

SECOND DIVISION

[G.R. No. 112563, June 28, 2001]

**HEIRS OF KISHINCHAND HIRANAND DIALDAS, PETITIONERS,
VS. COURT OF APPEALS AND NARI ASANDAS, DOING BUSINESS
UNDER THE NAME AND STYLE OF EXPOCRAFT INTERNATIONAL,
RESPONDENTS.**

[G.R. NO. 110647]

**NARI ASANDAS, DOING BUSINESS UNDER THE NAME AND STYLE
OF EXPOCRAFT INTERNATIONAL, PETITIONER, VS. COURT OF
APPEALS AND KISHINCHAND DIALDAS, RESPONDENTS.**

D E C I S I O N

DE LEON, JR., J.:

Before us are two (2) consolidated Petitions for Review on Certiorari of the Decision^[1] dated June 18, 1993 and Resolution^[2] dated November 5, 1993 in CA G.R. SP. No. 301107 of the Court of Appeals^[3] which nullified the Order^[4] dated October 7, 1992 of the Regional Trial Court of Manila, Branch 40 as well as the Order^[5] dated November 6, 1992, denying respondent's motion for reconsideration.

The undisputed facts are as follows:

On April 18, 1979, Kishinchand Hiranand Daldas, the deceased father of the petitioners, filed against respondent Nari Asandas before the Court of First Instance (now Regional Trial Court) of Manila a complaint docketed therein as Civil Case No. 123013. It prayed for an audit of the books and records of the business enterprise known as "Expocraft International" from October 15, 1972 up to December 31, 1977 to be conducted by an independent auditor for the purpose of determining Daldas' one-third (1/3) share in the business. It likewise prayed that the respondent be ordered to pay Daldas such amount as shall pertain to him in liquidation of his one-third (1/3) share with interest at the legal rate from December 31, 1977 until full payment.

Due to the death of Kishinchand Hiranand Daldas on November 22, 1984, the petitioners herein substituted their said deceased father in the case.

On August 28, 1986, the trial court rendered a Decision in favor of the petitioners by holding that Kishinchand Hiranand Daldas was a partner of the respondent in "Expocraft International." The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in plaintiff's favor against defendant, and it is hereby ordered that:

(1) An immediate independent audit of the books and records of 'EXPOCRAFT INTERNATIONAL' for the period from October 15, 1972 to December 31, 1977, be conducted for the purpose of determining plaintiff's 1/3 share in the said business;

(2) After plaintiff's share has been so determined, defendant shall immediately pay and/or deliver to plaintiff such amount equivalent to the value of plaintiff's aforesaid share, with interest at the legal rate computed from December 31, 1977, until this obligation is fully complied with;

(3) To pay plaintiff the following amounts:

(a) P50,000.00 as moral damages;

(b) P30,000.00 as attorney's fees and expenses of litigation;
and

(b) The cost of the suit.

SO ORDERED.^[6]

On appeal, the Court of Appeals rendered a Decision dated May 31, 1990 affirming the decision of the trial court. The respondent appealed the appellate court's Decision to this Court, but on October 15, 1990 we denied the petition for review. On November 7, 1990, the judgment became final.

On March 21, 1991, upon motion of the petitioners, the trial court issued an Order granting the writ of execution of its Decision. On May 14, 1991, the sheriff served upon the respondent a notice of the issuance of the writ giving the latter five (5) days from receipt thereof to comply with the judgment which ordered the respondent to produce the books and records necessary for an independent audit. However, the respondent failed to produce the same inasmuch as said documents were allegedly burned by the fire that engulfed respondent's business establishment sometime before the service of the writ of execution.

On June 28, 1991, the petitioners filed a "motion to authorize the plaintiff to determine 1/3 share under Section 10, Rule 39 of the Rules of Court". Respondent filed a manifestation to the effect that his "failure was not due to his deliberate refusal to submit the books of account but because said books had been lost, due to circumstances not of his will or desire." On July 17, 1991, the respondent filed a letter informing the trial court that "despite all efforts exerted we were unable to locate the records treated in the (instant) case." On October 14, 1991, the petitioners submitted their computation of their father's one-third (1/3) share in "Expocraft International" for the given period. After filing his comment, the respondent offered to deliberate with the trial court and the petitioners on other ways of determining the share of the petitioners' father. However, the respondent, acting through a new counsel, withdrew his offer to sit down in conference and

opted to assume the position that the trial court would be acting without or in excess of jurisdiction.

On October 7, 1992, the trial court issued an Order in favor of the petitioners. It made a determination of the one-third (1/3) share due to the petitioners as follows:

There is no question that plaintiff is entitled to 1/3 portion of the EXPOCRAFT International. From the decision rendered in this case, it is clear that an amount was determined as a starting point as to how much the plaintiff's 1/3 share is.

The Court, in its decision, stated:

xxx xxx xxx

"(8) In August, 1976, Balani separated from the business, apparently because of a "little misunderstanding" with the defendant, and subsequently filed a court action against the defendant before this Court (Civil Case No. 109818). Later, on the basis of a compromise agreement (Exh. "8"), a decision was rendered by the Court (Exh. "C"), wherein defendant agreed to pay Balani the sum of P210,000.00 "as liquidation of his one-third (1/3) share in the business known "Expocraft International" up to 31 August 1976."

xxx xxx xxx

'When Balani separated from Expocraft in August of 1976, it was determined in the court action he successfully pursued against defendant that he still had as unpaid share in the partnership; and in the decision rendered by the Court based on the compromise agreement reached between Balani and the defendant, Balani agreed to accept P210,000.00 "as liquidation of his one-third (1/3) share in the business known as "EXPOCRAFT INTERNATIONAL" up to 31 August 1976." (Exh. "C"). If Balani was entitled to the amount mentioned as his share in the business by August 31, 1976, undoubtedly, plaintiff should be entitled to at least the same amount as of that date, being an equal partner with plaintiff and defendant. If plaintiff continued the partnership with the defendant up to December 31, 1977 then, considering that the partnership must be assumed to be making profits yet, then plaintiff should be entitled to a share substantially more than what Balani got.'

Exh. "D-2" of the plaintiff shows that the plaintiff has a net equity of P324,344.75 as of August 31, 1976. From what has been submitted by the plaintiff, the estimated monthly income of the net equity for the plaintiff is P9,248.32, which is roughly as income of 2.85% per month. In short, the net equity earns around 34.21% per annum. This estimated income of the net equity of the plaintiff as of August 31, 1976, appears to be reasonable as this is even less than the interest rates extended by banks.

This Court rules that the 1/3 portion share of the plaintiff in the

With his motion for reconsideration thereto denied, the respondent filed a petition for certiorari before the Court of Appeals docketed therein as CA G.R. SP. No. 301107. On June 18, 1993, the appellate court rendered a decision reversing the Order of the trial court, the dispositive portion of which reads:

WHEREFORE, the petition is given due course, and the case is remanded to the court *a quo* for further proceedings. The petitioner is ordered to pay P8.80 as costs within five (5) days from receipt of notice.

SO ORDERED.

When the petitioners' motion for reconsideration was denied, they filed before this Court the instant petition for review on certiorari, docketed as G.R. No. 112563, seeking the reversal of the decision of the appellate court. In the meantime, the case was consolidated with the respondent's own petition for review, docketed as G.R. No. 110647, of the appellate court's decision in CA G.R. SP. No. 301107. The respondent's petition was based on the ground that the appellate court failed to find the trial court judgment as null and void for being conditional.

The petitioners submit the following assignment of errors:

I

RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN ALLOWING PRIVATE RESPONDENT TO ESCAPE EXECUTION THROUGH THE SIMPLE EXPEDIENT OF DECLARING THAT THE BOOKS OF ACCOUNT OF EXPOCRAFT INTERNATIONAL HAD BEEN LOST.

II

RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN NOT FINDING THAT THE ORDER OF THE TRIAL COURT WAS BASED ON SUBSTANTIATED AND UNREBUTTED EVIDENCE.

On account of the loss of the books and records of the partnership, the dispositive portion of the judgment in Civil Case No. 123013 ordering the production of the books and records has been rendered impossible to execute. As a result, upon motion of the petitioners, the trial court made its own findings of Daldas' share. For this reason, the respondent appealed to the appellate court which found the findings of the trial court based solely on the petitioners' computation and thus required another hearing to afford the respondent to present his side.

The petitioners seek the reversal of the appellate court's decision which ordered the reception by the trial court of evidence to determine the one-third (1/3) share that is due to their deceased father in the partnership venture. They claim that there is