

PHILIPPINE BRITISH ASSURANCE CO., INC., PETITIONER, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT, SYCWIN COATING & WIRES, INC., AND DOMINADOR CACPAL, CHIEF DEPUTY SHERIFF OF M...

G.R. No. 72005. May 29, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a Petition for Review on Certiorari of the Resolution dated September 12, 1985 of the Intermediate Appellate Court in AC-G.R. No. CR-05409[1] granting private respondent's motion for execution pending appeal and ordering the issuance of the corresponding writ of execution on the counterbond to lift attachment filed by petitioner. The focal issue that emerges is whether an order of execution pending appeal of a judgment maybe enforced on the said bond. In the Resolution of September 25, 1985[2] this Court as prayed for, without necessarily giving due course to the petition, issued a temporary restraining order enjoining the respondents from enforcing the order complained of.

The records disclose that private respondent Sycwin Coating & Wires, Inc., filed a complaint for collection of a sum of money against Varian Industrial Corporation before the Regional Trial Court of Quezon City. During the pendency of the suit, private respondent succeeded in attaching some of the properties of Varian Industrial Corporation upon the posting of a supersedeas bond.[3] The latter in turn posted a counterbond in the sum of P1,400,000.00[4] thru petitioner Philippine British Assurance Co., Inc., so the attached properties were released.

On December 28, 1984, the trial court rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, plaintiff's Motion for Summary Judgment is hereby GRANTED, and judgment is rendered in favor of the plaintiff and against the defendant Varian Industrial Corporation, and the latter is hereby ordered:

1. To pay plaintiff the amount of P1,401,468.00, the principal obligation with 12% interest per annum from the date of default until fully paid;
2. To pay plaintiff 5% of the principal obligation as liquidated damages;
3. To pay plaintiff P30,000.00 as exemplary damages;
4. To pay plaintiff 15% of P1,401,468.00, the principal obligation, as and for attorney's fees; and
5. To pay the costs of suit.

Accordingly, the counterclaim of the defendant is hereby DISMISSED for lack of merit.

SO ORDERED.”[5]

Varian Industrial Corporation appealed the decision to the respondent Court. Sycwin then filed a petition for execution pending appeal against the properties of Varian in respondent Court. Varian was required to file its

comment but none was filed. In the Resolution of July 5, 1985, respondent Court ordered the execution pending appeal as prayed for.[6] However, the writ of execution was returned unsatisfied as Varian failed to deliver the previously attached personal properties upon demand. In a Petition dated August 13, 1985 filed with respondent Court Sycwin prayed that the surety (herein petitioner) be ordered to pay the value of its bond.[7] In compliance with the Resolution of August 23, 1985 of the respondent Court herein petitioner filed its comment.[8] In the Resolution of September 12, 1985,[9] the respondent Court granted the petition. Hence this action.

It is the submission of private respondent Sycwin that without a previous motion for reconsideration of the questioned resolution, certiorari would not lie. While as a general rule a motion for reconsideration has been considered a condition sine qua non for the granting of a writ of certiorari, this rule does not apply when special circumstances warrant immediate or more direct action.[10] It has been held further that a motion for reconsideration may be dispensed with in cases like this where execution had been ordered and the need for relief was extremely urgent.[11]

The counterbond provides:

"WHEREAS, in the above-entitled case pending in the Regional Trial Court, National Capital Judicial Region, Branch LXXXV, Quezon City, an order of Attachment was issued against above-named Defendant;

WHEREAS, the Defendant, for the purpose of lifting and/or dissolving the order of attachment issued against them in the above-entitled case, have offered to file a counter-bond in the sum of PESOS ONE MILLION FOUR HUNDRED THOUSAND ONLY (P1,400,000.00), Philippine Currency, as provided for in Section 5, Rule 57 of the Revised Rules of Court.

NOW, THEREFORE, we, VARIAN INDUSTRIAL CORPORATION, as Principal and the PHILIPPINE BRITISH ASSURANCE COMPANY, INC., a corporation duly organized and existing under and by virtue of the laws of the Philippines, as Surety, in consideration of the above and of the lifting or dissolution of the order of attachment, hereby jointly and severally, bind ourselves in favor of the above Plaintiff in the sum of PESOS ONE MILLION FOUR HUNDRED THOUSAND ONLY (P1,400,000.00), Philippine Currency, under the condition that in case the Plaintiff recovers judgment in the action, and Defendant will, on demand, re-deliver the attached property so released to the Officer of the Court and the same shall be applied to the payment of the judgment, or in default thereof, the defendant and Surety will, on demand, pay to the Plaintiff the full value of the property released.

EXECUTED at Manila, Philippines, this 28th day of June, 1984." [12]

Sections 5, 12, and 17 of Rule 57 of the Revised Rules of Court also provide:

SEC. 5. Manner of attaching property. - The officer executing the order shall without delay attach, to await judgment and execution in the action, all the properties of the party against whom the order is issued in the province, not exempt from execution, or so much thereof as may be sufficient to satisfy the applicant's demand, unless the former makes a deposit with the clerk or judge of the court from which the order issued, or gives a counter-bond executed to the applicant, in an amount sufficient to satisfy such demand besides costs, or in an amount equal to the value of the property which is about to be attached, to secure payment to the applicant of any judgment which he may recover in the action. The officer shall also forthwith serve a copy of the applicant's affidavit and bond, and of the order of attachment, on the adverse party, if he be found within the province.

SEC. 12. Discharge of attachment upon giving counterbond. - At any time after an order of attachment has been granted, the party whose property has been attached, or the person appearing on his behalf, may, upon reasonable notice to the applicant, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order discharging the attachment wholly or in part on the security given.

The judge shall, after hearing, order the discharge of the attachment if a cash deposit is made, or a counter-bond executed to the attaching creditor is filed, on behalf of the adverse party, with the clerk or judge of the court where the application is made, in an amount equal to the value of the property attached as determined by the judge, to secure the payment of any judgment that the attaching creditor may recover in the action. Upon the filing of such counter-bond, copy thereof shall forthwith be served on the attaching creditor or his lawyer. Upon the discharge of an attachment in accordance with the provisions of this section the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be, or become, insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching creditor may apply for a new order of attachment.

SEC. 17. When execution returned unsatisfied, recovery had upon bond. - If the execution be returned unsatisfied in whole or in part, the surety or sureties on any counter-bond given pursuant to the provisions of this rule to secure the payment of the judgment shall become charged on such counter-bond, and bound to pay to the judgment creditor upon demand, the amount due under the judgment, which amount may be recovered from such surety or sureties after notice and summary hearing in the same action. (Underscoring supplied)

Under Sections 5 and 12, Rule 57 above reproduced it is provided that the counterbond is intended to secure the payment of "any judgment" that the attaching creditor may recover in the action. Under Section 17 of same rule it provides that when "the execution be returned unsatisfied in whole or in part" it is only then that "payment of the judgment shall become charged on such counterbond."

The counterbond was issued in accordance with the provisions of Section 5, Rule 57 of the Rules of Court as provided in the second paragraph aforesaid which is deemed reproduced as part of the counterbond. In the third paragraph it is also stipulated that the counterbond is to be "applied for the payment of the judgment". Neither the rules nor the provisions of the counter-bond limited its application to a final and executory judgment. Indeed, it is specified that it applies to the payment of any judgment that maybe recovered by plaintiff. Thus, the only logical conclusion is that an execution of any judgment including one pending appeal if returned unsatisfied maybe charged against such a counterbond.

It is well recognized rule that where the Law does not distinguish, courts should not distinguish. *Ubi Lex non distinguit nec nos distinguere debemus*.^[13] The rule, founded on logic, is a corollary of the principle that general words and phrases in a statute should ordinarily be accorded their natural and general significance.^[14] The rule requires that a general term or phrase should not be reduced into parts and one part distinguished from the other so as to justify its exclusion from the operation of the law.^[15] In other words, there should be no distinction in the application of a statute where none is indicated.^[16] For courts are not authorized to distinguish where the law makes no distinction. They should instead administer the law not as they think it ought to be but as they find it and without regard to consequences.^[17]

A corollary of the principle is the rule that where the law does not make any exception, courts may not except something therefrom, unless there is compelling reason apparent in the law to justify it.^[18] Thus where a statute grants a person against whom possession of "any land" is unlawfully withheld the right to bring an action for unlawful detainer, this Court held that the phrase "any land" includes all kinds of land, whether agricultural, residential, or mineral.^[19] Since the law in this case does not make any distinction nor intended to make any exception, when it speaks of "any judgment" which maybe charged against the counterbond, it should be interpreted to refer not only to a final and executory judgment in the case but also a judgment pending appeal.

All that is required is that the conditions provided for by law are complied with, as outlined in the case of *Towers Assurance Corporation v. Ororama Supermart*,^[20]

"Under Section 17, in order that the judgment creditor might recover from the surety on the counterbond, it is necessary (1) that the execution be first issued against the principal debtor and that such execution was returned unsatisfied in whole or in part; (2) that the creditor make a demand upon the surety for the satisfaction of the judgment, and (3) that the surety be given notice and a summary hearing on the same action as to his liability for the judgment under his counterbond."

The rule therefore, is that the counterbond to lift attachment that is issued in accordance with the provisions of Section 5, Rule 57, of the Rules of Court, shall be charged with the payment of any judgment that is returned unsatisfied. It covers not only a final and executory judgment but also the execution of a judgment pending appeal.

WHEREFORE, the petition is hereby DISMISSED for lack of merit and the restraining order issued on September 25, 1985 is hereby dissolved with costs against petitioner.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, and Sarmiento, JJ., concur.
Feliciano, J., on leave.

[1] Annex A, Petition, page 22, Rollo.

[2] Page 61, Rollo.

[3] Annex H, Petition, page 56, Rollo.

[4] Annex D, page 36, Rollo.

[5] Annex B, Petition, page 29, Rollo.

[6] Annex C, Pages 31-35, Rollo, Annex C, Page 40, Rollo.

[7] Annex F, Pages 41-42, Rollo.

[8] Annex G, Pages 47-55, Rollo.

[9] Annex A, Pages 22-23, Rollo.

[10] Uy Chu vs. Imperial, et al., 44 Phil. 27, Matutina vs. Buslon, et al., L-14637, Aug. 24, 1960, 109 Phil. 140.

[11] Luzon Surety Co., Inc. vs. De Marbella, et al., L-16088, September 30, 1960, 109 Phil. 734 and Socio vs. Vda. de Leary, 12 SCRA 326, 329.

[12] Annex D, page 36, Rollo.

[13] Colgate-Palmolive Phil., Inc. v. Gimenez, G.R. No. 14787, Jan. 28, 1961, 1 SCRA 267 (1961); Libudan v. Gil, G.R. No. 21163, May 17, 1972, 45 SCRA 17 (1972); Dominador v. Derahunan, 49 Phil. 452 (1926); Guevarra v. Inocentes, G.R. No. 25577, March 15, 1966, 16 SCRA 379 (1966); Director of Lands v. Gonzales, G.R. No. 32522, Jan. 28, 1963; Alfato v. Commission on Elections, G.R. No. 52749, March 31, 1981, 103 SCRA 741 (1981); Statutory Construction by Ruben E. Agpalo, 1986, pp. 143-144.

[14] 14 Loc Cham v. Ocampo, 77 Phil. 636 (1946).

[15] Social Security System v. City of Bacolod, G.R. No. 35726, July 21, 1982, 115 SCRA 412 (1982); Director of lands v. Gonzales, G.R. No. 32522, Jan. 28, 1983.

[16] Lo Cham vs. Ocampo, *supra*.

[17] Velasco v. Lopez, 1 Phil. 720 (1903).

[18] Tolentino v. Catoy, 82 Phil. 300 (1948).

[19] Social Security System v. City of Bacolod, *supra*; see also Robles v. Zambales Chromite Co., 104 Phil. 688 (1958); Government v. Municipality of Binalonan, 32 Phil. 634 (1915); Director of Lands v. Gonzales, G.R. No. 32522, Jan. 28, 1983; Oliva v. Lamadrid, G.R. No. 23196, Oct. 31, 1967, 21 SCRA 737 (1967); Escosura v. San Miguel Brewery, Inc., 114 Phil. 225 (1962); Alfato v. Commission on Elections, G.R. No. 52749, March 31, 1981, 103 SCRA 741 (1981); Liggett & Myers Tobacco v. Collector of Internal Revenue, G.R. No. 9415, April 22, 1957, 101 Phil. 106 (1957); Tiu San v. Republic, 96 Phil. 817 (1955); Agpalo, *supra*, pp. 143-147.

[20] 80 SCRA 262, 264 (1977); See also Leelin Marketing Corp. v. C & S Agro Dev. Co., 121 SCRA 725, 730-731 (1983); Dizon vs. Valdez, 23 SCRA 200, 203 (1968).

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