

THE PROVINCE OF CEBU, PETITIONER, VS. HON. RAMON AM. TORRES, IN HIS CAPACITY AS JUDGE OF THE REGIONAL TRIAL COURT OF CEBU, BRANCH VI, JUANITO ANDRINO, DAMIAN ASTILLERO, SANTIAGO...

G.R. No. 76950. December 15, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

Assailed in this petition for certiorari with prayer for a restraining order are the following orders of respondent Judge in Civil Case No. R-11204 entitled "Policronio Belacho, et al. vs. Rene Espina, et al.":

- order dated 6 October 1986 granting private respondents' motion for execution.
- order dated 24 December 1986 denying petitioner's motion for reconsideration and its supplemental motion to quash writ of execution and notice of garnishment; and
- order dated 29 December 1986 ordering the Philippine National Bank to turn over to private respondents the garnished funds in the amount of P2,720,053.00 within five (5) days from receipt of said order.

In Civil Case No. R-11204, a petition for mandamus, payment of back wages, damages and attorney's fees, the trial court, on 12 September 1974, rendered a decision ordering the petitioner herein to reinstate the private respondents and pay their back salaries from July 1968 until their reinstatement and to pay the costs.[1] The said decision became final and executory after it was affirmed in toto by the Court of Appeals[2] and a petition to review the appellate court decision, dismissed by the Supreme Court.[3]

Subsequently, or sometime in April 1979, the parties entered into a compromise agreement[4], where the private respondents, among others, waived their right to be reinstated. Pursuant to said compromise agreement, the trial court issued an order directing the Philippine National Bank, Cebu City branch, to release to Atty. Raul H. Sesbreno, counsel and attorney-in-fact of private respondents, the amount of P2.3 million. Atty. Sesbreno acknowledged receipt of the amount of P2.3 million in a document labelled "Partial Satisfaction of Judgment"[5] and at the same time guaranteed to refund to petitioner any overpayment made.

On 28 December 1979, the trial court issued an order holding that the amount of P2.3 million released by petitioner to Atty. Sesbreno shall be considered as full and final satisfaction of the former's obligation under the judgment with respect to backwages, terminal leaves and gratuity pay, provided that the GSIS and Medicare premiums shall be turned over by petitioner to the GSIS for proper disposition.[6]

Believing that there was an overpayment made to private respondents, petitioner filed a motion for reconsideration praying for the modification of the order dated 28 December 1979, i.e. to reduce the amount of P2.3 million to P2,089,105.63 as its true and correct obligation and which should be considered as full and final satisfaction of its obligation to private respondents. The trial court denied the motion of petitioner, in an order dated 1 February 1980.[7] In this last mentioned order, the lower court aside from denying petitioner's motion for

reconsideration of the order dated 28 December 1979, stated that "its final and executory judgment should be fully satisfied. . ." It is this statement in said order of 1 February 1980 that private respondents hold on to support their present contention that notwithstanding the compromise agreement between them and the petitioner, concluded on April 1979, it is the trial court's judgment of 12 September 1974 that may still be executed.

Petitioner elevated the matter to the Supreme Court in a petition for certiorari docketed as G.R. No. L-54442. Acting on said petition, this Court issued a resolution dated 29 May 1985 dismissing the petition and affirming in toto the order of respondent court dated 28 December 1979.[8]

On 11 July 1985, private respondents filed with the respondent court a motion for execution of the decision of 12 September 1974. Despite the opposition of petitioner, the respondent court granted the motion for execution of private respondents in its order dated 6 October 1986.[9] On 17 October 1986, an alias writ of execution was issued and on 22 October 1986, a notice of garnishment, placing under garnishment petitioner's funds deposited with the Philippine National Bank in the amount of P2,019,297.28.

Petitioner filed a motion for reconsideration of the order of 6 October 1986. Likewise, a supplemental motion to quash writ of execution and notice of garnishment was filed. Both motions were denied by the respondent court on 24 December 1986.[10]

Meanwhile, private respondents filed a motion for the delivery to them of the amount of P2,720,053.00. In its order dated 29 December 1986, respondent court granted the motion of private respondents.[11]

Hence, the instant petition. As prayed for, a temporary restraining order was issued by the Court on 15 January 1987.

We grant the petition.

In granting private respondents' motion for execution of the judgment dated 12 September 1974, the respondent court said:

"The dismissal of the petition for certiorari by the Supreme Court in G.R. No. L-54442 affirms [sic] the orders of December 28, 1979 and February 1, 1980. Ordinarily, these are the orders from which a writ of execution should arise. However, the last order of February 1, 1980, in a very substantial manner, amended or altered the order of December 28, 1979, when it said that "its final and executory judgment (referring obviously to the decision dated September 12, 1974) should be fully satisfied - - -" indicated a very drastic departure from the order of December 28, 1979. When it said "should be fully satisfied" it must have meant to imply or state that the order of December 28, 1979, which substantially departed from the terms of the decision of September 12, 1974, because it provided that the petitioners no longer seek reinstatement, would no longer be subject to execution, but in its place, it should be the final and executory judgment of September 12, 1974. The order of February 1, 1980 found affirmation, as previously stated, in the dismissal of the certiorari petition in G.R. No. L-54442. Not only that, even if, as argued by the Province of Cebu, that the order of December 28, 1979 should be the one executed, the petitioners now make an unequivocal choice to rescind said order, whose terms are in accordance with a Compromise Agreement, as given them by Art. 2041 of the Civil Code, because of the failure and the manifested refusal by the Province of Cebu and its provincial officials to abide by the Compromise agreement. The failure or refusal to abide, or breach of the Compromise Agreement (as contained in the order of December 28, 1979) by the respondent is manifested by their action to question by certiorari the order of December 28, 1979; thus paving the way for the petitioners to regard it as rescinded and to insist upon their original demand (Art. 2041, C.C.).[12]

The ruling of the respondent court that the order of 1 February 1980 found affirmation in the dismissal by this Court of the certiorari petition of the herein petitioner in G.R. No. L-54442, is not correct. A careful reading of the resolution of this Court dated 29 May 1985 in G.R. No. L-54442 bares a contrary message. Nowhere in the

resolution is there a reference made to the order of the respondent court dated 1 February 1980. What is referred to in said resolution of this Court is the order of 28 December 1979 which denied petitioner's claim of overpayment to private respondents.

For proper understanding, this Court's resolution, dated 29 May 1985, in G.R. No. L-54442 is here quoted in full:

"REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

SECOND DIVISION

May 29, 1985

Gentlemen:

Quoted hereunder, for your information, is a resolution of the Second Division of this Court dated May 29, 1985.

"G.R. No. 54442 (Province of Cebu vs. Judge Rafael T. Mendoza and 50 Laborers). - This incident refers to the execution of the decision of Judge Rafael T. Mendoza dated September 12, 1974 in Civil Case No. 11204, Belacho vs. Espina, which was affirmed by the Court of Appeals in CA-G.R. No. SP-05850, August 28, 1978. This Court in its resolution of November 22, 1978 in L-49076. Province of Cebu vs. Court of Appeals, et al., did not give due course to the appeal from the said judgment.

In that judgment, the Province of Cebu, by reason of the Decentralization Law, was ordered to reinstate the fifty private respondents herein (formerly public works laborers of the Bureau of Public Highways, Second Engineering District of Cebu) with backwages from July 1, 1968.

In this Court's resolution of October 3, 1979, in L-49076, Province of Cebu vs. Court of Appeals, it was assumed that the aforesaid judgment was never compromised in the same manner as the similar judgments of the Court of First Instance of Cebu in Civil Case No. R-11256, Santillas vs. Espina, elevated to this Court as Commissioner of Public Highways vs. Villasor, L-34843, July 5, 1979, 91 SCRA 335; in Civil Case No. R-10933, Panares vs. Espina, and Civil Case No. R-11214, Hermosa vs. Espina, elevated to this Court as L-36752-53, Commissioner of Public Highways vs. Burgos, December 18, 1979.

The compromise in L-34843 (Civil Case No. R-11256) was signed in Cebu City on April 19, 1979 and in Manila by the Commissioner of Public Highways on June 4, 1979 and filed in this Court on June 14, 1979. The private respondents were represented by Atty. Ramon B. Ceniza.

On the other hand, the compromise agreement covering Civil Cases Nos. R-11204, R-10933 and R-11214 (L-49076 and L-36752-53), is identical to the compromise agreement in L-34843 (Civil Case No. R-11256) except for the last two paragraphs 10 and 11. The respondents were represented by Atty. Raul H. Sesbreno (pp. 531-537, Rollo of L- 36752-53).

In an urgent ex-parte manifestation dated October 7, 1979, Atty. Sesbreno stated that he "joins the Honorable Solicitor General in seeking the approval of the compromise" (p. 586, Rollo of L-36752-53, Commissioner of Public Highways vs. Burgos).

Judge Mendoza in his order of December 28, 1979 held that the amount of P2.3 million released by the Province of Cebu to Sesbreno shall be considered as full and final satisfaction of its obligation under the judgment with respect to backwages, terminal leaves and gratuity provided that the GSIS and Medicare premiums shall be turned over by the Province of Cebu to the GSIS. The dispositive part of the order reads:

"WHEREFORE, in view of all the foregoing, it is hereby ordered that:

"1) the amount of P2.3 million which has been released to the petitioners thru Atty. Raul H. Sesbreno shall be considered as full and final satisfaction of the judgment or obligation of the Province of Cebu with respect to back salaries, terminal leaves and gratuity pay: Provided, the amounts corresponding to the GSIS premiums and medicare premiums which are retained by the Province of Cebu shall be turned over by the Province of Cebu to the GSIS for proper disposition;

"2) that all payments made to the petitioners shall be in payroll form which shall be signed by the petitioners and that Atty. Raul Sesbreno shall submit to the Court the payroll duly signed by all the petitioners within twenty (20) days from date of this order;

"3) petitioner Santiago Itol, who has been given an advance payment of P10,000.00 and who signed a promissory note that he will REFUND any OVERPAYMENT made to him, is hereby ORDERED to pay or REFUND to:

'a)

Atty. Raul H. Sesbreno the total amount of P7,918.63 broken down as follows: P7,764.98 for attorney's fees of 40% of P19,412.44 (back salaries: P5,620.12; terminal leave: P3,792.32; and retirement: P10,000.00).

'b)

to the Province of Cebu or direct to the GSIS, Regional Office, Cebu City, the amount of P911.61 for GSIS life and retirement premiums and medicare premiums, personal and government share.'

within five (5) days from receipt of a copy of this Order considering that as per computation made by the Committee of Six, Mr. Itol is entitled to be paid the amount of only P1,169.76 (back salaries and terminal leave minus GSIS and Medicare premiums and attorney's fees of Atty. Sesbreno). Should petitioner Itol fail to make the refund as ordered above, the GSIS, thru Atty. Bonjoc, a member of the Committee of Six is ordered to deposit with the Court Mr. Itol's retirement pay and monthly pensions in such amount sufficient to cover up the amounts of overpayment mentioned above, for eventual payment to Atty. Sesbreno and the Province of Cebu, respectively; provided, however, that the GSIS may directly deduct the amount of P911.61, which is the amount due the GSIS, from the retirement pay or monthly pensions of Mr. Itol.

"4) the Governor of Cebu to sign all the requisite papers to enable retirable petitioners to retire or avail of all benefits and privileges provided for under existing law to employees separated from the government thru no fault of their own;

"5) the district engineer, 1st engineering district, MPH, sign all clearances of petitioners and other papers necessary to effectuate property, cash or other accountabilities, and the governor of Cebu sign such clearances as a formality;

"6) all exhibits (GSIS policies, service records, etc.) presented during the trial by the petitioners, be released by the Branch Clerk of Court, Atty. Jesus Bajarias, or his representative, to Atty. Sesbreno, counsel for petitioners, who has a retaining lien over such documents;

"7) the GSIS which is notified thru Atty. Bonjoc is to provide all the necessary application forms and to process with dispatch all applications for retirement and other benefits to enable said petitioners to be paid their retirement and other benefits provided for under existing law to those employees separated from the service THRU NO FAULT OF THEIR OWN;

"8) all petitioners are considered resigned (with respect to those not yet retireable) and/or retired (with respect to those who are retireable) as of December 31, 1979;

"9) the attorney's lien of Atty. Sesbreno on petitioners' retirement pay may be taken from the amounts due said petitioners from the Province of Cebu;

"10) all other pending motions incidents are rendered MOOT & ACADEMIC except the manifestation of petitioners Suico, et al. filed on December 17, 1979 whose terminal leave, gratuity and retirement pay are held in abeyance pending resolution of whether they are covered by 40% lien of Atty. Sesbreno. For this purpose, the hearing of this manifestation is hereby set for January 28, 1980 at 8:00 o'clock in the morning.

"11) all previous orders inconsistent herewith are considered modified accordingly, hence, the order freezing or withholding the withdrawal from the PNB of the amount of P600,000.00 out of the P2.3 million already released is hereby LIFTED, hence, the said amount may now be released by the PNB to Atty. Sesbreno."

The issue now in this incident is whether, as contended by the Province of Cebu, there was an overpayment of P210,894.37 to Sesbreno. The amount was deposited in the savings account of the Cebu Branch of PNB.

After deliberating on the memoranda of the parties and the other incidents in the case, the Court resolved to RECONSIDER the giving of due course to the petition, to AFFIRM in TOTO the order of Judge Mendoza and to DISMISS the certiorari petition.

The Court further Resolved to DENY for lack of merit the motion for contempt filed by Sesbreno and the motion for contempt filed by the Province of Cebu.

The motion of some private respondents for the determination of the attorney's fees of Sesbreno in this incident is DENIED without prejudice to raising it in the lower court. That matter is not involved in the certiorari petition of the Province of Cebu"[13]

There is no doubt that the aforequoted resolution affirmed in toto the order of the respondent court dated 28 December 1979. As alleged by petitioner - and we agree - it is from the trial court's order of 28 December 1979 that the execution must ensue[14] and not from the order of 1 February 1980, as claimed by private respondents.

In any case, the remedy of executing the judgment of 12 September 1974 is no longer available in the instant case. As earlier stated, the amount of P2.3 million was already released to private respondents, thru their counsel, as evidenced by the document "Partial Satisfaction of Judgment" signed by Atty. Sesbreno. To allow private respondents to further recover the amount of P2,720,053.00 from petitioner in addition to the P2.3 million already received by them, would be to sanction unjust enrichment of private respondents to the prejudice and damage of petitioner.

Error was likewise committed by the respondent court in applying the provisions of Art. 2041 of the Civil Code to the case at bar. Contrary to the ruling of the respondent court that the petitioner had failed or refused to abide by, and had breached, the terms of its compromise agreement with the private respondents - as shown by its action in questioning by certiorari before this Court the order of 28 December 1979 - said petition for certiorari simply prayed for the refund of what Petitioner then believed to be an overpayment in the amount of P210,894.37. The petition was not a manifestation of petitioner's refusal to abide by the compromise agreement. The fact that petitioner had paid private respondents the amount of P2.3 million showed, on the contrary, petitioner's good faith in complying with the compromise agreement.

Adopting the posture of petitioner, we hold that Art. 2041 of the Civil Code applies only when there has been no substantial compliance with the compromise agreement. In the case at bar, petitioner has almost fully complied

with its part of the compromise agreement. What remains to be done is the turn over of the GSIS and Medicare premiums to the GSIS for proper disposition which, according to petitioner, could have been easily done had the payment to private respondents been made through the Office of the Provincial Treasurer.

On the motion for contempt filed by Atty. Sesbreno, the same is hereby denied for lack of merit.

WHEREFORE, the orders of the respondent court dated 6 October 1986, 24 December 1986 and 29 December 1986 are hereby ANNULLED and SET ASIDE. The temporary restraining order issued by this Court on 15 January 1987 is made PERMANENT. No Costs.

SO ORDERED.

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

[1] Rollo, pp. 20-32

[2] CA-G.R. No. SP-05850, 28 August 1978

[3] G.R. No. L-49076, 22 November 1978

[4] Annex B, Petition, Rollo, pp. 33-37

[5] Annex D, Petition, Rollo, p. 40

[6] Rollo, pp. 45-55

[7] Annex J., Petition, Rollo, pp. 59-60

[8] Annex L, Petition, Rollo, p. 74

[9] Rollo, pp. 87-90

[10] Ibid, p. 108

[11] Ibid, p. 109

[12] Ibid, pp. 88-89

[13] Rollo, pp. 74-77

[14] Rollo, p. 99

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