

NATIONAL POWER CORPORATION, PETITIONER, VS. HON. ARSENIO M. GONONG, JUDGE, RTC, MANILA, BR. 8, DOMINADOR B. ADRIANO, DEPUTY SHERIFF, ALLIED CONTROL & ELECTRIC CORPORATION, AND P...*G.R. No. 87140. September 07, 1989*

Ponente: NARVASA, J.

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Highlighted by the special civil action of certiorari at bar is the regrettable lack of familiarity with and the consequent misapplication of procedural rules governing execution of final judgments.

The instant action arose from an attempt to execute a final judgment rendered on October 8, 1987 in Civil Case No. 87-39301 of the Regional Trial Court of Manila.¹ The case had been instituted by Allied Control and Electric Corporation (hereafter, simply ACEC) to recover a sum of money from Batong Buhay Gold Mines, Inc. (hereafter, BGGMI). The judgment ordered BGGMI to pay ACEC its indebtedness of P264,401.00, interest thereon at the rate of 16% per annum and "penalty charge" at 3% per month beginning May 15, 1985, and the further sum of P66,100.00 equivalent to 25% of the overdue obligation as attorney's fees. The judgment having become final, execution was ordered by the Court at ACEC's instance on December 18, 1987.

Evidently the attempt at execution failed. Hence, ACEC filed on August 19, 1988 an "Ex-Parte Motion for Examination of Debtor of Judgment Debtor," alleging that the National Power Corporation (NPC) was a debtor of BGGMI and praying that certain officials of the NPC be required to appear before the Court and examined regarding its debt to BGGMI. This was granted by respondent Judge, who scheduled the examination "on September 28, 1988 and on posterior dates." The Manager of NPC's General Accounts Division, Ariel Vinoya, appeared in response to subpoena and was duly examined on oath. The gist of his testimony is set out in respondent Judge's Order of November 15, 1988,¹ viz:

" * * . Witness testified that sometime in 1980, National Power Corporation and defendant Batong Buhay Gold Mines Inc. entered into an agreement, whereby at that time Batong Buhay Gold Mines Inc. needed the supply of electricity from NPC, however, at that time there was no transmission lines connecting the mining site to the lines of NPC and it was not yet within the program of activities of NPC to construct those lines. Thus, Batong Buhay ** offered to finance the construction of the line which they did (TSN, pp. 16-17, Sept. 28, 1988). Under that arrangement, NPC is going to reimburse Batong Buhay Gold Mines Inc. the amount that they have spent for the construction of the line by crediting 25% of defendant's monthly electric power bills until the actual cost shall have been fully paid and without interest (1st paragraph, Exh. B-2). * * (T)he transmission lines were in fact erected and installed by defendant and NPC supplied electric power to the mining site and as agreed upon NPC deducted from the monthly power bills of defendant the sums equivalent to 25% thereof, as shown graphically in Exh 'A-2-Motion' from October 15, 1983 to October 11, 1985. As reflected in Exh. 'A-Motion' an amount of P51,745,319.15 was due to defendant as of December 31, 1982 and after deducting the 25%, a balance of P37,532,763.17 was left due to defendant (Exh. 'A-3?Motion' and Exh. 'A-5-Motion').

However, * * when defendant ceased operation in 1985 it left unpaid electric power bills in the amount of P15,941,625.35 plus interest of P2,643,514.76 as of August, 1986 or in the total amount of P18,585,140.11 (Exh. 'A-6-Motion'); deduct this from the P37,532,763.17 and a balance of P18,947,623.06 was left due to defendant but Mr. Vinoya further testified that it is not due to Batong Buhay Gold Mines, Inc. but a balance of the advances made by Batong Buhay Gold Mines Inc. in the construction of the power lines (TSN, p. 24, Sept. 26, 1988)."

On the strength of this testimony -- which included, it must be stressed, a denial by the witness that the amount of P18,947,623.06 was due to BGGMI, this being "but a balance of the advances made by ** (the latter) in the construction of the power lines" -- respondent Judge resolved to direct the NPC to pay ACEC "its judgment rendered in October 8, 1987 out of the remaining credit NPC holds in favor of defendant," and ordered his deputy sheriff (respondent Adriano) "to garnish and attach the said credit due Batong Buhay Gold Mines, Inc." In justification, His Honor invoked Section 15, Rule 39 of the Rules of Court, authorizing the sheriff charged with execution of a money judgment to levy on "debts" and "credits"2 in addition to "real property, stocks, shares, * * and other personal property, or any interest in either real or personal property," pointing out, too, that the NPC official, Vinoya, had later admitted that "this amount of P18,947,623.06 is due to defendant Batong Buhay Gold Mines Inc. (tsn, pp. 28-29, Sept. 28, 1988; tsn p. 5 Oct. 21, 1988)." Sheriff Adriano accordingly garnished such of the funds of the NPC on deposit at the Philippine National Bank, Escolta, Manila, as were "sufficient to cover the sum" required to be paid by respondent Judge's Decision of October 8, 1987.

The NPC filed a "Manifestation" dated December 20, 1988 for the avowed "purpose of bringing to ** (respondent) Court's attention certain facts and information in respect of its Order dated November 15, 1988,"1 these being:

1) the Court had "no jurisdiction to issue the Order of November 15, 1988 * * since movant NPC was never a party in the said civil case * * (h)ence, the aforesaid Order of Garnishment is null and void insofar as movant NPC is concerned;"

2) NPC was "not in possession nor in control of any * * property belonging to BBGMI nor does BBGMI have any receivable of whatsoever kind and nature from NPC;" and NPC ceased to have any "legal obligation to pay or amortize the balance of the cost of the transmission line constructed by BBGMI" after the latter ceased operations," a proposition shown by the following circumstances:

a) the "transmission line from the mining site of * * BBGMI to the lines of the NPC which was financed and constructed by BBGMI was a dedicated line for BBGMI mine site * * (and) was intended and was only utilized for * * supplying electric power from the NPC lines to the * * mine site;"

b) according to Vinoya, "under the arrangement between NPC and BBGMI, the former is going to reimburse BBGMI the amount that the latter spent for the construction of the line by crediting 25% of BBGMI's monthly electric bill until the actual cost shall have been fully amortized and paid without interest;" but Vinoya failed to state or stress "that under the same arrangement * * it is only after full payment and amortization by NPC of the total cost of the transmission line financed and constructed by BBGMI that ownership of said transmission line will be transferred * * to NPC;"

d) the NPC-BBGMI "Agreement was rendered inoperative and ineffective by reason of the breach thereof by BBGMI when it ceased operation in 1985 * * (for the) cessation of operation * * resulted in the stoppage of the supply of electric power by NPC to BBGMI and likewise effectively removed or did away with the agreed mechanics by which NPC is to pay/amortize the cost of the transmission line as agreed upon;" it resulted, too, in the loss of any value or utility of the transmission line to NPC, "the same having been intended solely for the benefit and use of BBGMI."

No action was apparently taken by respondent Judge in response to this Manifestation which was, to all intents and purposes, a motion to set aside the Order of November 15, 1988. And for aught that appears on the record, neither was any traversing pleading or paper ever presented by ACEC.

What happened next was that on February 17, 1989 the Philippine National Bank debited NPC's "account (S/A No. 010-572194--3 for Eight Hundred Twenty Eight Thousand Eight Hundred Six and 20/100 (P828,806.20) representing P828,796.00 amount of Cashier's Check delivered and paid to ** Sheriff Dominador B. Adriano, **".¹

Hence, the present action of certiorari instituted by NPC praying for "the setting aside (of) respondent Judge's Order dated November 15, 1988 * * and commanding respondent to desist from executing the writ of garnishment issued by respondent Sheriff in Civil Case No. 87--39301." For the reasons shortly to be explained, the Court decreed on March 15, 1989 the issuance of a temporary restraining order "enjoining the respondents from enforcing and/or implementing the (challenged) Order," and a preliminary mandatory injunction "commanding respondent Deputy Sheriff Dominador B. Adriano and/or Allied Control and Electric Corporation to RETURN to respondent Philippine National Bank the amount of P828,806.20 ** debited from petitioner's * * Account S/A No. 010-572194-3." The Court subsequently gave due course to the petition and required the parties to submit memoranda. Said memoranda have since been received.

The Court rules that in authorizing the execution of the judgment in Civil Case No. 87-39301 against a stranger to the action, on the theory that the latter was a "debtor of the judgment debtor," respondent Judge was guilty of grave abuse of discretion tantamount to lack or excess of jurisdiction.

It is true that Rule 39 empowers a Court to order the examination of a judgment debtor. This is clear from Section 39 of the rule:

"SEC. 39. Examination of debtor of judgment debtor. - After an execution against the property of a judgment debtor has been returned unsatisfied in whole or in part, and upon proof, by affidavit of a party or otherwise, to the satisfaction of the judge, that a person, corporation, or other legal entity has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person, corporation or other legal entity, or any officer or member thereof, to appear before the judge, or a commissioner appointed by him, at a time and place within the province in which the order is served, to answer concerning the same. The service of an order shall bind all credits due the judgment debtor and all money and property of the judgment debtor in the possession or in the control of such person, corporation, or legal entity from the time of service; and the judgment may also require notice of such proceedings to be given to any party to the action in such manner as he may deem proper."

It was thus clearly within respondent Judge's prerogative to require the appearance, by subpoena, of officials of the NPC to appear and be questioned regarding the latter's claimed indebtedness to the judgment debtor, BGGMI. But just as clearly, it was not within His Honor's power to order the payment by the alleged debtor of the judgment debtor to pay the claimed debt without indubitable admission or conclusive proof that the debt existed and was demandable. The applicable provision is not, as was respondent Judge's erroneous notion, Section 15 of Rule 39, which merely states the procedure that the sheriff should follow in the enforcement of a money judgment against the judgment debtor himself, i.e., to levy on property of the judgment debtor, including "debts" or "credits," and sell the same, etc., but which obviously does not at all treat of the propriety and requisites for collecting such "debts" or "credits" from third persons. The relevant provisions are those embodied in Sections 42 and 45 of the same Rule 39. Section 42 reads as follows:

"SEC. 42. Order for application of property and income in satisfaction of judgment -- The judge may order any property of the judgment debtor, or money due him, not exempt from execution, in the hands of either himself

or other person, or of a corporation or other legal entity, to be applied to the satisfaction of the judgment, subject to any prior rights over such property, ***."

Section 45, on the other hand, states the following:

"SEC. 45. Proceedings when indebtedness denied or another person claims the property -- If it appears that a person or corporation, alleged to have property of the judgment debtor or to be indebted to him claims an interest in the property adverse to him or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment, and may punish disobedience of such order as for contempt. Such order may be modified or vacated by the judge granting the same, or by the court in which the action is brought at anytime, upon such terms as maybe just."

A reading of these two provisions leaves no doubt about the proposition that after summary examination of a person or entity alleged to be a debtor of the judgment debtor or holding property belonging to the latter, in accordance with Section 39, Rule 39, *supra* execution may issue against such person or entity only upon an incontrovertible showing that the person or entity in fact holds property belonging to the judgment debtor or is indeed a debtor of said judgment debtor; i.e., that such holding of property, or the indebtedness is not denied. In the event of such a denial, it is not to repeat, within the judge's power to order delivery of property allegedly belonging to the judgment debtor or the payment of the alleged debt. A contrary rule would allow a court to adjudge substantive liability in a summary proceeding, incidental merely to the process of executing a judgment, rather than in a trial on the merits, to be held only after the party sought to be made liable has been properly summoned and accorded full opportunity to file the pleadings permitted by the Rules in ventilation of his side. This would amount to a denial of due process of law. So has this Court in fact already had occasion to rule. In a 1977 case, *Economic Insurance Co., Inc. v. Torres*,¹ the Court said:

* * the only power of the court in proceedings supplemental to execution is to make an order authorizing the creditor to sue in the proper court to recover an indebtedness due to the judgment debtor. The court has no jurisdiction to try summarily the question whether the third party served with notice of execution and levy is indebted to defendant when such indebtedness is denied. To make an order in relation to property which the garnishee claimed to own in his own right, requiring its application in satisfaction of judgment of another, would be to deprive the garnishee of property upon summary proceeding and without due process of law.

The record demonstrates that the supposed indebtedness of NPC to BBGMI was denied not only by the representative of NPC who gave testimony at the summary hearing scheduled by His Honor, but also by its lawyers who, in a formal pleading, detailed the facts and circumstances in substantiation of the thesis of non-liability. Of course, the respondent Judge's Order makes a general reference to later admissions supposedly made by Vinoya the NPC representative. Such unspecified admissions are, of course, not only contradictory of the earlier denial of Vinoya, but are themselves contradicted by the subsequent assertions of the NPC through its lawyers. This state of things, when the least that can be said is that it is doubtful if there has been a categorical admission of liability on the part of the NPC, cannot operate to invest the respondent Court with jurisdiction to order NPC to pay its alleged indebtedness to BBGMI. The only disposition that said Court could legitimately have made in the premises, was that indicated in Section 46 of Rule 39, above quoted, i.e., authorize ACEC, as judgment creditor, to bring a separate action against NPC, as alleged debtor of BBGMI, the judgment debtor, for establishment by satisfactory proof of the postulated indebtedness of NPC to BBGMI, and consequent payment to it (ACEC) of so much of that indebtedness as corresponds to the amount of its judgment.

The ruling herein made dictates the mode of resolution of ACEC's pending motion (dated July 10, 1989)¹ advising of its willingness to reserve the loan it had applied for from PNB Escolta "in the custody of PNB in

compliance with the resolution of ** June 19, 1989," a loan which, incidentally, it appears that it has already obtained in the sum of P829,000.00.2

WHEREFORE, the writ of certiorari prayed for is GRANTED. The Order of November 15, 1988 in Civil Case No. 87-39301 is NULLIFIED AND SET ASIDE. The temporary restraining order and mandatory injunction issued by this Court on March 15, 1989 are CONFIRMED AND MADE PERMANENT. Respondent Allied Control and Electric Corporation (ACEC) is commanded, IMMEDIATELY upon service of notice of this judgment, to deliver and pay to petitioner National Power Corporation the sum of P828,796.00 and P10.20 debited against the latter's account in the Philippine National Bank on February 17, 1989, with interest at the rate of six percent (6%) per annum from said date. Costs against respondents, excluding the Philippine National Bank.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

1 Rollo, pp. 17- 18

1 Id., pp. 19-20

2 Emphasis, Judge Gonong's

1 Rollo, pp. 23-26

1 Id., p. 35

1 L-28488, Oct. 21,1977, 79 SCRA 519, 523-524

1 Rollo, pp. 145-196

2 Id., pp 153-154

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