

ROMEO R. ECHAUZ, PETITIONER, VS. COURT OF APPEALS AND ASSOCIATED BANK, RESPONDENTS.*G.R. No. 79516. July 18, 1991*

Ponente: PADILLA, J.

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Private respondent Associated Bank filed a collection case against petitioner Romeo Echauz before the Regional Trial Court (RTC) of Manila, Branch 6, on 18 January 1983. Alleging that the case was filed with malice and bad faith and for harassment, petitioner filed a counterclaim and asked for damages. In a decision dated 8 September 1986, the respondent bank's complaint was dismissed while damages and attorney's fees were awarded by the court a quo in favor of the petitioner. The latter then asked for the immediate execution of the award, pending appeal, as private respondent bank seemed to petitioner to be in imminent danger of insolvency based on news reports and his own observations as to its management. Petitioner was then seventy (70) years old and might no longer be in a position to enjoy the award if his claim were not immediately acted upon. Execution was granted in a special order dated 8 October 1986. On 9 October 1986 a writ of execution was issued to implement the special order and on the same day. Deputy Sheriff Orlando Alcantara issued a written demand on respondent bank to comply with the writ of execution. Auction sale of respondent bank's properties was set for 23 October 1986. On 17 October 1986, respondent bank filed a motion to stay execution and tendered a property bond. Without waiting for the resolution of its motion to approve supersedeas bond in the court a quo, private respondent bank filed a petition for certiorari with the Court of Appeals on 17 October 1986 and obtained a temporary restraining order against the aforementioned special order, writ of execution and auction sale.

In a decision* promulgated on 8 June 1987, respondent Court of Appeals set aside the special order, quashed the writ of execution pending appeal and stopped the auction sale. It held that petitioner's apprehensions of respondent bank's financial standing and solvency were insufficient grounds to warrant immediate execution.

Petitioner argues before us in this petition for review on certiorari that the grounds for execution pending appeal in the case at bar are valid. Further, he claims that the petition that respondent bank filed with the Court of Appeals was precipitate as it still had, before the trial court, an unresolved Motion to Approve Supersedeas Bond. Such being the case, respondent bank is guilty of forum-shopping and double-dealing, so petitioner contends.

In the Court of Appeals, petitioner filed a motion for extension of time to file motion for reconsideration on 30 July 1987 (the last day for filing the motion for reconsideration). Citing the *Habaluyas* doctrine,[1] reiterated in *Lacsamana*,[2] the motion for extension was denied, and the motion for reconsideration filed on 2 July 1987 was stricken off the records for late filing.[3] Likewise denied was a second motion for reconsideration with supplemental motion for re-raffle filed on 23 July 1987, by virtue of Sec. 6, Executive Order No. 33 which took effect on 28 July 1986 disallowing the subject motion.[4]

On 23 August 1987, the present petition was filed adducing the following grounds:

1. Respondent Court of Appeals erred in not finding and holding that the lower court did not abuse its

discretion, neither did it exceed its jurisdiction in issuing Special Order dated October 8, 1986.

2. The respondent Court of Appeals erred in not finding and holding that the Petition filed by private respondent was pre-mature and that private respondent bank is guilty of forum shopping and double dealing.

3. The Decision sought to be reviewed did not make a complete findings of facts on all issues raised by herein petitioner before the Court of Appeals.

4. The Decision sought to be reviewed was contrary to the admission of facts by both the petitioner and private respondent.

5. The findings of facts in the questioned Decision are contrary to lower court's findings and its conclusion overlooked matters of substance but gave credence to private respondent's unsubstantiated propositions.

6. The judgment sought to be reviewed if not reversed and set aside is contrary to equity and will work injustice to herein petitioner who suffered and continues to suffer irreparable damage and great injury.[5]

Private respondent, in its comment, states that this petition was filed out of time. It is alleged that the Motion for Reconsideration of the Court of Appeals decision was filed two (2) days late, for which reason the same was stricken off the records by respondent Court citing the ruling in *Habaluyas* previously cited.

Petitioner's Reply contends that the *Habaluyas* case is not squarely applicable because what is contemplated in said case is delay that is manifest and evident, a situation not obtaining in this case. Likewise, in the case at bar, the factual findings and conclusions of law of respondent Court are diametrically opposed to those of the trial court, and therefore, the findings of the Court of Appeals are not binding on this Court.

Is the denial of a motion for extension of time to file a motion for reconsideration a reversible error when the appeal is purportedly not frivolous or manifestly filed for delay?

This Petition was filed after the promulgation of *Habaluyas* on 30 May 1986 which clearly ruled:

"x x x. Hence, for the guidance of Bench and Bar, the Court restates and clarifies the rules on this point, as follows;

1.) Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested."

The questioned appellate court's decision cannot be overturned absent any showing of reversible error. Strict application of technical rules will be disregarded to obviate injustice but, in point of fact, Associated Bank's continued operation belies petitioner's apprehension as to its continued solvency. The Court of Appeals did not err in affirming this fact.

Besides, as stated in *Aguilos vs. Barrios, et al.*:[6]

"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."

Then, in *RCPI v. Lantin, et al.*,[7] execution pending appeal of an award of moral and exemplary damages was

disallowed because:

'x x x The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. Unlike actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of the assignments of errors on appeal. It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced.'

Anent the issue of the propriety of a special civil action for certiorari to assail an order for execution pending appeal, we have ruled in *Jaca, et al. vs. Davao Lumber Company, et al.*[8] that:

'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 (ordinary) 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.'

Private respondent's act of filing a petition for certiorari while its motion to approve supersedeas bond was pending before the court a quo, cannot be a case of forum shopping or double dealing. In *Valencia vs. Court of Appeals*,[9] it was held:

"x x x, that certiorari lies against an order granting execution pending appeal where the same is not founded upon good reasons. Also, the fact that the losing party had appealed from the judgment does not bar the certiorari action filed in respondent court as the appeal could not be an adequate remedy from such premature execution.

That petitioner could have resorted to a supersedeas bond to prevent execution pending appeal, as suggested by the two lower courts, is not to be held against him. The filing of such bond does not entitle him to the suspension of execution as a matter of right. It cannot, therefore, be categorically considered as a plain, speedy and adequate remedy. Hence, no rule requires a losing party so circumstanced to adopt such remedy in lieu or before availment of other remedial options at hand.

Furthermore, a rational interpretation of Section 3, Rule 39 should be that the requirement for a supersedeas bond presupposes that the case presents a presumptively valid occasion for discretionary execution. Otherwise, even if no good reason exists to warrant advance execution, the prevailing party could unjustly compel the losing party to post a supersedeas bond through the simple expedient of filing a motion for, and the trial court improvidently granting, a writ of execution pending appeal although the situation is violative of Section 2, Rule 39. x x x"

WHEREFORE, the decision appealed from is **AFFIRMED**; the petition for review is **DENIED**.

SO ORDERED.

Melencio-Herrera, (Chairman), and Regalado, JJ., concur.

Paras, J., no part, wife concurred in CA decision.

Sarmiento, J., on leave.

* Limcaoco, J. - ponente; Bellosillo and Paras, JJ., concurring.

[1] G.R. No. 70895, 30 May 1986

[2] G.R. Nos. 73146-53, 26 August 1986

[3] CA resolution 13 July 1987

[4] CA resolution 3 August 1987

Executive Order No. 33, Sec. 6 reads:

"Section 11 of the same Act is hereby amended to read as follows:

x x x x x x

A motion for reconsideration of its decision or final resolution shall be resolved by the Court within ninety (90) days from the time it is submitted for resolution, and no second motion for reconsideration from the same party shall be entertained."

[5] Rollo at 5, 7, 9, 11, 12 and 15

[6] 72 Phil. 285, reiterated in Philippine National Bank vs. Puno, 170 SCRA 236 and in Valencia vs. Court of Appeals, 184 SCRA 568

[7] 134 SCRA 395 (1985)

[8] 113 SCRA 107(1982)

[9] Supra.

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