

SECOND DIVISION

[G.R. No. 144018, June 23, 2003]

FAR EAST BANK AND TRUST CO. (NOW BANK OF THE PHILIPPINE ISLANDS), PETITIONER, VS. TOMAS TOH, SR., AND REGIONAL TRIAL COURT, MANDALUYONG CITY, BRANCH 214, RESPONDENTS.

RESOLUTION

QUISUMBING, J.:

Assailed in this petition for review on *certiorari* is the Resolution^[1] dated June 26, 2000 of the Court of Appeals in CA-G.R. SP No. 59234, which dismissed petitioner's petition and affirmed the Order^[2] dated May 26, 2000 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 214 in Civil Case No. MC-99-643 granting private respondent's motion for discretionary execution because of private respondent's advanced age. Likewise challenged is the appellate court's Resolution^[3] dated July 10, 2000, denying petitioner's motion for reconsideration in CA-G.R. SP No. 59234.

The factual antecedents of this case, as culled from the records, are as follows:

On March 17, 1999, Tomas Toh, Sr., private respondent herein, filed Civil Case No. MC-99-643 against petitioner Far East Bank & Trust Co. (FEBTCO now merged in Bank of the Philippine Islands), seeking recovery of his bank deposits with petitioner in the amount of P2,560,644.68 plus damages. In his complaint, Toh claimed that petitioner had debited, without Toh's knowledge and consent, said amount from his savings and current accounts with petitioner bank and then applied the money as payment for the Letters of Credit availed of by Catmon Sales International Corporation (CASICO) from petitioner. Thus, when Toh issued two checks to Anton Construction Supply, Inc., they were dishonored by FEBTCO allegedly for having been drawn against insufficient funds, although Toh alleged as of February 4, 1999, he had an outstanding withdrawable balance of P2,560,644.68.

It appears that earlier on August 29, 1997, private respondent Tomas Toh, Sr., together with his sons, Tomas Tan Toh, Jr., and Antonio Tan Toh, had executed a Comprehensive Security Agreement in favor of petitioner, wherein the Tohs jointly and severally bound themselves as sureties for the P22 million credit facilities, denominated as Omnibus Line and Bills Purchased Line, earlier granted by petitioner to CASICO. Said credit line expired on June 30, 1998, but the parties renewed the same for another year, subject to the following amendments: (1) a reduction in the credit line from P22 million to P7.5 million; and (2) the relief of Toh, Sr., as one of the sureties of CASICO.

In its answer to private respondent's complaint, petitioner bank averred that the debiting of Toh's bank accounts was justified due to his surety undertaking in the event of the default of CASICO in its payments. Petitioner further claimed that the

reduction of credit line does not relieve Toh, Sr. from his continuing surety obligation, citing the absence of a new surety undertaking or any provisions in the renewal agreement releasing Toh, Sr., from his personal obligation. It pointed out that CASICO's default in its obligations became inevitable after CASICO filed a Petition for Declaration in a State of Suspension of Payments before the Securities and Exchange Commission (SEC).

On July 30, 1999, private respondent filed a Motion for Judgment on the Pleadings, which petitioner opposed. On October 15, 1999, the lower court granted the aforesaid motion. In its Order dated March 10, 2000, the lower court rendered a decision in favor of Toh, Sr., the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering the defendant to restore immediately to plaintiff's savings/current accounts the amount of P2,560,644.68 plus the stipulated interest thereon from February 17, 1999, until fully restored; and to pay to the plaintiff the amount of P100,000.00, as moral damages; and the amount of P50,000.00, as and by way of attorney's fees. With costs against the defendant.^[4]

On March 29, 2000, Toh Sr., filed a Motion for Discretionary Execution by invoking Section 2,^[5] Rule 39 of the Revised Rules of Court. He prayed that execution pending appeal be granted on the ground of old age and the probability that he may not be able to enjoy his money deposited in petitioner's bank. Petitioner duly opposed said motion.

On March 31, 2000, while private respondent's motion was pending before the RTC, petitioner filed a notice of appeal of the trial court's order of March 10, 2000.

On May 26, 2000, the RTC issued its order granting private respondent's Motion for Discretionary Execution, thus:

WHEREFORE, the motion for discretionary execution is GRANTED. The issuance of the corresponding writ of execution for the enforcement and satisfaction of the aforesaid decision against the defendant is hereby ordered.^[6]

On May 30, 2000, petitioner's appeal was given due course.

In granting Toh's motion, the trial court held that discretionary execution may be issued upon good reasons by virtue of Section 2(a),^[7] Rule 39 of the Revised Rules of Court. Citing *De Leon v. Soriano*,^[8] where we held that the approach of the end of one's life span is a compelling cause for discretionary execution pending appeal,^[9] the trial court used the circumstance of Toh's advanced age as a "good reason" to allow execution pending appeal.

On June 16, 2000, petitioner decided to forego filing a motion for reconsideration of the trial court's order of May 26, 2000. Instead, it brought the matter to the Court of Appeals in a special civil action for certiorari, docketed as CA-G.R. SP No. 59234.

On June 26, 2000, the appellate court decided CA-G.R. SP No. 59234 as follows:

WHEREFORE, premises considered, the instant petition for certiorari is hereby DISMISSED. [10]

The Court of Appeals pointed out that petitioner filed its petition for certiorari without filing a motion for reconsideration. It held that the fact that the lower court already ordered the execution of its judgment did not constitute a situation of extreme urgency as to justify petitioner's by-passing the remedy of reconsideration. The appellate court declared it found no grave abuse of discretion on the part of the trial court in granting discretionary execution. For the trial court had determined that Toh Sr. was already 79 years old and given his advanced age, might not be able to enjoy the fruits of a judgment favorable to him if he were to wait for the eventual resolution of the appeal filed by petitioner.

Petitioner filed its Motion for Reconsideration but the Court of Appeals denied it on July 10, 2000.

Hence, this petition where petitioner submits the following issues for our resolution:

1) WHETHER OR NOT THE FILING OF A MOTION FOR RECONSIDERATION IS NECESSARY BEFORE PETITIONER BANK CAN ASSAIL THE LOWER COURT'S ORDER DATED MAY 26, 2000 IN A SPECIAL CIVIL ACTION FOR CERTIORARI BEFORE THE HONORABLE COURT OF APPEALS.

2) WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN RULING THAT THE LOWER COURT COMMITTED NO GRAVE ABUSE OF DISCRETION IN ISSUING THE ORDER OF MAY 26, 2000. [11]

At the outset, it bears stressing that the *first issue* is now moot. We find that the appellate court did note petitioner's procedural by-pass or oversight. Nonetheless it proceeded to rule on the petition on its merits. The appellate court's action is not wanting in precedents as a special civil action for certiorari may be given due course, notwithstanding that no motion for reconsideration has been filed before the lower court under certain exceptional circumstances. [12] These exceptions include instances where: (1) the issue raised is purely one of law; (2) public interest is involved; (3) the matter is one of urgency; (4) the question of jurisdiction was squarely raised, submitted to, met and decided by the lower court; and (5) where the order is a patent nullity. [13]

Hence, the only relevant issue for our resolution now is whether the Court of Appeals erred in affirming the lower court's Order granting execution pending appeal on the ground of advanced age of private respondent Tomas Toh, Sr.

Petitioner contends that the Court of Appeals erred in finding no grave abuse of discretion on the part of the lower court when it granted the motion for discretionary execution based on private respondent's bare allegation that he was already 79 years old.

Private respondent avers that Section 2, Rule 49 of the 1997 Rules of Civil Procedure states the requisites for a grant of a motion pending appeal. All these requirements and conditions were complied with as evidenced by respondent's