

SPOUSES ROMEO LIPANA AND MILAGROS LIPANA, PETITIONERS, VS. DEVELOPMENT BANK OF RIZAL, RESPONDENTS.

G.R. No. 73884. September 24, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the August 30, 1985 Order of the Regional Trial Court of Pasig denying petitioners' Motion to Lift Stay of Execution in Civil Case No. 50802.

During the period from 1982 to January, 1984, herein petitioners opened and maintained both lime and savings deposits with the herein respondent Development Bank of Rizal all in the aggregate amount of P939,737.32. When some of the Time Deposit Certificates matured, petitioners were not able to cash them but instead were issued a manager's check which was dishonored upon presentment. Demands for the payment of both time and savings deposits having failed, on March 14, 1984, petitioners filed with the Regional Trial Court of Pasig a Complaint With Prayer For Issuance of a Writ of Preliminary Attachment for collection of a sum of money with damages, docketed therein as Civil Case No. 50802 (Record, pp. 3-11).

Respondent Judge, in an Order dated March 19, 1984 (Ibid., p. 19-21), ordered the issuance of a writ of attachment, and pursuant thereto, a writ of attachment dated March 20, 1984 was issued in favor of the petitioners (Ibid., p. 33).

On June 27, 1984, respondent bank filed its Answer (Ibid., p. 58-61).

On July 23, 1984, petitioners filed a Motion For Judgment on the Pleadings (Ibid., pp. 68-73), opposed by respondent bank (Ibid., pp. 74-76), but respondent judge, in a Decision dated November 13, 1984, rendered judgment in favor of petitioners. The dispositive portion of the said Decision, reads:

"IN VIEW OF ALL THE FOREGOING, the Court renders judgment in favor of the plaintiffs, ordering the defendant to pay the total sum of P939,737.32 plus stipulated interest; the sum equivalent to 15% of the amount due as attorney's fees; and costs of suit.

"The counterclaim is dismissed, for lack of merit."

Meanwhile, on August 10, 1984, the Monetary Board, in its Resolution No. 1009, finding that the condition of respondent bank was one of insolvency and that its continuance in business would result in probable loss to its depositors and creditors, decided to place it under receivership (Rollo, p. 84).

On December 7, 1984, petitioners filed a Motion for Execution Pending Appeal (Red., pp. 91-93), which was opposed by respondent bank (Ibid., p. 94-96). On December 27, 1984, petitioners filed their Reply to the opposition (ibid., pp. 98-101), to which respondent bank filed its Rejoinder on January 1, 1985 (Ibid., pp. 102-105).

In an order dated January 29, 1985, respondent Judge ordered the issuance of a writ of execution (Ibid., p. 106).

On February 11, 1985, respondent bank filed a Motion for Reconsideration of order dated January 29, 1985 and to Stay Writ of Execution (Ibid., pp. 109-110), opposed by petitioners (Ibid., p. III), but in an Order dated March 6, 1985, respondent judge stayed the execution (Ibid., p. 113).

On August 7, 1985, petitioners filed a Motion to Lift Stay of Execution (Ibid., pp. 119-122), opposed by respondent bank (Ibid., pp. 123-127), and in an Order dated August 30, 1985, respondent judge denied the said motion (Ibid., p. 130). Hence, the instant petition (Rollo, pp. 8-17).

The Second Division of the Court, in a resolution dated May 5, 1986, resolved to require the respondent to comment (Ibid., p. 52), In compliance therewith, respondent bank filed its Comment on June 9, 1986 (Ibid., pp. 53-58).

The petition was given due course in a resolution dated August 11, 1986, and the parties were required to file their respective memoranda (Ibid., p. 61). In compliance therewith, petitioners filed their Memorandum on September 19, 1986 (Ibid., p. 63-75), while respondent bank filed its Memorandum on September 25, 1986 (Ibid., pp. 76-83), and the case was considered submitted for deliberation in the Resolution dated October 8, 1986 (Ibid., p. 88).

Petitioners raised the following issues:

- Respondent judge cannot legally stay execution of judgment that has already become final and executory;
- The placing under receivership by the Central Bank of the respondent bank, long after the complaint was filed removed it from the application of the doctrine *In Re: Central Bank vs. Morfe* (63 SCRA 113);
- The filing of the complaint for a sum of money with damages against respondent bank and the subsequent attachment of its property in Pasig, Metro Manila long before the receivership took place render inapplicable the doctrine laid down by this Honorable Supreme Court in the said *Morfe* case;
- The indefinite stay of execution without a ruling as to how long it will last, amounts to deprivation of petitioners of their property without due process of law.

The instant petition is without merit.

I.

The main issue in this case is whether or not respondent judge could legally stay execution of judgment that has already become final and executory.

The answer is in the affirmative.

The rule that once a decision becomes final and executory, it is the ministerial duty of the court to order its execution, admits of certain exceptions as in cases of special and exceptional nature where it becomes imperative in the higher interest of justice to direct the suspension of its execution (*Vecine vs. Geronimo*, 59 O.G. 579); whenever it is necessary to accomplish the aims of justice (*Pascual vs. Tan*, 85 Phil. 164); or when certain facts and circumstances transpired after the judgment became final which could render the execution of the judgment unjust (*Cabrias vs. Adil*, 135 SCRA 354).

In the instant case, the stay of the execution of judgment is warranted by the fact that respondent bank was placed under receivership. To execute the judgment would unduly deplete the assets of respondent bank to the obvious prejudice of other depositors and creditors, since, as aptly stated in *Central Bank of the Philippines vs. Morfe* (63

SCRA 114), after the Monetary Board has declared that a bank is insolvent and has ordered it to cease operations, the Board becomes the trustee of its assets for the equal benefit of all the creditors, including depositors. The assets of the insolvent banking institution are held in trust for the equal benefit of all creditors, and after its insolvency, one cannot obtain an advantage or a preference over another by an attachment, execution or otherwise.

Moreover, it will be noted that respondent bank was placed under receivership on August 10, 1984, and the Decision of respondent judge is dated November 13, 1984. Accordingly, in line with the ruling in the aforesaid Morfe case, which reads:

"The circumstance that the Fidelity Savings Bank, having stopped operations since February 19, 1969, was forbidden to do business (and that ban would include the payment of time deposits) implies that suits for the payment of such deposits were prohibited. What was directly prohibited should not be encompassed indirectly, .x x x."

petitioners' complaint should have been dismissed.

II.

It is the contention of petitioners, however, that the placing under receivership of respondent bank long after the filing of the complaint removed it from the doctrine in the said Morfe case.

This contention is untenable. The time of the filing of the complaint is immaterial. It is the execution that will obviously prejudice the other depositors and creditors. Moreover, as stated in the said Morfe case, the effect of the judgment is only to fix the amount of the debt, and not give priority over other depositors and creditors.

III.

Anent the contention of petitioners that the attachment and loss of the properties of respondent bank was erased by virtue of the delayed receivership is to expand the power of the Central Bank, Suffice it to say that in the case of Central Bank of the Philippines, et al. vs. Court of Appeals, et al., (Resolution of this Court dated September 17, 1984 in G.R. No. 33302), wherein the original plaintiff Algue Inc. was able to obtain a writ of preliminary attachment against the original defendant

Island Savings Bank, this Court refused to recognize any preference resulting from such attachment and ruled that after a declaration of insolvency, the remedy of the depositors is to intervene in the liquidation proceedings.

IV.

It is also contended by the petitioners that the indefinite stay of execution without ruling as to how long it will last, amounts to a deprivation of their property without due process of law.

Said contention, likewise, is devoid of merit. Apart from the fact that the stay of execution is not only in accordance with law but is also supported by jurisprudence, such staying of execution is not without a time limit. In fact, the Monetary Board, in its resolution No. 433 approved the liquidation of respondent bank on April 26, 1985 and ordered, among others, the filing of a petition in the Regional Trial Court praying for assistance of said court in the liquidation of the bank. (Rollo, p. 81). The staying of the writ of execution will be lifted after approval by the liquidation court of the project of distribution, and the liquidator or his deputy will authorize payments to all claimants concerned in accordance with the approved project of distribution.

PREMISES CONSIDERED, the instant petition is hereby DISMISSED.

SO ORDERED.

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

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