

THIRD DIVISION

[G.R. No. 126556, July 28, 1997]

**NELSON C. DAVID, PETITIONER, VS. COURT OF APPEALS AND
PETRON CORPORATION, RESPONDENTS.**

R E S O L U T I O N

MELO, J.:

The petition for review before us questions the April 24, 1996 decision and October 7, 1996 resolution of respondent Court of Appeals which declared void a special order of Branch 4, of the Regional Trial Court of the Third Judicial Region stationed at Balanga, Bataan, ordering partial execution pending appeal to the extent of P50 million out of an award of P1,291,456,320.00 to be paid by Petron Corporation. The award is for the use of water over a 3-year period beginning 1992 up to 1994. The Sangguniang Bayan of the Municipality of Limay, Bataan, passed Municipal Ordinance No. 90 charging private respondent Petron Corporation the amount of approximately P430 million per year for the use of the municipality's water. Private respondent questioned the legality of the said ordinance before the above-named regional trial court, claiming among other things, that it does not consume more than P7 million worth of water per year.

The regional trial court rendered judgment upholding the validity of the aforementioned ordinance. Private respondent elevated the matter to the Court of Appeals where its appeal is now pending, docketed as CA-G.R. No. CV-52293. Meanwhile, before perfection of the appeal, petitioner filed a motion for partial execution pending appeal. As earlier mentioned, the regional trial court issued the order granting partial execution to the extent of P50 million. This order was questioned before respondent Court of Appeals by way of a petition for certiorari. The Court of Appeals, finding grave abuse of discretion on the part of the regional trial court for ordering the partial execution pending appeal, resolved to set aside the order. Hence, the present recourse by way of a petition for review.

The Court finds no reversible error committed by respondent Court of Appeal in setting aside the order of the regional trial court which granted partial execution pending appeal.

The then prevailing rule invoked by petitioner and accordingly applied by the regional trial court was Section 2, Rule 39 of the former Rules of Court which provides:

Sec. 2. Execution pending appeal. – On motion of the prevailing party which 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 filed thereafter the motion and the special order shall be included therein.

The execution of a judgment before becoming final by reason of appeal is recognized. However, this highly exceptional case must find itself firmly founded upon good reasons for such execution. For instance, execution pending appeal was granted by this Court where the prevailing party is of advanced age and in a precarious state of health and the obligation in the judgment is non-transmissible, being for support (*De Leon vs. Soriano*, 95 Phil. 806 [1954]), or where the judgment debtor is insolvent (*Padilla vs. Court of Appeals*, 53 SCRA 168 [1973]). Execution pending appeal was also allowed by this Court where defendants were exhausting their income and have no other property aside from the proceeds of the subdivision lots subject of the action (*Lao vs. Mencias*, 21 SCRA 1021 [1967]).

Mere issuance of a bond to answer for damages is no longer considered a good reason for execution pending appeal. This was expounded in *Roxas vs. Court of Appeals* (157 SCRA 370 [1988]), thus:

Execution pending appeal in accordance with Section 2 of Rule 39 is, of course, the exception. Normally, execution of a judgment should not be had until and unless it has become final and executory –i.e., the right of appeal has been renounced or waived, the period for appeal has lapsed without an appeal having been taken, or appeal having been taken, the appeal has been resolved and the records of the case have been returned to the court of origin – in which case, execution “shall issue as a matter of right.”

On the other hand, when the period of appeal has not expired, execution of the judgment should not be allowed, save only if there be good reasons therefor, in the court’s discretion. “As provided in Section 2, Rule 39 of the x x Rules x x, the existence of good reasons is what confers discretionary power on a Court x x to issue a writ of execution pending appeal. The reasons allowing execution must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment.”

It is not intended obviously that execution pending appeal shall issue as a matter of course. “Good reasons, special, important, pressing reasons must exist to justify it; otherwise, instead of an instrument of solicitude and justice, it may well become a tool of oppression and inequity. But 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 matters 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.

(pp. 377 – 378.)

Respondent court’s basis for setting aside the trial court’s order for the partial execution of the judgment pending appeal is herein quoted as follows:

The special reason which prompted the court a quo to grant the petition for execution pending appeal are not the special reasons contemplated by the rules in this particular case. There is no urgency or immediate