

ASSOCIATED BANK, PETITIONER, VS. HON. ARSENIO M. GONONG, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH VIII; ROLE, INC. AND ROMEO R. ECHAUZ, R...

G.R. No. 77353. July 30, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The perfection of an appeal and the jurisdiction of a trial court over a motion for execution pending appeal are the controverted issues in this petition to review the order of the respondent court in Civil Case No. 82-7281, dated December 16, 1986, denying the petitioner's motion for execution pending appeal on the ground of lack of jurisdiction.

The petition was filed on February 17, 1987. Private respondents Role, Inc. and Romeo R. Echauz filed their Comments on March 24 and March 27, 1987 respectively. The petitioner filed its Reply on June 16, 1987. We treat the Comments as the respondents' Answers and decide the petition on its merits.

This case has its origins in a complaint for the recovery of a sum of money filed by petitioner Associated Bank against respondent ROLE, Incorporated and Romeo R. Echauz before the then Court of First Instance of Manila, Branch 37.

On November 3, 1986, the trial court rendered its decision in favor of the petitioner. On November 6, 1986, respondent ROLE filed its notice of appeal. On November 24, 1986, respondent Echauz followed suit.

Meanwhile, on November 19, 1986, the petitioner filed a motion for execution pending appeal.

On December 16, 1986, the respondent court issued the questioned order denying the petitioner's motion for execution on the ground that the notices of appeal seasonably filed by private respondents had already been given due course when he issued his previous orders. According to the court, the filing of the respondents' notices of appeal and its approval of those notices deprived the trial court of jurisdiction to entertain the motion for execution pending appeal.

This petition for certiorari, prohibition, and mandamus was filed to - (a) annul and set aside the order denying the petitioner's motion for execution pending appeal; (b) enjoin and prohibit the respondents, specifically the respondent court, from elevating the records of the case to the Court of Appeals pending resolution of the instant petition; and (c) command the respondent court to assume its jurisdiction and resolve the petitioner's motion for execution pending appeal.

The questioned order is based on the premise that upon the seasonable filing and approval of the respondents' notices of appeal, the trial court is automatically divested of its jurisdiction over the case and, consequently, it has no more power to act upon the petitioner's motion. The mistake is apparent.

Section 39 of Batas Pambansa Blg. 129 removed the record on appeal as a requirement for the perfection of an appeal. In lieu of the usually expensive and time-consuming record on appeal, the entire original records are now transmitted to the appellate court.

In implementation of this amendatory provision, Section 23 of the Interim Rules of Court provides:

"23. Perfection of appeal. - In cases where appeal is taken, the perfection of the appeal shall be upon the expiration of the last day to appeal by any party."

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As long as any of the parties may still file his, her, or its appeal, the court does not lose jurisdiction over the case.

The plaintiff or plaintiffs may not deprive the defendants or co-plaintiffs and neither may the defendant or defendants deprive the plaintiff or co-defendants of the right to file a motion for reconsideration or to move for a new trial or an execution pending appeal by immediately filing a notice of appeal. The filing of an appeal by a losing party does not automatically divest the party favored by a decision of the right to move for a more favorable decision or to ask for execution pending appeal. It is only after all the parties' respective periods to appeal have lapsed that the court loses its jurisdiction over the case. As pointed out in *Universal Far East Corporation v. Court of Appeals* (131 SCRA 642) the period when a court considers and acts upon a motion for execution may take some time. As a matter of fact, the resolution of a motion may take place long after the expiration of the reglementary fifteen-day period for appeal.

As early as 1934, this Court in *People v. Ursua* (60 Phil. 252) stressed this mode of determining when an appeal is perfected.

An appeal by the defendant in a criminal case does not result in the court's losing its jurisdiction to entertain a motion for reconsideration filed by the offended party, insofar as civil liability is concerned, within the 15-day period. Thus we held in *Ursua*:

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x x x "If the accused has the right within fifteen days to appeal from the judgment of conviction, the offended party should have the right within the same period to appeal from so much of the judgment as is prejudicial to him, and his appeal should not be made dependent on that of the accused. If upon appeal by the accused the court altogether loses its jurisdiction over the cause, the offended party would be deprived of his right to appeal, although fifteen days have not yet elapsed from the date of the judgment, if the accused files his appeal before the expiration of said period. Therefore, if the court, independently of the appeal of the accused, has jurisdiction, within fifteen days from the date of the judgment, to allow the appeal of the offended party, it also has jurisdiction to pass upon the motion for reconsideration filed by the private prosecution in connection with the civil liability of the accused." (at pp. 254-255).

The above ruling was reiterated in *Simsim v. Belmonte* (34 SCRA 536) where we stated:

"Timoteo Simsim balked at the order to amend the record on appeal, contending that it was beyond the power of the Court to issue once his appeal had been perfected by the approval of the record. x x x.

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"x x x Furthermore, such a view would place it within the power of one of the parties, by the simple expedient of immediately perfecting his appeal, to deprive the other party of the right to ask for a reconsideration of the decision, let alone to have the court approve his own appeal if such a motion is denied. These consequences

find no justification in the Rules." (at pp. 538 & 539).

As explained in the above case of *Simsim*, the Rules must be interpreted to avoid impractical and absurd situations.

WHEREFORE, the petition is hereby GRANTED. The order of the respondent court, dated December 16, 1986 denying the petitioner's motion for execution pending appeal is SET ASIDE. The court a quo is ordered to retain the records of the case and to resolve the petitioner's motion for execution.

SO ORDERED.

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

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