

PHILIPPINE NATIONAL BANK, PETITIONER, VS. HON. COURT OF APPEALS, HON. JUDGE JOB MADAYAG, IN HIS OFFICIAL CAPACITY AS THE PAIRING/PRESIDING JUDGE OF THE REGIONAL TRIAL COURT IN M...

G.R. Nos. 86105-06. September 29, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The main issue in this petition for certiorari is the question of what would constitute "good reasons" to justify execution of judgment pending appeal, under Section 2, Rule 39 of the Revised Rules of Court.

The facts of the case are stated in the Court of Appeals' decision as follows:

In an original complaint for replevin with damages (CC No. 13579, RTC, Makati) which was amended upon proper motion, Milagros Ong Siy (Siy for short), a buy and sell dealer of steel sheets and plates and other metal products, under the business name, Bignay Trading, sought the collection from the Philippine National Bank (PNB for short) the costs of about 80 tons of steel sheets and plates which were allegedly owned by her, plus compensatory moral and exemplary damages, attorney 's fees and the costs of the suit. The steel sheets had disappeared from the PNB's DMC-MAN Division Compound at Bicutan, Muntinlupa, Taguig, Metro Manila after they were confiscated and impounded from Siy, by a joint Police-CIS detail without any search warrant or writ of seizure on suspicion that they were stolen and which the CIS authorities subsequently turned over to the PNB compound until their disappearance.

On June 3, 1988, now retired Hon. Jose L. Coscolluela rendered judgment, the decretal portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendant as follows:

- (1) Ordering defendant to pay to plaintiff the sum of P4,094,820.75, Philippine Currency, representing actual expenses and loses suffered by the latter, as above enumerated, with interest thereon at 12% per annum, computed from the date of the filing of this case in this Court up to the time the said amount is fully paid;
- (2) Ordering defendant to pay to plaintiff moral damages which this Court assesses in the sum of P2,000,000.00, Philippine Currency;
- (3) Ordering defendant to pay to plaintiff the sum of P300,000.00 as attorney's fees; and
- (4) Ordering defendant to pay plaintiff the sum of P21,290.00 as filing fees, and the costs of the suit.

No award for exemplary damage claimed by plaintiff is granted for lack of sufficient basis therefor.

Defendant PNB's counterclaim is hereby dismissed, for lack of merit.

SO ORDERED." (p. 183, Rollo)

The PNB received copy of the decision on June 8, 1988 and filed notice of appeal on June 9, 1988. On June 13,

1988, Siy filed a "Motion for Execution" with the trial court, alleging that she would redeem her foreclosed residential house and lot from the Bank of the Philippine Islands (BPI) and she depended on the proceeds of the decision of June 3, 1988 as fund source for the redemption. Judge Coscolluela who was scheduled to retire on June 28, 1988, referred the case to the pairing judge, Hon. Job B. Madayag.

On July 11, 1988, Judge Madayag issued a "Special Order" granting Siy's motion upon a bond of P6,416,020.75, thus:

"WHEREFORE, plaintiff's Motion For Immediate Execution is granted; and she is hereby ordered to post a bond in the sum of SIX MILLION FOUR HUNDRED SIXTEEN THOUSAND TWENTY PESOS AND SEVENTY-FIVE CENTAVOS (P6,416,020.75) with sufficient sureties, upon the approval of which a writ of execution pending appeal shall be issued to effect execution of the judgment dated June 3, 1988 of this Court.

"SO ORDERED." (p. 184, Rollo)

Upon denial of its motion for reconsideration, PNB filed a petition for certiorari with prayer for preliminary injunction and/or restraining order docketed as CA G.R. SP No. 15234, seeking the annulment of the July 11, 1988 - Special Order, as well as the corresponding writ of execution, dated July 28, 1988. The Court of Appeals issued a temporary restraining order against July 11, 1988 Special Order. Upon the lapse of 20 days, the sheriff caused a "Notice of Levy and Sale of Execution of Personal Properties" and scheduled the auction sale on August 29, 1988.

In the meantime, on August 26, 1988, the Assets Privatization Trust or APT (created pursuant to Proclamation No. 50) filed with the trial court an "Urgent Motion Ex-Parte for Deferment of Execution Pending Resolution of Third Party Claim". The trial court granted the motion in its order dated August 26, 1988 and directed deferment of the auction sale until the resolution of the third party claim.

On motion of the PNB, the Court of Appeals restrained the Sheriff from enforcing the "Notice of Levy and Execution", effective only for 10 days from August 29, 1988.

On September 8, 1988, the Court of Appeals gave due course to PNB's petition (CA-G.R. SP No. 15234). On September 26, 1988, it issued a writ of preliminary injunction upon a "Bank Guarantee" in lieu of P6,416,020.75 bond earlier ordered posted by the Court of Appeals.

Meanwhile, Siy had filed on September 5, 1988, a petition for certiorari and/or prohibition with preliminary injunction and/or restraining order (CA G.R. No. 15494) praying that the trial judge and PNB be enjoined from proceeding in Civil Case 13579 and/or enforcing its order dated August 26, 1988, or acting on the APT Motion and that the said August 26, 1988 Order be declared null and void.

The Court of Appeals consolidated both petitions and on November 16, 1988, ruled as follows:

"PREMISES CONSIDERED, (1) in CA-G.R. SP No. 15234, the Special Order dated July 11, 1988 is hereby AFFIRMED only insofar as the Philippine National Bank was ordered to pay Milagros Ong Siy the sums of:

(a) P4,094,820.75, Philippine Currency, representing actual expenses and losses suffered by the latter, as above enumerated, with interest thereon at 12% per annum, computed from the date of the filing of this case in the respondent court up to the time the said amount is fully paid; and

(b) P21,200.00 as filing fees and the costs of suit.

and (2) the Petition in CA-G.R. SP No. 15494 is DENIED DUE COURSE and is hereby DISMISSED.

The writ of preliminary injunction issued by this Court on September 26, 1988 is hereby partially lifted and is

in effect only in regard to enjoining the respondent court and the sheriff concerned from enforcing the directives in the said July 11, 1988 Special Order ordering the PNB to pay Milagros Ong Siy moral damages and attorney's fees.

The Partial Execution Pending Appeal ordained by this Court is, however, subject to the proceedings before the respondent court on the matter of APT'S third party claim which is within its jurisdiction. The "Bank Guarantee" set up by the PNB is ordered CANCELLED.

The record relating to the matter of APT's third party claim is returned to the respondent court for further proceedings thereon.

x x x." (pp. 199-200, Rollo)

PNB now seeks reversal of the Court of Appeals' decision in CA-G.R. SP No. 15234, affirming with modifications the Special Order, dated July 11, 1988.

Under Section 2, Rule 39 of the Revised Rules of Court, "x x x the court may, in its discretion, order execution to issue even before expiration of the time to appeal, upon good reasons to be stated in a special order x x x."

As to the concept of "good reasons," the Court of Appeals[1] stated:

"The rule x x x does not enumerate or give examples of what may be considered as good reasons to justify such an execution. The matter is addressed to the sound discretion of the trial court. It involves the exercise of that power of the trial court to determine questions arising in the trial of the case to which no strict law is applied, but which from their nature and circumstances of the case, are controlled by the personal judgment of the court. If in the mind of the court, taking into consideration the facts and circumstances surrounding the case, good reasons exist, the exercise of the power to issue immediate execution of the judgment shall not be disturbed by the appellate court for the latter should not substitute its way of thinking for that of the trial court, otherwise, the discretionary power given to the trial court would have no meaning. Interference by the appellate court with the discretion lodged in the trial court is proper only in case of grave abuse or in case conditions have so far changed since the issuance of the order as to necessitate the intervention of the appellate court to protect the interests of the parties against contingencies which were not or could have not been contemplated by the trial judge at the time of the issuance of the order. In the determination that there exist good reasons to warrant such execution pending appeal, the facts and circumstances which impelled the trial court to act as it did and its own assessment of the equities are entitled to considerable weight, for the issuance of the order of immediate execution is within its sound discretion (Padilla vs. CA, 53 SCRA 168)." (p. 191, Rollo)

On the basis of the foregoing statements, We agree with the Court of Appeals that redemption of Siy's foreclosed house and lot to prevent consolidation of title thereon by the Bank of the Philippine Islands, successful bidder, by utilizing the proceeds of the decision in Civil Case No. 13579, constitutes "good reasons" for allowing execution of judgment pending appeal.

The Court of Appeals took note of the documentary and testimonial evidence presented in Civil Case No. 13579, thus:

"(Siy) x x x in claiming for actual and moral damages therein had presented evidence that in view of her failure to get the return of her investment in the impounded and subsequently lost steel sheets, she was not able to pay her mortgage obligation of P2,333,775.63 with the Bank of the Philippine Islands as a consequence of which the Bank extrajudicially foreclosed her house and lot which were offered by her as collaterals for said loan (Exh. "J"), and subsequently purchased the said collaterals in a public auction thereof. Siy had also presented evidence that before the foreclosure of her properties by the Bank, she had to borrow money from Mrs. Monica Ramirez, who had a dollar account with the Bank and which she pledged to the Bank, to pay the interest on her

loans: P20,000.00 on July 16, 1985 (Exh. "X"), P15,500.00 on August 20, 1985 (Exh. "L"), P7,500.00 on March 2, 1987 (Exh. "M"), P8,500.00 on January 2, 1987 (Exh. "N"), P9,900.00 on June 1, 1986 (Exh. "O"), P6,750.00 on May 4, 1987 (Exh. "P"), and P7,600.00 on April 1, 1987 (Exh. "Q"). Also, she was made the respondent in a collection case filed by Concepcion C. Limon for she was cited to appear before Barangay Captain Carlos M. Gozon on October 1, 1986 (Exh. "S"), for which her Counsel, Atty. Pio Canta had to write a reply letter dated September 11, 1986, requesting Ms. Limon's counsel to give her more time to settle the obligation, considering that she was paying interest on the said loan from Ms. Limon.

There are proofs of the foreclosure of the said house and lot, the registration of the corresponding certificate of sale and the expiration of the redemption period. Siy had submitted to the respondent court certified true copy of TCT Nos. T-101839 and T-101840 of Caloocan City covering her said foreclosed properties containing the inscription of the date of Sheriff's sale at the bank thereof (Annexes "A" and "B" to Siy's opposition to PNB's motion for reconsideration filed before respondent court). Attached to the rollo of this case before this Court (p. 217) is the letter of Atty. Dencio B. Bargas dated July 25, 1988 to Atty. Loreto C. Buduan, counsel for Siy at that time, stating in brief that several extensions had been granted her to redeem her foreclosed properties with information that the BPI would not accede to any further extension of the redemption period.

In the hearing on June 21, 1988 on her motion for immediate execution pending appeal, said Atty. Bargas appeared and manifested to the respondent court that the said redemption period expired on February 15, 1988, and that they had already prepared the corresponding document of consolidation of title.

In regard to the petitioner's allegation that the private respondent's failure to pay her loan on the said mortgaged property, which led to the foreclosed (sic) thereof, was due to her own fault for she entered into multimillion transactions with the SMC and PNOC in September and October, 1985, the respondent court pointed out that the true cause of her financial bind was, as clearly stated in the June 3, 1988 decision, her failure to get the return on her investments on the impounded and subsequently lost steel sheets." (pp. 191-193, Rollo)

The Court of Appeals likewise properly upheld the trial court's observation that Siy's immediate need of funds (which she lacks) to redeem her foreclosed properties constitutes "good reasons", or an instance "where the lapse of time would make the ultimate judgment ineffective", in the sense that "if no execution pending appeal would be granted and the case dragged on until the appellate courts finally affirm the respondent court's June 3, 1988 judgment, the appellate courts' judgment would have become ineffective because long before same could be rendered, the private respondent could have had already lost her right to redeem her properties, and the titles to the said properties have already been consolidation (sic) in the mortgagee, the purchase price thereof would be much, much more, considering the inevitable increase in the value of real property." (See p. 193, Rollo)

The foregoing is also tied in closely with the issue of insolvency raised as a defense by Siy, and which the Court of Appeals correctly upheld, i.e., insolvency being "the inability or lack of means to pay one's debts or the condition of a person who is unable to pay his debts as they fall due (Munion v. Vic Corporation, May 28, 1959, 59 O.G. 9683 citing Dewey v. St. Albanos Trust CO., 48 Am. Rep. 803) x x x," in view of Siy's inability to pay the interest on her loan and the principal when it fell due resulting in the foreclosure of the collaterals thereof. (Ibid)

ACCORDINGLY, the petition is hereby DISMISSED and the decision of the Court of Appeals is AFFIRMED in all respects. The Temporary Restraining Order issued on January 9, 1989 is hereby LIFTED. No Costs.

SO ORDERED.

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

[1] Ponente, Gloria C. Paras, Associate Justice, Court of Appeals

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