

**RADIOLA-TOSHIBA PHILIPPINES INC., THROUGH ITS
ASSIGNEE-IN-INSOLVENCY VICENTE J. CUNA, PETITIONER, VS. THE
INTERMEDIATE APPELLATE COURT, HON. LEONARDO I. CRUZ, AS
JUDGE OF THE RE...**

G.R. No. 75222. July 18, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for certiorari of the March 31, 1986 Decision of the then Intermediate Appellate Court* in AC-G.R. SP No. 04160 entitled "Radiola-Toshiba Philippines, Inc. vs. Hon. Leonardo I. Cruz, et al." denying the petition for certiorari and mandamus; and its Resolution of July 1, 1986 denying the motion for reconsideration.

The antecedent facts of this case, as found by the then Intermediate Appellate Court, are as follows:

On July 2, 1980, three creditors filed a petition for the involuntary insolvency of Carlos Gatmaytan and Teresita Gatmaytan, the private respondents herein, the case docketed as Special Proceeding No. 1548 of the then Court of First Instance (now Regional Trial Court) of Pampanga and Angeles City.

On July 9, 1980, the respondent court issued an order taking cognizance of the said petition and stating inter alia that:

"x x x the Court forbids the payment of any debts, and the delivery of any property owing and belonging to said respondents-debtors from other persons, or, to any other persons for the use and benefit of the same respondents-debtors and/or the transfer of any property by and for the said respondents-debtors to another, upon petitioners' putting up a bond by way of certified and reputable sureties." (Annex 1, Comment).

Counsel for the petitioners-creditors informed respondent sheriff of Angeles City of the aforesaid order (Annex 2, Ibid) and on March 26, 1981, also communicated with counsel for the petitioner herein regarding same order, apprising the latter that "the personal and real property which have been levied upon and/or attached should be preserved till the final determination of the petition aforementioned." (Annex 3, *ibid*).

On April 12, 1983, petitioners-creditors filed second urgent motion for the issuance of insolvency order and resolution of the case, alleging, among other things, that in November, 1982, they filed an urgent motion to issue insolvency order; on December 28, 1982, they presented a motion to prohibit the city sheriff of Angeles City from disposing the personal and real properties of the insolvent debtors, Carlos Gatmaytan and Teresita Gatmaytan; on January 18, 1983, they (sic) appeared in the Bulletin Today issue of even date a news item to the effect that Radiola-Toshiba Phil. Inc. has already shut down its factory; sometime in March 1983, through their representative, they caused to be investigated the real properties in the names of Carlos Gatmaytan and Teresita Gatmaytan and they were surprised to find out that some of the aforesaid properties were already transferred to Radiola-Toshiba Phil., Inc.; and that in view of such development, it is their submission that without an insolvency order and a resolution of the case which was ripe for resolution as early as March 3, 1982, the rights and interest of petitioners-creditors would be injured and jeopardized. (Annex "C").

On April 15, 1983, petitioner filed an opposition to the said motion vis-a-vis the prayer that the insolvency order (which has not been rendered yet by the court) be annotated on the transfer certificates of title already issued in its name (Annex "D").

On April 22, 1983, judgment was rendered declaring the insolvency of respondents-debtors Carlos Gatmaytan and Teresita Gatmaytan.

On April 28, 1983, petitioner filed a supple-mental opposition to the same second urgent motion and motion to direct respondent sheriff to issue a final certificate of sale for the properties covered by TCT Nos. 18905 and 40430 in its favor (Annex "E").

On February 3, 1984, acting upon petitioner's motion claiming that ownership of certain real properties of the insolvents had passed to it by virtue of foreclosure proceedings conducted in Civil Case No. 35946 of the former Court of First Instance of Rizal, Branch II, Pasig, Metro Manila, which properties were not redeemed within the period of redemption, respondent court issued an order disposing, thus:

"WHEREFORE, the Court hereby confirms the election of Mr. Emilio C. Patino, as assignee of all the registered claimants in this case, and, in consequence thereof, the said assignee is hereby directed to post a bond in the amount of P30,000.00 and to take his oath thereafter so as to be able to perform his duties and discharge his functions, as such.

The Court, likewise, sets the meeting of all the creditors with the attendance, of course, of the assignee, on March 9, 1984, at 8:30., as by that time the proposals, which the respective representatives of the parties-claimants desire to clear with their principals, shall have already been reported.

The assignee shall see to it that the properties of the insolvents which are now in the actual or constructive custody and management of the receiver previously appointed by the Court on petitioners' and claimants' proposals, be placed under his actual or constructive custody and management, such as he is able to do so, as the Court hereby dissolves the receivership previously authorized, it having become a superfluity." (Annex "F").

On May 18, 1984, the Regional Trial Court, Branch CLII, Pasig, Metro Manila, in Civil Case No. 35946, issued an order directing respondent Sheriff of Angeles City, or whoever is acting in his behalf, to issue within seven (7) days from notice thereof a final deed of sale over the two (2) parcels of land covered by Transfer Certificates of Titles Nos. 18905 and 40430 in favor of petitioner. (Annex "G").

In Said Civil Case No. 35946, a case for collec-tion of sum of money covering the proceeds of television sets and other appliances, the then Court of First Instance of Rizal, Branch II, Pasig, Metro Manila, issued a writ of preliminary attachment on February 15, 1980 upon application of the petitioner, as plaintiff, which put up a bond of P350,000.00. On March 4, 1980, 3:00 P.M., levy on attachment was done in favor of petitioner on the real properties regis-tered in the names of spouses Carlos Gatmaytan and Teresita Gatmaytan under TCT Nos. 18905 and 40430 of the Registry of Deeds of Angeles City, per Entry No. 7216 on said titles. (Annex "A" and "B").

On December 10, 1980, a decision was rendered in favor of petitioner, ordering private respondents and their co-defendant Peoples Appliance Center, Inc. to pay petitioner, jointly and severally, the sum of P721,825.91 plus interest thereon of 14% per annum from October 12, 1979 until fully paid; P20,000.00, for and attorney's fees; and the costs of suit (Annex "5", Comment). After the said decision in the aforementioned Civil Case No. 35946 became final and executory, a writ of execution for the satisfaction thereof issued on March 18, 1981; and on May 4, 1981, respondent sheriff of Angeles City sold at auction sale the attached properties covered by TCT Nos. 18905 and 40430, to petitioner as the highest bidder, and the certificate of sale was accordingly issued in its favor.

On September 21, 1982, the court ordered the consolidation of ownership of petitioner over said properties; but

respondent sheriff of Angeles City refused to issue a final certificate of sale in favor of petitioner.

On May 30, 1984, petitioners-creditors interposed their opposition, stating among other things, that subject motion is improper and premature because it treats of matters foreign to the insolvency proceedings; and premature, for the reason that the properties covered by TCT Nos. 18905 and 40430-Angeles City were brought to the jurisdiction of the insolvency court for the determination of the assets of the insolvents available for distribution to the approved credits/liabilities of the insolvents. Petitioners-creditors theorized that the insolvency court is devoid of jurisdiction to grant the motion referring to matters involved in a case pending before a coordinate court in another jurisdiction (Annex "1").

Prior thereto or on July 13, 1984, to be precise, respondent court came out with its assailed extended order with the following decretal portion:

"WHEREFORE, and also for the reason stated in the aforequoted order issued in pursuance of a similar motion of the movant, the Court denies, as it is hereby denied the motion of Radiola-Toshiba, dated May 28, 1984 and directs the latter to participate in the supposed meeting of all the creditors/claimants presided by the duly elected assignee." (Annex "J").

On September 8, 1984, herein petitioner Radiola-Toshiba Philippines, Inc. (RTPI, for short) filed a petition for certiorari and mandamus with respondent Intermediate Appellate Court.

The then Intermediate Appellate Court, in a Decision promulgated on March 31, 1986, denied petitioner's aforesaid petition.

On April 19, 1986, petitioner filed a motion for reconsideration, but the same was denied in a Resolution dated July 1, 1986. Hence, the instant petition.

Herein petitioner raised two issues -

1. WHETHER OR NOT CERTIORARI IS A REMEDY DESIGNATED FOR THE CORRECTION OF ERRORS OF JURIS-DICTION ONLY; and
2. WHETHER OR NOT THE REFUSAL OF THE COURTS TO ENFORCE THE LIEN OF PETITIONER ARISING FROM A LEVY OF ATTACHMENT NOT MADE WITHIN ONE MONTH NEXT PRECEDING THE COMMENCEMENT OF THE INSOLVENCY PROCEEDING IS GRAVE ABUSE OF DISCRETION.

The main issue in this case is whether or not the levy on attachment in favor of the petitioner is dissolved by the insolvency proceedings against respondent spouses commenced four months after said attachment.

On this issue, Section 32 of the Insolvency Law (Act No. 1956, as amended), provides:

"Sec. 32. As soon as an assignee is elected or appointed and qualified, the clerk of the court shall, by an instrument under his hand and seal of the court, assign and convey to the assignee all the real and personal property, estate, and effects of the debtor with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of the proceedings in insolvency, and shall relate back to the acts upon the adjudication was founded, and by operation of law shall vest the title to all such property, estate, and effects in the assignee, although the same is then attached on mesne process, as the property of the debtor. Such assignment shall operate to vest in the assignee all of the estate of the insolvent debtor not exempt by law from execution. It shall dissolve any attachment levied within one month next preceding the commencement of the insolvency proceedings and vacate and set aside any judgment entered in any action commenced within thirty days immediately prior to the commencement of insolvency proceedings and shall set aside any judgment entered by default or consent of the debtor within thirty days immediately prior to the commencement of the insolvency proceedings." (Underscoring supplied)

Relative thereto, the findings of the then Intermediate Appellate Court are undisputed that the levy on attachment against the subject properties of the Gatmaytans, issued by the then Court of First Instance of Pasig in Civil Case No. 35946, was on March 4, 1980 while the insolvency proceeding in the then Court of First Instance of Angeles City, Special Proceeding No. 1548, was commenced only on July 2, 1980, or more than four (4) months after the issuance of the said attachment. Under the circumstances, petitioner contends that its lien on the subject properties overrode the insolvency proceeding and was not dissolved thereby.

Private respondents, on the other hand, relying on Section 79 of the said law, which reads:

"Sec. 79. When an attachment has been made and is not dissolved before the commencement of proceedings in insolvency, or is dissolved by an undertaking given by the defendant, if the claim upon which the attachment suit was commenced is proved against the estate of the debtor, the plaintiff may prove the legal costs and disbursements of the suit, and of the keeping of the property, and the amount thereof shall be a preferred debt."

and the fact that petitioner and its counsel have full knowledge of the proceedings in the insolvency case, argue that the subsequent Certificate of Sale on August 3, 1981, issued in favor of petitioner over the subject properties, was issued in bad faith, in violation of the law and is not equitable for the creditors of the insolvent debtors; and pursuant to the above quoted Section 79, petitioner should not be entitled to the transfer of the subject properties in its name.

Petitioner's contention is impressed with merit. The provision of the above-quoted Section 32, of the Insolvency Law is very clear - that attachments dissolved are those levied within one (1) month next preceding the commencement of the insolvency proceedings and judgments vacated and set aside are judgments entered in any action, including judgment entered by default or consent of the debtor, where the action was filed within thirty (30) days immediately prior to the commencement of the insolvency proceedings. In short, there is a cut off period - one (1) month in attachment cases and thirty (30) days in judgments entered in actions commenced prior to the insolvency proceedings. Section 79, on the other hand, relied upon by private respondents, provides for the right of the plaintiff if the attachment is not dissolved before the commencement of proceedings in insolvency, or is dissolved by an undertaking given by the defendant, if the claim upon which the attachment suit was commenced is proved against the estate of the debtor. Therefore, there is no conflict between the two provisions.

But even granting that such conflict exists, it may be stated that in construing a statute, courts should adopt a construction that will give effect to every part of a statute, if at all possible. This rule is expressed in the maxim, *ut magis valeat quam pereat* or that construction is to be sought which gives effect to the whole of the statute - its every word. Hence, where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction as will render the provision thereof operative and effective and harmonious with each other (*Javellana vs. Tayo*, 6 SCRA 1042 [1962]; *Statutory Construction* by Ruben E. Agpalo, p. 182).

Neither can the sheriff's sale in execution of the judgment in favor of the petitioner be considered as a fraudulent transfer or preference by the insolvent debtors, which constitute a violation of Sec. 70 of the Insolvency Law. In the case of *Velayo vs. Shell Co. of the Philippines* (100 Phil. 187, [1956]), this Court ruled that Sections 32 and 70 contemplate only acts and transactions occurring within 30 days prior to the commencement of the proceedings in insolvency and, consequently, all other acts outside of the 30-day period cannot possibly be considered as coming within the orbit of their operation.

Finally, petitioner correctly argued that the properties in question were never placed under the jurisdiction of respondent insolvency court so as to be made available for the payment of claim filed against the Gatmaytans in the insolvency proceedings.

Hence, the denial by respondent insolvency court to give due course to the attachment and execution of Civil Case

No. 35946 of the CFI of Rizal constitutes a freezing of the disposition of subject properties by the former which were not within its jurisdiction; undeniably, a grave abuse of discretion amounting to want of jurisdiction, correctible by certiorari.

WHEREFORE, the March 31, 1986 decision of the then Intermediate Appellate Court is hereby Reversed and SET ASIDE. The attachment and execution sale in Civil Case No. 35946 of the former CFI of Rizal are given due course and petitioner's ownership of subject properties covered by TCT Nos. 18905 and 40430 is ordered consolidated.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Davide, Jr., JJ., concur.

* Penned by Associate Justice Fidel P. Purisima and concurred in by Associate Justices Carolina C. Griño-Aquino, Jose F. Racela, Jr., and Jorge S. Imperial.

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