implement and/or enforce the judgment relating to the payment by herein petitioner to private respondent MACRO actual and exemplary damages and attorney's fees.

Indeed, how could respondent judge give due course to the appeal on March 13, 1985 after he had issued the order of February 13, 1985 saying that the decision of November 16, 1984 "has become final and executory" and granting private respondent's prayer for the issuance of a writ of execution of said judgment? WE are inclined to agree with the petitioners that "respondent Judge Jose P. Castro gave due course to petitioners' appeal to the Intermediate Appellate Court in an obvious attempt to render the instant petition for mandamus filed with the Supreme Court as moot and academic"; and that "respondent Judge Jose P. Castro recalled his writ of execution of his summary judgment in an equally obvious attempt to render the instant petition for certiorari filed with the Supreme Court as moot and academic." (page 225, rollo)

ACCORDINGLY, the Court Resolved to grant (1) the petition for mandamus and hereby orders respondent judge to certify and elevate to the Intermediate Appellate Court the appeal taken by petitioners from his summary judgment; and (2) the writ of certiorari and hereby sets aside respondent court's order dated January 7, 1985. With treble costs against private respondent.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Gutierrez, Jr., De La Fuente, and Alampay, JJ., concur.

Plana, J., on official leave.

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