

ROSAURO C. CRUZ, PETITIONER, VS. HON. AUGUSTO E. VILLARIN, IN HIS CAPACITY AS THE PRESIDING JUDGE OF REGIONAL TRIAL COURT OF MANILA, BRANCH XL, AND INVESTORS' FINANCE CORPORATION...

G.R. No. 75679. January 12, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

The present petition arose from a compromise agreement in Civil Case No. 125249 entitled "Investors' Finance Corporation vs. Rosauro Cruz", wherein the latter admitted having an outstanding obligation in favor of the former in the amount of Seven Thousand Sixty Eight Pesos and Forty Five Centavos (P7,068.45).[1] The agreement contained a promise on the part of petitioner Cruz to settle the debt by paying Nine Hundred Nine Pesos (P909.00) every ninth (9th) day of each month until the debt is fully paid. Consequently, on 1 August 1980, the Court of First Instance (now Regional Trial Court) of Manila, Branch XL, rendered judgment based on the agreement.

On the ground of failure on the part of herein petitioner to comply with the terms of the agreed settlement, respondent corporation moved for execution of the judgment. A writ of execution was issued by the then presiding Judge, Hon. Augusto E. Villarin, on 20 November 1980 for the amount of Seven Thousand Five Hundred Nineteen Pesos and Eighty Centavos (P7,519.80),[2] which writ, although served, was not implemented due to petitioner's payment on 11 December 1980 of Four Thousand Five Hundred Forty Five Pesos (P4,545.00) in the form of three (3) checks, payable as follows:

December 11, 1980

-

P1,818.00

January 11, 1981

-

1,818.00

February 11, 1981

-

909.00

TOTAL

-

P4,545.00

Another motion of the respondent corporation for the issuance of an alias writ of execution for the allegedly still unpaid balance of the indebtedness was filed at a later date. Respondent court granted the same on 19 May 1982 and accordingly, an alias writ was issued for the amount of Four Thousand Five Hundred Thirteen Pesos and Forty Three Centavos (P4,513.43). Certain properties of the petitioner were levied upon.[3]

Petitioner moved to lift the levy on his personal properties, claiming that he had already fully paid his obligation with the issuance of the three (3) checks on 11 December 1980. However, the motion was denied after a finding by the respondent court that petitioner still owed the company the sum of Three Thousand One Hundred Seventy Four Pesos and Eighty Centavos (P3,174.80).[4]

Praying to enjoin the enforcement of the 19 May 1982 alias writ of execution, petitioner filed a separate complaint with the Regional Trial Court of Pasig, which dismissed said complaint on 8 September 1982 on account of the earlier action before the Regional Trial Court of Manila, which gave rise to the issuance of said alias writ of execution.

A little over two (2) years thereafter, or on 24 September 1984, and on motion of the respondent corporation, the respondent court issued another alias writ of execution dated 29 October 1984, again for the amount of Four Thousand Five Hundred Thirteen Pesos and Forty Three Centavos (P4,513.43).[5]

Petitioner appealed to the Intermediate Appellate Court (now Court of Appeals), by way of a petition for certiorari and prohibition, praying for the nullification of both the 19 May 1982 and 29 October 1984 alias writs of execution issued by the respondent court.[6]

In his petition with the appellate court, petitioner averred that the amount of P4,545.00 that he paid on 11 December 1980 was computed by the Accounting Department of respondent corporation to be the only outstanding balance of his loan, as of that date. That amount, according to petitioner, added to payments made by him prior to 11 December 1980, constituted full satisfaction of the debt. He further stated that, although the sum of P4,545.00 was receipted for by the Sheriff as a collection, no Return of the writ of execution was submitted by said officer to prove the full payment made by him (petitioner). Petitioner argued that due to the failure of the respondent court to first require the Sheriff to make a Return of the writ of execution of 20 November 1980, the subsequent issuances of the alias writs of execution dated 19 May 1982 and 29 October 1984 were illegal. Not only was the second alias writ of 29 October 1984, in particular, assailed to be illegal on the above score; petitioner also alleged that the amount to be collected on said second alias writ of execution was not definite as

the same was left to the determination of the Sheriff by reason of the special instruction written on its face, to wit:

"Deduct from this writ of execution whatever amount had already been paid to plaintiff." [7]

On 19 March 1986, the Intermediate Appellate Court rendered judgment [8] dismissing the petition and ordering petitioner to pay the sum of P3,176.80 with legal interest from 19 May 1982. [9]

The Intermediate Appellate Court reiterated its ruling in a 17 July 1986 resolution, [10] denying petitioner's motion for reconsideration [11] of its earlier decision. This time, however, the amount of liability that petitioner was ordered to pay was reduced to P1,614.45 with legal interest from 9 August 1983. The modification is explained by the appellate court as follows:

"x x x We could not accept petitioner's assertion that the obligation had been fully paid with his issuance of the checks of December 1980, January 1981 and February 1981, because it was not mathematically possible. According to the compromise agreement between the parties, as of 1 August 1980, petitioner was indebted to private respondent in the amount of P7,068.45. The only payments made by petitioner were in the form of three (3) checks issued in December 1980, January, 1981 and February, 1981, in the sum total of P4,545.00. Deducting this from the principal of P7,068.45 and a balance of P2,523.45 remains. Considering that the amount may have earned interest in the meantime, the amount of P3,176.80 found to be still owing to private respondent is not without basis. However, considering that petitioner has now presented the order of the lower court dated 9 August 1983 which makes a definitive finding that petitioner's indebtedness to private respondent as of that date is only P1,614.45, and no objection has been raised by petitioner with respect thereto, in the interest of fairness and for equitable considerations, we hereby reduce petitioner's indebtedness to the amount of P1,614.45, with legal interest thereon from 9 August 1983."

Hence, this petition, [12] which insists on the annulment of the 19 May 1982 and 29 October 1984 alias writs of execution and a holding that petitioner had long fully paid his obligation.

To begin with, we cannot overrule petitioner's stand that, before the issuance of the alias writs in question, the Sheriff should have submitted the Return of Execution made on 11 December 1980. Under the law, particularly Section 11 of Rule 39, Rules of Court, it is the duty of the Sheriff to return the writ at any time not less than ten (10) nor more than sixty (60) days after he receives it. In making the Return, a report should have been properly made by the Sheriff on how the execution of the money judgment amounting to P7,068.45 was carried out, by a recital of the fact of payment by the petitioner on 11 December 1980 in three (3) checks, one current and two postdated, in the total amount of P4,545.00. A Return was necessary before the issuance of the alias writs in question.

A Return of execution which is regular on its face, should be presented to serve as conclusive evidence of the facts recited therein. Its importance is put in focus in a case which calls for a settlement of conflicting averments of the parties as to details of the execution proceedings, such as the manner, date and place of execution, the amount involved, etc.

Be that as it may, after a consideration of the facts of this case, we are not, however, prepared to hold the questioned alias writs as illegal. There is no dispute raised as regards the payment of P4,545.00 in the form of three (3) checks on 11 December 1980 by the petitioner. It is evident from the records of the case that respondent corporation admits the collection of the P4,545.00, representing payment by petitioner against his loan account on said date — the very fact that should have been contained (but was not) in the recitals of the Sheriff's Return.

Petitioner argues that it is because of the failure of the Sheriff to submit a Return of execution that the payment of P4,545.00 can not be proved as a full and final satisfaction of his loan obligation. In his petition to the Intermediate Appellate Court, dated 3 November 1984, he wrote:

"This (referring to P4,545.00) was the amount provided by the Accounting Department of Private Respondent which was computed after checking its records earlier made, and thereafter relayed to the Petitioner, Private Respondent's representative, and the Sheriff, while the latter two were enforcing the execution last December 11, 1980. This was the amount received by the latter as the collection made on execution.

"There would be no dispute today that such payment (of P4,545.00) extinguished the judgment debt had the Sheriff submitted a Return as required by law. x x x." [13]

We are unable to go along with the above argument. It cannot be logically deduced, as petitioner tries to do, that the Return would prove his allegation that when the P4,545.00 worth of checks were issued and delivered to the Sheriff, petitioner had thereby fully settled his obligation. What the Return could have proved was merely the fact of delivery by petitioner of said three (3) checks totalling P4,545.00. It was not expected of the Sheriff to recite on the Return more than what he was supposed to report. Stated differently, the conclusiveness of a Return extends to facts which the Sheriff is legally obligated to state therein and does not extend to matters which he is not required or expected to state. For him to include in the recitals of the Return that the amount of P4,545.00 was a full satisfaction of the writ of execution amounting to P7,519.80, was to commit an irregularity. He had no authority to determine for himself whether or not a payment by a judgment debtor in the execution proceedings indeed fully satisfied an execution where obviously the amount collected was not equivalent to the amount written on the face of the writ.

Although the executing officer may have reported the presence of, and petitioner's reliance on, the earlier mentioned accounting report originating from private respondent, he may not conclusively deduce therefrom that the amount he received was actually a final settlement of the execution. Neither could the petitioner rely on the accuracy of the said accounting report, because he himself, as stated repeatedly in his pleadings, described it as "quite sloppy and messy x x x such that all its (private respondent's) collection efforts have been mere guesswork x x x". [14]

We thus uphold the validity of the 19 May 1982 alias writ of execution due to the above reasons. We cannot, however, do the same for the 29 October 1984 second alias writ. There is merit in petitioner's contention that the issuance of the second alias writ constitutes an unlawful delegation to the Sheriff of a judicial function in determining the exact amount due. Section 8 of Rule 39, Rules of Court, provides that a writ of execution must state "the amount actually due thereon if it be for money." While it may be true that the said second alias writ in question indicated the figure P4,513.43 as the amount to be satisfied, yet there was a special instruction stated on its face and directed to the Sheriff "to deduct from the writ whatever amount had already been paid to plaintiff." [15] Naturally, when the writ of execution is finally enforced, the Sheriff would necessarily satisfy the judgment not on the basis of the amount of P4,513.43, but on his determination of the actual amount of indebtedness that was still unpaid. It is refreshing to quote the ruling in *Windor Steel Manufacturing Co., Inc. v. Court of Appeals* [16] on this particular issue, to wit:

"Leaving to the Sheriff, as held by the Court of Appeals, the determination of the exact amount due under the Writ would be tantamount to vesting such officer with judicial powers. He would have to receive evidence to determine the exact amount owing. In his hands would be placed a broad discretion that can only lead to delay and open the door to possible abuse. The orderly administration of justice requires that the amount on execution be determined judicially and the duties of the Sheriff confined to purely ministerial ones."

The issue of whether petitioner has fully satisfied his obligation to the private respondent by the payment of P4,545.00 is necessarily a question of fact. This being a petition for review, we find it necessary to adopt the ruling of the Court of Appeals that there still remains an amount of P1,614.00 owing from petitioner to the private respondent. It is well settled that, except in cases where the lower court's findings are not supported by the record

or are not based on substantial evidence, this Court is not expected to re-weigh its findings of fact^[17] which should properly assume the character of finality.

As correctly observed by the appellate court, it is mathematically impossible for a payment of P4,545.00 to serve as a full settlement of a P7,519.80^[18] worth of indebtedness, there being no satisfactory evidence of any other payments made. Neither can petitioner assail the correctness of the amount of P7,068.45 as he is estopped from doing so from the time he signed the 1 August 1980 compromise agreement, admitting said debt to respondent corporation and obliging himself to pay the same in stipulated installments.

Based on the foregoing, we find no reversible error in the appellate court's order to the petitioner to pay the private respondent P1,614.45 plus legal interests thereon from 9 August 1983, the said amount being based on the definitive finding of the Regional Trial Court in its 9 August 1983 order.^[19]

WHEREFORE, the petition is DENIED. The modified judgment, dated 17 July 1986, of the respondent appellate court is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Sarmiento, and Regalado, JJ., concur.
Paras, J., no part.

[1] Rollo, pp. 108-109.

[2] Annex "C", Petition, p. 19, Rollo.

[3] Annex "D", Petition, p. 20, Rollo.

[4] Annex "D-1", Petition, p. 21, Rollo.

[5] Rollo, p. 107.

[6] Annex "K", Petition, p. 33, Rollo.

[7] Rollo, p. 107.

[8] Penned by Justice Luis A. Javellana, concurred in by Justices Edgardo L. Paras, Vicente V. Mendoza and Ricardo P. Tensuan.

[9] Annex "A", Petition, p. 9, Rollo.

[10] Annex "J", Petition, p. 27, Rollo.

[11] Annex "B", Petition, p. 13, Rollo.

[12] Rollo, p. 2.

[13] Rollo, p. 40.

[14] Annex "K", Petition, p. 41, Rollo.

[15] Rollo, p. 107.

[16] G.R. No. L-34332, January 27, 1981, 102 SCRA 275.

[17] *Amigo v. Teves*, 50 OG 5799; *Alsua-Betts vs. CA, et al.*, L-46430-31, July 30, 1979, 92 SCRA 332.

[18] Annex "C", Petition, p. 19, Rollo.

[19] Intermediate Appellate Court's July 17, 1986 resolution, Annex "J", Petition, p. 27, Rollo

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