

THIRD DIVISION

[G.R. No. 131109, June 29, 1999]

**INTERNATIONAL SCHOOL, INC. (MANILA), PETITIONER, VS.
HON. COURT OF APPEALS, SPOUSES ALEX AND OPHELIA
TORRALBA, RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

For review is the decision of the Court of Appeals,^[1] dated June 23, 1997 in CA-G.R. SP No. 42197, which dismissed the petition for *certiorari* filed by International School (Manila), Inc. (ISM) assailing the orders dated June 19, 1996 and August 27, 1996 of the lower court granting a writ of execution pending appeal, and denying the subsequent motion to reconsider the same; and the resolution dated October 14, 1997 of the appellate court denying ISM's motion for reconsideration.

On February 14, 1996, the Regional Trial Court of Quezon City, Branch 77^[2] rendered a decision in Civil Case No. Q-91-10653 entitled "Spouses Alex and Ophelia Torralba v. International School, Inc. (Manila), Dr. Rodney C. Hermes, Noli Reloj and Danilo de Jesus" involving a Complaint for Damages due to the death of plaintiffs' only son, Ericson Torralba while in the custody of ISM and its officers. The dispositive portion of the said decision reads:

"WHEREFORE, Judgment is hereby rendered finding defendant International School (Manila), Inc. liable to pay plaintiffs, the following:

1. The sum of P4,000,000.00 as and for Moral damages;
2. The amount of P1,000,000.00 by way of Exemplary damages;
3. The amount of P2,000,000.00 as Actual damages;
4. The sum of P300,000.00 as and for Attorney's fees; and
5. To pay the costs.

The complaint against the individual defendants is DISMISSED for insufficiency of evidence. Likewise, the Counterclaim is DISMISSED for lack of merit.

SO ORDERED."^[3]

ISM appealed to the Court of Appeals. During the pendency thereof, the spouses Torralba filed a motion for execution pending appeal before the lower court on the grounds that the appeal is merely dilatory and that the filing of a bond is another good reason for the execution of a judgment pending appeal.^[4] Said motion was

opposed by ISM.

In an order dated June 19, 1996, the lower court granted execution pending appeal upon the posting of a bond in the amount of Five Million Pesos (P5,000,000.00) by the spouses Torralba.^[5] In an *ex-parte* motion dated July 25, 1996, Deputy Sheriff Angel L. Doroni informed the lower court that pursuant to the Writ of Execution Pending Appeal issued by the court on July 17, 1996, a Notice of Garnishment of ISM's bank deposits at Global Consumer Banking, Citibank N.A. (Citibank) was served by him to Citibank on July 18, 1996; and that on July 24, 1996, he received a letter from Citibank informing him that ISM's bank deposits with the said bank in the amount of P5,500,000.00 were on 'hold/pledge'.^[6]

In the meantime, ISM filed a motion for reconsideration or for approval of supersedeas bond in the amount of Five Million and Six Hundred Thousand Pesos (P5,600,000.00) on July 23, 1996.^[7]

On July 25, 1996, the lower court issued an order directing Citibank to release to Deputy Sheriff Doroni in cash or check the amount of Five Million and Five Hundred Thousand Pesos (P5,500,000.00), subject of the Notice of Garnishment dated July 25, 1996.^[8] The following day, the spouses Torralba filed an urgent *ex parte* motion to encash and receive the proceeds of the Citibank Manager's check representing the amount garnished in execution.^[9]

However, on July 29, 1996, ISM filed an urgent motion to stop delivery of garnished funds to the spouses Torralba.^[10] On August 2, 1996, the lower court issued an order suspending the execution process there being no opposition filed in relation thereto and pending resolution of ISM's motion for reconsideration (or for approval of supersedeas bond).^[11] The spouses Torralba then filed an opposition to ISM's motion for reconsideration.^[12]

In an order dated August 27, 1996, the lower court denied ISM's motion for reconsideration and authorized and directed Deputy Sheriff Doroni to encash the Citibank Manager's Check payable to the said court in the amount of Five Million Five Hundred Thousand Pesos (P5,500,000.00) and to turn over the proceeds thereof after deducting all legal fees and charges if any, to the plaintiffs or their representative.^[13]

In view of the above order of the lower court, ISM filed a motion to withdraw the supersedeas bond.

Attempts to have the order of execution pending appeal set aside having proved futile and the offer of a supersedeas bond having been rejected by the lower court, ISM filed a petition for *certiorari* before the Court of Appeals.^[14] ISM sought the nullification of the assailed orders for having been issued in excess of jurisdiction and with grave abuse of discretion.

In its challenged decision dated June 27, 1997, the Court of Appeals denied due course and dismissed the petition for lack of merit.^[15] The Court of Appeals found that the grounds relied upon by the lower court in granting execution pending appeal, and which were raised by the plaintiffs-spouses in their motion - that the

appeal taken by the defendant school is merely dilatory and the filing of a bond - constitute good reasons. The Court of Appeals agreed with the lower court that ISM's appeal appears to be dilatory in view of its "virtual admission of fault when it adopted the project "Code Red" consisting of safety and emergency measures, only after the death of plaintiffs-spouses Torralba's only son"; and that the delay has already affected the plaintiffs-spouses Torralba financially. In a resolution dated October 14, 1997, the Court of Appeals denied ISM's motion for reconsideration.^[16]

Hence, this petition: To sum up the grounds raised in the petition, the question now is whether or not the respondent Court of Appeals erred in finding that the lower court did not commit any grave abuse of discretion in granting execution pending appeal of its decision.

However, we shall deal first with the procedural issues raised by the private respondents-spouses in their memorandum. Private respondents-spouses contend that herein petitioner ISM is engaging in forum-shopping in filing the instant petition for review on *certiorari* seeking the same reliefs as those prayed for in their pending appeal with the Court of Appeals. Further, they contend that petitioner ISM improperly availed of the special civil action for *certiorari* before the Court of Appeals considering that an appeal and/or the posting of a supersedeas bond are both adequate remedies precluding resort to the extraordinary writ of *certiorari*.

Forum-shopping is present when in the two or more cases pending there is identity of parties, rights or causes of action and reliefs sought.^[17] While there is an identity of parties in the appeal and in the petition for review on *certiorari* filed before this Court, it is clear that the causes of action and reliefs sought are unidentical, although petitioner ISM may have mentioned in its appeal the impropriety of the writ of execution pending appeal under the circumstances obtaining in the case at bar. Clearly, there can be no forum-shopping where in one petition a party questions the order granting the motion for execution pending appeal, as in the case at bar, and, in a regular appeal before the appellate court, the party questions the decision on the merits which finds the party guilty of negligence and holds the same liable for damages therefor. After all, the merits of the main case are not to be determined in a petition questioning execution pending appeal^[18] and vice versa. Hence, reliance on the principle of forum-shopping is misplaced.

Coming now to the issue of the propriety of a special civil action for *certiorari* filed before the appellate court to assail an order for execution pending appeal, this issue has been squarely addressed in *Valencia vs. Court of Appeals*^[19] as follows:

"xxx, we have ruled in *Jaca, et al. vs. Davao Lumber Company, et al.* that:

"xxx Although Section 1, Rule 65 of the Rules of Court provides that the special civil action for *certiorari* may only be invoked when 'there is no appeal, nor any plain, speedy and adequate remedy in the (ordinary) course of law,' this rule is not without exception. The availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of *certiorari* where appeal is not an adequate remedy or equally beneficial, speedy and sufficient. It is the inadequacy-not the mere absence of all other legal

remedies and the danger of failure of justice without the writ that usually determines the propriety of certiorari."

Thus, we held therein, and we so reiterate for purposes of the case at bar, that certiorari lies against an order granting execution pending appeal where the same is not founded upon good reasons. Also, the fact that the losing party had appealed from the judgment does not bar the certiorari action filed in respondent court as the appeal could not be an adequate remedy from such premature execution.

That petitioner could have resorted to a supersedeas bond to prevent execution pending appeal, as suggested by the two lower courts, is not to be held against him. The filing of such bond does not entitle him to the suspension of execution as a matter of right. It cannot, therefore, be categorically considered as a plain, speedy and adequate remedy. Hence, no rule requires a losing party so circumstanced to adopt such remedy in lieu or before availment of other remedial options at hand.

Furthermore, a rational interpretation of Section 3, Rule 39 should be that the requirement for a supersedeas bond presupposes that the case presents a presumptively valid occasion for discretionary execution. Otherwise, even if no good reason exists to warrant advance execution, the prevailing party could unjustly compel the losing party to post a supersedeas bond through the simple expedient of filing a motion for, and the trial court improvidently granting, a writ of execution pending appeal although the situation is violative of Section 2, Rule 39. This could not have been the intendment of the rule, hence we give our imprimatur to the propriety of petitioner's action for certiorari in respondent court."

[20]

Verily, a petition for *certiorari* lies against an order granting execution pending appeal where the same is not founded upon good reasons.

This brings us now to the question on the validity of the appellate court's ruling upholding the writ of execution pending appeal.

It must be stressed that private respondents-spouses' motion/application for an execution pending appeal was premised on the following reasons: that the appeal was being taken for purpose of delay and that they are filing a bond. In granting the motion for the exceptional writ over the strong opposition of the ISM, the trial court adopted by reference the said grounds adduced by the spouses Torralba in their motion in the first order dated June 19, 1996;^[21] and expressly reiterated the same grounds in the order denying the motion for reconsideration dated August 27, 1996.

[22]

In upholding the writ of execution pending appeal, the Court of Appeals observed that the lower court had, prior to its issuance, duly noted the presence of the circumstances laid down by Section 2, Rule 39 of the Rules of Court,^[23] allowing execution as an exception, or pending appeal, even before final judgment, to wit:

(a) There must be a motion by the prevailing party with notice to the adverse party;