

ABE INDUSTRIES, INC., TEOFILO SEE, TIRSO AMPEN SE KING FU, ANTONIO SEE, SUSAN SY, SY CHIN KIONG, AURELIANO SEE AND CLAUDIO SEE, PETITIONERS, VS. HON. COURT OF APPEALS, HON. RAMO...

G.R. No. 77632. June 08, 1988

Ponente: YAP, C.J.

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YAP, C.J.:

The principal issue before us is whether or not respondent Judge Ramon Am. Torres had still jurisdiction to issue a special order granting the winning party's motion for partial execution pending appeal, after he had already given due course to the appeal of the losing party and ordered the elevation of the records of the appealed case to the appellate court.

The background facts of the case are as follows: On September 2, 1983, Erlinda Leonardo, the private respondent herein, as administratrix of the estate of her deceased husband, Victoriano See Leonardo, filed a complaint for recovery of property against petitioners herein before the Regional Trial Court of Cebu, docketed as Civil Case No. CBB-1167. After trial on the merits, the trial court rendered judgment on October 29, 1985 in favor of plaintiff. Copy of the decision was received by the plaintiff (private respondent herein) on November 4, 1985, while defendants (petitioners herein) received theirs on November 7, 1985.

On November 14, 1985, defendants filed a notice of appeal, and on November 25, 1985 the trial court gave due course to the appeal and ordered the elevation of the records to the appellate court.

On November 19, 1985, the plaintiff filed with the trial court a motion for partial execution of the decision pending appeal. This was opposed by the defendants on the ground that the appeal had been perfected and the trial court had lost jurisdiction over the case. On December 19, 1985, the court issued the special order granting the partial execution of the decision pending appeal, subject to plaintiffs bond to answer for whatever damages defendants might suffer by reason of the partial execution pending appeal.

The respondent Court of Appeals sustained the lower court's order granting partial execution pending appeal. Citing Rule 23 of the Interim or Transitional Rules and Guidelines relative to the implementation of Batas Blg. 129,[1] it held that since the petitioners received a copy of the lower court's decision on November 7, 1985, "the appeal was not deemed perfected until the last day of the 15-day reglementary period to appeal or on November 22, 1985 to be precise." Hence, it concluded that when private respondent filed her motion for partial execution pending appeal on November 19, 1985, the lower court was still competent to entertain the motion.

We agree with respondent appellate court's decision, but not with the reason it adduced in support thereof. In order to clarify the meaning of Section 23 of the Rules and Guidelines promulgated by this Court, we hold that if one party has already perfected his appeal, the clause "upon the expiration of the last day to appeal by any party" obviously no longer applies to him, but only to the other party whose period to appeal has not yet expired.

Thus, in the instant case, since the petitioners had already perfected their appeal on November 15, 1985, although they had until November 22, 1985 within which to file their appeal, the latter date had become immaterial. However, the other party received the decision on November 4, 1985, hence she had until November 19, 1985 within which to appeal. Her motion for execution pending appeal which was filed on November 19, 1985 was therefore filed on time. Had she filed the motion on November 22, 1985 it would have been filed late.

With the above clarification, we find no reversible error in the appeal decision and accordingly DENY the petition for lack of merit.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

[1] Sec. 123. Perfection of Appeal. — In cases where appeal is taken, the perfection of the appeal shall be upon expiration of the last day to appeal by any party.

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