

**ARTURO G. EUDELA, RENATO TUAZON, FRANCISCO S. PANGILINAN
AND LEO GUEVERRERA, PETITIONERS, VS. HON. COURT OF APPEALS,
HON. FILEMON H. MENDOZA, AS PRESIDING JUDGE OF THE
REGIONAL TR...**

G.R. No. 89265. July 17, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

The only issue before us is the validity of the order of the trial court granting the motion for execution pending appeal of its decision, which is now before the Court of Appeals. That order has been affirmed by the respondent court. It is now faulted in this petition for certiorari under Rule 45 of the Rules of Court. The grounds are that there is no valid justification for the order and that the resolution denying the motion for reconsideration did not comply with the constitutional requirements.

The petition is inordinately long, consisting of 47 pages, and so is the petitioners' memorandum, which covers all of 60 pages. The reply to the private respondents' 12-page comment is all of 38 pages. The petitioners forget that they are not arguing the merits of the case but only the order granting execution pending appeal. Counsel should remember that they do a disservice to the administration of justice and contribute to its delay by imposing on the time of the courts with irrelevant discussions that only clutter the record.

This case arose from two complaints filed by the private respondents against the petitioners for injunction, specific performance and damages, in the Regional Trial Court of Quezon City. These complaints were consolidated and, after trial, decided against the petitioners on December 16, 1987. The petitioners were found to have defrauded the private respondents and held solidarily liable to them in the amount of P450,000.00 plus 15% interest and P30,000.00 as attorney's fees.[1]

On motions for reconsideration filed by both parties, the decision was amended on February 1, 1988, to specify the respective amounts due each of the two complainants.[2] On that same date, the petitioners filed a notice of appeal of the original decision. The private respondents received a copy of the amended decision and six days later filed a motion for execution pending appeal. After considering the same and the opposition filed by the petitioners, then Judge Filemon H. Mendoza[3] issued the following order:

ORDER

Acting on the plaintiffs' written offer of evidence, the court resolves to admit Exhibits "A" to "C" in support of their motion for execution pending appeal over the defendants' objection.

In connection therewith, the Court believes that plaintiffs' motion for execution pending appeal has to be granted considering the following material and supervening circumstances to warrant the same, to wit:

- 1) The case at bar had been filed way back on May 26, 1984 and only decided, after a long Court battle, on

December 16, 1987 and February 1, 1988 and in view hereof, the court is uncertain whether the individual private defendants may satisfy the awards granted in favor of the plaintiffs and thus will render this judgment a mere paper judgment, in the event the questioned Decision is affirmed by the higher court.

2) The defendant bank is presently under receivership as they are under the state of insolvency and thus its assets might not be sufficient to pay the plaintiffs as there are many creditors of said banking institution.

3) The fact that defendant Renato Tuazon and his family are already and in all possibility they will stay abroad permanently and real properties are being sold.

4) The court will likewise order the plaintiffs to post a bond to answer for whatever damages the individual defendants might suffer by virtue of the issuance of the writ should the decision in question be reversed by the higher court.

WHEREFORE, upon the filing of a bond in the amount of P100,000.00, let a writ of execution issue against the individual defendants and after which, let the entire records of this case be forwarded to the Honorable Court of Appeals.

SO ORDERED.

This order was challenged by the petitioners on certiorari with the Court of Appeals. On April 10, 1989, the order was sustained.[4] The respondent court held that the petition was premature because at the time of its filing the questioned order and the writ of execution had not yet been issued by the trial court. It added that the posting of the bond was good and sufficient reason for the execution of the decision pending appeal. It also ruled that the lower court had not lost jurisdiction to act on the motion for execution pending appeal despite the notice of appeal filed by the petitioners. The reason was that the records had not yet been elevated to the appellate court.

In *Cuento vs. Pareres*,[5] this Court held that where a judgment is amended, the date of the amendment should be considered the date of the decision in the computation of the period for perfecting the appeal.

In the present case, the notice of the amended decision was received by the private respondents on February 13, 1988, and the motion for execution pending appeal was filed on February 19, 1988, or six days thereafter. Under the present procedure for appeal, it suffices that the notice of appeal is made before the expiration of the 15-day reglementary period. An appeal bond is no longer necessary, and neither is the filing of a record on appeal, except in case of multiple appeals.[6] The mere filing of a notice of appeal does not divest the trial court of its jurisdiction over the case. The court may still take cognizance of the other party's motion for execution pending appeal, as in the instant case, provided such motion is filed within 15 days from notice of the decision to the said party.[7]

The general rule under Sec. 1 of Rule 39 of the Rules of Court is that a judgment can be executed only after it has become final and executory, that is, when it "finally disposes of the action or proceeding." Such execution shall issue as a matter of right upon the expiration of the period for appeal if no appeal has been perfected.

By way of exception, however, execution pending appeal is allowed under Sec. 2 of the same Rule as follows:

Sec. 2. Execution pending appeal. - On motion of the prevailing party with notice to the adverse party, the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein.

Execution pending appeal requires observance of the following requisites: (a) there must be a motion therefor by the prevailing party with notice to the adverse party; (b) there must be a good reason for issuing the writ of execution; and (c) the good reason must be stated in a special order.[8]

The exercise of the power to grant or deny immediate or advance execution is addressed to the sound discretion of the court. However, the existence of good reason is indispensable to the grant of execution pending appeal. Absent any such good reason, the special order of execution must be struck down for having been issued with grave abuse of discretion.

The Court disagrees with the respondent court that the mere filing of a bond is sufficient to warrant execution pending appeal. It is now settled that the filing of a bond cannot by itself alone entitle the private respondents to such a process. Whatever doubts may have been generated by early decisions have been clarified in *Roxas vs. Court of Appeals*,^[9] thus:

It is not intended obviously that execution pending appeal shall issue as a matter of course. "Good reasons," special, important, pressing reasons must exist to justify it; otherwise, instead of an instrument of solicitude and justice, it may well become a tool of oppression and inequity. But to consider the mere posting of a bond a "good reason" would precisely make immediate execution of a judgment pending appeal routinary, the rule rather than the exception. Judgments would be executed immediately, as a matter of course, once rendered, if all that the prevailing party needed to do was to post a bond to answer for damages that might result therefrom. This is a situation, to repeat, neither contemplated nor intended by law.

Even so, the Court finds that the justification given by the trial court in its challenged order constitutes the "good reasons" required by Section 2 of Rule 39 for authorizing execution pending appeal. It is noted that the decision under appeal held the petitioners solidarily liable to the private respondents for what it described as "the fraudulent combination of the defendants against the plaintiffs." Of these defendants, Pioneer Savings and Loan Bank is under receivership and in a state of insolvency;^[10] Renato Tuazon and his family have immigrated and his real properties are being sold;^[11] Leo Guevarra and Arturo Eudela appear to have no registered real properties in their name, and Eudela himself is reportedly at large and facing malversation charges filed by the Bureau of Internal Revenue.^[12] Francisco Pangilinan, the president of the insolvent bank, appears to be the only one who may be able to satisfy the private respondents' claims although he has not denied their allegations that his real properties are heavily mortgaged and that he has sold two of his cars.^[13] Added to these danger signals is the fact that the complaints were filed in the Regional Trial Court of Quezon City as early as 1986, and the private respondents have yet to execute the judgment in their favor because of the petition at bar and the appeal pending in the Court of Appeals. In these circumstances, the Court feels that the trial court did not commit grave abuse of discretion but in fact acted quite judiciously in granting the motion for execution pending appeal.

It is worth noting that the petitioners filed a motion to file a counterbond to prevent the enforcement of the writ of execution pending appeal and that the said motion was granted by the trial court.^[14] The record does not show that the counterbond has been filed to date. This is still another indication of the financial difficulties of the solidary debtors that may diminish if not altogether nullify the private respondents' chances for recovery.

The petitioners have not frontally refuted the finding of the appellate court that the petition brought before it was premature, having been filed before the issuance of the challenged order granting the writ of execution pending appeal. All they have done was cite extensive jurisprudence dealing generally with the right to extraordinary remedies, but they have not shown they were entitled to such remedies when they questioned on May 11, 1988, the order granting the writ of execution issued only on May 30, 1988.

To the question, finally, of whether or not the resolution of the appellate court denying the motion for reconsideration is constitutionally flawed, the answer must also be against the petitioners. The said resolution found "no cogent reason to justify the reversal of our decision of April 10, 1987." This was a sufficient statement of the legal basis required by Article VIII, Sec. 14, of the Constitution. In so saying, the respondent court was in effect sustaining and re-affirming the challenged decision, with the factual findings and legal conclusions

contained therein. There was no need to reproduce all this in the order denying reconsideration.

For all their extraordinary verbiage, the petitioners have failed to show that the trial court committed grave abuse of discretion in issuing the order granting execution pending appeal. The merits of the case may still be threshed out in the appeal, but we are persuaded that in the meantime the private respondents are entitled to the relief they seek.

ACCORDINGLY, the petition is DENIED, with costs against the petitioners. It is so ordered.

Grino-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Orig. Rec., pp.31-39.

[2] Ibid., pp., 40-41.

[3] Retired as Justice of the Court of Appeals.

[4] Francisco, J., ponente with Kapunan and Dayrit, JJ., concurring.

[5] 40 Phil. 346.

[6] Interim Rules, pars. 18 and 19(b).

[7] Universal Far East Corp. vs. Court of Appeals, 131 SCRA 642; Sec. 23 Interim Rules.

[8] Engineering Construction, Inc. vs. National Power Corp., et al., 163 SCRA 9; Valencia vs. Court of Appeals, 184 SCRA 561.

[9] 157 SCRA 390.

[10] Orig. Rec., pp. 66-68.

[11] Ibid., p. 108.

[12] Rollo, pp. 10, 232.

[13] Ibid., pp. 118-121, 232.

[14] Orig. Rec., pp. 148, 149-151.

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