

JESUS T. DAVID, PETITIONER, VS. THE COURT OF APPEALS AND VALENTIN AFABLE, JR., RESPONDENTS.

G.R. No. 97240. October 16, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Can the Court of Appeals, in a judgment sustaining the trial court's denial of a petition for relief from judgment, validly amend or modify the decision sought to be overturned by such petition?

This is the basic issue which confronts this Court in the instant case.

Stripped of unnecessary details, the facts of this case, as gathered from the pleadings, are as follows:

Due to the dishonor of five (5) checks with a total value of P52,800.00 which private respondent issued in favor of the petitioner after the former failed to deliver 2,500 cavans of palay deposited with him by the latter or pay the amount of P54,000.00 representing the value thereof, and to comply with the obligation in respect to the set of earrings and a diamond ring delivered by the petitioner's wife on 20 May 1964, petitioner instituted two (2) criminal cases for estafa and filed an independent civil action for a sum of money with preliminary attachment against the private respondent before the then Court of First Instance (now Regional Trial Court) of Manila. The latter was docketed as Civil Case No. 94781 and was assigned to Branch 26 thereof.

On 8 December 1965, private respondent executed a document entitled Compromise Agreement which reads:

"COMPROMISE AGREEMENT"

In consideration of Mr. Jesus T. David consenting to another postponement of our criminal cases (estafa) now pending trial before the Court of First Instance of Manila, I hereby promise to pay him the sum of SIXTY-SIX THOUSAND FIVE HUNDRED (P66,500.00) PESOS on or before January 4th, 1966; and for the purpose of finally settling amicably this case.

Manila, December 18, 1965."^[1]

On 27 May 1975, petitioner filed an Amended Complaint which makes specific reference to this so-called Compromise Agreement.

On 14 August 1979, the trial court issued an order declaring the private respondent "as in default" for his failure to appear at the pre-trial and allowing the petitioner to present his evidence ex-parte. The latter offered in evidence the "Compromise Agreement", which was marked as Exhibit "L".

On 31 October 1979, the trial court handed down a Decision^[2] in favor of the petitioner the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered against the defendant, Valentin Afable, Jr., ordering him to pay to the plaintiff the sum of P66,500.00 plus the legal rate of interest thereon from July 24, 1974 up to the time

the same is fully paid plus the amount of P5,000.00 as and for attorney's fees and to pay the costs of the suit." [3]

Upon petitioner's motion for reconsideration questioning the date when interest should begin to run, the trial court issued an Order [4] on 20 June 1980 amending the dispositive portion of the decision by declaring that the interest shall be reckoned from 4 January 1966 pursuant to the so-called Compromise Agreement.

On 10 October 1980, the trial court issued a writ of execution. Private respondent filed a petition for relief from judgment which, however, was denied. He then filed a motion to reconsider the said denial which was also subsequently denied. A copy of this last denial order was received by the private respondent on 1 March 1983. The following day, private respondent filed a notice of appeal. On 2 August 1984, the trial court elevated the records of the case to the respondent Court of Appeals. The case was docketed therein as C.A.-G.R. CV No. 06532.

As summarized by the respondent Court of Appeals in its 28 July 1989 decision, [5] the issues raised by the private respondent before it were:

- "1. Whether or not the defendant-appellant was correctly declared in default and a judgment in default correctly rendered below;
2. Whether or not a Petition for Relief From Judgment is available to the defendant-appellant;
3. Whether or not the execution of the Decision appealed from was validly ordered;
4. Whether or not the Amended Complaint dated May 24, 1975 should have been dismissed on the grounds of lack of cause of action, prescription, and res judicata; and
5. Whether or not granting ex gratia argumenti the validity of the Decision in question, the same correctly awarded damages and attorney's fees in favor of the plaintiff-appellee." [6]

Respondent Court correctly resolved the first four (4) issues explicitly against the private respondent. More specifically, anent the second issue, it declared:

"This brings us to the second issue: whether or not a Petition for Relief is an available remedy. Under Rule 38 of the Rules of Court, a petition for relief from judgment 'must be accompanied with affidavit showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be'. Said grounds must be established in order to be convincing. The alleged excusable negligence, accident or mistake relied upon by defendant-appellant could have been avoided with ordinary prudence. The alleged fraud could not have been committed by plaintiff-appellee through mere inaction since he is not duty bound to personally notify the defendant of court processes. It is not incumbent upon him to search for the address of defendant so that the latter may be properly notified by the Court. This is not the kind of fraud contemplated by law. Bad faith cannot be presumed from inaction where there is no duty to act. The grounds not having been clearly established, petition for relief will not lie." [7]

As to the fifth issue, the appellate court, amended the dispositive portion of the decision appealed from by declaring that the interest should run only from the date of the filing of the Amended Complaint. In support thereof, it made the following disquisitions:

"Finally, on the question of the validity of the award of damages and attorney's fees, defendant-appellant further challenged the amendment of the decision of October 31, 1979 adjusting the date for computing the legal interest to start from January 4, 1966 instead of July 24, 1974, as per original decision. The rule is, where

a party has been declared in default, the amount of damages that should be adjudged against him cannot exceed the amount alleged in the complaint even if the complainants are able to prove during the reception of evidence a higher amount of damages. (Mario vs. Gaddi, L-30860, March 29, 1972). It appears in this case that the amount of damages awarded is in accordance with the relief prayed for in the Amended Complaint except that the legal interest should be computed from the date of the filing of the Complaint, which is from May 27, 1975. It would be different if the defendant is not in default, plaintiff may be granted any relief that is supported by the evidence, although not specified in his pleadings. As to the propriety of the award of attorney's fees, since plaintiff-appellee was compelled to litigate in order to protect his interest, the Court a quo correctly granted the relief as prayed for."[8]

Accordingly, the Court of Appeals decreed as follows:

"WHEREFORE, in view of all the foregoing considerations, the decision of the Court a quo, being substantially in accordance with law, is hereby affirmed with slight modification to reflect the date of computing the legal interest to be from May 27, 1975, the date of filing the amended complaint. Costs against defendant-appellant."[9]

On 3 October 1989, petitioner filed a petition for relief (which should have been, more appropriately, a motion for reconsideration) from judgment to set aside the aforementioned modification decreed by the respondent Court of Appeals on the ground that since the trial court's decision was already final, it could no longer be amended. It was only on 18 April 1990 that the respondent Court promulgated a Resolution[10] denying the said petition on the ground that the interest could not run from 4 January 1966 because the private respondent had not incurred in delay, there being no proof of extrajudicial demand. Under the first paragraph of Article 1169 of the Civil Code, the debtor incurs in delay from the time the creditor judicially or extrajudicially demands the fulfillment of the obligation. In the absence of proof of extrajudicial demand, the date of the filing of the amended complaint based on the so-called Compromise Agreement, which was 27 May 1975, shall be the date wherefrom computation of interest shall commence.

Petitioner filed a motion to reconsider this resolution[11] which the respondent Court of Appeals denied on 4 February 1991.[12]

Hence, this petition for review under Rule 45 of the Rules of Court wherein petitioner submits the following assignment of errors:

"A. THE RESPONDENT COURT OF APPEALS ERRED IN MODIFYING THE DECISION OF THE REGIONAL TRIAL COURT IN A MANNER WHICH CONTRADICTED THE TERMS OF JUDICIAL (sic) COMPROMISE AGREEMENT WHICH HAS ALREADY LONG BECOME FINAL AND EXECUTORY.

B. THE RESPONDENT COURT OF APPEALS ERRED IN IGNORING DOCUMENTARY EVIDENCE ON THE RECORD WHICH HAS NOT BEEN DENIED NOR (sic) CONTRADICTED.

C. THE RESPONDENT COURT OF APPEALS ERRED IN AMENDING THE LOWER COURT'S DECISION WITHOUT ITS HAVING BEEN THE SUBJECT OF ANY ASSIGNMENT OR ERROR BY THE APPELLANT IN THE CASE.

D. THE RESPONDENT COURT OF APPEALS ERRED IN COMMITTING A VIRTUAL BUT GROSS VIOLATION OF LAW BY REFUSING TO ENFORCE A JUDICIAL COMPROMISE AGREEMENT WHICH IS THE LAW BETWEEN THE PARTIES THERETO."[13]

There is so much circuitry in these assigned errors. It is obvious that the petitioner does not have a full understanding of a compromise agreement and a judgment based thereon.

What the private respondent signed on 18 December 1975 is not a compromise agreement although it is captioned

as such.

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.[14] It is "an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their difficulties by mutual consent in the manner which they agree on, and which everyone of them prefers to the hope of gaining, balanced by the danger of losing.[15] The so-called Compromise Agreement sought neither to avoid litigation nor explicitly put an end to the cases already commenced between the parties. Since it was only the private respondent who signed the agreement, it may not be considered a bilateral contract. Rather, it is but a mere promise to pay P66,500.00 on or before 4 January 1966 as a step towards the amicable settlement of the case. It does not, by itself, settle the case or put an end to it. It contemplates the execution of a formal act after payment shall have been made.

The parties did not submit any separate compromise agreement for approval by the court. What the court received was the evidence for the petitioner which included the so-called "compromise agreement" (marked as Exhibit "L"); judgment was rendered on the basis of such evidence as thus adduced. It is precisely for this reason that the trial court awarded attorney's fees and ordered the private respondent to pay interest plus the costs of the suit.

Clearly, no judgment based on a compromise agreement was rendered by the trial court. The doctrine relied on by the petitioner and underscored by numerous case citations -- that a compromise agreement constitutes the law between the parties and that a judgment based thereon is immediately final and executory -- is unfortunately inapplicable in this petition.

To the mind of this Court, the real issue is whether or not the respondent Court, having sustained -- and correctly -- the trial court's denial of the private respondent's petition for relief from judgment, could, at the same time, modify the decision sought to be overturned by such a petition. The answer is in the negative. The filing of the petition for relief from judgment with the trial court was an unequivocal admission on the private respondent's part that his period to appeal from the decision had already expired. Such was the incontrovertible fact; besides, a petition for relief from judgment under Rule 38 of the Rules of Court presupposes a final judgment[16] or loss of the right to appeal. The affirmance by the respondent Court of the denial of the petition is a confirmation of the existence of a final and executory judgment. It can neither amend nor modify it. "[N]othing is more settled in the law than that when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the Court rendering it or by the highest Court of the land. The only recognized exceptions are the correction of clerical errors or the making of so-called nunc pro tunc entries which cause no prejudice to any party, and, of course, where the judgment is void." [17] Respondent Court may have had in mind the second paragraph of Section 2 of Rule 41 which allows a party who appeals from an order denying a petition for relief to assail the judgment on the merits on the ground that the same is not supported by the evidence or is contrary to law. Said section provides as follows:

"SEC. 2. Judgments or orders subject to appeal.

x x x

A judgment denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that it is not supported by the evidence or it is contrary to law."

This provision, however, cannot be construed as allowing a review of the decision on the specific ground therein indicated if the denial of the petition for relief by the trial court is sustained by the appellate court. It may only be done if the appellate court overturns such denial.

The respondent Court then erred in modifying the decision of the trial court. Having sustained the trial court's denial of the petition for relief filed under Rule 38 of the Rules of Court, it had nothing more to do save to dismiss the appeal and make a pronouncement that the decision of the trial court had long become firm, final and executory.

WHEREFORE, for the reason abovestated, the petition is GRANTED. That portion of the challenged decision of the respondent Court of Appeals in C.A.-G.R. CV No. 06532 of 29 July 1989 modifying the decision of the trial court with respect to the date when interest should commence to run is hereby SET ASIDE and NULLIFIED.

Costs against the private respondent.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, 6.

[2] Rollo, 20-22.

[3] Id., 22.

[4] Id., 23.

[5] Rollo, 24-29; per Associate Justice Abelardo M. Dayrit, with the concurrence of Associate Justices Nathanael P. De Pano, Jr. and Celso L. Magsino.

[6] Id., 26.

[7] Rollo, 27.

[8] Rollo, 28.

[9] Id., 28.

[10] Id., 33-34.

[11] Rollo, 35-41.

[12] Id., 42.

[13] Id., 9.

[14] Article 2028, Civil Code.

[15] *Rovero vs. Amparo*, 91 Phil. 228, 235 [1952], citing *Black's Law Dictionary*, 382; see also *Arcenas vs. Cinco*, 74 SCRA 118, 123 [1976].

[16] *Ilacad vs. Court of Appeals*, 78 SCRA 301 [1977]; *Jalover vs. Ytoriaga*, 80 SCRA 100 [1977]; *Villa Rey Transit, Inc. vs. Far East Motor Corp.*, 81 SCRA 298 [1978].

[17] *Manning International Corp. vs. NLRC*, 195 SCRA 155 [1991]; *Alba Patio de Makati vs. NLRC*, 201 SCRA 355 [1991].

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