

**MB FINANCE CORPORATION, FORMERLY KNOWN AS
JARDINE-MANILA FINANCE, INC., PETITIONER, VS. HON. BERNARD P.
ABESAMIS, JUDGE, RTC, QC, BRANCH 85, HUM-BERTO A. JAMBORA,
ANNABELLE JAMB...**

G.R. No. 93875. March 22, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

Sought to be nullified in the special civil action of certiorari at bar is the Order of respondent Judge issued on June 18, 1990 in Civil Case No. Q-90-5520, denying the motion to dismiss filed by petitioner (as defendant in the action) which was grounded on bar by prior judgment and failure of the complaint to state a cause of action. To place the issues in proper perspective, a recitation of the antecedents, which are not disputed, will first be made.

Humberto Jambora, Annabelle Jambora-Tale and Gerard M. Jambora were the defendants in a replevin action instituted in the then Court of First Instance at Pasig, Rizal by Jardine-Manila Finance, Inc. (now, MB Finance Corporation). The action was for the recovery of an automobile the purchase price of which, stipulated to be payable on installments, had not been paid by the defendants. It was docketed as Case No. 32056.

Despite the issuance of a writ of seizure by the Trial Court, and two (2) subsequent orders addressed to the defendants for the surrender of the automobile in question to the sheriff, the Jamboras obdurately retained possession thereof. In fact they sought to nullify said orders in a certiorari suit filed by them in the Court of Appeals, docketed as CA G.R. SP No. 09809. Their petition was however dismissed by said Court on July 9, 1980, for lack of merit.

Later, judgment was rendered in Civil Case No. 32056 by Branch 20 of the then Court of First Instance of Rizal at Pasig,[1] the dispositive part of which reads as follows:

"In view of the fact that the plaintiff failed to recover the motor vehicle in question from the defendants who refused to surrender the same notwithstanding the orders of this court dated May 11, 1979 and September 13, 1979, plaintiff is entitled to the alternative relief prayed for in the complaint.

WHEREFORE, judgment is hereby rendered ordering the defendants to pay jointly and severally to plaintiff the principal sum of Twenty Six Thousand Six Hundred Seventy-One Pesos and Twenty Centavos (P26,671.20) with interest thereon at the rate of 14% per annum from September 4, 1978 until fully paid, liquidated damages in the sum equivalent to five per cent (5%) of the principal due and unpaid, attorney's fee in the sum equivalent to fifteen per cent (15%) of the amount due, the sum of One Thousand Sixty Pesos and Fifty Centavos (P1,060.50) representing judicial expenses including the replevin and costs of suit."

The Jamboras appealed to the Court of Appeals, their appeal being docketed as CA G.R. No. 68485, but failed in their bid to obtain reversal of the Trial Court's judgment. The decision of the Appellate Tribunal, promulgated on November 29, 1983, affirmed that of the Trial Court in toto.

The Jamboras then came up to this Court for relief. Again they failed. Their petition for review on certiorari, docketed as G.R. No. 66878, was dismissed on account of tardiness by Resolution dated September 17, 1984.

Prior to the perfection of the Jamboras' appeal to the Court of Appeals, Jardine-Manila Finance, Inc. (hereafter, simply Jardine) filed a motion for immediate execution, which the Trial Court granted on October 24, 1980. This order, too, was challenged by the Jamboras. They filed a petition for certiorari and prohibition with the Court of Appeals. Again, their petition was found to be without merit and was accordingly dismissed on April 8, 1981.

On December 17, 1981, on the strength of a First Alias Writ of Execution, the Sheriff of Quezon City levied on property of the Jamboras located at No. 2 Natib Street, Cubao, Quezon City, covered by Transfer Certificate of Title No. 267026. However, it was not until August 30, 1985 that, pursuant to a Second Alias Writ of Execution, the public sale of the property was scheduled. The Jamboras moved to quash the writ, contending that Jardine had no legal capacity to enforce the judgment because it had already been dissolved (a new corporation having taken its place, MB Finance Corporation). The Court denied their motion by Order dated July 29, 1985. The execution sale was eventually concluded on October 17, 1985. Jardine's bid of P82,537.45 was deemed the highest and a certificate of sale was accordingly executed in its favor by the Sheriff of Quezon City on that day.

The one-year period of redemption granted by law to the Jamboras expired without any redemption being attempted by the latter. Consequently, the Quezon City Sheriff drew up and delivered to Jardine an "Officer's Final Deed of Sale" dated November 18, 1987.

Jardine then filed a motion dated December 3, 1987 with the Regional Trial Court at Pasig (which had rendered the original judgment) praying for the cancellation of the Jamboras' transfer certificate of title (No. 267026) and the issuance of a new one to it, and for the issuance of a writ of possession. The motion was opposed by the Jamboras on the ground that there had been no valid levy and sale, and Jardine no longer had corporate personality and existence. On April 12, 1988, the Trial Court issued an order granting only the writ of possession but not the issuance of new title which matter, in its view, fell within the competence of the Court of Quezon City where the property is located.

The Jamboras filed a succession of motions to prevent completion of execution: a motion dated April 25, 1988 for reconsideration of the Order of April 12, 1988; a "Motion to Quash or Stay Writ of Possession" dated March 4, 1989; a "Motion to File Bond to Stay Enforcement of the Order and Writ of Possession" dated April 8, 1989; and a "Motion for Reconsideration and/or Recall of Court Order Granting Writ of possession" dated September 7, 1989. All the motions were denied by the Trial Court, the last of such denials being set forth in an Order dated September 8, 1989.

Once more, the Jamboras went to the Court of Appeals. They sued for a writ of certiorari and prohibition. In that proceeding, docketed as CA-G.R. No. 18700, they contended that

- 1) the writ of possession against their real property was not proper on the basis of a chattel mortgage of a motor vehicle belonging to Humberto Jambora, and because said real property had never been offered as collateral;
- 2) Jardine had lost capacity to sue after its dissolution and transfer of rights to MB Finance Corporation; and
- 3) Annabelle Jambora-Tale and Gerard M. Jambora were not personally notified of the execution sale of the realty owned by them in common with Humberto Jambora.

Their petition was given short shrift. It was dismissed by the Court of Appeals by Decision dated October 23, 1989.[2] And their motion for reconsideration was denied by Resolution dated November 28, 1989.

The Jamboras took an appeal to this Court. Their appeal was docketed as G.R. No. 91166. Again they were

rebuffed. By this Court's Resolution dated February 7, 1990,[3] their petition for review on certiorari was "NOTED without action" because their motion for its admission was "DENIED for having been filed out of time." Their motion for reconsideration was denied with finality in the Resolution of April 16, 1990.

One would suppose that the story would have ended at this point. Incredibly, still another chapter was opened by the Jamboras. On May 21, 1990, they filed with the Regional Trial Court at Quezon City an action against MB Finance Corporation and the City Sheriff of Quezon City, docketed as Civil Case No. Q-90-5520. The complaint recited the antecedents relative to their mortgage of a vehicle to guarantee a principal obligation, their failure to pay the obligation through fortuitous cause, their unsuccessful attempt to negotiate a settlement, and the filing of the replevin suit. The complaint further alleged that the defendants were seeking to take the Jamboras' real property at No. 2 Natib Street, although it had never been offered as collateral to guarantee any obligation and its value was considerably in excess of the amount of said obligation.

The defendants promptly filed a motion, dated June 4, 1990, to dismiss the complaint and to cite the plaintiffs for contempt of court. They argued that "all questions on the ownership of defendant MB Finance Corporation over the property covered by TCT No. 267026 and the right to take its possession have already been settled and decided with finality" by the judgments, orders and resolutions rendered by the Trial Court, the Court of Appeals, and this Court in relation to or in connection with the replevin suit, Case No. 32056. They further alleged that the plaintiffs had "deliberately misled" the Court and "committed falsehood" by omitting or falsely stating the material facts. An opposition was filed by the Jamboras under date of June 9, 1990.

In an Order dated June 18, 1990 the Trial Court denied the motion, required the defendants to file answer within 10 days, and set the application for preliminary injunction for hearing on June 22, 1990.

On June 29, 1990, MB Finance Corporation commenced the special civil action of certiorari at bar, claiming that the Trial Judge had "acted with grave abuse of discretion and/or without or in excess of jurisdiction in issuing the Order dated June 18, 1990."

The Jamboras, for their part, theorize that the action is without basis because the Order of June 18, 1990 is "interlocutory and not appealable," no motion for reconsideration had been filed prior to its institution; and in any case, no grave abuse of discretion may be laid at the Judge's door. They submit "that what the petitioners should have done as defendants a quo was to file its answer to the complaint for quieting of title etc., * * if only to allow the court a quo to proceed with the trial of the case * * (and if) an adverse decision is rendered against the petitioners, the proper remedy is to appeal and assign as errors all that they are now claiming about."

There can be no question that all the defenses and objections as regards the Jamboras' indebtedness to Jardine, and as regards the levy on execution and public sale of their real property were put at issue in, and passed upon and resolved in the several proceedings in which said parties were involved previous to their institution of their latest action, Civil Case No. Q-90-5520 of the Regional Trial Court of Quezon City. Those prior actions and proceedings numbered no less than seven (7); one (1) original action in the Court of First Instance; four (4) proceedings in the Court of Appeals; and two (2) in the Supreme Court. More particularly, the matter of their default in the payment of the price of a car purchased by them; their corresponding obligation to surrender the car to Jardine (MB Finance) as chattel mortgagee thereof; the validity of the enforcement of the executory judgment rendered adversely to the Jamboras against real property belonging to them; the competence of Jardine to enforce the judgment in its favor in view of its change of name to MB Finance Corporation; the regularity of the execution sale of the Jamboras' real property levied on in execution, and the propriety of the writ of possession, all these were presented before, and squarely resolved by, the Courts in the cases above surveyed.

Now, clear and explicit is the principle that final judgments lay to rest not only issues expressly raised and dealt

with therein, but also those which could have been, but were not so raised in the actions or proceedings in which the judgments were rendered. Section 49 (b), Rule 39 of the Rules of Court declares, quite categorically, that a final and executory judgment or order in an action or proceeding in personam "is, with respect to the matter directly adjudged, or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity." [4] This is the well known doctrine of *res adjudicata*, pursuant to which, as this Court has ruled more than once, a final judgment on the merits "constitutes an absolute bar to a subsequent action, and is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." [5] Stated otherwise, a final judgment on the merits is conclusive not only as to the issues actually determined, but also "as to every other matter which the parties might have litigated and have had decided as incident to or essentially connected with the subject matter of the litigation, and every matter coming within the legitimate purview of the original action, both in respect to matters of claim and of defense." [6] Those issues, raised or not, may not therefore be litigated anew.

But this is what precisely what the Jamboras are now attempting to do, in Civil Case No. Q-90-5520 instituted by them in the Regional Trial Court of Quezon City. Plainly, they are guilty of violating the *res judicata* doctrine, and the rule against forum shopping, in that they seek to obtain remedies in an action in one court which had already been solicited and, what is worse, already refused, in other actions and proceedings in other tribunals, including this Court. They are guilty, as well, of attempting to foist on the courts demonstrably misleading and egregiously erroneous arguments, such as the supposed loss of capacity of a judgment creditor to enforce a judgment in its favor merely because it had changed its corporate name; or that a judgment for money is enforceable only against personal property given as security for the debt in question, and not against other real or personal property of the judgment debtor, regardless of the sufficiency of the original collateral, or its disappearance. Equally clear are the sanctions which their actuations merit: the summary dismissal of all their actions and proceedings, without prejudice to the taking of appropriate administrative action or contempt proceeding against the erring counsel or party. [7]

The private respondents' defenses to the action at bar -- that the respondent Court's Order of June 18, 1990, being interlocutory apart from not having been subject of a motion for reconsideration, may not properly be challenged by a certiorari action -- may be quickly disposed of by mere advertence to two fundamental and familiar axioms. First. The general rule that an erroneous order denying a motion to dismiss is interlocutory and should not be corrected by certiorari but by appeal, admits as an exception a situation where an appeal would not prove to be a speedy and adequate remedy, as when an appeal would not promptly relieve petitioners from the injurious effects of the patently mistaken order maintaining respondent's baseless action and compelling petitioners needlessly to go through a protracted trial and clogging the court dockets by one more futile case. [8] Second. The general rule that before filing a petition for certiorari, the attention of the lower court should first be called to its supposed error and its correction asked for, and that, if this is not done, the writ shall be denied, does not apply where the matter and issue involved have been squarely raised and argued before, passed upon and resolved, allegedly with grave abuse of discretion, by said lower court. [9]

WHEREFORE, the petition is granted; the writ of certiorari prayed for is issued NULLIFYING AND SETTING ASIDE the respondent Court's Order dated June 18, 1990 in Civil Case No. Q--90-5520 -- denying the motion to dismiss filed by the defendants therein, MB Finance Corporation (formerly, Jardine-Manila Finance, Inc.) and the City Sheriff of Quezon City, and requiring said defendants to file answer within 10 days, and setting the application for preliminary injunction for hearing; and the respondent Court is hereby DIRECTED to take no

further action on Civil Case No. Q-90-5520 except to DISMISS the same. Within ten (10) days from notice of this judgment, Atty. Humberto A. Jambora is ORDERED to show cause why no disciplinary sanction should be imposed on him for bringing an action in the Regional Trial Court of Quezon City to obtain remedies which had already been solicited and, what is worse, already refused, in other actions and proceedings in other tribunals, including this Court. Costs against private respondents.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Now Branch 159 of the Regional Trial Court at Pasig; the judgment, dated July 31, 1980, was written by Hon. Celso L. Magsino (later, Associate Justice of the Court of Appeals)

[2] The Decision was written for the Eleventh Division by Kalalo, J., with whom concurred Pronove, Jr. and Santiago, JJ.

[3] The case was docketed as G.R. No. 91166 (Humberto A. Jambora, et al. v. Court of Appeals, et al.) and assigned to the Second Division of this Court

[4] Italics supplied

[5] SEE Peñalosa v. Tuason, 22 Phil. 303; Chua Tan v. del Rosario, 57 Phil. 411, cited in Feria, Civil Procedure, 1969 ed., pp. 631-632

[6] SEE Moran, Comments on the Rules, 1979 ed., Vol. 2, p. 359, citing Mapa III v. Guanzon, 77 SCRA 398 (1977); italics supplied

[7] Pacquing v. C.A., 115 SCRA 117; Vda. de Guanzon v. Yrad, Jr., 133 SCRA 727; Minister of Natural Resources v. Heirs of Orval Hughes, 155 SCRA 566; Limpin v. I.A.C., 161 SCRA 83; Syjuco v. Castro, 175 SCRA 171; Bugnay Construction & Dev. Corp. v. Laron, 176 SCRA 240; DBP v. I.A.C., G.R. No. 73027, Oct. 18, 1990; Benguet Electric Cooperative v. NEA, G.R. No. 93924, Jan. 23, 1991

[8] Moran, Comments on the Rules, 1980 ed., Vol. 3, p. 177, citing Occeña v. Jabson, 73 SCRA 637, 641 (1976)

[9] Moran, op. cit., p. 181

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