

STRONGHOLD INSURANCE CO., INC., PETITIONER, VS. HON. COURT OF APPEALS, HON. CLEMENTE M. SORIANO, PRESIDING JUDGE OF BRANCH 3, REGIONAL TRIAL COURT OF MANILA, SHERIFF JAIME K. DE...

G.R. No. 84979. November 06, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

In a complaint filed against private respondent Jose Orosa, dated November 13, 1984 and docketed as Civil Case No. 84-28188 in Branch 3 of the Regional Trial Court of Manila, therein plaintiff FCP Credit Corporation prayed that a writ of replevin be issued against private respondent Jose Orosa ordering the seizure of the motor vehicle covered by a chattel mortgage executed in favor of said plaintiff. Upon the filing of an affidavit of merit^[1] and a replevin bond put up by petitioner Stronghold Insurance Co., Inc. in the amount of P210,000.00,^[2] a writ of replevin was issued by the court a quo.

On March 25, 1988, judgment was rendered by the trial court^[3] with the following dispositive portion:

"WHEREFORE, judgment is rendered for the defendant, and against the plaintiff:

1)

Dismissing the complaint for lack of merit;

2)

Declaring that the plaintiff was not entitled to the Writ of Replevin, issued on January 7, 1985, and is now liable to the defendant for actual damages under the Replevin bond it filed;

3)

On defendant's counterclaim, ordering the plaintiff to pay the defendant the sum of P400,000.00 as moral damages; P100,000.00 as exemplary damages, and P50,000.00 as, and for, attorney's fees;

4)

Ordering the plaintiff to return to the defendant the subject 1983 Ford Laser Sedan, with Motor or Serial No. SUNKBT 14584, or its equivalent, in kind or value, in cash as of this date and to pay the costs."

Copy of the decision was received by private respondent on April 11, 1988 while petitioner received a copy thereof on April 13, 1988. On the following day, April 14, 1988, private respondent Orosa filed a motion for execution of the judgment pending appeal, alleging that the judgment in the case may be rendered ineffective because FCP Credit Corporation was already liquidating its business affairs. He expressed his willingness to file a bond for such purpose.[4] Petitioner opposed said motion through a "Motion for Partial Reconsideration of the Decision and Opposition to the Motion for Execution"[5] filed on April 26, 1988, on the following grounds, as summarized by the respondent court, to wit:

"1. The petitioner was adjudged liable in the decision without the benefit of hearing in violation of Rule 57, Section 20 in relation to Section 10, Rule 60, Rules of Court;

"2. The petitioner being not a party to the proceedings, judgment against it could not be rendered without violating the elementary rules of procedure;

"3. The allegations in private respondent's motion for execution pending appeal are purely speculative, self-serving conclusions and without factual basis;

"4. The exact liability of the bondsman is not specified."[6]

An application for judgment on the bond was thereafter filed by private respondent Orosa on April 26, 1988, adopting by reference his motion for execution of judgment pending appeal and the findings of the trial court,[7] An opposition thereto was filed by petitioner on the contentions that the appeal had been perfected hence the trial court had already lost jurisdiction to hear therein defendant's motion; that the application for damages does not set forth the facts showing his right thereto and the amount thereof; and that the motion is fatally defective for lack of the requisite three (3) days notice.[8]

The hearing on the application was scheduled on April 29, 1988, but the herein private respondent Orosa and his counsel failed to appear therein. Consequently, petitioner's counsel orally moved for the denial of said application for judgment on the bond, but the court below denied said motion and declared all incidents submitted for resolution.[9] In the meantime, action on therein plaintiff's notice of appeal and motion to elevate the records to the Court of Appeals, which were earlier filed on April 14, 1988, was held in abeyance by the court.[10]

In a special order dated June 3, 1988, the trial court ordered the issuance of a writ of execution pending appeal upon respondent Orosa's filing of a bond in the amount of P500,000.00.

The special reasons cited by the court for said immediate execution are (1) "defendant's willingness to file a required bond to answer for damages in the case of reversal of the judgment" and (2) "the plaintiff is in imminent danger of insolvency or dissolution." [11] The motion for partial reconsideration of the decision and opposition to the motion for execution filed on April 26, 1988 by petitioner was likewise denied for lack of merit in another order on the same date.[12]

Respondent Orosa's right to recover damages on the replevin bond and the liability of herein petitioner for said damages and for all the sums of money recovered in the case in the lower court by therein defendant against the plaintiff, jointly and severally with the plaintiff to the extent of the value of the bond, was held to be unquestionable in an order of the court a quo dated June 6, 1988.[13]

The following day, June 7, 1988, the trial court issued what was designated as a "supplemental decision," which reads:

"Pursuant to the order of June 6, 1988 and Sec. 10, Rule 60 of the Rules of Court, and by way of supplement to the decision, dated March 25, 1988, judgment is hereby rendered, for the defendant, ordering the Surety, Stronghold Insurance Co., Inc., jointly and severally with the plaintiff, to return to the defendant, the 1983

Ford Laser 1.5 Sedan involved, or its equivalent in kind or in cash, as of the date of the said decision (March 25, 1988), to pay him the damages specified in the said decision, to the extent of the value of the replevin bond which is P210,000.00, with costs against the said Surety." [14]

Respondent Deputy Sheriff Jaime Del Rosario, by virtue of the order of execution pending appeal, levied upon the properties of petitioner and garnished its funds with Far East Bank and United Coconut Planters Bank on June 17, 1988.

A few days thereafter, on June 22, 1988, petitioner filed a petition for certiorari, with a prayer for preliminary injunction and/or restraining order, in respondent court where it was docketed as CA-G.R. SP No. 14938. Petitioner sought therein the annulment of the orders of the trial court dated June 3 and 6, 1988, the supplemental decision of June 7, 1988 and the writ of execution issued in Civil Case No. 84-28188.

Significantly, even after the filing of the petition for certiorari with the appellate court, the trial court acted on several motions filed either before or after said petition was instituted. On the same day of the filing of said petition, an order was issued by the trial court supplementing its order of execution pending appeal dated June 3, 1988 by ordering private respondent Orosa to file an additional bond in the amount of P200,000.00.¹⁵

An "Urgent Omnibus Motion for Reconsideration with Prayer for Restraining Order," dated June 24, 1988, was filed by the petitioner with the trial court, alleging that "there exists no good and valid reasons to justify execution pending appeal against SICI considering that it is very solvent and any final judgment against it would surely be satisfied." [16] The motion was denied for lack of merit on June 27, 1988.

Likewise, the trial court denied on July 6, 1988 the motion of therein plaintiff, dated June 20, 1988, for the reconsideration of the special order of the court issued on June 3, 1988. [17]

On July 11, 1988, upon an ex parte motion, the trial court directed the enforcement of the writ of execution pending appeal against therein plaintiff FCP Credit Corporation alone. [18] Later, on August 5, 1988, another order was issued this time directing its enforcement against petitioner. [19] Petitioner moved for the reconsideration of said order and in the hearing of said motion, its counsel adduced additional arguments in support thereof. The court was informed that its application for a writ of injunction was already submitted for resolution by the Court of Appeals. [20]

Eventually, the application for a writ of injunction referred to by petitioner was granted by the Court of Appeals on August 26, 1988. Nevertheless, the same writ was lifted and set aside when the petition for certiorari was dismissed in a decision promulgated by respondent court on September 9, 1988 in CA-G.R. SP No. 14938. [21] No grave abuse of discretion was found to have been committed by the trial court in issuing the questioned orders.

Hence, this petition to set aside and annul the aforesaid decision of respondent court.

The rule is clear that where the judgment in an action is in favor of the party against whom the writ of replevin was issued, he may recover damages resulting therefrom and the replevin bond required under Section 2, Rule 60 of the Rules of Court may be held to answer for this purpose. The procedure to hold the surety liable upon the replevin bond is provided for under Section 10 of the same rule in relation to Section 20 of Rule 57. Compliance with the following requisites is essential:

"x x x (1) the filing of an application therefor with the Court having jurisdiction of the action; (2) the presentation thereof before the judgment becomes executory (or before the trial or before appeal is perfected); (3) the statement in said application of the facts showing the applicant's right to damages and the amount thereof; (4) the giving of due notice of the application to the attaching creditor and his surety or sureties; and (5) the holding of a proper hearing at which the attaching creditor and sureties may be heard on the application.

These requisites apply not only in cases of seizure or delivery under Rule 60, but also in cases of preliminary injunctions under Rule 58, and receiverships under Rule 59." [22]

To avoid multiplicity of suits, all incidents arising from the same controversy must be settled in the same court having jurisdiction of the main action. Thus, the application for damages must be filed in the court which took cognizance of the case, with due notice to the other parties.

The timeliness of the application for judgment on the bond in this case, as well as the motion for immediate execution, is apparent because it was filed before the appeal was perfected. The fact that one of the parties had filed a notice of appeal does not perfect such appeal. An appeal is perfected upon the lapse of the last day for all parties to appeal. [23]

It should also be noted that the filing of the application for judgment on the bond by private respondent Orosa was in the nature of a motion for reconsideration under Section 1 (c), Rule 37 of the Rules of Court, which consequently had the effect of interrupting the period to appeal, [24] This being so, the order holding in abeyance plaintiffs notice of appeal was not even necessary and was an apparent superfluity.

Petitioner nevertheless claims that there was failure to hold a proper hearing. Such requirement, however, has been held to mean that "the hearing will be summary and will be limited to such new defenses, not previously set up by the principal, as the surety may allege and offer to prove. The oral proof of damages already adduced by the claimant may be reproduced without the necessity of retaking the testimony, but the surety should be given an opportunity to cross-examine the witness or witnesses if he so desires." [25] In the present case, as respondent court correctly pointed out, petitioner did not allege and offer to prove any new defense not previously set up by the principal. Furthermore, the grounds relied upon in its opposition to the application requires no hearing for their proper consideration by the court a quo, aside from the fact that the trial court adequately and particularly resolved them in its order of June 6, 1988.

If petitioner really had additional defenses, it should have asked for the opportunity to present the same when the motion to dismiss the application for judgment on the bond was denied. This is also true with respect to the cross-examination of the witnesses which petitioner is now belatedly asking for. While there was no one to cross-examine during the hearing of the application for judgment on the bond because of private respondent's absence, petitioner could have invoked and insisted on such right. Further, even if private respondent had appeared during the hearing, it could reasonably be expected that no witnesses would be presented since the application for judgment on the bond relied mainly on the same grounds that were already presented in court and were subject of the trial on the merits, or were at least already of record. To repeat, had petitioner been sincere in the stance that it now takes to create an issue, it should have demanded its right to cross-examine such witnesses as it was minded to. As it turned out, the opportunity to so demand was present but petitioner did not care to do so. Instead, it preferred to stick to its stand that the application should be denied for failure of respondent Orosa to appear during the hearing. The petitioner should, therefore, suffer the consequences of its inexplicable inaction and conscious omission.

Independent of the foregoing considerations, neither does the petitioner have the right to question the "supplemental judgment" of the trial court. As already stated, the application for judgment on the bond was in the nature of a motion for reconsideration, hence the resolution thereof constitutes a final and appealable order. Appeal being the proper and then available remedy, the original action for certiorari does not lie and cannot substitute for the remedy of appeal that was thereafter lost.

We cannot, however, sanction the execution pending appeal which was authorized in this case. The order for advance execution must be struck down for lack of the requisite good reasons therefor. It is already settled that the

mere filing of a bond does not warrant execution pending appeal. To consider the mere filing of a bond a good reason would precisely make immediate execution of a judgment pending appeal routine, the rule rather than the exception.[26]

The alleged imminent danger of insolvency of plaintiff FCP Credit Corporation does not also constitute a good reason for immediate execution. In the aforecited Philippine National Bank case, we ruled that where there are two or more parties who are held to be solidarily or subsidiarily liable for the judgment account, the insolvency of one will not justify immediate execution where the others are capable of paying the obligation. The obligation of petitioner surety company and the plaintiff corporation in the case at bar is in solidum. Their agreement states that the principal and the surety therein jointly and severally bound themselves "in the sum of TWO HUNDRED TEN THOUSAND PESOS ONLY (P210,000.00) Philippine Currency, for the prosecution of the action, for the return of the property to defendant, if the return thereof be adjudged, and for the payment x x x of such sum as may in the cause be recovered against the plaintiff, and costs of the action." [27]

IN VIEW OF THE FOREGOING, the order of the trial court, dated June 3, 1988, ordering the issuance of a writ of execution pending appeal, as well as the other orders for its implementation, are hereby ANNULLED and SET ASIDE. In all other respects, the decision of respondent Court of Appeals is AFFIRMED.

SO ORDERED.

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

[1] Rollo, 38.

[2] Annex B-I; Rollo, 39.

[3] Penned by Judge Clemente M. Soriano; Rollo, 40-47.

[4] Annex D; Rollo, 48-50.

[5] Annex F; *ibid.*, 52-56.

[6] Rollo, 25-26.

[7] Annex-G; *ibid.*, 57-59.

[8] Annex H; *ibid.*, 60-61.

[9] Annex I; *ibid.*, 62.

[10] Annex J; *ibid.*, 63.

[11] Annex K; *ibid.*, 64-65.

[12] Annex M; *ibid.*, 68.

[13] Annex L; *ibid.*, 66-67.

[14] Annex N; *ibid.*, 69.

[15] Annex R; *ibid.*, 94.

[16] Annex M, Comment of Respondent Orosa.

[17] Annex R-3; Rollo, 97.

[18] Annex R-4; *ibid.*, 98.

[19] Annex R-5; *ibid.*, 99.

[20] Annex R-6; *ibid.*, 100.

[21] Penned by Justice Celso L. Magsino, with Justices Oscar R. Victoriano and Luis D. Victor concurring.

[22] *Zaragoza vs. Fidelino, et al.*, 163 SCRA 443 (1988).

[23] Sec. 23, Interim Rules and Guidelines; *Universal Far East Corporation vs. Court of Appeals, et al.*, 131 SCRA 642 (1984); *Montelibano. et al. vs. Bacoht-Murcia Milling Co., Inc., et al.*, 136 SCRA 294 (1985); *Yakut vs. Intermediate Appellate Court, et al.*, 142 SCRA 124 (1986); *Belgado vs. Intermediate Appellate Court, et al.*, 147 SCRA 258 (1987); *Magtibay vs. Court of Appeals, et al.*, G.R. No. 77040, November 29, 1988.

[24] *Zaragoza vs. Fidelino, et al*, *supra*.

[25] *Visayan Surety & Insurance Corporation vs. Pascual, et al.*, 85 Phil. 779(1950).

[26] *Roxas vs. Court of Appeals, et al.*, 157 SCRA 370 (1988); *Philippine National Bank vs. Hon. Benigno M. Puno, et al.*, G.R. No. 76018, February 10, 1989.

[27] Annex B-I; Rollo, 39.

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