

**ERIBERTO G. VALENCIA, PETITIONER, VS. HON. COURT OF APPEALS,
HON. CARLOS C. OFILADA, PRESIDING JUDGE, REGIONAL TRIAL
COURT, BULACAN, BRANCH XL, THIRD JUDICIAL REGION, DEPUTY
SHE...**

G.R. NO. 89431. April 25, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

For review is the resolution of the Court of Appeals,[1] promulgated on June 20, 1989 in CA-G.R. SP No. 17374, which dismissed the petition for certiorari, prohibition and mandamus filed by petitioner assailing the order of respondent judge granting a writ of execution pending appeal, and the resolution of said respondent court, dated August 9, 1989, denying petitioner's motion for reconsideration of that dismissal.

The record shows that on July 6, 1984, petitioner filed Civil Case No. 7554-M of the Regional Trial Court, Branch XL at Malolos, Bulacan, for the rescission of a lease contract over a 24-hectare fishpond in Paombong, Bulacan, with a prayer for a writ of preliminary mandatory injunction against private respondents.[2] Private respondents filed an answer with a counterclaim for damages.

During the pendency of the case, as found by the trial court, the lease contract expired and the defendants therein peacefully surrendered the fishpond to therein plaintiff. Consequently, in its decision dated November 29, 1988, the court a quo declared that the plaintiff's prayer for rescission of contract had become moot and academic and the only remaining issue for adjudication was the matter of damages claimed by the defendants. On that score, the trial court awarded P100,000.00 as moral damages and P50,000.00 as exemplary damages to each defendant and further ordered plaintiff to pay P30,000.00 as attorney's fees, aside from the costs of suit.[3]

Petitioner claims that defendant Bagtas acknowledged in writing his receipt of a copy of said decision on January 3, 1989. On the other hand, petitioner received a copy of the decision on January 10, 1989, and filed a notice of appeal on January 16, 1989.[4] On the same day, respondent judge issued an order that said notice of appeal be "given due course" and directing that the records of the case be forwarded to the Court of Appeals.[5]

On January 17, 1989, private respondents filed a motion for execution pending appeal, alleging that:

"2. Under Section 2 of Rule 39 of the Rules of Court a writ of execution may be issued to enforce a judgment before the expiration of the period to appeal upon showing good reasons. In the cases of Hacienda Navarra, Inc. -vs- Labrador, et al., 65 Phil. 536; The People's Bank and Trust Company -vs- San Juan, et al., L-7692, April 27, 1955; and Rodriguez -vs- Court of Appeals, May 23, 1953, it has already been held that the filing of the bond by the successful party is a good reason for ordering execution. (Cited in Moran, Rules of Court, Volume 2, 1979 edition, Page 256)

"3. Pursuant to said Section 2 of Rule 39 and the jurisprudence on the matter, defendant is now moving that a writ of execution be issued pending appeal to enforce judgment of this Honorable Court and for this purpose

hereby offers to post a bond in such amount that this Honorable Court may deem adequate to answer for all damages that the plaintiff may suffer by reason of the execution prayed for."[6]

On March 6, 1989, respondent judge, over the opposition filed by herein petitioner, issued an order[7] granting the motion for execution pending appeal, the defendants having filed a bond in the amount of P330,000.00 posted by the Domestic Insurance Company of the Philippines. It also granted a period up to April 27, 1989[8] within which the plaintiff may "file a counter bond to stay the implementation of the Writ of Execution to be issued."

Petitioner's motion for reconsideration thereof was denied by the trial court in its order dated April 6, 1989, on the ground that "an offer of a bond for immediate execution of judgment is a good ground for execution pending appeal" and "execution pending appeal may be granted as long as movant files a good and sufficient surety."[9]

On April 10, 1989, a writ of execution pending appeal was issued by the trial court.[10] Petitioner then filed a petition for certiorari, prohibition and mandamus with the Court of Appeals on the following grounds reproduced in the decision of said respondent court, to wit:

"THAT THE RESPONDENT JUDGE, UPON THE PERFECTION OF THE APPEAL FROM THE DECISION RENDERED ON NOVEMBER 29, 1988 IN CIVIL CASE NO. 7554-M, A COPY THEREOF HAVING BEEN RECEIVED BY BUNYE AND BAGTAS ON JANUARY 3, 1989, AS INDICATED ON THE RECORDS OF SAID CASE, REGIONAL TRIAL COURT BULACAN BRANCH XV (15), THIRD JUDICIAL REGION, LOST JURISDICTION OVER THE CASE (AQUINO V. SANTIAGO, G.R. NO. 56362, 28 MAY 1988) AND ACCORDINGLY, NO LONGER HAD ANY JURISDICTION TO ENTERTAIN BUNYE'S AND BAGTAS' MOTION FOR EXECUTION PENDING APPEAL, LET ALONE TO ISSUE A WRIT OF EXECUTION.

"CONSIDERING THE EXPRESS PROVISIONS OF THE RULE GOVERNING EXECUTION PENDING APPEAL IN RELATION TO THE SETTLED DECISIONAL LAW DEFINING THE ESSENTIAL REQUISITES, STATING THAT MERE FILING OF A BOND DOES NOT SUFFICE ABSENT OF (sic) A SHOWING OF SUPERIOR CIRCUMSTANCES DEMANDING URGENCY WHICH WILL OUTWEIGH THE INJURY OR DAMAGES SHOULD THE LOSING PARTY SECURE A REVERSAL OF THE JUDGMENT, AND RULING THAT A TRIAL COURT EXCEEDS THE LIMITS OF ITS JURISDICTION WHERE IT ORDERS ADVANCE OF (sic) EXECUTION OF CONSEQUENTIAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

"INSTEAD, RESPONDENT JUDGMENT (sic) SHOULD HAVE IMPLEMENTED HIS ORDER GIVING DUE COURSE TO VALENCIA'S APPEAL AND DIRECTING THE RECORDS OF CIVIL CASE NO. 7554-M FORWARDED TO THIS COURT."[11]

As stated at the outset, respondent Court of Appeals dismissed said petition and refused to reconsider such dismissal, eventuating in petitioner's appeal to us. In our resolution of August 28, 1989, we issued a temporary restraining order against respondents.

We are not persuaded by the first and third grounds invoked by petitioner. Under the present procedure, an appeal is perfected upon the expiration of the last day to appeal by any party.[12] It is not perfected on the date the notice of appeal was filed.[13] In the present case, the defendants had up to January 18, 1989 within which to appeal and the plaintiff had up to January 25, 1989. The motion for execution was filed by defendants on January 17, 1989, before the expiration of the last day to appeal by any of the parties.

The fact that plaintiff filed a notice of appeal on January 16, 1989 did not, as already stated, result in the perfection of the appeal. Despite plaintiff's having filed his notice of appeal, defendants, had they been so minded,

could still have availed of the right, up to their last day to appeal which was January 18, 1989, to also file their notice of appeal or to file a motion for new trial or to move for execution as in fact they did, since plaintiff's appeal had not yet been perfected. That respondent judge gave "due course" to plaintiff's notice of appeal, on the same date when it was filed on January 16, 1989, is inconsequential. Both under the former and present procedural governance on appeals, a notice of appeal does not require the approval of the trial court,[14] and its act of giving "due course" thereto, or seeming approval thereof, does not affect the rule as to when an appeal is deemed perfected.

Petitioner's second ground, however, commends itself as a meritorious submission. It is concordant with our present doctrinal pronouncements and must be sustained.

Conformably with Section 2, Rule 39 of the Rules of Court, in order that there may be a discretionary issuance of a writ of execution pending appeal the following requisites must be satisfied: (a) There must be a motion 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.[15]

In the case at bar, the ground relied upon by the trial court in allowing the immediate execution, as stated in its order of March 20, 1989, is the filing of a bond by private respondents. The rule is now settled that the mere filing of a bond by the successful party is not a good reason for ordering execution pending appeal, as clarified in *Roxas vs. Court of Appeals, et al.*,[16] which we are constrained to quote for the benefit of the parties:

"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 the damages that might result therefrom. This is a situation, to repeat, neither contemplated nor intended by law."

The exercise of the power to grant or deny immediate or advance execution is addressed to the sound discretion of the court.[17] However, the existence of good reasons is principally what confers such discretionary power. 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 has had the occasion to explain the importance of such requirement for good reasons, thus:

"x x x If the judgment is executed and, on appeal, the same is reversed, although there are provisions for restitution, oftentimes damages may arise which cannot be fully compensated. Accordingly, execution should be granted only when these considerations are clearly outweighed by superior circumstances demanding urgency and the provision contained in Rule 39, Section 2, requires a statement of these circumstances as a security for their existence."[18]

The courts look with disfavor upon any attempt to execute a judgment which has not acquired a final character. Section 2 of Rule 39 which authorizes the discretionary execution of judgments, being an exception to the general rule, must be restrictively construed. It would not be a sound rule to allow indiscriminately the execution of a money judgment, even if there is a sufficient bond.

Moreover, we likewise further reproduce what we said in *Radio Communications of the Philippines, Inc. (RCPI) vs. Lantin, et al.*[19] that awards for moral and exemplary damages cannot be the subject of execution pending appeal, under the following rationale:

"x x x The execution of any award for moral and exemplary damages is dependent on the outcome of the main

case. Unlike actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of the assignments of errors on appeal. It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced."

Anent the issue of the propriety of a special civil action for certiorari to assail an order for execution pending appeal, we have ruled in *Jaca, et al. vs. Davao Lumber Company, et al.*[20] that:

"x x x Although Section 1, Rule 65 of the Rules of Court provides that the special civil action of certiorari may only be invoked when 'there is no appeal, nor any plain, speedy and adequate remedy in the (ordinary) course of law,' this rule is not without exception. The availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of certiorari where appeal is not an adequate remedy or equally beneficial, speedy and sufficient. It is the inadequacy - not the mere absence - of all other legal remedies and the danger of failure of justice without the writ that usually determines the propriety of certiorari."

Thus, we held therein, and we so reiterate for purposes of the case at bar, that certiorari lies against an order granting execution pending appeal where the same is not founded upon good reasons. Also, the fact that the losing party had appealed from the judgment does not bar the certiorari action filed in respondent court as the appeal could not be an adequate remedy from such premature execution.

That petitioner could have resorted to a supersedeas bond to prevent execution pending appeal, as suggested by the two lower courts, is not to be held against him. The filing of such bond does not entitle him to the suspension of execution as a matter of right.[21] It cannot, therefore, be categorically considered as a plain, speedy and adequate remedy. Hence, no rule requires a losing party so circumstanced to adopt such remedy in lieu or before availment of other remedial options at hand.

Furthermore, a rational interpretation of Section 3, Rule 39 should be that the requirement for a supersedeas bond presupposes that the case presents a presumptively valid occasion for discretionary execution. Otherwise, even if no good reason exists to warrant advance execution, the prevailing party could unjustly compel the losing party to post a supersedeas bond through the simple expedient of filing a motion for, and the trial court improvidently granting, a writ of execution pending appeal although the situation is violative of Section 2, Rule 39. This could not have been the intent of the rule, hence we give our imprimatur to the propriety of petitioner's action for certiorari in respondent court.

WHEREFORE, the petition is granted and the assailed resolutions of respondent Court of Appeals are hereby REVERSED and SET ASIDE. The writ of execution issued by the trial court pursuant to its order of March 20, 1989 is hereby ANNULLED. The temporary restraining order heretofore issued against the said order and writ is hereby made permanent.

SO ORDERED.

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

[1] Per Justice Jose C. Campos, Jr., with Justices Emeterio C. Cui and Nicolas P. Lapeña, Jr., concurring.

[2] Rollo, 63-67.

[3] Ibid., 98-103.

[4] Petitioner's Memorandum, 7; Rollo, 183.

[5] Rollo, 62.

[6] Ibid., 105-106.

[7] Ibid., 113.

[8] The copy of the order in the rollo of this case shows that this date is encircled, with a handwritten superimposition reading "March 27."

[9] Rollo, CA-G.R. SP No. 17374, 86.

[10] Rollo, 116.

[11] Ibid., 22-23.

[12] Sec. 23, Interim Rules and Guidelines.

[13] Yabut, et al. vs. Intermediate Appellate Court, et al., 142 SCRA 124 (1986).

[14] Aquino vs. Santiago, et al., 161 SCRA 570 (1988).

[15] Engineering Construction, Inc. vs. National Power Corporation, et al. and Manila Electric Company vs. Court of Appeals, et al., 163 SCRA 9 (1988).

[16] 157 SCRA 370 (1988).

[17] Santos vs. Mojica, et al. 26 SCRA 607 (1969); Engineering Construction, Inc. vs. National Power Corporation, et al., supra.

[18] Philippine National Bank vs. Puno, et al., G.R. No. 76018, February 10, 1989, citing Aguilos vs. Barrios, et al., 72 Phil. 285 (1941).

[19] 134 SCRA 395 (1985).

[20] 113 SCRA 107 (1982).

[21] City of Manila vs. Court of Appeals, et al. 72 SCRA 98 (1976).

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