

JUAN PONCE ENRILE, PETITIONER, VS. HON. IGNACIO CAPULONG AND AYER PRODUCTIONS PTY. LTD., RESPONDENTS.

G.R. No. 88373. May 18, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioner filed this Petition to stop the respondent court from acting on the private respondent's application for damages arising from the wrongful issuance of a writ of preliminary injunction by that court, later nullified by this Court in *Ayer Productions Pty. Ltd. v. Capulong*.^[1] Ayer's findings are as follows:

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On 23 February 1988, private respondent filed a Complaint with application for Temporary Restraining Order and Writ of Preliminary Injunction with the Regional Trial Court of Makati, docketed as Civil Case No. 88-151 in Branch 134 thereof, seeking to enjoin petitioners from producing the movie "The Four Day Revolution". The complaint alleged that petitioners' production of the mini-series without private respondent's consent and over his objection, constitutes an obvious violation of his right of privacy. On 24 February 1988, the trial court issued ex-parte a Temporary Restraining Order and set for hearing the application for preliminary injunction.

On 9 March 1988, Hal McElroy filed a Motion to Dismiss with Opposition to the Petition for Preliminary Injunction contending that the mini-series film would not involve the private life of Juan Ponce Enrile nor that of his family and that a preliminary injunction would amount to a prior restraint on their right of free expression. Petitioner Ayer Productions also filed its own Motion to Dismiss alleging lack of cause of action as the mini-series had not yet been completed.

In an Order dated 16 March 1988, respondent court issued a writ of Preliminary Injunction against the petitioners, the dispositive portion of which reads thus:

WHEREFORE, let a writ of preliminary injunction be issued, ordering defendants, and all persons and entities employed or under contract with them, including actors, actresses and members of the production staff and crew, as well as all persons and entities acting on defendants' behalf, to cease and desist from producing and filming the mini-series entitled "The Four Day Revolution" and from making any reference whatsoever to plaintiff or his family and from creating any fictitious character in lieu of plaintiff which nevertheless is based on, or bears remote, substantial or marked resemblance or similarity to, or is otherwise identifiable with, plaintiff in the production and filming any similar film or photoplay, until further orders from this Court, upon plaintiff's filing of a bond in the amount of P2,000,000.00, to answer for whatever damages defendants may suffer by reason of the injunction if the Court should finally decide that plaintiff was not entitled thereto.

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(Underscoring supplied)

On 22 March 1988, petitioner Ayer Productions came to this Court by a Petition for Certiorari dated 21 March 1988 with an urgent prayer for Preliminary Injunction or Restraining Order, which petition was docketed as G.R. No. L-82380.

A day later, or on 23 March 1988, petitioner Hal McElroy also filed a separate Petition for Certiorari with Urgent Prayer for a Restraining Order or Preliminary Injunction, dated 22 March 1988, docketed as G.R. No. L-82398.

By a Resolution dated 24 March 1988, the petitions were consolidated and private respondent was required to file a consolidated Answer. Further, in the same Resolution, the Court granted a limited Temporary Restraining Order partially enjoining the implementation of the respondent Judge's Order of 16 March 1988 and the Writ of Preliminary Injunction issued therein, and allowing the petitioners to resume producing and filming those portions of the projected mini-series which do not make any reference to private respondent or his family or to any fictitious character based on or bearing substantial resemblance or similarity to or identifiable as private respondent.

Private respondent seasonably filed his Consolidated Answer on 6 April 1988 invoking in the main a right of privacy.[2]

On April 29, 1988, this Court rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE,

a) The Petitions for Certiorari are GRANTED DUE COURSE, and the Order dated 16 March 1988 of respondent trial court granting a Writ of Preliminary Injunction is hereby SET ASIDE. The limited Temporary Restraining Order granted by this Court on 24 March 1988 is hereby MODIFIED by enjoining unqualifiedly the implementation of respondent Judge's Order of 16 March 1988 and made PERMANENT, and

b) Treating the Manifestations of petitioners dated 30 March 1988 and 4 April 1988 as separate Petitions for Certiorari with Prayer for Preliminary Injunction or Restraining Order, the Court, in the exercise of its plenary and supervisory jurisdiction, hereby REQUIRES Judge Teofilo Guadiz of the Regional Trial Court of Makati, Branch 147, forthwith to DISMISS Civil Case No. 88-413 and accordingly to SET ASIDE and DISSOLVE his Temporary Restraining Order dated 25 March 1987 and any Preliminary Injunction that may have been issued by him.

No pronouncement as to costs.

SO ORDERED.[3]

On May 16, 1988, the petitioner filed a Motion for Reconsideration.[4] On June 9, 1988, this Court denied the Motion with finality.[5] On June 20, 1988, our Decision was entered in the Book of Entries.[6]

On November 24, 1988, the private respondent filed a "Motion to Resolve" with the respondent court, in connection with its Motion to Dismiss filed on March 9, 1988.[7]

On January 19, 1989, the respondent court issued an Order, granting the Motion to Dismiss.[8]

On February 10, 1989, the private respondent filed a "Motion for Reconsideration and/or Application to Hold Plaintiff and the Surety Bond Company the First Integrated Bonding Insurance Company, Inc. Jointly and Severally Liable on the Bond." [9] The private respondent claimed that as a consequence allegedly of the Writ of Preliminary Injunction, it was forced to "[move] the filming of the picture to Sri Lanka after an extensive locational survey," [10] that "[the] move caused over [sic] budget travelling costs of entire cast and crew from Manila to Sri Lanka and Australia; additional days of shooting in excess of original schedule; additional communications costs; costs for building additional sets and decorations in Australia and Sri Lanka; insurance

costs; location survey costs, accommodations; and special unit shooting costs,"[11] and that "as a direct result of [the] preliminary injunction issued in this case, [it] suffered losses and damages totalling FOUR HUNDRED THIRTY-EIGHT THOUSAND SEVENTY-THREE AUSTRALIAN DOLLARS ..." [12] It also sought to hold the petitioner (along with its surety, the First Integrated Bonding Insurance Company, Inc.) liable on his (the petitioner's) bond, FIBICI Board No. JCL-(8)00323, in the sum of P2,000,000.00, Philippine Currency.[13]

Subsequently, on February 12, 1989, the private respondent filed a "Notice to Take Oral Deposition," in support of its claim for damages, of four witnesses, all residents of New South Wales, Australia, before Consul Petronila Carbonell of the Philippine Consulate General of Australia, Sydney, Australia.[14]

On February 28, 1989, the petitioner filed a "Motion to Suppress Notice to Take Deposition and/or For Protective Order," on the ground, inter alia, that the private respondent's right to damages under the bond was not indubitable and prayed that pending the determination thereof, the deposition-taking be postponed. The private respondent opposed the Motion.

After a further exchange of pleadings, the respondent court, on May 2, 1989, issued an Order, the dispositive portion of which reads as follows:

WHEREFORE, plaintiff's motion to suppress notice to take deposition and/or for protective order be, as it is, hereby, DENIED.[15]

According to the respondent court, the private respondent had the right to an award of damages, "resulting from [the Supreme Court's] ruling that [the petitioner] is not entitled to the writ [of preliminary injunction]."[16]

On May 9, 1989, the petitioner was served a copy of another "Notice to Take Oral Deposition." [17] On May 15, 1989, he filed a "Motion to Suppress Notice to Take Oral Deposition." [18] On May 19, 1989, he filed a "Motion for Reconsideration (Re: Order dated 2 May 1989)." [19] The private respondent opposed it.

On June 1, 1989, the respondent Court issued an Order, the dispositive portion of which reads as follows:

WHEREFORE, the motion for reconsideration filed by plaintiff, is hereby DENIED.[20]

According to the respondent court:

... The Court finds and resolves that the application or claim for damages of the [private respondent] was filed within the reglementary period of time, considering that the fifteen (15) day period should be counted from the receipt of the Order of this Court dismissing this case, dated January 19, 1989, and not from the receipt of [the private respondent] of the decision of the Supreme Court dated April 29, 1988 ... and this Court in effect recognizes the right of [the private respondent] to file its application and claim for damages under the injunction bond filed by [the petitioner].[21]

On June 6, 1989, the petitioner filed the present Petition for certiorari and prohibition with preliminary injunction and/or restraining order. The petitioner as we indicated, asks this Court to stop the respondent court from conducting further proceedings below, specifically, to nullify its Order, dated May 2, 1989, and its Order, dated June 1, 1989. He submits that both Orders were issued with grave abuse of discretion, to wit:

I

RESPONDENT JUDGE ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN ADMITTING AYER'S APPLICATION FOR DAMAGES, NOTWITHSTANDING THAT THIS HONORABLE COURT'S DECISION IN G.R. NO. 82380, WHICH HAD LONG BECOME FINAL AND EXECUTORY. OPERATED TO DISMISS, OR RESULTED IN THE EFFECTIVE DISMISSAL OF, THE MAIN CASE.

II

ASSUMING ARGUENDO THAT THIS HONORABLE COURT'S DECISION IN G.R. NO. 82380 DID NOT OPERATE TO DISMISS, OR RESULT IN THE EFFECTIVE DISMISSAL OF, THE MAIN CASE. RESPONDENT JUDGE NEVERTHELESS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ADMITTING AYER'S APPLICATION FOR DAMAGES CONSIDERING THAT AYER, IN VIOLATING THE PREVIOUS INJUNCTIVE ORDER OF RESPONDENT JUDGE, FORFEITED THE RIGHT TO CLAIM FOR DAMAGES AGAINST THE BOND FOR THE VERY INJUNCTION WHICH AYER DEFIED IN THE FIRST PLACE.

III

ASSUMING ARGUENDO THAT AYER HAD NOT FORFEITED THE RIGHT TO CLAIM FOR DAMAGES AGAINST THE INJUNCTION BOND, RESPONDENT JUDGE NEVERTHELESS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ADMITTING AYER'S APPLICATION FOR DAMAGES CONSIDERING THAT, HYPOTHETICALLY ADMITTING THE ALLEGATIONS IN SAID APPLICATION. THE CLAIMED DAMAGES RESULTED NOT FROM COMPLIANCE WITH THE INJUNCTION BUT RATHER FROM AYER'S DEFIANCE THEREOF.

IV

RESPONDENT JUDGE ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN REFUSING TO SUPPRESS THE DEPOSITION PROCEEDING WHICH WAS PROPOSED IN CONNECTION WITH THE INADMISSIBLE APPLICATION FOR DAMAGES.[22]

On June 13, 1989, this Court issued the following Resolution:

G.R. No. 88373 (Juan Ponce Enrile vs. Hon. Ignacio Capulong, et al.). - Acting on the special civil action for certiorari and prohibition with prayer for a writ of preliminary injunction and/or restraining order, the Court Resolved, without giving due course to the petition, to require the respondents to COMMENT thereon, within ten (10) days from notice.

The Court further Resolved to ISSUE a TEMPORARY RESTRAINING ORDER, effective immediately and continuing until further orders from this Court, ordering the respondent judge from implementing the questioned Orders (dated May 2, 1989 and June 1, 1989) issued by him in Civil Case No. 88-151, entitled "Juan Ponce Enrile vs. Ayer Productions, Pty. Ltd.", from conducting further proceedings in Ayer's application for damages against the injunction bond and from taking depositions or conducting other discovery proceedings, or any other proceedings." [23]

On June 21, 1989, the private respondent filed its comment, holding that:

I

RESPONDENT JUDGE ACTED CORRECTLY WHEN HE REFUSED TO ACCEPT PETITIONER'S GRATUITOUS CLAIM THAT THE DECISION OF THIS HONORABLE SUPREME COURT IN G.R. NO. 82380, "OPERATED TO DISMISS" CIVIL CASE NO. 88-151, AND THAT THE 15-DAY PERIOD FOR FINALITY OF THE DECISION SHOULD BE COUNTED FROM RECEIPT OF THIS HONORABLE COURT'S DECISION.[24]

II

THE TRIAL COURT ACTED CORRECTLY WHEN IT ALLOWED [THE PRIVATE RESPONDENT] TO TAKE THE DEPOSITION BY ORAL INTERROGATORIES OF ITS WITNESSES TO PROVE THE DAMAGES IT SUSTAINED AS A RESULT OF THAT INJUNCTION. THE CLAIM THAT [THE PRIVATE RESPONDENT] VIOLATED THE INJUNCTION IS FALSE.[25]

III

THE RESPONDENT JUDGE ACTED CORRECTLY WHEN IT ALLOWED [THE PRIVATE RESPONDENT] TO EXERCISE ITS RIGHT TO TAKE ITS WITNESSES' DEPOSITION BY ORAL INTERROGATORIES SINCE PETITIONER'S GRATUITOUS SPECULATION THAT [THE PRIVATE RESPONDENT] "CAUSED ITS OWN DAMAGES" IS A FACTUAL ISSUE SUBJECT TO PROOF.[26]

IV

THE TRIAL COURT ACTED PROPERLY IN ALLOWING THE DEPOSITION TAKING.[27]

After exchanges of further pleadings, this Court issued a Resolution considering the private respondent's Comment as an Answer, giving due course to the petition, and directing the parties to file their Memoranda.[28]

A rule firmly settled in this jurisdiction is that a claim for damages arising from a wrongful injunction should be filed in the main case with notice to the surety.[29] If the lower court's decision, denying injunction, is however appealed to the Appellate Court, and the latter affirms the denial, the application may be commenced in the Appellate Court, which may either direct a remand of the case for reception of evidence or otherwise hear the claim itself.[30] So also, it must be commenced before judgment attains finality.[31] Otherwise, it is barred. Thus, it is provided under Section 9, Rule 58, of the Rules of Court, in relation to Section 20, Rule 57 thereof:

SEC. 9. Judgment to include damages against party and sureties. ? Upon the trial the amount of damages to be awarded to the plaintiff, or to the defendant, as the case may be, upon the bond of the other party, shall be claimed, ascertained, and awarded under the same procedure as prescribed in section 20 of Rule 57.

It has been held that this procedure is mandatory, and the failure to observe it deprives the aggrieved party the right to proceed against the surety bond.[32]

The Court finds that the single most important question that confronts it pertains to whether or not the claim for damages was filed before finality of judgment. Corollarily, whose "judgment" is to be considered, ours or the respondent court's?

The petitioner contends that the reckoning point should be prior to June 20, 1988, the date our Decision became final by virtue of the issuance of an Entry of Judgment. On the other hand, the private respondent insists that our Decision delved alone on the incidental issue of whether or not a writ of preliminary injunction was proper, and avoided the case on the merits, amongst others, as to damages. Hence, so it is submitted, the departure point should be January 19, 1989, the date the respondent Judge issued the Order dismissing the case. The issue then turns on whether or not our Decision was one on the merits of Civil Case No. 88-151, for if it was so, it is the Decision to be considered, and the point of reference should be prior to June 20, 1988, the date judgment was entered.

Ayer Productions Pty. Ltd. vs. Capulong, so we hold, is in the nature of disposition of Civil Case No. 88-151 before Judge Ignacio Capulong on its merits. Hence, when we held in that case that the petitioner was not entitled to injunctive relief, we spoke in the clearest terms possible that the petitioner lacked any cause of action for

injunction, whether preliminary or permanent. It is notable that, as Ayer decreed in part:

... The limited Temporary Restraining Order granted by this Court on 24 March 1988 is hereby MODIFIED by enjoining unqualifiedly the implementation of respondent Judge's Order of 16 March 1988 and made PERMANENT...[33]

If we made the Temporary Restraining Order (TRO) of March 24, 1988 permanent, it means that no injunctive writ may be issued in any manner whatsoever, because, as we said there: "The production and filming by petitioners of the projected motion picture 'The Four Day Revolution' does not, in the circumstances of this case, constitute an unlawful intrusion upon [the petitioner's] 'right of privacy,' "[34] and that injunction was a prior restraint to free speech and consequently, injunction was not permissible. Accordingly, there is no doubt that when we gave due course to the private respondent's Petition, and made the TRO permanent, we could not have been any more clear that we were disposing of Civil Case No. 88-151 on the merits. And when we granted the private respondent's Petition, we also unavoidably dismissed Civil Case No. 88-151.

It is also to be noted that the petitioner's Complaint was in essence one for injunction, and corollarily, for the issuance of preliminary injunction pending further proceedings. The fact that it also prayed for damages, the question of which the private respondent alleges has been left untouched, is insignificant, because demands for damages customarily shadow actions for injunction. In the petitioner's Complaint, it was prayed thus:

WHEREFORE, plaintiff respectfully prays that:

1. Upon the filing of this Complaint, this Court issue a temporary restraining order enjoining defendants and all persons and entities employed or under contract with them, including actors, actresses and members of the production staff and crew, as well as all persons and entities acting on defendants' behalf, from producing filming, distributing and exhibiting the aforesaid mini-series and from making any reference whatsoever to plaintiff or his family or creating any fictitious character in lieu of plaintiff which nevertheless is based on, or bears remote, substantial or marked resemblance or similarity to, or is otherwise identifiable with, plaintiff, in the production, filming, distribution, promotion, airing or exhibition of any similar film or photoplay.
2. After notice and hearing, and the filing of such bond as may be required, this Court convert the foregoing temporary restraining order into a writ of preliminary injunction.
3. After trial of the issues, this Court convert the writ of preliminary injunction into a permanent injunction and, further, order defendants to pay plaintiff the following:
 - a. P1 Million, by way of moral damages;
 - b. P1 Million by way of exemplary damages; and
 - c. P300,000.00 by way of attorney's fees and costs of litigation.

Plaintiff prays for such further and other relief as may be deemed just or equitable.[35]

Again, when this Court declared that the petitioner had no cause of action for injunction because, first, of an insufficient showing of invasion of his privacy, and second, because injunction operated as a prior restraint to the guaranty of free expression, we declared to all intents and purposes, that he, the petitioner, had no right of relief whatsoever, preliminary or permanent injunction or damages. And when we declared so, there was therefore absolutely nothing else for Judge Capulong to hear and decide. Certainly, His Honor could not have further acted on petitioner Enrile's right to stop the filming of the motion picture in question, when we had already spoken: petitioner Enrile had no right.

It is not indeed surprising that in its "Motion to Resolve" (the Motion to Dismiss),[36] the private respondent

relied on our very Decision to portray the invalidity of the Complaint, thus:

ASSUMING THAT THE FILM THE FOUR-DAY REVOLUTION HAS BEEN COMPLETED, NEVERTHELESS THE COMPLAINT WOULD STATE NO CAUSE OF ACTION.[37]

For if there was indeed something left for the court a quo to try, the private respondent should have asked for trial. Obviously, however, this would have been poor strategy because in that event, it would have been hard put to justify a request for trial after having moved for dismissal from the beginning.

The Court's ruling, therefore, is that the private respondent's claim for damages brought about by a wrongful injunction should have been commenced prior to June 20, 1988 (the date Ayer judgment was entered) either with this Court or with the court below. What is plain is that it had neglected to file its claim speedily and seasonably, and for what clearly emerges as an effort to revive a lost opportunity, it sought a court order to raise the case long decided by this Court as having had no leg on which to stand.

The private respondent can not deny the application of *Rivera v. Talavera*,[38] where we said that the request for damages arising from injunction may be ventilated in the Appellate Court, because although *Talavera* involved an appeal, whereas *Ayer* was one for certiorari (special civil action), the distinction is, for purposes hereof, tenuous because, in both cases, there was a final resolution on the merits that left nothing for the trial court to adjudicate.

Because the case had achieved a character of finality, it follows that all proceedings below, including the request for deposition, after June 20 1988, are void and of no effect. The challenged Orders, dated May 2, 1989 and June 1, 1989, respectively, are equally null and inexistent.

WHEREFORE, the Petition is GRANTED. The Order, dated May 2, 1989, and the Order, dated June 1, 1989, are declared NULL AND VOID.

Costs against the private respondents.

SO ORDERED.

Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Cortes, Griño-Aquino, and Regalado, JJ., concur. Fernan, C.J., and Feliciano, J., joins J. Narvasa in his dissenting opinion.

Medialdea, J., no part.

Gancayco, J., on leave.

[1] Nos. L-82380 & 82398, April 29, 1988, 160 SCRA 861; Feliciano, J.

[2] *Supra*, 867-869.

[3] *Supra*, 878.

[4] *Rollo*, G.R. Nos. 82380 & 82398, 242-252; 211-221.

[5] *Id.*, 276-277; 237-238.

[6] *Id.*, 280; 248.

[7] *Ayer*, *supra*, 867.

[8] G.R. No. 88373, *rollo*, 123-124.

[9] *Id.*, 125-129.

- [10] Id., 126.
- [11] Id.
- [12] Id.
- [13] Id., 130-131.
- [14] Id., 131.
- [15] Id., 217.
- [16] Id., 216.
- [17] Id., 16.
- [18] Id., 220-223.
- [19] Id., 223-244.
- [20] Id., 266-267.
- [21] Id., 267.
- [22] Id., 17-18.
- [23] Id., 268, 269.
- [24] Id., 272.
- [25] Id., 279.
- [26] Id., 283.
- [27] Id., 288.
- [28] Id., 338.
- [29] *Visayan Surety & Insurance Corporation v. Pascual*, 85 Phil. 779 (1950).
- [30] *Rivera v. Talavera*, Nos. L-16280 & 16805, May 30, 1961, 2 SCRA 272.
- [31] *Pacis v. Commission on Elections*, No. L-29026, August 22, 1969, 29 SCRA 24.
- [32] *Aguasin v. Velasquez*, 88 Phil. 357 (1951).
- [33] *Ayer*, *supra*, 878; emphasis supplied.
- [34] *Supra*, 878.
- [35] *Rollo*, *id.*, 50-51.
- [36] See *Ayer*, *supra*, 867.
- [37] *Rollo*, *id.*, 120.
- [38] *Supra*.

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SEPARATE OPINION

NARVASA, J.:

I regret my inability to give my concurrence to the well written ponencia of my esteemed colleague, Mr. Justice Abraham F. Sarmiento. I feel however that what I take to be the applicable legal and jurisprudential principles suggest conclusions different from those reached by him.

There can, of course, be no quarrel with Mr. Justice Sarmiento's succinct statement¹ of the rule, "firmly settled in this jurisdiction, ** that a claim for damages arising from a wrongful injunction should be filed in the main case with notice to the surety,²⁹" and that ?

" * *. If the lower court's decision, denying injunction, is however appealed to the Appellate Court, and the latter affirms the denial, the application may be commenced in the Appellate Court, which may either direct a remand of the case for reception of evidence or otherwise hear the claim itself.³⁰ So also, it must be commenced before judgment attains finality.³¹ Otherwise, it is barred.* X x x .

It has been held that this procedure is mandatory, and the failure to observe it deprives the aggrieved party the right to proceed against the surety bond.³²

Application of the rule presents no difficulty in a situation where judgment is rendered by the Court of Appeals or this Court on an appeal from the decision on the merits of a Trial Court.

The case at bar, however, treats not of an appeal, but of special civil actions of certiorari instituted in this Court² by parties defendant aggrieved by a preliminary injunction issued by a Regional Trial Court shortly after commencement of suit against them and before presentation of any answer and/or counterclaim. The suit was commenced by Senator Juan Ponce Enrile in the Regional Trial Court at Makati, and was there docketed as Civil Case No. 88-151, and sought to perpetually enjoin the defendants, Ayer Productions Pty. Ltd. and Hal McElroy, from producing a (so-called mini-series) movie, "The Four Day Revolution," it being claimed that that production, undertaken without Enrile's consent and over his objection, was a violation of his constitutional right of privacy.

The special civil actions of certiorari in this Court resulted in a judgment setting aside the Trial Court's order of injunction and permanently enjoining its implementation, and directing the Trial Judge in Civil Case No. 88-413 to dismiss the action itself.¹ The judgment became final, and entry thereof was made on June 20, 1988.

On remand of the case, Civil Case No. 88-151 was dismissed by Order rendered on January 19, 1989 by the Trial Court, acting on a pending motion for such dismissal filed shortly after commencement of the suit by one of the defendants (Ayer Productions Pty., Ltd.).

Before the expiration of 15 days from notice of the Order of dismissal of January 19, 1989, one of the defendants, Ayer Productions -- claiming to have suffered damages by reason of the preliminary injunction earlier issued -- moved, with notice to the surety on the injunction bond, for leave to present evidence on said damages, with a view to holding the surety liable therefor. Senator Enrile opposed the motion, as well as Ayer's attempts to take the depositions of certain witnesses in Australia. After an exchange of pleadings, the Trial Judge ruled, by Order dated June 1, 1989, that Senator Enrile's objections should be overruled and his motion for reconsideration denied; that Ayer Productions' "right ** to file its application and claim for damages under the injunction bond"

should be recognized; and that the application had been timely filed, i.e., before finality of its order of dismissal of January 19, 1989. This is the Order that Senator Enrile now impugns (in G.R. No. 88373).

As Mr. Justice Sarmiento puts it, the "single most important question that (arises is) whether or not the claim for damages was filed before finality of judgment ** (and) (c)orollarily, whose 'judgment' is to be considered, ours or the respondent court's (order of January 19, 1989 dismissing the action, supra)?"

There can be no doubt that this Court's decision of April 29, 1988 in G.R. Nos. 82380 and 82398, was a definite pronouncement that Senator Enrile had no cause of action in Civil Case No. 88-151 of the Makati RTC, which should therefore be dismissed on that account. The decision was res judicata in so far as concerned Senator Enrile's cause of action. But it could not be so considered as regards Senator Enrile's liability to the defendants for damages. That decision could not be construed as absolving Senator Enrile from liability for such damages as might have been caused to Ayer Productions Pty. Ltd (or its co-defendant, Hal McElroy) by his unfounded action and the preliminary injunction wrongly obtained by him. That liability could be claimed and enforced against him independently of that of the surety which posted the injunction bond in his behalf in accordance with Rule 58.

The posting of a bond in connection with a preliminary injunction (or attachment [under Rule 57], or receivership [under Rule 59], or seizure or delivery of personal property [under Rule 60]) does not operate to relieve the party obtaining an injunction from any and all responsibility for the damages that the writ may thereby cause. It merely gives additional protection to the party against whom the injunction is directed. It gives the latter a right of recourse against either the applicant or his surety, or against both.

The liabilities of the party obtaining the injunction and of his surety, although usually spoken of conjointly, are in truth distinct and separate. While those liabilities have a common origin -- according to the main ponencia, "demands for damages customarily shadow actions for injunction" -- they are not identical. The surety's liability is limited by the amount set out in its bond; the principal's is not. The principal's liability must be ascertained at a trial on the merits; the surety's, either at such trial, or at a summary hearing prior to the finality of judgment. If the damages resulting from an injunction wrongfully issued exceed the amount set forth in the injunction bond, the balance may be recovered from the party at whose instance the injunction issued. In fact, it may well happen that the surety becomes bankrupt during the pendency of the action, resulting in its inability to pay for the damages caused by the injunction; this would have no effect on the plaintiff's own liability for those damages.

When entry of the judgment in G.R. Nos. 82380 and 82398 was made on June 20, 1988, Civil Case No. 88-151 was still pending. Indeed, it was not dismissed until January 19, 1989 as above mentioned. Since said judgment did not settle Senator Enrile's liability to the defendants for damages, it does not seem correct to state that it "left nothing for the trial court to adjudicate." At that time, defendant Ayer Productions had, theoretically at least, the option either (1) to file its answer with counterclaim, withdrawing its pending motion to dismiss, and claim from the plaintiff, Senator Enrile, whatever damages it might have suffered by reason of the unfounded suit and the wrongful injunction, or, as was the quicker way, (2) to waive its claim against the plaintiff itself and attempt to hold only the surety liable upon its injunction bond. It would appear that Ayer Productions availed of the latter course of action. It stood on its pending motion to dismiss, thus in effect waiving the filing of a counterclaim against Senator Enrile personally; but it did make known that it was pursuing its claim against the surety upon its bond; and it did file its claim against the surety before the Order of dismissal of January 19, 1989 became final.

The special civil action of certiorari in this Court, docketed as G.R. Nos. 82380 and 82398, was not the proper action in which the matter of the surety's liability upon an injunction bond posted by it in Civil Case No. 88--151 could be ventilated and resolved. The certiorari action was separate from and independent of Civil Case No. 88-151. It dealt chiefly only with the propriety of the issuance of a preliminary injunction in said Civil Case No.

88-151. The issue of liabilities of the parties on the merits in Civil Case No. 88-151, as among themselves, was peculiarly within the Trial Court's competence. It was not an issue in the certiorari action in this Court. The Trial Court acquired jurisdiction over the surety when it voluntarily submitted itself to that Court's authority by posting the injunction bond undertaking to indemnify the parties against whom the injunction was issued for the damages thereby caused to them. This Court, on the other hand, never acquired jurisdiction over the surety. No final judgment or order of the RTC was ever appealed to this Court. No bond was ever filed by the surety in this Court in relation to the Trial Court's injunction. The surety never voluntarily appeared in the certiorari action; and no summons or other process emanating from this Court was ever served on it so as to bring it within this Court's jurisdiction. Upon these premises, it would appear that it is in the action before the Trial Court (Civil Case No. 88-151), rather than in the certiorari suit in this Court, that the damages resulting from the injunction may be recovered, upon application with due notice to the applicant and his surety or sureties, in accordance with Section 20, Rule 57 in relation to Section 9, Rule 58 of the Rules of Court.

I therefore vote to DISMISS the petition, and to sustain the respondent Court's challenged Orders of May 2, and June 1, 1989.

1 At page 12 of his ponencia

"29 Visayan Surety & Insurance Corporation v. Pascual, 85 Phil. 779 (1950)"

"30 Rivera v. Talavera, Nos. L-16280 & 16805, May 30, 1961, 2 SCRA 272"

"31 Pacis v. Commission on Elections, No. L-29026, August 22, 1969, 29 SCRA 24"

* Reference being made to "Section 20, Rule 57, of the Rules of Court, in relation to Section 9, Rule 58"

"32 Aguasin v. Velasquez, 88 Phil. 357 (1951)"

2 Docketed as G.R. Nos. 82380 and 82398

1 This Court's judgment, per Feliciano, J., was promulgated on April 29, 1988 and is now reported in 160 SCRA 861

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