376 Phil. 669

SECOND DIVISION

[G.R. No. 115412, November 19, 1999]

HOME BANKERS SAVINGS AND TRUST COMPANY, PETITIONER VS. COURT OF APPEALS AND FAR EAST BANK & TRUST COMPANY, RESPONDENTS.

D E C I S I O N

BUENA , J.:

This appeal by *certiorari* under Rule 45 of the Rules of Court seeks to annul and set aside the decision[1] of the Court of Appeals[2] dated January 21, 1994 in CA-G.R. SP No. 29725, dismissing the petition for *certiorari* filed by petitioner to annul the two (2) orders issued by the Regional Trial Court of Makati[3] in Civil Case No. 92-145, the first, dated April 30, 1992, denying petitioner's motion to dismiss and the second, dated October 1, 1992 denying petitioner's motion for reconsideration thereof.

The pertinent facts may be briefly stated as follows: Victor Tancuan, one of the defendants in Civil Case No. 92-145, 0issued Home Bankers Savings and Trust Company (HBSTC) check No. 193498 for P25,250,000.00 while Eugene Arriesgado issued Far East Bank and Trust Company (FEBTC) check Nos. 464264, 464272 and 464271 for P8,600,000.00, P8,500,000.00 and P8,100,000.00, respectively, the three checks amounting to P25,200,000.00. Tancuan and Arriesgado exchanged each other's checks and deposited them with their respective banks for collection. When FEBTC presented Tancuan's HBSTC check for clearing, HBSTC dishonored it for being "Drawn Against Insufficient Funds." On October 15, 1991, HBSTC sent Arriesgado's three (3) FEBTC checks through the Philippine Clearing House Corporation (PCHC) to FEBTC but was returned on October 18, 1991 as "Drawn Against Insufficient Funds." HBSTC received the notice of dishonor on October 21, 1991 but refused to accept the checks and on October 22, 1991, returned them to FEBTC through the PCHC for the reason "Beyond Reglementary Period," implying that HBSTC already treated the three (3) FEBTC checks as cleared and allowed the proceeds thereof to be withdrawn.[4] FEBTC demanded reimbursement for the returned checks and inquired from HBSTC whether it had permitted any withdrawal of funds against the unfunded checks and if so, on what date. HBSTC, however, refused to make any reimbursement and to provide FEBTC with the needed information.

Thus, on December 12, 1991, FEBTC submitted the dispute for arbitration before the PCHC Arbitration Committee,[5] under the PCHC's Supplementary Rules on Regional Clearing to which FEBTC and HBSTC are bound as participants in the regional clearing operations administered by the PCHC.[6]

On January 17, 1992, while the arbitration proceedings was still pending, FEBTC

filed an action for sum of money and damages with preliminary attachment[7] against HBSTC, Robert Young, Victor Tancuan and Eugene Arriesgado with the Regional Trial Court of Makati, Branch 133. A motion to dismiss was filed by HBSTC claiming that the complaint stated no cause of action and accordingly "...should be dismissed because it seeks to enforce an arbitral award which as yet does not exist." [8] The trial court issued an omnibus order dated April 30, 1992 denying the motion to dismiss and an order dated October 1, 1992 denying the motion for reconsideration.

On December 16, 1992, HBSTC filed a petition for *certiorari* with the respondent Court of Appeals contending that the trial court acted with grave abuse of discretion amounting to lack of jurisdiction in denying the motion to dismiss filed by HBSTC.

In a Decision[9] dated January 21, 1994, the respondent court dismissed the petition for lack of merit and held that "FEBTC can reiterate its cause of action before the courts which it had already raised in the arbitration case"[10] after finding that the complaint filed by FEBTC "...seeks to collect a sum of money from HBT [HBSTC] and not to enforce or confirm an arbitral award."[11] The respondent court observed that "[i]n the Complaint, FEBTC applied for the issuance of a writ of preliminary attachment over HBT's [HBSTC] property"[12] and citing section 14 of Republic Act No. 876, otherwise known as the Arbitration Law, maintained that " [n]ecessarily, it has to reiterate its main cause of action for sum of money against HBT [HBSTC],"[13] and that "[t]his prayer for conservatory relief [writ of preliminary attachment] satisfies the requirement of a cause of action which FEBTC may pursue in the courts."[14]

Furthermore, the respondent court ruled that based on section 7 of the Arbitration Law and the cases of ***National Union Fire Insurance Company of Pittsburg vs. Slolt-Nielsen Philippines, Inc.***,[15] and ***Bengson vs. Chan***,[16] "...when there is a condition requiring prior submission to arbitration before the institution of a court action, the complaint is not to be dismissed but should be suspended for arbitration."[17] Finding no merit in HBSTC's contention that section 7 of the Arbitration Law "...contemplates a situation in which a party to an arbitration agreement has filed a court action without first resorting to arbitration, while in the case at bar, FEBTC has initiated arbitration proceedings before filing a court action," the respondent court held that "...if the absence of a prior arbitration may stay court action, so too and with more reason, should an arbitration already pending as obtains in this case stay the court action. A party to a pending arbitral proceeding may go to court to obtain conservatory reliefs in connection with his cause of action although the disposal of that action on the merits cannot as yet be obtained."[18] The respondent court discarded Puromines, Inc. vs. Court of Appeals,[19] stating that "...perhaps ***Puromines*** may have been decided on a different factual basis." [20]

In the instant petition,[21] petitioner contends that *first*, "no party litigant can file a non-existent complaint,"[22] arguing that "...one cannot file a complaint in court over a subject that is undergoing arbitration."[23] *Second*, petitioner submits that " [s]ince arbitration is a special proceeding by a clear provision of law,[24] the civil suit filed below is, without a shadow of doubt, barred by *litis pendencia* and should

be dismissed *de plano* insofar as HBSTC is concerned."[25] *Third*, petitioner insists that "[w]hen arbitration is agreed upon and suit is filed without arbitration having been held and terminated, the case that is filed should be dismissed,"[26] citing Associated Bank vs. Court of Appeals,[27] Puromines, Inc. vs. Court of Appeals,[28] and Ledesma vs. Court of Appeals.[29] Petitioner demurs that the ***Puromines*** ruling was deliberately not followed by the respondent court which claimed that:

> "xxx xxx.
>
> It would really be much easier for Us to rule to dismiss the complainant as the petitioners here seeks to do, following Puromines. But with utmost deference to the Honorable Supreme Court, perhaps Puromines may have been decided on a different factual basis.
>
> xxx xxx."[30]

Petitioner takes exception to FEBTC's contention that ***Puromines*** cannot modify or reverse the rulings in National Union Fire Insurance Company of Pittsburg vs. Stolt-Nielsen Philippines, Inc.,[31] and ***Bengson vs. Chan***,[32] where this Court suspended the action filed pending arbitration, and argues that "[s]ound policy requires that the conclusion of whether a Supreme Court decision has or has not reversed or modified [a] previous doctrine, should be left to the Supreme Court itself; until then, the latest pronouncement should prevail."[33] *Fourth*, petitioner alleges that the writ of preliminary attachment issued by the trial court is void considering that the case filed before it "is a separate action which cannot exist,"[34] and "...there is even no need for the attachment as far as HBSTC is concerned because such automatic debit/credit procedure[35] may be regarded as a security for the transactions involved and, as jurisprudence confirms, one requirement in the issuance of an attachment [writ of preliminary attachment] is that the debtor has no sufficient security."[36] Petitioner asserts further that a writ of preliminary attachment is unwarranted because no ground exists for its issuance. According to petitioner, "...the only allegations against it [HBSTC] are that it refused to refund the amounts of the checks of FEBTC and that it knew about the fraud perpetrated by the other defendants,"[37] which, at best, constitute only "incidental fraud" and not causal fraud which justifies the issuance of the writ of preliminary attachment.

Private respondent FEBTC, on the other hand, contends that "...the cause of action for collection [of a sum of money] can coexist in the civil suit and the arbitration [proceeding]"[38] citing section 7 of the Arbitration Law which provides for the stay of the civil action until an arbitration has been had in accordance with the terms of the agreement providing for arbitration. Private respondent further asserts that following section 4(3), article VIII[39]of the 1987 Constitution, the subsequent case of ***Puromines*** does not overturn the ruling in the earlier cases of National Union Fire Insurance Company of Pittsburg vs. Stolt-Nielsen Philippines, Inc.[40] and ***Bengson vs. Chan***,[41] hence, private respondents concludes that the prevailing doctrine is that the civil action must be stayed rather than dismissed pending arbitration.

In this petition, the lone issue presented for the consideration of this Court is:

> "WHETHER OR NOT PRIVATE RESPONDENT WHICH COMMENCED AN ARBITRATION PROCEEDING UNDER THE AUSPICES OF THE PHILIPPINE CLEARING HOUSE CORPORATION (PCHC) MAY SUBSEQUENTLY FILE A SEPARATE CASE IN COURT OVER THE SAME SUBJECT MATTER OF ARBITRATION DESPITE THE PENDENCY OF THAT ARBITRATION, SIMPLY TO OBTAIN THE PROVISIONAL REMEDY OF ATTACHMENT AGAINST THE BANK, THE ADVERSE PARTY IN THE ARBITRATION PROCEEDINGS."[42]

We find no merit in the petition. Section 14 of Republic Act 876, otherwise known as the Arbitration Law, allows any party to the arbitration proceeding to petition the court to take measures to safeguard and/or conserve any matter which is the subject of the dispute in arbitration, thus:

> Section 14. Subpoena and subpoena *duces tecum*. - Arbitrators shall have the power to require any person to attend a hearing as a witness. They shall have the power to subpoena witnesses and documents when the relevancy of the testimony and the materiality thereof has been demonstrated to the arbitrators. Arbitrators may also require the retirement of any witness during the testimony of any other witness. All of the arbitrators appointed in any controversy must attend all the hearings in that matter and hear all the allegations and proofs of the parties; but an award by the majority of them is valid unless the concurrence of all of them is expressly required in the submission or contract to arbitrate. **The arbitrator or arbitrators shall have the power at any time, before rendering the award, without prejudice to the rights of any party to petition the court to take measures to safeguard and/or conserve any matter which is the subject of the dispute in arbitration.** (emphasis supplied)

Petitioner's exposition of the foregoing provision deserves scant consideration. Section 14 simply grants an arbitrator the power to issue subpoena and subpoena *duces tecum* at any time before rendering the award. The exercise of such power is without prejudice to the right of a party to file a petition in court to safeguard any matter which is the subject of the dispute in arbitration. In the case at bar, private respondent filed an action for a sum of money with prayer for a writ of preliminary attachment. Undoubtedly, such action involved the same subject matter as that in arbitration, i.e., the sum of P25,200,000.00 which was allegedly deprived from private respondent in what is known in banking as a "kiting scheme." However, the civil action was not a simple case of a money claim since private respondent has included a prayer for a writ of preliminary attachment, which is sanctioned by section 14 of the Arbitration Law.

Petitioner cites the cases of Associated Bank vs. Court of Appeals,[43] Puromines, Inc. vs. Court of Appeals,[44] and Ledesma vs. Court of Appeals[45] in contending that "[w]hen arbitration is agreed upon and suit is filed without arbitration having