

**FILIPINO MERCHANTS’ INSURANCE CO., INC., PETITIONER,
VS. THE INTERMEDIATE APPELLATE COURT, SPOUSES ALFREDO
CALAQUIAN AND DEMETRIA CALAQUIAN, RESPONDENTS.**

G.R. No. 71640. June 27, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a petition for review on certiorari of the decision[1] of the public respondent, then Intermediate Appellate Court, filed by the petitioner insurance company against Judge Ignacio Capulong of the Regional Trial Court of San Fernando, Pampanga, Branch XLIII.

The following are the facts.

Sometime in April, 1978, the private respondents, the spouses Alfredo Calaquian and Demetria Calaquian, due to a vehicular accident in which their son, then "about to graduate" in commerce, majoring in management at the University of the East, was killed, filed with the Court of First Instance of Pampanga a complaint for damages against several persons and their insurer, the petitioner herein. On April 26, 1984, the trial court adjudged the petitioner (one of the defendants) jointly and severally liable with the other defendants (not parties in this case) in favor of the parents of the deceased, the herein private respondents Calaquians, in the amount of Thirty Thousand (P30,000.00) Pesos. In addition, the other defendants were ordered to pay the Calaquians various sums totalling Twenty Eight Thousand (P28,000.00) Pesos.

No appeal having been taken, on October 3, 1984, the Calaquians moved ex parte for execution. The motion was granted on October 9, 1984 and the corresponding writ of execution was issued on December 3, 1984.

On January 28, 1985, the deputy sheriff of Makati served the writ of execution on the petitioner and levied on four electric and six manual typewriters of the latter. The properties levied upon were scheduled for auction sale on February 5, 1985.

With just one day before the date set for the auction sale, the petitioner, at 3:54 o'clock in the afternoon of February 4, 1985, filed a petition for relief from judgment claiming that it became aware of the trial court's decision only because of the notice of the writ of execution. In that petition, the petitioner insurance company also applied for the issuance of a writ of preliminary injunction to stay the impending execution and to prevent the sheriff of Makati from proceeding with the scheduled auction sale. On February 6, 1985, the petitioner filed an urgent motion to recall the writ of execution.

Three days later, or on February 9, 1985 to be precise, the petitioner initiated in the respondent court mandamus proceedings charging Judge Capulong, before whom the petition for relief from judgment and the motion to recall the writ of execution had been pending for five and three days, respectively, of inaction, and prayed that the appellate court compel and command the respondent Judge Capulong to act on its petition for relief and motion to recall writ of execution. The petitioner company also prayed for the issuance of a temporary restraining order to

enjoin the execution of the decision and the auction sale of its properties. The appellate court declined to issue the restraining order sought.

After the parties had submitted their respective memoranda, the respondent appellate court rendered on June 20, 1985 the assailed decision dismissing the petition. The petitioner moved for reconsideration which was denied on July 25, 1985. Hence, this petition.

The crucial issue is whether or not the respondent court committed any reversible error in its decision dismissing the petition. We rule that it did not.

The main complaint of the petitioner is the non-application of the ruling in the case of *Vda. de Sayman vs. Court of Appeals*[2] by the respondent court. The petitioner contends that, applying *Sayman*, the respondent court should have enjoined the execution of the assailed decision and the auction sale.

The petition for mandamus instituted with the respondent court barely four days from the filing of the petition for relief from judgment in the trial court is manifestly premature. Within only four days, the trial court judge could scarcely be expected to be able to act on the petition for relief and the motion for the recall of the writ. While prompt action on and early disposition of cases are "devoutly to be wished," time constraints and the load of the court's docket must also be considered. In any case, the petition for mandamus which sought to have the trial court act on the petition for relief from judgment had been rendered moot and academic by the order issued by Judge Capulong on February 5, 1985 directing the private respondents to comment on the petition (for relief from judgment) but declining to issue a temporary restraining order to suspend the implementation of the writ of execution. Undoubtedly, the petitioner's prayer for action by the trial court had been substantially complied with. The trial court had already acted on the petition for relief from judgment. This is despite the claim of the petitioner that the said order to comment dated February 5, 1985, issued by the trial judge, was merely antedated. Absent any clear, positive, and convincing proof to the contrary, the trial court is presumed to have acted regularly in the performance of its duty.

Unsatisfied with the action of the trial court, the petitioner would still want to go a step further by having the execution complained of enjoined or suspended pending the outcome of its petition for relief from judgment. The respondent court refused citing Sec. 5 of Rule 38 of the Revised Rules of Court as its basis.

Section 5 of Rule 38 provides for the requisites for granting preliminary injunction.

SEC. 5. Preliminary injunction pending proceedings. — The court in which the petition is filed, or a judge thereof, may grant such preliminary injunction as may be necessary for the preservation of the rights of the parties pending the proceeding, upon the filing by the petitioner of a bond to the adverse party, conditioned that if the petition is dismissed or the petitioner fails on the trial of the case upon its merits, he will pay the adverse party all damages and costs that may be awarded to him by reason of the issuance of such injunction or the other proceedings following the petition; but such injunction shall not operate to discharge or extinguish any lien which the adverse party may have acquired upon the property of the petitioner. (*Italics supplied*)

The case of *Sayman* is, as rightly held by the respondent court, inapplicable here. In that case, the issue was the propriety of the issuance of the writ of execution under the circumstances there obtaining. Here, the controversy is the legality of the implementation of the writ of execution even during the pendency of a petition for relief from judgment. The issuance of the writ of execution is not placed in controversy in the case at bar. Moreover, and more importantly, payment in satisfaction of the liability adjudged in the assailed decision had not been made in *Sayman*. Here, however, payment had apparently been already made by the petitioner to satisfy the judgment against it. Thus, as far as this case is concerned, there is no longer any reason to belabor the point as to whether or

not the trial court should have been enjoined. The liability of the petitioner under the trial court's decision has been satisfied. The issue, and for that matter the case itself, has therefore become moot and academic.

The respondent court likewise acted correctly when it ruled to dismiss the petition even if the same were to be considered as one for certiorari. It is noteworthy that the petitioner requested for this late change of remedy relying on events which transpired during the pendency of the petition in the trial court. However,

it proved that these occurrences themselves posed as the very obstacle militating against the conversion of the petition for mandamus into a petition for certiorari. As held by the respondent appellate court, the supervening circumstances introduced factual matters that bring to fore the issue of the mootness of the petition for relief from judgment in the trial court. And it is elementary that questions of facts are improper in a special civil action for certiorari[3] They are best left for ventilation at the trial on the merits of the original case.

The peculiar circumstances referred to above are stated in the assailed decision as follows:

X X X

X X X

X X X

On the night of February 8, 1985, before the filing of the petition, here at on February 9 but after the petition for relief was filed at almost the close of office hours on February 4, 1985, petitioner handed to private respondent BPI Check No. 369150 for the amount of P-30,000.00 (the full amount for which petitioner was held solidarily liable together with the other defendants) with the annotation "Payment Under Protest." Petitioner represents that the person who issued the check — though whom is not stated, but this person could only be a ranking officer — was coerced into issuing the check because the sheriff was ready to take away the property levied upon consisting of the aforementioned 10 typewriters. However, when private respondent Alfredo Calaquian noted the words "Payment Under Protest," he declined to accept the tendered check, knowing the same to be conditional and thus would not be honored by the bank. Upon the sheriffs insistence — coercion petitioner avers — the words were cancelled by the same unnamed official of petitioner. The check was thereafter deposited and cleared by the bank.[4]

X X X

X X X

X X X

Hence, while the petitioner contends that there was "coercion" in obtaining the payment, it is nonetheless undeniable that a factual issue, which may result in a finding that the case would become moot and academic, has arisen.

WHEREFORE, finding no reversible error in the Decision of the Intermediate Appellate Court dated July 20, 1985, the same is AFFIRMED, and the petition is hereby DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Yap, C. J. (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

[1] Melo, A.R., J.; German, M.A., Kapunan, S.M., and Lazaro, A.M., JJ., Rollo, 46.

[2] No. L-25596, April 28, 1983, 121 SCRA 650.

[3] Ygay vs. Escareal, No. L-44189. February 28, 1985, 135 SCRA 78.

[4] Rollo, 45.

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