

**LEANDRO ALAZAS, PETITIONER, VS. HON. BERNARDO LL. SALAS,
PRESIDING JUDGE OF BRANCH 8 OF THE REGIONAL TRIAL COURT
OF CEBU AND ROSARIO MERCADER, RESPONDENTS.**

G.R. No. 83693. December 04, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In an action for damages arising from libel filed by Rosario Mercader in the Regional Trial Court of Cebu against Leandro Alazas and Dioscoro Lazaro, a decision was rendered on November 4, 1982 ordering said defendants to pay plaintiff solidarily the sums of P200,000.00 moral damages, P10,000.00 attorney's fees, P5,000.00 litigation expenses and costs. On appeal to the Intermediate Appellate Court,* the decision was modified in that the case against Dioscoro Lazaro was dismissed but the decision was affirmed with costs against Leandro Alazas. When the case was elevated to this Court, the decision was modified by way of a reduction of the moral damages to P50,000.00 in a resolution dated September 28, 1987.

Upon motion of plaintiff on March 7, 1988 the trial court issued an order of execution of said final judgment. The deputy provincial sheriff garnished the shares of defendant Alazas in Gala Inc. on March 16, 1988. Marilou Valmores, cashier of Gala Inc. informed the sheriff that as of October 17, 1982 Alazas had only one (1) share at a par value of P100.00.

Nevertheless, the sheriff issued the notice of sale at public auction of the shares of Alazas in Gala Inc. On March 29, 1988, plaintiff Mercader submitted a bid of P47,400.00 for 1,580 shares of Alazas in Gala Inc. and it was awarded to her. The sheriff issued a certificate of sale on March 30, 1988 in her favor in partial satisfaction of the judgment. On April 4, 1988, Gloria Alazas, corporate secretary of Gala Inc. wrote the sheriff that defendant Alazas had only one (1) share as he had disposed of his 1,580 shares in Gala Inc.

On April 6, 1988 a second Notice of Levy and Execution was issued by the sheriff on the basis of records showing that Alazas has 16,000 unissued shares in Gala Inc. A second Notice of Sale on Public Auction was published by the sheriff which was scheduled for April 14, 1988 from 8:00 A.M. to 5:00 P.M. On April 8, 1988 Gloria Alazas wrote to the sheriff, copy furnished the SEC, informing him that Alazas had only one (1) share in the corporation since December 1983. Nevertheless, the public auction proceeded where Mercader bid for 803 shares of stock of Alazas for P24,090.00. On April 15, 1988 the corresponding certificate of sale thereof was issued by the sheriff in favor of Mercader.

On May 6, 1988 Mercader wrote the President and Board of Directors of Gala Inc. informing them of the two (2) auction sales where she acquired sufficient shares of stocks of Leandro Alazas to become a majority stockholder of the corporation. On the same day, he wrote Mr. Axel Alazas, secretary of Gala Inc., to furnish him copies of the minutes of the board meetings during the year as well as the stockholders' meetings for 1988.

On May 24, 1988 Mercader filed a motion for examination of Alazas in the trial court stating that except for the 1,580 shares of stocks of Alazas in Gala Inc. which was sold to Mercader by the sheriff for P47,400.00 in partial

satisfaction of the judgment, no other personal or real properties could be found by the sheriff which plaintiff believes defendant Alazas has cleverly hidden/concealed so that he asks that Alazas be made to appear to be examined under oath as to his property and source of income in accordance with Section 39 of Rule 39, Rules of Court. The motion was granted on the same day so the examination of the defendant was scheduled for May 30, 1988. However, because of the absence of defendant on said date, the examination was rescheduled on June 6, 1988 at 8:30 A.M. A subpoena duces tecum was also issued to Gloria Alazas, Atty. Deen and Axel Alazas, cashier, treasurer and assistant treasurer, respectively, of Gala Enterprises to bring along with them the minutes of meetings of the stockholders and board of directors, stock and transfer books, and financial statement with balance sheet of said enterprise.

Defendant Alazas filed a motion for reconsideration alleging that upon full satisfaction of the judgment by the writ of execution and by the entry of judgment, the trial court has lost jurisdiction over the case except as to its ministerial function relating to the issuance of the writ of execution thus the trial court has lost jurisdiction to act further on the case. An opposition thereto was filed by counsel for plaintiff. The motion was denied in an order dated June 6, 1988 and the examination of the defendant was reset for June 20, 1988 at 8:30 o'clock in the morning, the trial court taking note of the statement made by Marilou Valmores, cashier of Gala Inc., that as of October 17, 1982 Leandro Alazas owned only one (1) share of stock worth P100.00.

Hence, the herein petition for certiorari and prohibition with a prayer for the issuance of a temporary restraining order and a writ of preliminary injunction filed by Alazas wherein it is alleged that the judgment of the trial court as modified by the Supreme Court having become final and executory, the trial court has lost jurisdiction over the case except as to the ministerial act of ordering the execution of the judgment. Alazas also argues that the judgment having been satisfied, the case is now beyond review. On the basis thereof petitioner seeks to restrain the trial court from conducting its examination of petitioner as a judgment debtor and to annul all proceedings and orders issued in connection therewith.

On June 29, 1988, without giving due course to the petition, the Court required respondents to comment thereon within ten (10) days from notice. The Court also resolved to issue a temporary restraining order enjoining the trial court judge from proceeding in any manner with the incident dealt with in his order dated June 6, 1988 or otherwise enforcing said order or orders relative to the same incident in Civil Case No. R16623.

The comment having been filed and petitioner not having filed its reply as required by the Court, the case is now submitted for decision.

The petition is devoid of merit. It is true that when a judgment has become final and executory all that is left of the trial court is the ministerial act of ordering the execution of the judgment and that after such judgment has been fully satisfied, the case is deemed terminated once and for all. However, in this case, while it appears that after two (2) public auction sales of the alleged shares of stock of petitioner in Gala Inc. had been undertaken wherein private respondent was the successful bidder so that the judgment was deemed fully satisfied, it nevertheless appears from the repeated representations of certain officers of Gala Inc., that he owns only one (1) share of stock worth P100.00 in Gala Inc.. If this is so then there is every reason for the private respondent to ask the trial court to issue the order for the examination of the petitioner as judgment debtor under Section 39 of Rule 39, Rules of Court, so that the trial court may determine if there are any credits, money and property of the judgment debtor in the possession or control of such person, corporation or legal entity that may answer for the unsatisfied judgment.

It is of no moment if there was an error in the reference by the trial court to Gala Enterprises which is a non-existent corporation, as it is a clerical error, referring in fact to Gala Inc.

The situation in this case is paradoxical in that while petitioner claims that the judgment has been fully satisfied, on the other hand the representatives of Gala Inc. assert that he had only one (1) share left to his name when the judgment was executed, thus the judgment against him remains unsatisfied. The pretension that his shares of stock have been sold may be a ruse or clever scheme in order to evade the execution of the judgment thereon. The examination of petitioner as judgment debtor is in order. This process is within the competence of the trial court even as the judgment had become final as it is his duty to see to it that the judgment is fully satisfied.

WHEREFORE, the petition is DISMISSED with costs against petitioner. The restraining order issued by this Court on June 29, 1988 is hereby lifted. This judgment is immediately executory. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

* Penned by Associate Justice Marcelino R. Veloso and concurred in by Associate Justices Porfirio V. Sison, Abdulwahid A. Bidin and Ramon B. Britanico.

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