

JAO & COMPANY, INC., PETITIONER, VS. HON. COURT OF APPEALS, HON. ROSALIO DE LA ROSA, AS PRESIDING JUDGE OF BR. 51, REGIONAL TRIAL COURT OF MANILA, THE SHERIFF OF THE CITY OF MAN...

G.R. No. 93233. December 19, 1995

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Due to the non-appearance of defendant (the petitioner herein) Jao & Company, Inc., during the hearing on the merits, the Regional Trial Court of Manila, Branch 51 — upon motion of herein private respondent Top Service, Inc. — issued an order dated April 14, 1989 declaring said petitioner in default and allowed evidence to be presented ex-parte. The petitioner however filed an answer. Thereafter, on May 26, 1989, the trial court rendered a decision ordering petitioner Jao to pay private respondent Top Service P150,920.00 representing agreed rentals with 12% interest per annum from date of filing of the suit, attorney's fees of P5,000.00, plus costs.

After receipt of the decision, petitioner filed on November 10, 1989 a motion for reconsideration and/or to set aside decision (Rollo, p. 9). Pending resolution of the motion, respondent judge restrained the sheriff from holding an auction sale of two barges he earlier levied on. Thereafter, on January 10, 1990, the trial court denied the said motion and lifted the restraining order against the auction sale. On January 12, 1990, the sheriff of Manila gave petitioner a Notice of Resetting of Execution Sale of Personal Properties on January 15, 1990.

On January 15, 1990, petitioner filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. No. SP-19680, contesting the jurisdiction of the trial court. The following day, January 16, 1990, the respondent appellate court issued a temporary restraining order to stop the sheriff from conducting the auction sale. However, it appears that the auction took place one day before, on January 15, 1990, although the petitioner contends that no such sale actually took place. The barges in question were purchased during the auction by respondent Henry Castillo, who later sold them to Quintin Go, who in turn sold them to Carlito Abadilla. On March 13, 1990, respondent Court of Appeals promulgated a Resolution denying petitioner's motion for a writ of preliminary injunction, the dispositive portion of which reads:

"ACCORDINGLY, the prayer for the issuance of the writ of preliminary injunction is hereby DENIED for lack of merit." (Rollo, p. 86)

The respondent Court held that the motion has become moot and academic because the properties have already been sold to third parties and because the decision of the trial court dated May 26, 1989 "has long become final and executory on the basis that petitioner failed to appeal x x x." Upon denial of its motion for reconsideration via the Court of Appeals' Resolution dated April 25, 1990, petitioner brought the Supreme Court the instant petition for certiorari and mandamus under Rule 65, inter alia, to nullify the said Resolutions of the respondent Court dated March 13, 1990 and April 25, 1990 and to command the said Court to declare as void the auction sale of January 15, 1990, for grave abuse of discretion and/or lack/excess of jurisdiction.

In their respective Comments, private respondents argued that the trial court's decision has become final and executory and that the barges have been bought and resold to buyers in good faith, and that at any rate, the parties have another pending case for replevin of said properties pending in Branch I of the Regional Trial Court of Manila. In its Consolidated Reply, petitioner averred that the decision could not become final because the trial court "improperly declared defendant-petitioner in default and unjustifiably allowed private respondent-plaintiff to present its evidence ex-parte" (Rollo, p. 203) because it (petitioner) was not given notice of the order of April 14, 1989 declaring it in default and of the decision of May 26, 1989. It also assailed the respondent Court's suggestion that petitioner's remedy is a "separate action for the nullification of the sale or such other remedies or process sanctioned by accepted rules and procedure." It also contended that the case for preliminary injunction has not become moot and academic by the auction sale of the subject barges, citing the factual circumstances why, in its view, the said sale on January 15, 1990 did not actually take place. In their Rejoinder, private respondents stated that petitioner's counsel had withdrawn his appearance in the trial court and left no forwarding address. Hence, no notice of the said order of default and the decision could be given it. At any rate, petitioner's remedy, they concluded, was timely appeal, which petitioner failed to perfect.

Deliberating on the petition together with the various other submissions of the parties, the Court believes that, in sum and stripped of non-essentials, these various issues and questions submitted by the parties could be summarized in two:

- (1) Did the respondent Court of Appeals gravely abuse its discretion in refusing to issue a writ of preliminary injunction? and,
- (2) Has the decision of the trial court, promulgated on May 26, 1989, become final?

On the first question, it must be stressed at the outset that the grant or denial of the writ of preliminary injunction rests upon the sound discretion of the court (*Avila vs. Tapucar*, G.R. No. 45947, 201 SCRA 148 [1991], citing *Belisle Investment & Finance Co., Inc. vs. State Investment House, Inc.*, 151 SCRA 630 [1987]). And in evaluating whether to issue it or not, the court is called upon to be careful and circumspect, "with the caveat that extreme caution be observed in the exercise of such discretion" to prevent a denial of procedural due process and avoid causing "irreparable prejudice to a party" (*Bataclan vs. Court of Appeals*, G.R. No. 78148, 175 SCRA 764 [1989]). Its main purpose is to preserve the status quo and not to grant the very subject of the petition on the merits. The Supreme Court in *Unciano Paramedical College, Inc. vs. Court of Appeals*[1], quoting with approval from the case of *Capitol Medical Center, Inc., et al. vs. Court of Appeals, et al.*[2] stated:

"The sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard. The status quo is the last actual peaceable uncontested status which preceded the controversy (*Rodulfa vs. Alfonso*, 76 Phil. 225). It may only be resorted to by a litigant for the preservation or protection of his rights or interests and for no other purpose during the pendency of the principal action (*Calo vs. Roldan*, 76 Phil. 445). It should only be granted if the party asking for it is clearly entitled thereto (*Climaco vs. Macaraeg*, 4 SCRA 930; *Subido vs. Gopengco*, 27 SCRA 455; *Police Commission vs. Bello*, 37 SCRA 230)."

In the instant case, the respondent Court promptly issued a temporary restraining order one day after an application therefor was filed by the petitioner. From this, it can be inferred that said Court was alert and sensitive to the need for immediate action. However, as the sale took place the day before, i.e., on January 15, 1990, the TRO was useless in preventing/stopping the act complained of.

This being the case, it is reasonable to expect that even if the said Court was minded to issue the Writ, it would have been also *functus officio*, since a preventive writ can not be used to restore the parties' status ante bellum

(vide, *Unciano Paramedical College, Inc. vs. Court of Appeals, supra.*), particularly because the subject properties were already in the possession of persons who were not parties in the proceedings before said Court. As to petitioner's contention that the auction sale and the subsequent sale to third parties were fraudulent, we cannot disagree with the finding of the respondent Court that the allegation involves "factual issues" which require "trial on the merits", and which cannot be decided on the mere say-so of the parties in their pleadings.

On the second issue, it is well-settled that, under ordinary circumstances, the proper remedy of a party wrongly declared in default is either to appeal from the judgment by default or to file a petition for relief from judgment, and not certiorari (*Pacete vs. Carriaga, Jr.*, 231 SCRA 321 [1994]). A default judgment is an adjudication on the merits and is, thus, appealable. Since appeal is the proper remedy, the extraordinary writ of certiorari will not lie.

Petitioner contends that it could not be bound by the questioned Order of April 14, 1989 declaring it in default and the subsequent Decision of May 20, 1989 because it did not receive copies thereof. Respondents counter that such non-service was due to petitioner's fault in not furnishing the trial court with its "forwarding address" after its counsel withdrew his appearance. This Court is not in a position to settle this issue of fact — as indeed the Supreme Court does not decide such questions.

But it is not disputed that after receipt of the decision, petitioner filed a motion for reconsideration. Thus, whatever defects — if indeed there was any — may have been committed by the trial court in failing to give constructive notice of its erroneous default order was cured by petitioner's voluntary filing of the said motion for reconsideration. Upon denial thereof, petitioner should have appealed. But instead of doing that, it opted for the wrong remedy of certiorari.

WHEREFORE, the petition is DISMISSED as petitioner failed to show that respondent Court of Appeals acted with grave abuse of discretion and/or lack of jurisdiction. Costs against petitioner.

SO ORDERED.

Romero, (Acting Chairperson), Melo, and Vitug, JJ., concur.

[1] G.R. No. 100335, 221 SCRA 285 (1993).

[2] G.R. No. 82499, 178 SCRA 493 (1989).

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