

JOSE C. BORJA, PETITIONER, VS. THE COURT OF APPEALS AND RURAL BANKERS ASSOCIATION OF THE PHILIPPINES, INC., RESPONDENTS.

G.R. No. 95667. May 08, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

We deal here only with the validity of the orders of the respondent Court of Appeals denying the petitioner's motion for execution pending appeal of a judgment rendered in his favor by the Regional Trial Court of Manila.[1] That appeal shall be resolved on the merits in due course but not in this petition.

On October 11, 1979, the petitioner filed a complaint against the private respondent for the sum of P78,325.00, representing unpaid commissions, and damages. He was then 66 years old. Judgment was rendered in his favor five years later,[2] when he was already 71 years, and promulgated on November 28, 1986, after he had turned 73.

On December 3, 1986, before the private respondent's appeal was perfected, the petitioner moved for execution of the judgment. The motion was denied by the trial court on July 28, 1988, on the ground that the grant thereof "would affect the issues involved in the appeal."

On March 14, 1989, the petitioner filed with the trial court, the records of the case not yet having been elevated to the appellate court, a second motion for execution pending appeal. This was also denied on the same ground.

On April 18, 1990, the petitioner filed a third motion for execution pending appeal, this time with the respondent court. This was also denied. The appellate court saw no justification for execution at that time, observing that it had ordered the re-taking by the trial court of the testimony of one of the witnesses.

It was only on September 14, 1990, that the complete records of the case were finally elevated to the respondent court, at which time the petitioner was already 75.

The petitioner now seeks certiorari under Rule 65 of the Rules of Court against the resolutions of the respondent court dated August 24, 1990, denying his motion for execution, and September 28, 1990, denying reconsideration. He avers that these orders were issued with grave abuse of discretion amounting to lack of jurisdiction and should therefore be set aside.

The general rule in Rule 39, Section 1, of the Rules of Court is that a judgment can be executed only after it has become final and executory, or "finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the final appeal therefrom if the appeal has been duly perfected."

However, execution pending appeal is allowed under Section 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.

The petitioner argues that the case has been dragging for more than ten years since it was filed in 1979, with no early resolution of the appeal in sight. The elevation of the records alone from the trial court took all of six years. The proceedings in the appellate court will entail further delay. The petitioner has grown old with the case and is now 76 years of age. He fears he may no longer be in this world when the case is finally decided.

The private respondent points out that the petitioner is raising the argument about his age only at this time, when he should have invoked it earlier. Not having been seasonably raised, the issue cannot now be considered on appeal.

We are not persuaded by this argument. The petitioner's attitude is understandable. He may not have considered himself old in 1984, but now, at 76, he is feeling his age. While we may not agree that a man of his years is practically moribund, the Court can appreciate his apprehension that he will not be long for this world and may not enjoy the fruit of the judgment before he finally passes away. That is the reason why he has raised the issue now. Belatedly if you will, but no less validly in our view.

The Court realizes the seriousness of the private respondent's challenge to the appealed decision, which appears to have been rendered by Judge Tomas P. Maddela, Jr. on June 13, 1984, but promulgated only after two years, when he had already retired. This contention must be carefully examined. But factual verification thereof cannot be made by us in the first instance. At this stage of the proceedings, the issue cannot be resolved directly by this court on the basis of the evidence before it.

The important point is that if the appealed judgment is annulled, the complaint of the petitioner will have to be tried anew and will probably be appealed whatever its outcome. It will take years again before it is finally decided. By that time, the petitioner may be facing a different judgment from a Court higher than any earthly tribunal. The decision on his complaint, even if it be in his favor, will have become meaningless as far as he himself is concerned.

The Court feels that this circumstance is a "good reason" to allow execution of the challenged judgment pending appeal, consistently with Rule 39, Section 2. Despite the misgivings of the private respondent, we may presume the said judgment to be valid at this time in the absence of evidence that it is a nullity. The applicable rule is Rule 131, Section 5, of the Rules of Court under which it is presumed that "official duty has been regularly performed"[3] and that "a court, or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of his jurisdiction."[4]

So presuming, we apply our ruling in *De Leon v. Soriano*,^[5] where this Court approved the following observations of the trial court:

Therefore, in conclusion this court is of the opinion and so holds that the fact that the appeal is frivolous and intended for the purpose of delay, and considering that the herein plaintiff is an old woman of 75 years, sickly and without any means of living, are all in the opinion of the court strong grounds to justify the execution of the judgment in spite of the supersedeas bond, because the right of the plaintiff to live and to pursue her happiness are paramount rights which outweigh the security offered by the supersedeas bond.

As for the supersedeas bond, we note that the petitioner is willing to post it in the amount to be determined by the lower court. It is of course settled that the filing of a supersedeas bond cannot by itself alone entitle the appellee to execution pending appeal. In the case at bar, however, we find that the bond provides added justification, together with the advanced age of the petitioner, for the grant of the motion under the exception to the general rule.

We agree that in a petition for certiorari under Rule 65 of the Rules of Court, the impugned decision may be

reversed only if it is clearly shown to be tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. This requirement has been established in the present case, in light of Rule 39, Section 2, and the particular circumstance of the petitioner's advanced age, which is the most formidable argument in his favor. We reach this conclusion on the basis not only of the law but also of equity, which supports the law. *Aequitas non facit jus, sed juri auxiliatur.*

It should be added that even if filed under Rule 45 rather than Rule 65, the petition would still prosper. The record shows that the petitioner was notified of the denial of his motion for reconsideration by the respondent court on October 11, 1990, and that on October 26, 1990, he moved for and was granted an extension of thirty days from that date within which to file his petition. This was actually filed on November 23, 1990. The docket fees were also paid on time, on October 26, 1990. No less importantly, the petition raises a question of law, to wit, the correct interpretation and application of Rule 39, Section 2, of the Rules of Court.

It is therefore not correct to say, as the private respondent does, that the petitioner is availing himself of certiorari under Rule 65 as a substitute for a lost appeal.

We are convinced that the petitioner's motion for execution pending appeal should have been granted. In sustaining its denial by the trial court, the respondent court committed an error of judgment reversible under Rule 45 or grave abuse of discretion that can be corrected under Rule 65.

WHEREFORE, the petition is GRANTED. The resolutions of respondent Court of Appeals dated August 24, 1990, and September 28, 1990, are SET ASIDE. The Court hereby ALLOWS execution pending appeal of the decision of the Regional Trial Court of Manila, Branch 34, in Civil Case No. 127114 upon the filing of a sufficient supersedeas bond.

SO ORDERED.

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

[1] Rollo, pp. 26-27, *Ibid.*, pp. 29-30, Buena, J. ponente, Lapeña, Jr. and Vailoces, JJ., concurring.

[2] *Id.*, pp. 32-36. Decided by Judge Tomas P. Maddela, Jr.

[3] Rule 131, Sec. 5(m).

[4] *Ibid.*, Sec. 5(n).

[5] 95 Phil. 806.

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