

LILIA T. ONG, PETITIONER, VS. COURT OF APPEALS AND VIRGINIA SARMIENTO, RESPONDENTS.

G.R. No. 92241. October 17, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition seeks to review on certiorari, the decision of the Court of Appeals, upholding the writ of execution pending appeal issued by the trial judge.

The facts of the case are stated in the Court of Appeals decision.

Private respondent Virginia Sarmiento (Sarmiento) sued Eligio Dee (Dee) for the collection of the amount of P121,759.00 representing the value of construction materials allegedly obtained by him, for attorney's fees and expenses of litigation. Dee had earlier issued checks in the total amount of P40,000.00, but these subsequently bounced for insufficiency of funds. Sarmiento also prayed for the issuance of a writ of preliminary attachment.

The complaint was subsequently amended to include petitioner Lilia Ong (Ong) as party-defendant on the allegation that she and Eligio Dee had issued the checks and that the construction materials were delivered to the piggery farm of Ong.

A writ of attachment was issued by the trial judge and served upon Ong, resulting in the levy of certain hogs valued at P40,000.00. The court later issued a temporary restraining order (TRO) against further enforcement of the writ, pending resolution of a motion to quash filed by Ong.

On November 4, 1988, the trial judge rendered a decision, which was received by Ong on November 29, 1988 (p. 91, Rollo) finding Dee and Ong jointly and severally liable for the sum of P121,759.00.

Dee and Ong filed a notice of appeal on December 2, 1988.

On December 12, 1988, Sarmiento filed a "Motion for Immediate Execution Pending Appeal," dated December 9, 1988, alleging that the appeal is dilatory and frivolous.

Ong opposed the motion claiming that the trial court no longer had any jurisdiction to act on said motion since the appeal had clearly been perfected, and besides, there was already a writ of attachment to secure the court's judgment.

On January 26, 1989, the trial judge issued an order granting Sarmiento's motion for execution pending appeal, conditioned upon a bond the amount of P121,759. 00.

On February 2, 1989, Ong filed a petition for certiorari and prohibition with injunction with the Court of Appeals. The appellate court dismissed it on October 18, 1989.

Hence this petition questioning the validity of the appellate court's ruling upholding the writ of execution pending appeal.

In upholding the writ of execution pending appeal, the appellate court observed that the trial judge had, prior to its issuance, duly noted the presence of the circumstances laid down by Section 2, Rule 39 of the Revised Rules of Court, allowing execution as an exception, or pending appeal, even before final judgment; viz:

"x x x.

"a. x x x motion by the prevailing party with notice to the adverse party;

"b. x x x good reasons for issuing execution; and

"c. x x x the good reasons be stated in a Special Order (Lao v. Mencias, G.R. No. L-23554, November 25, 1967; 21 SCRA 1021) (See p. 92, Rollo, CA decision).

Likewise, it accepted as "good reasons" Sarmiento's statements in support of her motion, that "the appeal of said defendants is clearly and obviously frivolous and dilatory in nature, considering that they have not adduced substantial valid and meritorious defenses against the plaintiffs." (p. 92, Rollo, CA decision) The appellate court also ruled that "the filing of the bond required by the court constitutes special ground authorizing the court to issue writ of execution pending appeal:

"x x x.

"x x x the determination of the sufficiency or insufficiency of the special reasons rests upon the sound discretion of the court issuing the writ of execution pending appeal. The appellate court cannot interfere with the exercise of this discretion unless it appears that there had been a grave abuse or excess of authority in doing so (Buenaventura v. Peña, 78 Phil. 795; Naredo v. Yatco, 80 Phil. 220) or conditions have so far changed since the order was issued as to require the intervention of the appella(te) court (Buenaventura v. Peña, supra). In the present case, this Court finds no abuse of discretion nor a change of condition since the order was issued as to require the intervention of this court (CA decision, pp. 87-94, Rollo, at p. 92)

The appellate court also disagreed with Ong's claim that upon filing of her notice of appeal, the trial court had lost jurisdiction to act on Sarmiento's motion for execution pending appeal, declaring that the mere filing of appellant's notice of appeal does not divest the trial court of jurisdiction over the case, since "an appeal is not perfected on the date the notice of appeal was filed but on the expiration of the last day to appeal," citing the cases of Montelibano v. Bacolod Murcia Milling Co., Inc., G.R. No. 69800, May 5, 1985, 136 SCRA 294 and Yabut v. IAC, G.R. No. 69208, May 28, 1986, 142 SCRA 124.

Thus, the appellate court observed:

"x x x when petitioner received a copy of the decision on November 29, 1988, an appeal thereof was deemed perfected on December 14, 1988, the expiration of the last day to appeal by any party. When the private respondent filed her motion for execution pending appeal on December 12, 1988, it is very clear that the appeal was not yet perfected. Considering then that the motion was filed well before the perfection of the petitioner's appeal, the respondent Court had jurisdiction to act on the motion." (CA decision, p. 91, Rollo).

We agree with the Court of Appeals.

Section 23 of the Interim Rules (implementing the 1981 Judiciary Act, BP No. 129) promulgated on January 11, 1983, provides:

"23. Perfection of appeal. - In cases where appeal is taken the perfection of the appeal shall be upon the expiration of the last day to appeal by any party."

The Interim Rules brought about a change in the procedure for appeal by dispensing with the appeal bond, as well as the record on appeal (except in cases of multiple appeals). As a result, what determines perfection of the appeal

is the expiration of the reglementary period for appeal (Universal Far East Corp. v. Court of Appeals, G.R. No. 64931, August 31, 1984, 131 SCRA 642; Montelibano v. Bacolod-Murcia Milling Co., Inc., supra; Yabut v. IAC, supra; Sonida Industries, Inc. v. Wasan, Sr., G.R. No. 76342, December 4, 1989, 179 SCRA 763).

The mere filing of appellant's 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 new trial under Rule 37, if he should opt to file one, or, as in the instant case, a motion for execution pending appeal, provided of course, such motions are filed within 15 days from said party's notice of the decision. What is crucial to determine is the timeliness of the filing of the motion for execution pending appeal (Sonida Industries, Inc. v. Wasan, Sr., supra).

On the other hand, We do not agree that the writ of execution pending appeal was premised on, or justified by good reasons, i.e. a) that the appeal was frivolous and dilatory, and b) sufficient bond required by the court had been posted.

In the case of Roxas v. Court of Appeals (G.R. No. L-56960, January 28, 1988, 157 SCRA 370), We stated:

"Execution pending appeal in accordance with Section 2 of Rule 39 is, of course, the exception. Normally, execution of a judgment should not be had until and unless it has become final and executory -- i.e., the right of appeal has been renounced or waived, the period for appeal has lapsed without an appeal having been taken, or appeal having been taken, the appeal has been resolved and the records of the case have been returned to the court of origin -- in which case, execution 'shall issue as a matter of right.' (Sec. 1, Rule 39 in relation to Sec. 11, Rule 51)

"On the other hand, when the period of appeal has not expired, execution of the judgment should not be allowed, save only if there be good reasons therefor, in the court's discretion. 'As provided in Section 2, Rule 39 of the x x Rules x x, the existence of good reasons is what confers discretionary power on a Court x x to issue a writ of execution pending appeal. The reasons allowing execution must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment.' (Jaca v. Lumber Co., G.R. No. L-25771, March 29, 1982; 113 SCRA 107, 121)

"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.'" (Emphasis ours)

Where the reason given is that an appeal is frivolous and dilatory, execution pending appeal cannot be justified. It is not proper for the trial court to find that an appeal is frivolous and consequently to disapprove it since the disallowance of an appeal by said court constitutes a deprivation of the right to appeal. The authority to disapprove an appeal rightfully pertains to the appellate court (Heirs of Gavino Sabenal v. Hon. Benjamin Gorospe, G.R. No. 50168, September 30, 1988, 166 SCRA 145).

Having declared that the trial judge may not rightfully determine that an appeal from its own decision is frivolous or dilatory, it is clear that the writ of execution pending appeal would be premised solely on the bond posted by Sarmiento. The next question to be resolved then is whether or not the filing of a bond, without anything more, can be considered a good reason to justify immediate execution under Section 2 of Rule 39.

In the case of Roxas v. Court of Appeals, supra, We had occasion to address this issue directly. We clarified the doctrine as follows:

"x x x 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.

"There are, to be sure, statements in some of this Court's decisions which do generate the perception that 'the filing of the bond by the successful party is a good reason for ordering execution. Petitioner Roxas herself cites *City of Manila v. C.A.* to support her postulation of this effect. From that case -- which adverts to *Hacienda Navarra, Inc. v. Labrador, et al.* (65 Phil. 531) and *People's Bank and Trust Co. etc. v. San Jose, et al.* (96 Phil. 895) -- she quotes the following:

'From what has been said, it is thus clear that the Court of Appeals erred in not considering the city's posting to a bond as [heirs of the estate of a deceased person under administra] (sic) good and special reason to justify execution pending appeal.'

"But sight should not be lost of the factual context in which the quoted statement was made. In that case, the City of Manila had succeeded in obtaining judgment for the recovery of a piece of land it had lent to the Metropolitan Theater, and immediate execution became imperative because the theater was insolvent and there was imminent danger of its creditor's foreclosing a mortgage on the property. This combination of circumstances was the dominant consideration which impelled the grant of immediate execution, the requirement of a bond having been imposed merely as an additional factor, no doubt for the protection of the defendant's creditor. In *Hacienda Navarra*, there was a special reason for immediate execution, in addition to the posting of a bond. There, the Court said that 'Inasmuch as the purpose in depositing the money is to insure its receipts by the party obtaining a favorable judgment in the above cited civil case, the filing of a sufficient bond for the delivery of said proceeds secures said receipt.' And in *People's Bank*, the order involved in the case decreed payment of allowances for the support of one of the heirs of the estate of a deceased person under administration, and the urgent need of the party entitled thereto was the paramount consideration for immediate execution, not the filing of a bond." (emphasis ours)

Based on the foregoing discussions, We have no alternative but to strike down the writ of execution pending appeal for lack of "good reasons" to justify its issuance.

The other issues raised by Ong on her alleged solidary liability are not proper for discussion in this petition for certiorari, being errors of judgment by the trial court, correctible by appeal and which has been already undertaken by Ong.

ACCORDINGLY, the petition is GRANTED. The Order dated January 26, 1989 granting the issuance of a writ of execution pending appeal is hereby SET ASIDE and NULLIFIED, having been issued in grave abuse of discretion. Costs against private respondent.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Griño-Aquino, JJ., concur.

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