

**ANTONIO TOLEDO, PETITIONER, VS. HON. JOSE P. BURGOS,
PRESIDING JUDGE OF BRANCH XXV OF THE REGIONAL TRIAL
COURT OF CEBU, REGION VII, AND PERCY CASTRO, RESPONDENTS.**

G.R. No. 75466. December 19, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari and mandamus with a prayer for the issuance of a writ of preliminary prohibitory injunction, questioning the respondent judge's denial of petitioner's "Application for Issuance of a Writ of Preliminary Attachment" and the latter's subsequent "Motion for Reconsideration", in his orders dated 6 June 1986 and 23 June 1986, respectively.

As can be gleaned from the parties' memoranda, the following material facts have been established:

A complaint for Delivery of Personal Property was commenced by petitioner on 14 June 1985 against respondent Castro but was subsequently connection denied. In connection therewith, a writ of Replevin was applied for. Petitioner's subsequent reconsideration been likewise denied, he went to the then Intermediate Appellate Court on certiorari. The latter Court denied the same on 30 April 1986.[*]

Subsequently, on 14 May 1986, petitioner applied for the issuance of a writ of preliminary attachment with the Court below, and which was requested by the former's counsel for it to be considered in the morning of 6 June 1986 "with or without the attendance of counsel and without oral arguments" (p. 28, Rollo). In said application, it was alleged that respondent Castro, among others, "has removed and has deposed (sic) or is about to depose (sic) of her property with intent to defraud the herein plaintiff" (p. 24, Rollo). To support such allegation, an affidavit of one Rudolfo Inot (p. 29, Rollo) was attached to the application to prove that respondent Castro and her spouse insistently offered to sell to him two (2) motor vehicles. Castro submitted her written opposition thereto on 4 June 1986 (p. 57, Rollo). On the hearing of 6 June 1986, neither petitioner nor his counsel appeared. Being present then, Castro assailed the allegations in the affidavit of Mr. Inot. She likewise argued that petitioner had to prove by overwhelming evidence his allegation that she was about to dispose of her properties fraud of creditors, and that mere affidavits would not suffice. On the same date, respondent denied the application. On 17 June 1986, petitioner moved to reconsider the above denial. Once more, counsel for petitioner requested that the consideration of said motion be scheduled in the morning session of 23 June 1986 "without need of argument or appearance of counsel" (p. 35, Rollo). But like before, petitioner, and his counsel failed to appear. On said date, respondent Castro manifested that the two (2) vehicles, alleged to have been offered for sale by her, were needed in her retail merchandising business, thus, had no intention of disposing of them. The respondent judge then issued another order dated 23 June 1986 denying petitioner's motion. Hence, this present petition was filed on 12 August 1986.

In a minute resolution dated 25 August 1986 (p. 90, Rollo), this Court denied the instant petition for being without merit. And after respondent Castro had filed her answer and petitioner his motion for reconsideration, this Court

reconsidered the aforesaid resolution in a subsequent one dated 5 January 1987 (p. 94, Rollo) and ordered the parties to submit their respective memoranda.

The sole issue in this case concerns the propriety of the respondent judge's denial of petitioner's application for a writ of attachment. In branding the denial as improper, petitioner accuses respondent judge of having made it "with undue haste and without proper notice of hearing and with disregard of the "(strong) evidence in support of the application" (Petition, P. 8, Rollo)

We disagree with the petitioner's accusations. Contrary to his claims, the respondent judge acted well within his powers and in the highest regard for justice. Respondent judge acted correctly in denying petitioner's "Application for Issuance of a Writ of Preliminary attachment". There was no need for him to, as against petitioner's claim, set a hearing on the said application. This is because the issuance of a writ of preliminary attachment may be made by the Court ex-parte. As We held in the case of *Filinvest Credit Corporation vs. Relova*, 117 SCRA 420, and reiterated in *Belisle Investment and Finance Co., Inc. vs. State Investment House, Inc.*, 151 SCRA 630:

"Nothing in the Rules of Court makes notice and hearing indispensable and mandatory requisites for the issuance of a writ of attachment. The statement in the case *Blue Green Waters, Inc. vs. Hon. Sundiam and Tan* cited by private respondent, to the effect that the order of attachment issued without notice to therein petitioner *Blue Green Waters, Inc.* and without giving it a chance to prove that it was not, fraudulently disposing of its properties is irregular, gives the wrong implication. As clarified in the separate opinion of Mr. Justice Claudio Teehankee in the game cited case, a writ of attachment may be issued ex-parte."

And even if said notice is indeed necessary, petitioner can only blame himself for failing to attend the scheduled hearing of 6 June 1986. This is because it was he, through his counsel, who requested that the application be set for consideration and approval by the Court on the said date. It was, therefore, his duty to be present in Court on that date.

Inasmuch as a writ of preliminary attachment may be issued without hearing, the judge before whom the application is made has full discretion in considering the supporting evidence proffered by the applicant. And in dealing with the affidavit of Mr. Inot, the respondent judge was empowered to decide whether or not such should be given credit. As We enunciated in the early case of *La Granje vs. Samson* (58 Phil. 578): "the sufficiency or insufficiency of an affidavit depends upon the amount of credit given to it by the judge, and its acceptance or rejection upon his sound discretion."

It is unfortunate that counsel for petitioner, in his motion for reconsideration dated 13 October 1986, has made a hasty accusation against the Honorable Judge Jose Burgos, the public respondent, as having "shown manifest partiality towards private respondents, making statements and actions which clearly intimate that the private respondents would win the case hands down. This is indeed unfortunate, improper and an affront to the dignity of the judiciary." (p. 79; Rollo). We do not find any cogent and valid ground in the records of this case which justify such a grave imputation upon a member of the Bench. Counsel for petitioner is hereby reminded of his duties to the Court. And the attorney's duty of prime importance is to observe and maintain the respect due the courts of justice and judicial officers (Rule 138, Sec. 20(b); *Rheem of the Phil. vs. Ferrer*, 60 SCRA 234). His arguments, written or oral, should be gracious to both the court and opposing counsel and be of such words as may be properly addressed by one gentleman to another (*National Surety Co. v. Jarvis*, 278 US 610 (1928)).

WHEREFORE, premises considered, this petition is hereby DENIED with costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

[*] IAC Third Special Cases Division, penned by Justice Alfredo M. Lazaro and concurred in by Justices Juan A. Sison, Santiago M. Kapunan, and Alfredo V. Cruz, Jr.

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