

PHILIPPINE NATIONAL BANK, PETITIONER, VS. HON. BENIGNO M. PUNO, INDUSTRIAL ENTERPRISES, INC., AND DEPUTY SHERIFF ARTURO C. FLORES, RESPONDENTS.

G.R. No. 76018. February 10, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

The order of the respondent judge, dated September 15, 1986, allowing execution pending appeal of the decision of the Regional Trial Court of Makati, Branch 150, in Civil Case No. 8109 thereof[1] in favor of private respondent Industrial Enterprises, Inc. (IEI, for brevity) is sought to be annulled in this special civil action for certiorari.

The records show that IEI was granted a coal operating contract on July 27, 1979 by the then Ministry of Energy, through the Bureau of Energy Development (hereinafter referred to as BED), for the exploration of two coal blocks in Barrio Carbon, Magsaysay, Eastern Samar. While exploring said coal blocks, IEI found the adjoining areas encompassing three coal blocks to have coal potentials. As a consequence, IEI filed with the BED an application for a coal operating contract to explore those three coal blocks after they were confirmed by BED as located in a free area. Thereafter, IEI applied for conversion of its contract over the two coal blocks to “development/production”. [2]

In August, 1983, IEI and Marinduque Mining and Industrial Corporation (hereinafter referred to as MMIC) entered into an agreement whereby the former assigned its coal operating contract to the latter, with the approval of the BED. [3]

On August 31, 1984, Philippine National Bank (PNB, for short) caused to be sold in extrajudicial foreclosure proceedings the properties of MMIC including the mining equipment and other movable properties then under the possession and control of MMIC at Giporlos, Eastern Samar. [4]

On June 20, 1985, after IEI had instituted the aforesaid case before the Regional Trial Court, Branch 150, for rescission and damages, it filed an amended complaint also against MMIC, Minister Geronimo Velasco and this time, impleading PNB as a co-defendant, [5] praying that:

"x x x after due hearing judgment issue in favor of the plaintiff and against the defendants, as follows:

1. Declaring the memorandum of agreement between the plaintiff and defendant Marinduque Mining and Industrial Corporation, Annex 'C' hereof, rescinded and ordering defendant Marinduque Mining and Industrial Corporation to return the two coal blocks covered by the coal operating contract, Annex 'A' hereof, together with all the pieces of equipment it received therewith from the plaintiff, to the plaintiff, the rescission to become valid and effective upon receipt by the plaintiff of the written approval by the Bureau of Energy Development and Ministry of Energy of the return to the plaintiff of said coal operating contract, accompanied by a written confirmation by said Bureau and Ministry that the same coal operating contract is still valid and in full force and effect and declaring the extrajudicial foreclosure sale effected on behalf of Philippine National

Bank of the mining equipment and other movable property, part of the Giporlos Coal Project, null and void, and of no force and effect especially against the plaintiff.

2. Ordering defendant Honorable Geronimo Z. Velasco, or his successor as Minister of Energy, to have the return of the coal operating contract, Annex 'A' hereof, from defendant Marinduque Mining Industrial Corporation to the plaintiff, approved by the Bureau of Energy Development and the Ministry of Energy, accompanied by a written confirmation that said coal operating contract is in all respect (sic) still valid and effective; and in due course to expeditiously (sic) have said coal operating contract converted by the said Bureau and Ministry from exploration to development/production or exploitation contract in favor of the plaintiff;

3. Ordering said defendant Honorable Geronimo Z. Velasco or his successor as Minister of Energy to also in due course expeditiously have a coal operating contract for the exploration of the additional three coal blocks in the plaintiff's Giporlos Coal Project awarded by the Bureau of Energy Development and Ministry of Energy in favor of the plaintiff; and

4. Ordering defendant Marinduque Mining & Industrial Corporation pay to the plaintiff the following amounts:

xxx xxx xxx

5. Ordering defendant Philippine National Bank to pay to the plaintiff damages as may be proven at the trial."[6]

A summary judgment was rendered by the trial court on April 23, 1986 with a decretal portion which reads:

"WHEREFORE, judgment is hereby rendered:

a) declaring the memorandum agreement Exhibit 'C', as rescinded or annulled and without further force and effect between the parties thereto;

b) declaring and sustaining the continued efficacy and validity of the coal operating contract dated July 27, 1979, Exhibit 'A', between plaintiff and defendant BED;

c) ordering the reversion or return of the coal blocks covered by the coal operating contract dated July 27, 1979, Exhibit 'A', from the defendant MMIC to and in favor of the plaintiff together with or including all the pieces of equipment MMIC received by said defendant in virtue of the rescinded memorandum of agreement, Exhibit 'C';

d) ordering the defendant Bureau of Energy Development to issue its corresponding formal written affirmation and confirmation of the coal operating contract, Exhibit 'A', and to expeditiously cause the conversion thereof from exploration to development/production or exploitation contract in favor of the plaintiff;

e) directing the Bureau of Energy Development and the Ministry of Energy to give due course to plaintiff's application for a coal operating contract for the exploration of the three additional coal blocks in the plaintiff's Giporlos Coal Project;

f) condemning the defendant MMIC to pay the plaintiff the amount of P3,431,645.00 representing expenditures on the two coal blocks covered by Exhibit 'A' from July 31, 1983 up to May 1984 and such further amounts from said date up to the finality of this decision to be computed in accordance with the formula adopted in the report of Sycip, Gores (sic) and Velayo referred to in paragraph 14 of the Amended Complaint;

g) ordering the defendant MMIC to pay the plaintiff the sum of P6,500,000.00 representing rehabilitation expenses to be incurred by plaintiff in putting back the two coal blocks and the pieces of equipment thereon in the same workable and operating condition as they were at the time they were taken possession of by said defendant MMIC and the defendant PNB shall be subsidiarily liable therefor;

h) condemning the defendants MMIC and PNB jointly and solidarily liable to pay the plaintiff moral damages in the amount of P300,000.00 as exemplary damages of P200,000.00 and the amount of P200,000.00 as and for attorney's fees;

i) declaring the extra-judicial foreclosure sale executed for and in behalf of the defendant Philippine National Bank of the mining equipment and other movable property which are enumerated in Exh. '000' and which are part of the Giporlos Coal Project, as null and void and of no force and effect as against the plaintiff; in the event of the loss or deterioration of the said mining equipment and other movable property, the said defendants PNB and MMIC shall be held jointly and solidarily liable to the plaintiff for the current market value thereof;

j) ordering the defendants MMIC and PNB to pay the cost of this suit."[7]

Pursuant to the order of the respondent judge subject of the present action, a writ of execution pending appeal was issued on September 22, 1986 and which respondent sheriff sought to enforce against petitioner.[8] Petitioner then came to Us in the present special civil action and, on its motion, a temporary restraining order to prevent the enforcement of said order and writ was issued pursuant to the Court's resolution of October 10, 1986.

Meanwhile, PNB had filed a notice of appeal, dated September 30, 1986. Verification by the Court revealed that said case is pending in the Court of Appeals where it is docketed as CA-G.R. CV No. 12660.[9]

The pertinent provision of Rule 39 of the Rules of Court, involved in this controversy at bar, provides:

"Sec. 2. Execution pending appeal. - On motion of the prevailing party with notice to the adverse party, the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein."

Under this provision, in order that there may be a discretionary issuance of a writ of execution pending appeal, there must be a motion by the prevailing party with notice to the adverse party; there must be good reasons for issuing the execution; and the good reasons must be stated in a special order.[10]

The bone of contention which constitutes the decisive issue is whether or not there are good reasons justifying the execution of the judgment in this case pending appeal therefrom.

It bears emphasizing at the outset that the exercise of the power to grant or deny immediate or advance execution is addressed to the sound discretion of the court.[11] However, the existence of good reasons is principally what confers such discretionary power.[12] Absent any such good reason, the special order of execution must be struck down for having been issued with grave abuse of discretion. The Court has had the occasion to explain the importance of such requirement for good reasons, thus:

"x x x If the judgment is executed and, on appeal, the same is reversed, although there are provisions for restitution, oftentimes damages may arise which cannot be fully compensated. Accordingly, execution should be granted only when these considerations are clearly outweighed by superior circumstances demanding urgency and the provision contained in Rule 39, section 2, requires a statement of these circumstances as a security for their existence."[13]

In the order allowing immediate execution,[14] the first reason appreciated by the trial court is MMIC'S alleged inability to meet its financial obligations. This state of insolvency is admitted, according to the trial court.[15]

While this Court in several cases has held that insolvency of the judgment debtor or imminent danger thereof is a good reason for discretionary execution,[16] otherwise to await a final and executory judgment may not only diminish but may nullify all chances for recovery on execution from said judgment debtor, We are constrained to rule otherwise in this particular case. In the aforecited cases, there was either only one defeated party or judgment

debtor who was, however, insolvent or there were several such parties but all were insolvent, hence the aforesaid rationale for discretionary execution was present. In the case at bar, it is undisputed that, assuming MMIC is insolvent, its co-defendant PNB is not. It cannot, therefore, be plausibly assumed that the judgment might become illusory; if MMIC cannot satisfy the judgment, PNB will answer for it. It will be observed that, under the dispositive portion of the judgment hereinbefore quoted, the liability of PNB is either subsidiary or solidary.[17]

Another reason relied on by the lower court is the alleged possibility of deterioration of the steel and metal equipment and improvements in the coal blocks. Such allegation, however, is unsubstantiated, aside from the fact that the doctrine in *NAMARCO*, hereinbefore cited, cannot apply in the present case. The articles involved in *NAMARCO* were perishable commodities or goods which would inevitably not only diminish in value or deteriorate but would be lost due to total spoilage during the pendency of an appeal. The onus of establishing such alleged deterioration in the case at bar rests upon IEI and nothing appears from the records to show that it adequately discharged such evidentiary burden, not to speak of the consideration that this Court is not a trier of facts. The order of the trial court allowing execution, and which quoted from its own decision for that purpose, merely relied upon therein plaintiff's statement of the substance of the case. On the other hand, it was admitted that MMIC retained a caretaker crew on the site to look after the coal blocks.[18] It is also contended that the Philippine Pyrite Corporation, a subsidiary of National Development Corporation, is operating the mining plant and the equipment involved in this controversy.[19] However, these are factual controversions that We are not in a position to resolve.

Parenthetically, ample protection is provided IEI in the aforequoted judgment of the court a quo which states that "in the event of the loss or deterioration of the said mining equipment and other movable property, the said defendants PNB and MMIC shall be held jointly and solidarily liable to the plaintiff for the current market value thereof".

Neither do We accept the further thesis of the trial court, in justifying its issuance of said writ, that "the immediate resumption of operation on the two coal blocks in question becomes imperative and of urgent necessity at this time when our government is in dire need of capitalization to encourage the establishment of business to generate employment and dollar-producing energy sources x x x." [20] This is not to say that, under appropriate circumstances, public interest is not a good reason for immediate execution. What is to be stressed, however, is the need for specific factual bases of sufficient cogency to support the contention that public interest will be affected or is directly involved in this particular instance, rather than to proceed upon nebulous and generalized statements that necessarily will be hard to prove or disprove. To authorize execution pending appeal on such a self-serving ground alone would be to allow every motion for discretionary execution so long as it will theoretically result in added capitalization to the Government, a conclusional exercise based on premises unknown. Needless to say, the need for capitalization and other matters concerning the economy, presented in such broad propositional form, are beyond the ken of judicial inquiry or resolution.

We disagree with the claim of the private respondent IEI that the mere filing of a bond would entitle it to an execution pending appeal. Whatever doubts may have been generated by early decisions involving this matter, starting with *Hacienda Navarra, Inc. vs. Labrador, et al.*, [21] have been clarified in *Roxas vs. Court of Appeals, et al.*, [22] thus:

"It is not intended obviously that execution pending appeal shall issue as a matter of course. Good reasons, special, important, pressing reasons must exist to justify it; otherwise, instead of an instrument of solicitude and justice, it may well become a tool of oppression and inequity. But to consider the mere posting of a bond a 'good reason' would precisely make immediate execution of a judgment pending appeal routinary, the rule rather than the exception. Judgments would be executed immediately, as a matter of course, once rendered, if

all that the prevailing party needed to do was to post a bond to answer for the damages that might result therefrom. This is a situation, to repeat, neither contemplated nor intended by law."

With respect to the issue of the propriety of a special civil action for certiorari to assail an order for execution pending appeal, We have only to quote from the decision of the Court in *Jaca vs. Davao Lumber Co.*, *supra*:

"x x x Although Section 1, Rule 65 of the Rules of Court provides that the special civil action of certiorari may only be invoked when 'there is no appeal, nor any plain, speedy and adequate remedy in the course of law', this rule is not without exception. The availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of certiorari where appeal is not an adequate remedy or equally beneficial, speedy and sufficient. It is the inadequacy - not the mere absence - of all other legal remedies and the danger of failure of justice without the writ that usually determines the propriety of certiorari."

Our disquisitions in this case are understandably limited to the issue of the propriety of the execution of its judgment authorized by the court below during the pendency of the appeal. Our pronouncements necessarily exclude and should not apply to the other issues raised by the parties or which are involved in the merits of the appeal from the main case in CA-G.R. CV No. 12260 of the Court of Appeals.

WHEREFORE, judgment is hereby rendered SETTING ASIDE the order of the trial court, dated September 15, 1986, in Civil Case No. 8109 and ANNULING the writ of execution issued on September 22, 1986 pursuant thereto. The temporary restraining order heretofore issued against said order and writ is hereby made permanent.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, concur.

[1] *Industrial Enterprises, Inc. vs. Marinduque Mining & Industrial Corporation and the Hon. Geronimo Z. Velasco*, in his capacity as Minister of Energy, & Philippine National Bank.

[2] *Rollo*, 42-43.

[3] *Ibid.*, 44.

[4] *Ibid.*, 33-34.

[5] *Ibid.*, 23-37.

[6] *Ibid.*, 35-37.

[7] *Ibid.*, 63-64.

[8] *Ibid.*, 8, 112-114.

[9] *Industrial Enterprises, Inc. vs. Marinduque Mining & Industrial Corp., et al.*

[10] *Engineering Construction, Inc. vs. National Power Corporation, et al.*, G.R. No. L-34589, June 29, 1988.

[11] *Federal Films vs. Ocampo*, 78 Phil. 472 (1947); *Federation of United NAMARCO Distributors, Inc., et al. vs. NAMARCO*, 4 SCRA 867 (1962); *Astraquillo vs. Javier*, 13 SCRA 125 (1965); *Lao, et al. vs. Mencias, et al.*, 21 SCRA 1021 (1967); *Santos vs. Mojica, et al.*, 26 SCRA 607 (1969); *Engineering Construction, Inc. vs. National Power Corporation, et al.*, *supra*.

[12] *Jaca vs. Davao Lumber Co.*, 113 SCRA 107 (1982); *Roxas vs. Court of Appeals*, 157 SCRA 370 (1988).

[13] Aguilos vs. Barrios, et al., 72 Phil. 285 (1941).

[14] Annex M, Rollo, III.

[15] Rollo, 116.

[16] Astraquillo vs. Javier, supra; Lao vs. Mencias, supra; Santos vs. Mojica, supra; Padilla vs. Court of Appeals, 53 SCRA 168 (1973); City of Manila vs. Court of Appeals, 72 SCRA 98 (1976); Universal Far East Corp. vs. Court of Appeals, 131 SCRA 642 (1984).

[17] Rollo, 63-64.

[18] Ibid., 44-45, 62, 116.

[19] Ibid., 289-290.

[20] Ibid., 117.

[21] 65 Phil. 536 (1938); Cf. Philippine Virginia Tobacco Administration, et al. vs. Lucero, et al., 125 SCRA 337 (1983).

[22] 157 SCRA 370 (1988).

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