361 Phil. 294

SECOND DIVISION

[G.R. No. 102965, January 21, 1999]

JAMES REBURIANO AND URBANO REBURIANO, PETITIONERS, VS. HONORABLE COURT OF APPEALS, AND PEPSI COLA BOTTLING COMPANY OF THE PHILIPPINES, INC., RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

In Civil Case No. Q-35598, entitled "Pepsi Cola Bottling Company of the Philippines, Inc. v. Urbano (Ben) Reburiano and James Reburiano," the Regional Trial Court, Branch 103 rendered on June 1, 1987 a decision, the dispositive portion of which reads:

> ACCORDINGLY, judgment is hereby rendered in favor of plaintiff Pepsi Cola Bottling Co. of the Philippines, Inc.
>
> 1. Ordering the defendants Urbano (Ben) Reburiano and James Reburiano to pay jointly and severally the plaintiff the sum of P55,000.00, less whatever empties (cases and bottles) may be returned by said defendants valued at the rate of P55.00 per empty case with bottles.
>
> 2. Costs against the defendants in case of execution.
>
> SO ORDERED.

Private respondent Pepsi Cola Bottling Company of the Philippines, Inc. appealed to the Court of Appeals seeking the modification of the portion of the decision, which stated the value of the cases with empty bottles as P55.00 per case, and obtained a favorable decision. On June 26, 1990, judgment was rendered as follows:

> WHEREFORE, the decision appealed from is SET ASIDE and another one is rendered, ordering the defendant-appellees to pay jointly and severally the plaintiff-appellant the sum of P55,000.00 with interest at the legal rate from January 1982. With costs against defendants-appellees.

After the case had been remanded to it and the judgment had become final and executory, the trial court issued on February 5, 1991 a writ of execution.

It appears that prior to the promulgation of the decision of the trial court, private respondent amended its articles of incorporation to shorten its term of existence to July 8, 1983. The amended articles of incorporation was approved by the Securities and Exchange Commission on March 2, 1984. The trial court was not notified of this fact.

On February 13, 1991, petitioners moved to quash the writ of execution alleging -

> 3. That when the trial of this case was conducted, when the decision was rendered by this Honorable Court, when the said decision was appealed to the Court of Appeals, and when the Court of Appeals rendered its decision, the private respondent was no longer in existence and had no more juridical personality and so, as such, it no longer had the capacity to sue and be sued;
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> 4. That after the [private respondent], as a corporation, lost its existence and juridical personality, Atty. Romualdo M. Jubay had no more client in this case and so his appearance in this case was no longer possible and tenable;
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> 5. That in view of the foregoing premises, therefore, the decision rendered by this Honorable Court and by the Honorable Court of Appeals are patent nullity, for lack of jurisdiction and lack of capacity to sue and be sued on the part of the [private respondent];
>
> 6. That the above-stated change in the situation of parties, whereby the [private respondent] ceased to exist since 8 July 1983, renders the execution of the decision inequitable or impossible.[1]

Private respondent opposed petitioners' motion. It argued that the jurisdiction of the court as well as the respective parties' capacity to sue had already been established during the initial stages of the case; and that when the complaint was filed in 1982, private respondent was still an existing corporation so that the mere fact that it was dissolved at the time the case was yet to be resolved did not warrant the dismissal of the case or oust the trial court of its jurisdiction. Private respondent further claimed that its dissolution was effected in order to transfer its assets to a new firm of almost the same name and was thus only for convenience.[2]

On February 28, 1991, the trial court issued an order[3] denying petitioners' motion to quash. Petitioners then filed a notice of appeal, but private respondent moved to dismiss the appeal on the ground that the trial court's order of February 28, 1991 denying petitioners' motion to quash writ of execution was not appealable.[4] The trial court, however, denied private respondent's motion and allowed petitioners to pursue their appeal.

In its resolution[5] of September 3, 1991, the appellate court dismissed petitioners' appeal. Petitioners moved for a reconsideration, but their motion was denied by the appellate court in its resolution, dated November 26, 1991.

Hence, this petition for review on certiorari. Petitioners pray that the resolutions, dated September 3, 1991 and November 26, 1991, of the Court of Appeals be set aside and that a new decision be rendered declaring the order of the trial court denying the motion to quash to be appealable and ordering the Court of Appeals to give due course to the appeal.[6]

On the other hand, private respondent argues that petitioners knew that it had

ceased to exist during the course of the trial of the case but did not act upon this information until the judgment was about to be enforced against them; hence, the filing of a Motion to Quash and the present petition are mere dilatory tactics resorted to by petitioners. Private respondent likewise cites the ruling of this Court in *Gelano v. Court of Appeals*[7] that the counsel of a dissolved corporation is deemed a trustee of the same for purposes of continuing such action or actions as may be pending at the time of the dissolution to counter petitioners' contention that private respondent lost its capacity to sue and be sued long before the trial court rendered judgment and hence execution of such judgment could not be complied with as the judgment creditor has ceased to exist.[8]

First. The question is whether the order of the trial court denying petitioners' Motion to Quash Writ of Execution is appealable. As a general rule, no appeal lies from such an order, otherwise litigation will become interminable. There are exceptions, but this case does not fall within any of such exceptions.

In *Limpin, Jr. v. Intermediate Appellate Court*, this Court held:[9]

> Certain, it is, . . . that execution of final and executory judgments may no longer be contested and prevented, and no appeal should lie therefrom; otherwise, cases would be interminable, and there would be negation of the overmastering need to end litigations.
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> There may, to be sure, be instances when an error may be committed in the course of execution proceedings prejudicial to the rights of a party. These instances, rare though they may be, do call for correction by a superior court, as where -
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> 1) the writ of execution varies the judgment;
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> 2) there has been a change in the situation of the parties making execution inequitable or unjust;
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> 3) execution is sought to be enforced against property exempt from execution;
>
> 4) it appears that the controversy has never been submitted to the judgment of the court;
>
> 5) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or,
>
> 6) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority;
>
> In these exceptional circumstances, considerations of justice and equity dictate that there be some mode available to the party aggrieved of elevating the question to a higher court. That mode of elevation may be

> either by appeal (writ of error or certiorari) or by a special civil action of certiorari, prohibition, or mandamus.

In this case, petitioners anchored their Motion to Quash on the claim that there was a change in the situation of the parties. However, a perusal of the cases which have recognized such a ground as an exception to the general rule shows that the change contemplated by such exception is one which occurred subsequent to the judgment of the trial court. Here, the change in the status of private respondent took place in 1983, when it was dissolved, during the pendency of its case in the trial court. The change occurred prior to the rendition of judgment by the trial court.

It is true that private respondent did not inform the trial court of the approval of the amended articles of incorporation which shortened its term of existence. However, it is incredible that petitioners did not know about the dissolution of private respondent considering the time it took the trial court to decide the case and the fact that petitioner Urbano Reburiano was a former employee of private respondent. As private respondent says,[10] since petitioner Reburiano was a former sales manager of the company, it could be reasonably presumed that petitioners knew of the changes occurring in respondent company. Clearly, the present case does not fall under the exception relied upon by petitioners and, the Court of Appeals correctly denied due course to the appeal. As has been noted, there are in fact cases which hold that while parties are given a remedy from a denial of a motion to quash or recall writ of execution, it is equally settled that the writ will not be recalled by reason of any defense which could have been made at the time of the trial of the case.[11]

Second. The Court of Appeals also held that in any event petitioners cannot raise the question of capacity of a dissolved corporation to maintain or defend actions previously filed by or against it because the matter had not been raised by petitioners before the trial court nor in their appeal from the decision of the said court. The appellate court stated:

> It appears that said motion to quash writ of execution is anchored on the ground that plaintiff-appellee Pepsi Bottling Company of the Philippines had been dissolved as a corporation in 1983, after the filing of this case before the lower court, hence, it had lost its capacity to sue. However, this was never raised as an issue before the lower court and the Court of Appeals when the same was elevated on appeal. The decision of this Court, through its Fourth Division, dated June 26, 1990, in CA-G.R. CV No. 16070 which, in effect, modified the appealed decision, consequently did not touch on the issue of lack of capacity to sue, and has since become final and executory on July 16, 1990, and has been remanded to the court *a quo* for execution. It is readily apparent that the same can no longer be made the basis for this appeal regarding the denial of the motion to quash writ of execution. It should have been made in the earlier appeal as the same was already obtaining at that time.[12]

We agree with this ruling. Rules of fair play, justice, and due process dictate that parties cannot raise for the first time on appeal from a denial of a Motion to Quash a Writ of Execution issues which they could have raised but never did during the trial and even on appeal from the decision of the trial court.[13]