

CESAR SARMIENTO, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT, HON. REGINA G. ORDOÑEZ-BENITEZ, AS THE PRESIDING JUDGE OF BRANCH XLVII OF THE REGIONAL TRIAL OF MANILA, PHILIP...

G.R. No. 75409. August 17, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition to review and reverse the decision* dated June 13, 1986 of respondent Intermediate Appellate Court (now Court of Appeals) in AC-G.R. SP Nos. 09159 and 09160 denying the petition for certiorari and prohibition for lack of merit and correspondingly dismissing these cases.

The facts of the aforecited cases will be presented separately since they involve different proceedings heard before different branches of the Regional Trial Court of Manila.

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The Court of Appeals narrates the facts thus:

"It appears that on May 10, 1977, the private respondent Norma Sarmiento sued her husband, the petitioner Cesar Sarmiento, for support. The case was filed with the Juvenile and Domestic Relations Court and later assigned to Regional Trial Court, Branch XLVII, presided over by Judge Regina Ordonez - Benitez, after the reorganization of the Judiciary in 1983. On March 1, 1984, Judge Ordonez-Benitez rendered a decision, the dispositive portion of which reads:

'WHEREFORE, judgment is hereby rendered ordering the defendant, Cesar Sarmiento, to pay his plaintiff-wife, Norma Sarmiento, the sum of Five Hundred Pesos (P500.00) monthly as support commencing on May 10, 1977 up to March, 1984, which shall be paid thirty (30) days after the Decision shall have become final and executory and the monthly support, starting April, 1984, shall be deposited with the Cashier of the Regional Trial Courts, City Hall, Manila within the first five (5) days of April 1984 and every month thereafter from which plaintiff-wife or her duly authorized representative may withdraw the same. Support shall be immediately payable, notwithstanding any appeal which may be interposed by defendant.

'Let a copy of this Decision be furnished the Cashier of the Regional Trial Courts of City Hall, Manila, for his information and guidance.' "

'On April 9, 1984 the private respondent moved for execution of the judgment pending appeal. The petitioner actually filed a notice of appeal four days later on April 13. On May 3, 1984, Judge Ordonez-Benitez issued the following order:

'Acting on the 'Motion for Execution of Decision Pending Appeal', dated April 9, 1984, and the 'Notice of Appeal' filed by the defendant on April 13, 1984, the Philippine National Bank is hereby directed that no amount due the

defendant be released without authority from this Court and until final disposition of said case.

'Let a copy of this Order be directed to the Philippine National Bank for its guidance and information.'

"On May 29, 1985 the private respondent filed a motion to require the Philippine National Bank to deliver to the private respondent the accrued support out of the retirement benefits due to the petitioner as a former employee of the PNB.

"The petitioner prays —

"That a restraining order and/or writ of preliminary injunction forthwith issue, ENJOINING AND PROHIBITING the respondent JUDGE REGINA G. ORDONEZ-BENITEZ and all the respondents in Civil Case No. E-02184, their agents and employees, and all persons acting for them or on their behalf, from enforcing, executing or otherwise giving force and effect to the Decision (Annex "A" hereof, and the Order Annex "B" hereof)."

On June 13, 1966, the Court of Appeals found petitioner's appeal unmeritorious and thus dismissed the same. Petitioner moved for reconsideration but the motion was denied.

Hence this petition.

G.R. No. 75410

The Court of Appeals sums up the facts as follows:

"It appears that, on August 1, 1984, the private respondent brought another action against the petitioner for a declaration that the retirement benefits due the petitioner from the PNB were conjugal and that 50% thereof belonged to the private respondent as her share. The case was assigned to Branch XXVII of the RTC of Manila, presided over by Judge Ricardo Diaz. The petitioner filed an answer in which he contended that the complaint did not state a cause of action; that there was another action pending between him and the plaintiff and that the plaintiff did not exhaust administrative remedies before bringing the suit. However, the trial court refused to dismiss the complaint because the grounds cited were not indubitable. The case was therefore set for pretrial conference. For failure of the petitioner to appear at the pretrial conference on December 19, 1985, the trial court declared him as in default. Thereafter, on February 20, 1986, judgment was rendered as follows:

'WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering defendant Philippine National Bank to desist and refrain from releasing to defendant Cesar Sarmiento all monetary benefits and emoluments which may be due him by reason of his retirement from service, but instead, to deliver one-half (1/2) thereof to the herein plaintiff; and if in the event that all such monetary benefits and emoluments, for one reason or another, had already been paid to defendant Cesar Sarmiento, said defendant is hereby ordered to pay plaintiff one-half (1/2) of whatever monetary benefits, emoluments and privileges he received from defendant Philippine National Bank by reason of his retirement. Likewise, defendant Cesar Sarmiento is hereby ordered to pay the amount of P10,000.00 as and for attorney's fees and the costs of suit.'

"On April 21, 1986, the private respondent moved for the immediate execution of the judgment in her favor, on the ground that any appeal that the petitioner might take would merely be dilatory in the light of the admission in his answer. The petitioner filed an opposition to the motion wherein he manifested that he was not going to appeal the decision of the trial court but that he would instead file a petition for certiorari and prohibition against the trial court."

Petitioner appealed the February 20, 1986 decision of respondent Judge Diaz to the Court of Appeals on a petition for certiorari and prohibition. The assailed decision denied the above petition.

Hence, this joint petition.

Petitioner's averments can be narrowed down to the following:

1. The order of May 3, 1984 of respondent Judge Ordonez-Benitez, prohibiting the Philippine National Bank to release any amount of the retirement gratuity due the petitioner without the trial court's approval is contrary to law, because retirement benefits are exempt from execution.
2. Since the trial court had refused to give due course to his appeal, he was justified in resorting to the extraordinary legal remedies of certiorari and prohibition.
3. The default judgment dated February 20, 1986 of respondent Judge Diaz also ordering the PNB to desist from releasing to petitioner any portion of his retirement benefits and to deliver one-half thereof to herein private respondent is contrary to law.

From the foregoing, it can be gauged that what petitioner principally questions or protests against is respondent appellate court's failure (actually refusal to resolve the issue on whether or not the retirement benefits due the petitioner from the PNB are subject to attachment, execution or other legal process)

Private respondent, however, claims that the issues raised by petitioner before respondent Court of Appeals were issues relating to the merits of the cases then pending with respondents Judge Ordonez-Benitez and Judge Diaz and hence the said issues were proper subject of an appeal, which remedy was already availed of by petitioner in both cases. She likewise submits that since no question of jurisdiction or abuse of discretion had been raised and substantiated in the petitions before the respondent Court of Appeals, said appellate court was legally justified in dismissing the petition.

Just as We have dealt with the facts of these two cases. We now intend to resolve their issues and questions also separately.

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We do not find merit in petitioner's contention that simply because the trial court had refused to give due course to his appeal, he was already justified in resorting to the extraordinary legal remedies of certiorari and prohibition. What the respondent Court of Appeals found in this regard need not be further elaborated upon.

Said appellate court ruled:

"Under BP 129, sec. 39, no record on appeal is required[^] to take an appeal. Nor is an appeal bond required. (Interim Rules, sec. 18) A notice of appeal is sufficient. Unlike before, where approval of the record on appeal and the appeal bond was required before the appeal was perfected, under the present rule, the appeal is perfected upon the expiration of the last day to appeal by a party by the mere filing of a notice of appeal (Interim Rules, sec. 23). The approval of the court is not required. This means that within 30 days after the perfection of the appeal, the original record should be transmitted to the Intermediate Appellate Court. If the clerk neglects the performance of this duty, the appellant should ask the court to order the clerk. It does not seem that the petitioner has done this, and it may even be that he is liable for failure to prosecute his appeal. (Rule 46, sec. 3; Rule 50, sec. 1 [c])."

On the allegation of petitioner that it is not the appellant but the appellee's duty to make the clerk of court of the trial court transmit the record on appeal to the appellate court, respondent Court of Appeals aptly points to the rulings under Rule 46, sec. 3 of the Revised Rules of Court:

'It has been held that, while it is the duty of the clerk of the Court of First Instance to immediately transmit to the clerk of the Supreme Court a certified copy of the bill of exceptions, (now, record On appeal) it is also the duty of the appellant to cause the same to be presented to the clerk of the Supreme Court within thirty days after its approval. He cannot simply fold his arms and say that it is the duty of the Clerk of Court of First

Instance under the provisions of section 11, Rule 41 of the Rules of Court to transmit the record of appeal to the appellant court. It is appellant's duty to make the clerk act and, if necessary, procure a court order to compel him to act. He cannot idly sit by and wait till this is done. He cannot afterwards wash his hands and say that delay in the transmittal of the record on appeal was not his fault. For, indeed, this duty imposed upon him was precisely to spur or the slothful. (2 Moran, Comments on the Rules of Court 480 [1979]).'

Evidently, petitioner had no valid excuse to resort to the extraordinary writ of certiorari and prohibition when appeal had been available to him and which he, in fact, already initiated but did not pursue.

Petitioner, in questioning the Order of May 3, 1984 of respondent Judge Ordonez-Benitez, claims that such order contravenes the law exempting retirement gratuity from legal process and liens. We find merit in petitioner's stand in the light of the explicit provisions of Sec. 26 of CA 186, as amended, which read as follows;

"Sec. 26. Exemption from legal process and Liens. - No policy of life insurance issued under this Act, or the proceeds thereof, when paid to any member thereunder, nor any other benefit granted under this Act, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of such member, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the member for payment of his debt: Provided, however, That this section shall not apply when obligations or indebtedness to the System and the employer are concerned, nor when the retirement annuity is assigned to any person, corporation, association or bank or other financial institution, which is hereby authorized."

The aforecited freeze order of respondent Judge Benitez (directing PNB not to release any portion of the retirement benefits due the petitioner) falls squarely within the restrictive provisions of the aforequoted section. Notably, said section speaks of "any other benefit granted under this Act", or "other process" and "applied by any legal or equitable process or operation of law." This assailed order clearly violates the aforestated provision and is, therefore, illegal and improper.

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Re the petition for certiorari and prohibition, the appellate court in dismissing the same, said:

"But in this case, the petitioner could have appealed from the decision of Judge Diaz. Instead, he announced he was not going to appeal. He was going to file a petition for certiorari and prohibition as he in fact did in this case. This certainly cannot be done, even under the most liberal view of practice and procedure. Especially can this not be done when the questions raised do not relate either to errors of jurisdiction or to grave abuse of discretion but, if at all, to errors of judgment."

The default judgment dated February 20, 1986 of respondent Judge Diaz which ordered then defendant PNB to desist and refrain from releasing to petitioner all monetary benefits and emoluments due him as retirement benefits and to deliver one-half thereof to private respondent also comes within the prohibition imposed by Sec. 26, as amended, of the GSIS Charter. This, in effect, is also a freeze order.

The directive to deliver one-half (1/2) of the retirement benefits to private respondent makes the default judgment doubly illegal because retirement benefits have been adjudged as gratuities or reward for lengthy and faithful service of the recipient and should be treated as separate property of the retiree-spouse. Thus, if the monetary benefits are given gratis by the government because of previous work (like the retirement pay of a provincial auditor in *Mendoza vs. Dizon*, L-387, October 25, 1956) or that of a Justice of the Peace (*Eclar vs. Eclar*, CA-40 O.G. 12th Supp. No. 18, p. 86), this is a gratuity and should be considered separate property (Art. 148, Civil Code).

In view of the foregoing, the petitions are hereby GRANTED. Let the records be remanded to the trial courts of origin for further proceedings.

Teehankee, (C.J.), Narvasa, Cruz and Gancayco, JJ., concur.

* Penned by Justice Vicente V. Mendoza concurred in by Justices Mariano A. Zosa, Luis A. Javellana and Ricardo P. Tensuan.

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