

DEVELOPMENT BANK OF RIZAL, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND IBRAHIM OMAR, RESPONDENTS.

G.R. No. 75964. December 01, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari seeking to set aside the decision of the Court of Appeals which dismissed the Development Bank of Rizal's petition and affirmed the trial court's order for the issuance of a writ of execution in favor of the private respondent on the ground that the decision below has become final and executory.

On March 30, 1984, respondent Ibrahim Omar filed a complaint with the Regional Trial Court of Manila for collection of sum of money against the petitioner Development Bank of Rizal and the Central Bank. The Central Bank filed a motion to dismiss on the ground of lack of cause of action. The trial court granted the motion and thus, the petitioner became the only defendant in the case.

On May 19, 1984, the petitioner likewise filed a motion to dismiss for lack of jurisdiction and lack of cause of action. On August 6, 1984, the motion was denied. A copy of the court order denying the motion was received by the petitioner on August 13, 1984. However, it failed to file an answer within the reglementary period as a consequence of which it was declared in default and the respondent was allowed to present his evidence *ex parte* on November 27, 1984.

On November 23, 1984, the petitioner filed motion to lift the order of default. The motion was denied by the trial court on May 3, 1985. The petitioner moved to reconsider but the same was also denied on July 19, 1985.

On November 12, 1985, the trial court rendered a judgment by default against the petitioner, the dispositive portion of which states:

"WHEREFORE, judgment is hereby rendered ordering the defendant to pay the plaintiff:

1. The sum of P10,119.14 with legal interests from March 13, 1984 until the same is fully paid;
2. The sum of P10,000.00 as moral damages and P5,000.00 as exemplary damages;
3. The sum of P5,000.00 as attorney's fees; and
4. The cost of suit.

SO ORDERED." (Rollo, p. 80)

The petitioner did not appeal.

On February 12, 1986, the respondent filed an Ex-Parte Motion for Execution and to Approve Bill of Costs. This was granted by the trial court on February 17, 1986.

On March 12, 1986, the trial court issued a writ of execution and, on March 14, 1986, the writ was served on the

petitioner on the basis of which it surrendered under protest the following properties;

PROPERTY NO. TRADE MARK-SERIAL NO.

1. MO-095.....BSI-Model 101-Serial No. 153727
2. MO-087.....Olympia ES 101-Serial No. 67-0214716
3. MO-061.....BSI-Model 101-Serial No. 1537227

On March 17, 1986, the petitioner filed a motion for reconsideration of the court's order granting execution and to lift the writ issued pursuant thereto, with temporary restraining order.

On April 4, 1986, the trial court denied the motion.

On April 9, 1986, a notice of sale on execution of the petitioner's personal properties which were levied upon was issued setting the sale for April 16, 1986.

The petitioner filed a petition for certiorari before the appellate court contending that the writ of execution was null and void for having been issued without any hearing. It likewise alleged that it did not receive a copy of the trial court's order granting the motion for execution. Furthermore, petitioner contended that its assets are being held in trust by the Monetary Board of the Central Bank and, therefore, the judgment cannot be executed against it.

On September 10, 1986, the appellate court dismissed the petition stating that inasmuch as the petitioner is not contesting the trial court's decision on the merits and the said decision has become final and executory, the respondent can have it executed as a matter of right and the grant of execution was but a ministerial duty of the trial court. Hence, the petitioner need not be given advance notice of the application for execution nor may it be afforded prior hearing. As to the question of its assets being held by the Monetary Board, the appellate court ruled that since the petition for liquidation had not yet been actually filed as of the date of the issuance of the writ of execution, it cannot truly be said that the respondent has gained undue or fraudulent preference over the petitioner's other creditors and depositors.

In this petition before us, the petitioner raises the following issues:

I

WHETHER OR NOT A PARTY DECLARED IN DEFAULT IS ENTITLED TO NOTICE OF ALL PROCEEDINGS SUBSEQUENT TO HIS FILING A MOTION TO SET ASIDE THE ORDER OF DEFAULT;

II

WHETHER OR NOT IT IS THE MINISTERIAL DUTY OF THE COURT TO ORDER THE EXECUTION OF A JUDGMENT WHICH HAS BECOME FINAL AND EXECUTORY; AND

III

WHETHER OR NOT THE CASE OF CENTRAL BANK V. MORFE, (63 SCRA 114) IS APPLICABLE TO THE PRESENT CASE AND THEREFORE, THE WRIT OF EXECUTION CANNOT BE ENFORCED AGAINST IT.

In the first and second assignments of error, the petitioner contends that a party who is declared in default is entitled to all notice of proceedings subsequent to his filing of a motion to set aside the order of default as

mandated by Section 9, Rule 13 of the Revised Rules of Court. Therefore, the writ of execution issued against it by the trial court is null and void since the same was issued without prior notice and hearing. The petitioner further contends that 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.

It is true that a party who is declared in default is entitled to notice of all further proceedings upon his filing of a motion to set aside the order of default but the failure to furnish copy of the motion for the issuance of a writ of execution to the party does not render null and void the writ issued pursuant thereto because upon finality of judgment, the prevailing party becomes entitled to its execution as a matter of right.

As we have ruled in *Pamintuan v. Munoz*, (22 SCRA 1109, 1111-1112):

"Regarding the first point, it is by now axiomatic that a judgment on a compromise - like the one in the case at bar - is at once final and immediately executory. Also of the same stature is the rule that once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right and the granting of execution becomes a ministerial duty of the court. Otherwise stated, once sought by the prevailing party, execution of a final judgment will just follow as a matter of course. Hence, the judgment debtor need not be given advance notice of the application for execution nor be afforded prior hearing. (Rule 39, Sec. 1, Rules of Court; *Luther v. Clay*, 100 Ga. 236, 28 S.E. 46) This renders of little significance then the fact alleged by petitioners that they received copy of respondent's motion for execution only on the afternoon of the day set for its hearing."

The petitioner, in this case, claims that it was served the writ of execution without notice or hearing prior to its issuance. However, it filed a motion for reconsideration to lift the writ. Assuming, therefore, that the writ was irregularly issued because of lack of notice, the defect was cured upon the petitioner's filing of its motion for reconsideration. Furthermore, the petitioner admits that it was served the writ of execution and the notice of sale on execution of personal property. In the *Pamintuan* case, (*supra*, p. 1112-1113) we further said:

"Petitioners finally argue that they had not been served a notice of the levy nor a notice of the sale as required by the Rules. The sheriff's return, however, shows that the notice of levy had been registered with the Register of Deeds pursuant to Rule 57, Sec. 7 in connection with Rule 39, Sec. 15 of the Rules, and that the notice of sale had been sent by registered mail on December 28, 1964, to petitioners. Even assuming then that petitioners were not served a copy of the notice of levy, yet We have already ruled in *Philippine Bank of Commerce v. Macadaeg*, L-14174, October 31, 1960, that this defect is cured by service of notice of sale upon the judgment debtors prior to the sale, which was done here. The levy was validly effected then."

Unless there exists a compelling reason therefore, for holding in abeyance the writ of execution, the same will issue as a matter of right in favor of the prevailing party upon finality of the decision. Thus in the case of *Roman Santos, Jr. & Herminia Santos v. The Hon. Court of Appeals and Francisco S. Nigos*, (G.R. No. 56614, July 28, 1987) we ruled:

"xxx As this Court held in *Agricultural and Industrial Marketing, Inc. v. Court of Appeals*, (118 SCRA 49) it is beyond question that the perfection of an appeal or the filing of a petition for review, within the statutory or reglementary period is mandatory and jurisdictional; and that failure to so perfect an appeal renders final and executory the questioned decision and deprives the appellate court of jurisdiction to entertain appeal. The lapse of the appeal period deprives the courts of jurisdiction to alter the final judgment, and the prevailing party becomes entitled as a matter of right to its execution, and for the court, it becomes its ministerial duty to order the execution of judgment."

The question which, thus, confronts us now is whether or not there exists a compelling reason for staying the execution of judgment.

In the third assignment of error, the petitioner contends that it is immaterial that no liquidation proceedings had been instituted as of the issuance of the writ of execution and that precisely because actual liquidation had not yet begun, there was still the possibility that the petitioner could be rehabilitated and reopened for business so that to allow execution of judgment against it would be to unduly dissipate its assets and hamper any ongoing efforts toward its rehabilitation. The petitioner argues that the remedy of the private respondent who is not necessarily elevated to the status of a preferred creditor by virtue of the judgment, is to wait, along with other creditors, for the eventual liquidation, or rehabilitation of the bank and then present his claim to the duly appointed liquidator or the rehabilitated bank in case of rehabilitation.

We are constrained to agree with the petitioner. True, the questioned writ was issued prior to the filing of the liquidation proceedings of the petitioner bank. However, the respondent became aware that the petitioner was in a distressed position with the possibility of being subjected to liquidation as early as the date when said petitioner failed to cash the respondent's checks notwithstanding the fact that the latter still had a deposit with the petitioner in the amount of more than P10,000.00, sufficient to cover the issued checks. At this point, the respondent was prompted to file a collection case below and, rightly so, was able to obtain a favorable judgment therein. Be that as it may, to allow the execution of said judgment would unduly cause prejudice to the other depositors of the bank who were caught unaware by its distressed situation and sudden closure. As correctly contended by the petitioner, the respondent would be placed in the status of a preferred creditor over his other co-depositors, a situation which we sought to prevent in the case of *Central Bank of the Philippines v. Morfe* (63 SCRA 114). In that case, we said:

"A contrary rule or practice would be productive of injustice, mischief and confusion. To recognize such judgments as entitled to priority would mean that depositors in insolvent banks, after learning that the bank is insolvent as shown by the fact that it can no longer pay withdrawals or that it has closed its doors or has been enjoined by the Monetary Board from doing business, would rush to the courts to secure judgments for the payment of their deposits.

"In such an eventuality, the courts would be swamped with suits of that character. Some of the judgments would be default judgments. Depositors armed with such judgments would pester the liquidation court with claims for preference on the basis of article 2244 (14)(b). Less alert depositors would be prejudiced. That inequitable situation could not have been contemplated by the framers of section 29."

The petitioner, in this case, has manifested that the "Petition for Assistance in the Liquidation of Development Bank of Rizal" was filed with the Regional Trial Court of Makati and was approved on November 25, 1985; and that soon after the completion of the ongoing inventory and appraisal of assets, a notice to creditors will be published once a week for three consecutive weeks in a newspaper of general circulation requiring creditors to file their claims including, final judgments, with the liquidator, or his assistant, who will then collate all submitted claims, including final judgments, in a project of distribution for approval by the liquidation court.

The remedy of the respondent then is to present the final judgment in his favor before the liquidation court after the proper notice has been given to all of the petitioner Bank's creditors and depositors.

WHEREFORE, the petition is GRANTED. The trial court's orders of March 12, 1986 and April 9, 1986 are reversed and set aside.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin and Cortes, JJ., concur.

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