445 Phil. 465

THIRD DIVISION

[G.R. No. 143933, February 14, 2003]

PHILIPPINE NAILS AND WIRES CORPORATION, PETITIONER, VS. MALAYAN INSURANCE COMPANY, INC., RESPONDENT.

D E C I S I O N

PANGANIBAN, J.:

A trial court has no authority to pass upon the issue of whether an appeal is dilatory or frivolous. For it to do so would constitute a review of its own judgment and a mockery of the appellate process. Only the court reviewing the appeal may rule on that question. On the other hand, procedural lapses, to which no timely objections have been raised, may be deemed waived.

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, challenging the March 31, 2000 Decision and the June 29, 2000 Resolution the Court of Appeals (CA)[1] in CA-GR SP No. 33387. The assailed Decision disposed as follows:

> "**WHEREFORE,** the petition at bench is GRANTED. The assailed order is hereby VACATED and SET ASIDE. The surety bond filed by the private respondent is ordered CANCELLED, and the Notice of Garnishment upon the petitioner-insurer's bank is likewise VOIDED."[2]

The assailed Resolution denied reconsideration.[3]

The Facts

The factual antecedents of the case are summarized by the CA as follows:

> "Docketed as Civil Case No. 63445 entitled *Philippine Nails and Wires Corporation v. Malayan Insurance Company, Incorporated* before the RTC of Pasig City, Branch 163, the [herein petitioner] filed on July 28, 1993 a complaint for recovery of the contractual liability of [herein respondent] under its Marine Cargo Policy No. LP-0001-08287 and its Endorsement No. LP-0001-91399. Sought to be recovered therein was the sum of P2,698,637.00, representing the insured value of the lost or undelivered 377.168 metric tons of Prime Newly Hot Rolled Steel Billets, including attorney's fees and costs.
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> "Against the complaint, [respondent] filed a motion to dismiss dated August 10, 1993, on grounds of failure to state a cause of action and improper venue. On August 16, 1993, [petitioner] filed its opposition to the said motion, to which [respondent] rejoined on August 26, 1993.

"On September 8, 1993, [petitioner] filed a motion to admit its amended complaint, attaching therewith a copy of the pleading itself, which x x x the respondent court granted in an order dated September 17, 1993. Meanwhile, in an order dated October 1, 1993, the respondent court, presided over by the Honorable Aurelio Trampe, denied [respondent's] motion to dismiss. On October 18, 1993 [respondent] filed a motion for extension of time to file an answer purportedly on account of a pending motion to dismiss. In its October 21, 1993 order, the respondent court granted the motion for extension, and gave [respondent] a non-extendible period of ten (10) days from receipt of said order within which to file its answer. On the theory that [respondent's] period to file a responsive pleading had expired, [petitioner] sought to have [respondent] declared in default. Respondent court agreed, and declared [respondent] in default in an order dated November 5, 1993. Whereupon reception of [petitioner's] evidence *ex parte* followed on November 9, 1993.

"[Respondent] filed its answer to the complaint on November 10, 1993. A week later, [respondent] instituted with this Court a petition for prohibition, docketed as CA-G.R. SP No. 32614, entreating the Court to dismiss [petitioner's] complaint on the ground of improper venue. However, in our resolution of November 19, 1993, we denied petition for failure to attach an affidavit of non-forum shopping. A timely motion for reconsideration, was, by us likewise thumbed down in our Resolution of February 28, 1994.

"In the meantime, [petitioner] filed before respondent court an *ex-parte* motion to expunge from the records [respondent's] answer with compulsory counterclaim dated November 11, 1993; this was by the respondent court granted the next day, November 12, 1993.

"On December 10, 1993, respondent court gave judgment for [petitioner]. On January 10, 1994, [respondent] filed a notice of appeal against said verdict. But on January 6, 1994, [petitioner] moved for execution of the judgment pending appeal, which [respondent] opposed on January 11, 1994. Disposing of said motion, the public respondent issued the now assailed order dated February 4, 1994, as well as the writ of execution pending appeal on February 22, 1994. Upon the filing on February 21, 1994 of the surety bond by [petitioner], as required in the respondent court's February 4, 1994 order, the respondent Branch Sheriff served on [respondent]-insurer's bank a notice of garnishment on February 22, 1994.

"On February 23, 1994, [respondent] filed the instant petition [for certiorari]. On March 2, 1994, it filed with respondent court motion to stay the execution, and to approve the supersedeas bond, which was still pending thereat.

"On March 7, 1994, this court issued a temporary restraining order enjoining [petitioner and the RTC] from implementing the impugned February 4, 1994 order."[4] (Citations omitted)

Ruling of the Court of Appeals

The CA ruled that the RTC gravely abused its discretion when it issued the February 4, 1994 Order granting petitioner's Motion for Execution pending appeal. The appellate court belittled petitioner's argument that respondent had erred in filing a special civil action for certiorari instead of a supersedeas bond to stay the execution of the judgment. The CA explained that both of these remedies were sanctioned by jurisprudence, and that neither one of these ran afoul of the interdiction against forum-shopping.[5] It also held that a motion for reconsideration was no longer necessary, because the question of whether respondent was entitled to appeal, despite being declared in default, had already been ruled upon by the RTC.

The CA annulled the Writ of Execution on the following grounds: (1) petitioner failed to satisfy the stringent requirements of the law for the issuance of the Writ; (2) no prejudice, damage or injury would inure to petitioner as a result of the disallowance of the Writ, because of the financial capability of respondent to meet the latter's obligations; (3) respondent did not have to file a motion to vacate the judgment of default before it could appeal the default judgment; and (4) the mere filing of a bond was not a sufficient reason to authorize execution pending appeal.

Finally, the CA also held that the trial judge had improvidently issued the default Order. It concluded that the date on which respondent received it allowed the latter to file an answer only on November 9, 1993, way beyond the October 31, 1993 deadline set by the judge. Hence, the appellate court granted it an opportunity to file its responsive pleading, so that "the case [could] be properly evaluated and adjudicated on the basis of every piece of evidence adduced by both parties."[6]

Hence, this recourse.[7]

The Issues

In its Memorandum,[8] petitioner raises the following issues for our consideration:

> **"A**
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> Whether or not the Honorable Court of Appeals plainly erred and acted contrary to existing laws and jurisprudence in annulling the trial court's Special Order dated February 4, 1994, allowing execution pending appeal. This, despite the existence of 'good reasons' therefore *coupled* with the filing of the bond.
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> **"B**
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> Whether or not the Honorable Court of Appeals plainly erred and acted contrary to existing laws and jurisprudence in ruling that the 'trial court improvidently declared the respondent in default', considering the fact that:
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> (1) the said issue was already raised and squarely resolved by the same appellate court, seventh division, in respondent's

main appeal in CA-G.R. CV No. 45547 which ruled that 'the trial court properly declared the respondent in default'.

(2) the said ruling in CA-G.R. CV No. 45547 that the respondent was properly declared in default has become final since this issue was no longer raised by the respondent in its appeal in G.R. No. 138084; and

(3) this issue was actually not raised by either party, much less by the respondent, in CA-G.R. SP No. 33387.

"C

Whether or not the Honorable Court of Appeals plainly erred and acted contrary to law and jurisprudence in not dismissing the respondent's Petition in CA-G.R. SP No. 33387, considering the failure of respondent as petitioner therein to attach an affidavit on non-forum shopping and lack of statements of material dates showing that said Petition was timely filed as required by relevant SC Circulars."[9]

Simply put, the issues are as follows: (1) the propriety of the February 4, 1994 RTC Order allowing an execution pending appeal, (2) the validity of the Order declaring respondent in default, and (3) the effect of respondent's failure to attach a certificate of non-forum shopping and a statement showing the material dates.

This Court's Ruling

The Petition is partly meritorious.

First Issue:
Execution Pending Appeal

Petitioner contends that the alleged dilatory tactics employed by respondent are sufficient reasons to grant the former's Motion for Execution pending appeal. On the other hand, respondent argues that the CA was correct in striking down the Writ of Execution pending appeal, because of the following: (1) petitioner showed no proof that respondent's appeal would derail the implementation of the RTC's judgment, (2) the RTC did not have the authority to rule on whether the appeal was dilatory, and (3) the filing of a supersedeas bond per se did not authorize the execution pending appeal.

We agree with respondent. Under the old Rules, specifically Section 2 of Rule 39 of the pre-1997 Rules of Court, the trial court is granted, upon good reasons, the discretion to order an execution even before the expiration of the time to appeal. For convenience, that Section is reproduced hereunder:

"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 therein."

The present Rules also grant the trial court the discretion to order the execution of a judgment or a final order even before the expiration of the period to appeal, also upon good reasons stated in a special order after due hearing. Such discretion, however, is allowed only while the trial court still has "jurisdiction over the case and is in possession of either the original record, or the record on appeal, as the case may be, at the time of the filing of such motion." Section 2(a), Rule 39 of the 1997 Rules on Civil Procedure, states:

> "SEC 2. *Discretionary execution.* –
>
> "(a) *Execution of a judgment or final order pending appeal.* – On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.
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> "After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.
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> "Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing."

Petitioner avers that respondent's appeal, being purely dilatory, satisfies the requirement of good reasons prescribed by the above-quoted Section. We disagree. Jurisprudence teaches that the trial court cannot pass upon the question of whether an appeal is frivolous or dilatory. That prerogative belongs to the appellate tribunal.

In *Philippine Bank of Communications v. Court of Appeals*,[10] the Court explained that an execution pending appeal may be allowed only upon a showing of good reasons, such as the impending insolvency of the adverse party or the patently dilatory intent of the appeal. *And if the reason is the latter, it is only the appellate court, not the trial court, that can appreciate the dilatory intent of the appeal*. Said the Court:

> "x x x. Even the danger of extinction of the corporation will not per se justify a discretionary execution unless there are showings of other good reasons, such as for instance, impending insolvency of the adverse party or the appeal being patently dilatory. But even as to the latter reason, it was noted in *Aquino vs. Santiago* (161 SCRA 570 [1988]), that it is not for the trial judge to determine the merit of a decision he rendered as this is the role of the appellate court. *Hence, it is not within the competence of the trial court, in resolving a motion for execution pending appeal, to rule that the appeal is patently dilatory and rely on the same as its basis for finding good reason to grant the motion. Only an appellate court can appreciate the dilatory intent of an appeal as an additional good reason in upholding an order for execution pending appeal* which may have been issued by the trial court for other good reasons, or in cases where the motion for execution pending appeal is filed with the appellate court in accordance with Section 2, paragraph (a), Rule 39 of the 1997 Rules of Court."[11] (Italics supplied)