

POLYSTERENE MANUFACTURING CO., INC., PETITIONER, VS. THE COURT OF APPEALS AND DEVELOPMENT BANK OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 77631. May 09, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

The decision of respondent Court of Appeals in CA-G.R. No. 09201-SP, setting aside the orders dated November 5, 1985 and May 12, 1986 of the court a quo^[1] in Civil Case No. 11819 thereof, and the resolution of said respondent court denying petitioner's motion for the reconsideration of said decision, are assailed in this petition for review on certiorari.

The antecedental facts which led to the filing of the original action below are undisputed and are hereinunder set forth as synthesized by the court below and implicitly adopted by respondent court.^[2]

On March 8, 1973, petitioner entered into a loan agreement for US\$1,100,000.00 with Mitsubishi International Corporation. The loan was stipulated to be paid within a period of eight years with interest at the rate of 8% per annum, which payment was guaranteed by private respondent Development Bank of the Philippines (DBP).

On October 23, 1973, petitioner executed a deed of mortgage in favor of private respondent to secure the payment of any and all obligations, damages and liabilities the latter may incur by reason of the principal obligation, the bulk of which was used to finance machineries and equipment needed by petitioner to build a polysterene plant.

Meanwhile, on October 25, 1973, Mitsubishi International Corporation ceded all its rights and claims for payment of the loan in favor of Bank of Tokyo Trust Company.

On December 17, 1973, private respondent, by means of a letter addressed to the Bank of Tokyo, guaranteed irrevocably the payment of the principal obligation and interest on the loan subject to certain conditions,^[3] to wit:

1. 1% per month or 12% per annum shall be due on whatever amount may be advanced by the DBP arising out of the guarantee, plus 1/2% service fee on the amount so advanced;
2. All payments that may be made by the DBP arising out of the guarantee shall be payable on demand; and
3. Polysterene shall provide insurance coverage on all insurance amounts mortgaged to the DBP equivalent to at least the outstanding balance of the total accommodations to cover such risks and in such amounts and currencies as may be required by the DBP, the insurance to be placed by DBP.

Sometime in January 1982, the plant of petitioner, which was previously insured, was completely burned and the insurance proceeds thereof were paid to private respondent as beneficiary.

On May 17, 1985, petitioner received notice of the extrajudicial foreclosure and scheduled sale of its mortgaged properties, based on an alleged unpaid obligation in favor of private respondent in the amount of P43,602,245.51.

Petitioner protested, claiming that the amount did not reflect the true and accurate amount of its obligations and demanded that foreclosure be suspended until a reconciliation of the accounts shall have been arrived at.

Private respondent agreed to the suspension of the foreclosure sale but required petitioner to issue, as it did in fact issue, six postdated checks in the total amount of P3,000,000.00 or P500,000.00 for each check, subject to the result of the reconciliation. Three of these checks were encashed by private respondent. However, after allegedly realizing that it had overpaid private respondent, petitioner issued a stop payment order on the remaining three checks.

Thereafter, or on September 27, 1985, petitioner filed the hereinbefore stated Civil Case No. 11819 for injunction with prayer for the issuance of a writ of preliminary injunction and/or restraining order in the aforementioned trial court, to enjoin private respondent from proceeding with the foreclosure proceedings.[4]

Private respondent, in opposition thereto, alleged that said foreclosure was initiated under the provisions of Presidential Decree No. 385; that petitioner had not paid 20% of the outstanding arrearages; and that the issue raised by petitioner in its complaint is only one of accounting.[5]

Finding petitioner's case impressed with merit as one not falling within the ambit of Presidential Decree No. 385, there being a "significant and tremendous" discrepancy between the accounting records of petitioner and private respondent, and taking note of the payment of the insurance proceeds and other payments made by petitioner such that it had allegedly overpaid private respondent, the trial court on November 5, 1985 issued an order with the following dispositive part:

"WHEREFORE, premises considered, let a writ of preliminary injunction be issued prohibiting and enjoining the defendant from proceeding with the foreclosure of the mortgaged properties of the plaintiff upon the latter's filing and approval of a bond in the amount of P300,000.00 to answer for all and any damages which the defendant may suffer by reason of the issuance of the writ."[6]

Private respondent's motion for reconsideration having been denied, it filed a petition for certiorari under Rule 65 with respondent Court of Appeals. Respondent court, in its decision dated September 26, 1986,[7] set aside the questioned orders noting that there was no allegation nor was there evidence to show that petitioner has paid at least 20% of its arrearages after the filing of the foreclosure proceedings. Accordingly, it ruled that no injunction should have been issued to restrain the foreclosure. Anent petitioner's contention that the substantial discrepancy between its computation and that of private respondent removes its case from the ambit of Presidential Decree No.385, respondent court stated that there are no portions in the decree indicating an intention to give it a restricted or limited application.[8]

On petitioner's motion for reconsideration, respondent court, in its resolution dated March 4, 1987,[9] denied the same after finding no necessity to pass upon the constitutional issue raised therein and holding against the applicability of the ruling in *Filipinas Marble Corporation vs. The Hon. Intermediate Appellate Court, et al.*[10] cited by petitioner.

Hence, the instant petition.

In amplification of its position, petitioner posits that Presidential Decree No. 385 constitutes an incursion into the domain of judicial power vested by the Constitution in courts established by law, in the sense that it deprives the courts of their inherent and supposedly undiminishable power to issue injunctions and/or restraining orders. Further, petitioner asseverates that the decree is violative of the due process clause enshrined in the Constitution in that government financial institutions are given the power to effect foreclosure outright on the sole basis of their own financial records.

As a complementary issue, petitioner argues that granting that Presidential Decree No. 385 is constitutional, it nevertheless does not apply to the present case, the discrepancy in its accounting records vis-a-vis those of private respondent being very significant. It contends that *Filipinas Marble*, although not on all fours with the present case, is authority for the holding that "Presidential Decree No. 385 cannot automatically be applied where the extent of the loan actually received by the borrower still has to be determined." [11]

The relevant portion of Presidential Decree No. 385 reads:

"SECTION 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of the foreclosure proceedings."

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The provision, therefore, contemplates the instance where the borrower has sought a writ of injunction, in a principal action therefor or as an ancillary remedy in another case or proceeding, to enjoin the foreclosure of its properties by the government financial institution concerned. Consistent with the procedural requirements set forth therein, a hearing should first be had to determine whether or not 20% of the outstanding arrearages has been paid, as a prerequisite for the issuance of a temporary restraining order or a writ of preliminary injunction.

This cannot, however, be logically and plausibly arrived at unless the court, on the basis of the evidence then in its possession, makes a determination itself, provisionally at the very least, on the matter of the actual existence of arrearages and the amount thereof on which 20% shall be computed or reckoned.

In the case at bar, we note that the above-stated procedure was not followed. In fact, the trial court only went so far as to find that there was a significant discrepancy between the financial records of petitioner and private respondent and concluded on the basis thereof that Presidential Decree No. 385 was not applicable. There is no showing whatsoever that the trial court attempted to resolve the discrepancy by ascertaining the factual existence of any arrearage and the amount thereof if there really was such a default.

Although respondent court held that there was no evidence presented to show that petitioner had paid at least 20% of the alleged arrearages, it does not appear that a hearing had been held in the court *quo* for such purpose. The finding that there was no allegation in the complaint to the same effect flies in the face of petitioner's allegation that it even overpaid private respondent. In such a situation, the court must perforce conduct a hearing to determine the primal requirement, that is, the existence of arrearages, if any, and thereafter whether or not 20% thereof has been paid. Such facts must be ascertained not only for purposes of the formulistic allegations in the complaint for injunction, but because these are contemplated or required by the decree itself as the *bases sine qua non* for the issuance of the writ.

Since the attendant circumstances call for prior determination of requisite facts, we find no necessity to rule upon the constitutional issues raised by petitioner. Besides we have consistently adhered to the doctrine that the constitutionality of a law will be passed upon only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to afford relief to the party entitled to such protection. [12] As correctly observed by respondent court, we held in *Alger Electric, Inc. vs. Court of Appeals, et al.* [13] as follows:

"We see no necessity of passing upon the constitutional issues raised by respondent Northern. This Court does not decide questions of a constitutional nature unless absolutely necessary to a decision of a case. If there exists some other grounds of construction, we decide the case on a non-constitutional determination. (See

Burton vs. United States, 196 U.S. 283; Siler vs. Louisville and Nashville R. Co., 213 U.S. 175; Berea College vs. Kentucky, 211 U.S. 45)."

Apropos of petitioner's claim that Presidential Decree No. 385 does not apply in the present case under the authority of *Filipinas Marble*, suffice it to state that the cited case cannot be a complete basis of the desired reliance. Said case involved the issue of misappropriation of the proceeds of the loan which was imputed to the officials of private respondents, the government lending institutions therein, which took over the management of petitioner pursuant to one of the conditions for the loan. Thus, the liability of the petitioner therein for the loan, the non-payment of which was the basis for the foreclosure of the mortgage, was not yet settled, prompting this Court to allow the issuance of a writ of injunction against the foreclosure sale, because -

"x x x Pending the outcome of such litigation, P.D. 385 cannot automatically be applied for if it is really proven that respondent DBP is responsible for the misappropriation of the loan, even if only in part, then the foreclosure of the petitioner's properties under the provisions of P.D. 385 to satisfy the whole amount of the loan would be a gross mistake. It would unduly prejudice the petitioner, its employees and their families."

The present case does not present such a situation, although it may also be observed that one of petitioner's significant contentions is that it has even overpaid its obligation to private respondent, an issue that likewise demands proof and determination before Presidential Decree No. 385 can be automatically applied. It bears mention, in passing, that respondent court, while citing *Filipinas Marble*, would limit the non-application of the decree to only two "scenarios," the one of relevance to the case at bar being "where the extent of the loan actually received by the borrower still has to be determined." By the same token then, if not more so, the decree should not likewise apply where the existence of any balance, arrearages or any obligation still due from the borrower is precisely disputed and has also still to be determined.

WHEREFORE, the assailed decision and resolution of respondent Court of Appeals are hereby ANNULLED and SET ASIDE. The Regional Trial Court, Branch 149 of the National Capital Judicial Region at Makati, Metro Manila, or to which Civil Case No. 11819 is presently assigned, is hereby DIRECTED to expediently conduct another hearing in accordance with the procedure set forth in Section 2 of Presidential Decree No. 385, as explained in this decision, to determine the propriety of the issuance of a temporary restraining order or a writ of preliminary injunction, and thereafter to forthwith proceed with the trial and adjudication of the case on the merits with appropriate dispatch.

SO ORDERED.

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

[1] Regional Trial Court of Makati, Metro Manila, Branch 149, Judge Manuel E. Yuson presiding.

[2] Rollo, 65-67.

[3] *Ibid.*, 54.

[4] *Ibid.*, 52-59.

[5] *Ibid.*, 60-64.

[6] *Ibid.*, 65-70.

[7] Penned by Justice Manuel C. Herrera, with Justices Luis A. Javellana and Celso L. Magsino concurring.

[8] Rollo, 74-75.

[9] Ibid., 92-95.

[10] 142 SCRA 180 (1986).

[11] Ibid., 226-234.

[12] People, et al. vs. Vera, et al., 65 Phil. 56 (1937); Dumlao, et al. vs. Commission on Elections (COMELEC), 95 SCRA 392 (1980); National Protectionism Association, et al. vs. Ongpin, etc., et al., G.R. 67752, April 10, 1989.

[13] 135 SCRA 37 (1985).

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