SUPREME COURT
THIRD DIVISION

INTERNATIONAL SCHOOL, INC. (Manila),
***Petitioner*,**

-versus-

G.R. No. 131109
June 29, 1999

HON. COURT OF APPEALS, SPOUSES ALEX AND OPHELIA TORRALBA,
***Respondent*.**
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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 vs. 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:
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> 1. The sum of P4,000,000.00 as and for Moral damages;
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> 2. The amount of P1,000,000.00 by way of Exemplary damages;
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> 3. The amount of P2,000,000.00 as Actual damages;
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> 4. The sum of P300,000.00 as and for Attorney's fees; and
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> 5. To pay the costs.
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> The complaint against the individual defendants is DISMISSED for insufficiency of evidence. Likewise, the Counterclaim is DISMISSED for lack of merit.
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> 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:

> "We have ruled in Jaca, et al. vs. Davao Lumber Company, et al. that:
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> > "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;
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> (b) There must be good reasons for issuing the execution; and
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> (c) The good reasons must be stated in a special order.[24]

Likewise, the Court of Appeals accepted as 'good reasons' that ISM's appeal appears to be dilatory in view of its virtual admission of fault when it adopted the project "Code Red" only after the death of plaintiffs-spouses Torralba's son, and the delay of the case which already affected plaintiffs spouses Torralbas financially.

This Court has ruled in Ong vs. Court of Appeals[25] that:

> "Where the reason given is that an appeal is frivolous and dilatory, execution pending appeal cannot be justified. It is not proper for the trial court to find that an appeal is frivolous and consequently to disapprove it since the disallowance of an appeal by said court constitutes a deprivation of the right to appeal. The authority to disapprove an appeal rightfully pertains to the appellate court."[26]

The "admission of fault or negligence" adverted to in the lower court's order and subsequently adopted by the appellate court in its decision, was based on the following exchange between the private respondents-spouses' counsel and one of the defendants, ISM's swimming coach Noli Reloj, which transpired during the hearing of February 18, 1994:

> "ATTY. GUERRERO:
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> Issue of Vol. 48, No. 2 of October 1993.

Mr. Reloj, you said that you have read this. There is here an article which says on the front page "Introducing Code Red." And in this article it says and I quote "It was introduced last year by the administration to prevent further incidents like the tragic death of Freshman Ericson Torralba in August 1991 who collapsed while taking the swimming competency test.

Due to school's lack of emergency procedures and equipments, valuable time was lost in coordinating medical efforts in bringing him to the Makati Medical Center.

WITNESS:

Yes, I read that portion.

Q. That's all I want from you.

Now likewise Mr. Witness on page 8 or Exhibit AA, by the way your Honor, may I request the portion which I read be marked as AA-1. Likewise on page 8, there is again mentioned here I quote "ISM has also acquired new equipment to deal with emergencies such as oxygen tank, respirator, new buoyancy and life saving equipment to the pool and a licensed ambulance to transport the victim to the Makati Medical Center.

With the apparent success of Code Red, no one at ISM need worry any longer about life or death emergency. Did you read these portions?

WITNESS:

I read those articles."[27]

For purposes only of determining the correctness of the writ of execution pending appeal, we cannot see how the lower courts came upon the conclusion of virtual admission of fault or negligence by ISM based on the above-quoted exchange where ISM's swimming coach admitted that he read the school paper article introducing "Code Red". As correctly pointed out by ISM, the article was not an official statement of the school, but merely an opinion of its author.

Moreover, we cannot see how the statement of Mr. Noli Reloj that he read the article on "Code Red" can be construed as an admission of liability by the school. Clearly then, the conclusion of the lower courts that the appeal is dilatory based solely on the foregoing exchange rests on shaky ground.

The next question to be resolved is whether or not the filing of a bond can be considered a good reason to justify immediate execution under Section 2, Rule 39.

In the case of Roxas vs. Court of Appeals,[28] this Court had occasion to address this issue directly, as follows:

> "To consider the mere posting of a bond a 'good reason' would precisely make immediate execution of a judgment pending appeal routinary, the rule rather than the exception. Judgments would be executed immediately, as a matter of course, once rendered, if all that the prevailing party needed to do was to post a bond to answer for damages that might result therefrom. This is a situation, to repeat, neither contemplated nor intended by law."[29]

In fine, the rule is now settled that the mere filing of a bond by the successful party is not a good reason for ordering execution pending appeal, as "a combination of circumstances is the dominant consideration which impels the grant of immediate execution, the requirement of a bond is imposed merely as an additional factor, no doubt for the protection of the defendant's creditor."[30] Since we have already ruled that the reason that an appeal is dilatory does not justify execution pending appeal, neither does the filing of a bond, without anything more, justify the same. Moreover, ISM could not be faulted for its withdrawal of its supersedeas bond inasmuch as the lower court granted the execution pending appeal and rejected its offer of supersedeas bond.

Finally, we note that writ of execution pending appeal covered the moral and exemplary damages adjudged by the lower court against ISM. In this regard, we likewise reproduce what was said in Radio Communications of the Philippines, Inc. (RCPI) vs. Lantin, et al.[31]

that awards for moral and exemplary damages cannot be the subject of execution pending appeal, under the following rationale:

> "The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. Unlike the actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of errors on appeal. It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced."

Much as we appreciate the predicament of the bereaved parents, however, this Court is of the opinion that the general rule still finds application in the instant case. In other words, the respondent Court of Appeals committed reversible error in upholding the writ of execution pending appeal absent the 'good reasons' required by law.

WHEREFORE, the petition is granted and the assailed decisions of the Court of Appeals are hereby **REVERSED** and **SET ASIDE**. The writ of execution issued by the lower court pursuant to its order of June 19, 1996 is hereby **ANNULLED**.

SO ORDERED.

Vitug, Panganiban and Purisima, *JJ.*, concur.
Romero, *J.*, is on leave.

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[1] Per Justice Lourdes K. Tayao-Jaguros, with justices Romeo A. Brawner and Hilarion L. Aquino, concurring.
[2] Presided by Judge Ignacio L. Salvador.
[3] Rollo, p. 35.
[4] Ibid., pp. 112-114.

[5] Ibid., p. 62
[6] Ibid., p. 155.
[7] Ibid., p. 135.
[8] Ibid., p. 156.
[9] Ibid., p. 158.
[10] Ibid., p. 160.
[11] Ibid., p. 165.
[12] Ibid., p. 166.
[13] Ibid., p. 63.
[14] Ibid., p. 45.
[15] Ibid., p. 34.
[16] Ibid., p. 44.
[17] Employees' Compensation Commission vs. Court of Appeals, 257 SCRA 717.
[18] City of Manila vs. Court of Appeals, 72 SCRA 98.
[19] 184 SCRA 561.
[20] At pp. 569-570.
[21] Supra, see note 5.
[22] Supra, see note 13.
[23] Section 2, Rule 39 of the Rules of Court provides:
"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 field thereafter, the motion and the special order shall be included thereon."
[24] Provident International Resources Corporation vs. Court of Appeals, 259 SCRA 510.
[25] 203 SCRA 38.
[26] At p. 43.
[27] Rollo, pp. 86-87.
[28] 157 SCRA 370.
[29] At pp. 44.
[30] Ibid.
[31] 134 SCRA 395.