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EN BANC

[G.R. No. 85494, July 10, 2001]

CHOITHRAM JETHMAL RAMNANI AND/OR NIRMLA V. RAMNANI AND MOTI C. RAMNANI, PETITIONERS, VS. COURT OF APPEALS, SPS. ISHWAR RAMNANI AND OVERSEAS HOLDING CO., LTD., RESPONDENTS.

[G.R. No. 85496]

SPS. ISHWAR JETHMAL RAMNANI AND SONYA JETHMAL RAMNANI, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, ORTIGAS & COMPANY, LTD. PARTNERSHIP AND OVERSEAS HOLDING CO., LTD., ET. AL., RESPONDENTS.

[G.R. No. 195071]

OVERSEAS HOLDING CO., LTD., PETITIONER, VS. ISHWAR JETHMAL, RAMNANI AND SONYA RAMNANI, RESPONDENTS.

RESOLUTION

SANDOVAL-GUTIERREZ, J.:

Execution of a judgment is the fruit and end of the suit and is the life of the law. To frustrate it for almost a decade by means of deception and dilatory schemes on the part of the losing litigants is to frustrate all the efforts, time and expenditure of the courts. This Court's Decision in this case became final and executory as early as 1992. After years of continuous wrangling during the execution stage, it is unfortunate that the judgment still awaits full implementation. Delaying tactics employed by the said losing litigants have prevented the orderly execution. It is in the interest of justice that we should write *finis* to this litigation.

For resolution is the Motion for Reconsideration of this Court's Resolution dated August 17, 1999 filed by spouses Ishwar and Sonya Ramnani. Our assailed Resolution denied their Manifestation and Urgent Motion dated May 6, 1994 and affirmed the orders of the Regional Trial Court of Pasay City, Branch 119 dated January 27 and April 5, 1994.

The factual backdrop, culled from the voluminous records in these cases, are:

In the latter part of 1965, spouses Ishwar Jethmal Ramnani, an American citizen, and Sonya Jethmal Ramnani, both from New York (hereinafter referred to as spouses Ishwar), invested substantial amount of money for a profitable business venture in the Philippines. Since they could not personally manage their investments, they appointed two of Ishwar's brothers, Choithram Jethmal Ramnani and Navalrai Jethmal Ramnani, as their attorneys-in-fact.

Choithram decided to invest in the real estate business. On February 1, 1966 and May 16, 1966, Choithram, in his capacity as attorney-in-fact of Ishwar, bought two parcels of land located in Barrio Ugong, Pasig, Rizal from Ortigas & Company, Ltd. Partnership (Ortigas, for short) and had buildings constructed thereon. Through the industry and genius of Choithram, Ishwar's property was developed and improved into a valuable asset worth millions of pesos.

Unfortunately, Choithram, while showing himself to be a good manager, proved unfaithful to the trust reposed in him by spouses Ishwar. Without their knowledge, Choithram started to appropriate his brother's property and other assets as his own.

In 1973, upon complete payments of Ishwar's lots which he purchased from Ortigas, Choithram caused the latter to execute the corresponding deeds of sale in favor of his daughter-in-law, Nirmla. Eventually, TCT Nos. 403150 and 403152 were issued by the Registry of Deeds of Rizal in her favor.

Choithram also donated 2,500 shares of stock in a garment corporation to his children. He also fraudulently mortgaged $3,000,000.00 worth of the spouses' property to "Overseas Holding Co." Records show that the $3,000,000.00 mortgage was executed on June 20, 1989, or 6 days before the corporation was organized.

Spouses Ishwar learned what Choithram was doing. Hence, they asked him to render an accounting, but there was none forthcoming. They then revoked Choithram's general power of attorney. He earnestly pleaded in writing to Ishwar to issue another power of attorney, but to no avail.

Choithram repudiated all well-meaning efforts to solve the controversy within the Ramnani family. Moreover, he denied the genuine nature of the trust relationship between him and his brother Ishwar.

Agitated, spouses Ishwar filed on October 6, 1982 with the Court of First Instance of Rizal a complaint for reconveyance and damages against Choithram and his son Moti and daughter-in-law Nirmla (Choithram family for short). Ironically, the CFI dismissed the complaint and recognized Choithram's full ownership of the questioned two parcels of land. On appeal, the Court of Appeals reversed the trial court's decision, finding that spouses Ishwar entrusted capital to Choithram to be invested in the Philippines. The appellate court held the Choithram family and Ortigas jointly and severally liable to spouses Ishwar.

Subsequently, the Court of Appeals modified its earlier decision by dismissing the case against Ortigas. Both parties appealed to this Court. In ***G.R. No. 85494***, the Choithram family vigorously asserted their right of ownership over the disputed lots, while in ***G.R. No. 85496***, spouses Ishwar faulted the Court of Appeals in dismissing the case against Ortigas.

In the meantime, Choithram continued to dissipate Ishwar's assets.

On May 7, 1991, this Court rendered a joint Decision in G.R. Nos. *85494* and *85496*, now in 196 SCRA 731. This Court held that Choithram violated the trust relationship between him and Ishwar. Considering, however, that the two protagonists are brothers and that Choithram made wise investments of spouses Ishwar's money, this Court applied a *Solomonic* solution by dividing equally between spouses Ishwar and the Choithram family the two parcels of land subject of the litigation, including all the improvements thereon and income from 1967. This Court also ruled that Ortigas is solidarily liable with Choithram family to spouses Ishwar because of its bad faith in executing the deeds of sale in favor of Nirmla despite its knowledge that Choithram's general power of attorney had been revoked by Ishwar.

Later, this Court realized that its *Solomonic* Decision, in effect, formulated a new contract for the parties. Thus, in its Resolution dated February 26, 1992, this Court declared that the disputed lots are solely owned by spouses Ishwar. The motion for reconsideration of the Choithram family was **denied with finality.**

On March 18, 1992, this Court also denied Choithram's **motion for clarification and/or second motion for reconsideration. Entry of final judgment** was then made on March 20, 1992.

Still obstinate to abide with this Court's final judgment, the Choithram family filed a petition for certiorari, through the Overseas Holding Corporation, (docketed as **G.R. No. 105071**) seeking to set aside as "unconstitutional" this Court's May 7, 1991 joint Decision declaring, among others, that the mortgaged contract involving the two parcels of land executed between Nirmla and Overseas Holding is void. This Court denied the said petition for being in the nature of a third motion for reconsideration and stressed that a writ of certiorari may not issue from the Court *en banc* to annul a Decision of one of the Court's Divisions. This Court forthwith ordered the Regional Trial Court of Pasay City, Branch 112 to execute with dispatch its joint Decision of May 7, 1991 and Resolution dated February 26, 1992. The parties and counsel were also warned to desist from further assailing an already final Decision and raising anew issues already passed upon.

Per Resolution of this Court dated August 26, 1992, the case was re-assigned to the RTC of Pasay City, Branch 119. Thereafter, execution proceedings and hearing on the valuation of the disputed properties ensued.

Because of the Choithram family's continuing delaying tactics and evasive moves against the execution of this Court's Decision and due to the desire of spouses Ishwar to quickly obtain the fruits of their many years of court battle, the latter were constrained to agree to a compromise agreement which was denominated as Tripartite Agreement.

It bears stressing that spouses Ishwar were claiming for the value of the two lots, not the lots themselves. To clear up this issue, the July 19, 1993 Tripartite Agreement fixed the valuation at P65,000,000.00 which the Choithram family, together with Ortigas, agreed to pay spouses Ishwar, thus:

"(a) P40 Million upon the signing hereof by the parties;

b) P10 Million within thirty (30) days from July 5, 1993 or on or before September 3, 1993;

c) P15 Million within sixty (60) days from July 5, 1993 or on or before September 3, 1993;
Choithram and/or Harish Ramnani shall issue to plaintiffs postdated checks on the amounts covered by paragraph (b and c above) immediately encashable on due dates."[1]

There is also a specific agreement on default by the Choithram family, thus:

> "6. In the event of default of defendants Ortigas and Choithram Jethmal Ramnani to pay any of the amounts within the agreed period, <u>proceedings in execution, including hearings on valuation, shall immediately resume and plaintiff shall be entitled to enforce and execute the Supreme Court's judgment against the defendants in accordance with the terms thereof</u> and the final and total monetary entitlements described in paragraph 1 above, less whatever amounts plaintiffs may have partially recovered from the defendants. In case of execution of the balance due Ishwar as finally determined by the Court, plaintiffs shall proceeds to first sell the subject properties mentioned in par. 6 hereof."[2]

The Choithram family paid spouses Ishwar 40,000,000.00, as agreed upon. However, when the payment of the P25,000,000.00 balance became due, they defaulted and again balked at complying with their commitments under the compromise agreement.

On August 3, 1993, or one day before August 4, 1993, the due date of the second payment, the Choithram family wrote the Bureau of Internal Revenue, ostensibly requesting clarification whether or not, as payors of P65 million, they should pay the government any tax. Significantly, they did not inform the BIR that Ishwar is a permanent resident alien here and that the amount he will receive under the Tripartite Agreement is not subject to withholding tax at source. In response, the BIR Commissioner, in a letter dated August 6, 1993, informed Choithram and Ortigas that the 65 million compromise settlement is subject to 30% withholding tax collectible against spouses Ishwar and at the same time constituted Choithram and Ortigas as "withholding agents."

The side issue arising from the Choithram family's report to BIR of alleged non-payment of taxes due was eventually decided in favor of spouses Ishwar. But it gave the Choithram family a convenient excuse for not complying with their obligation to pay when due the balance under the compromise agreement.

On September 3, 1993, the Choithram family filed a manifestation tendering payment of the balance of P25 million as evidenced by checks payable, not to spouses Ishwar, but to the Branch Clerk of Court of the RTC. Subsequently, or particularly on September 7, 1993, or three days after the maturity date of the second set of checks, spouses Ishwar filed with the court *a quo* an urgent motion for immediate resumption of hearing, arguing that pursuant to Paragraph 6 of the Tripartite Agreement, Choithram and Ortigas were already in default, hence, execution proceedings should be resumed. The trial court, in its assailed order dated January 27, 1994, denied the motion, thus:

> "That defendant's desire to pay the balance of the amount stipulated in their Tripartite Agreement is apparent. Under the aforestated facts and circumstances, is it equitable that they be held in default? Article 1229 of the Civil Code gives the court the power to equitably reduce penalty when the principal obligation has been partly complied with by the debtor. In default cases, the court may likewise reconsider its order of default when the interest of justice so dictates.
>
> "In order not to put to naught all the efforts of the parties in forging the Tripartite Agreement which took them a long period of time to arrive at, the branch Clerk of Court is directed to immediately endorse to the counsel of plaintiffs, up to the time the same is encashed, under the following terms:
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> 1. That the Quasha Law (F)irm receives the balance of the amount of P25 million in compliance with the Tripartite Agreement, adverted to, and subject to the tax claim of the BIR;
>
> 2. That it shall release to the plaintiffs the amount due them after the tax matter on said amount shall have been resolved, and in the meanwhile the said amount shall be deposited in an interest bearing account and/or money placement in treasury bills; and
>
> 3. The upon receipt of the aforestated amount, plaintiffs shall execute the Deed of Assignment of Judgment in favor of defendants Ortigas & Co., Ltd., Partnership and Choithram Jethmal Ramnani in the proportion agreed upon by the said defendants.
>
> In view of the foregoing, plaintiffs' Motion for continuation of hearing is DENIED."[3]

Spouses Ishwar filed a Motion for Reconsideration but was denied. This prompted them to file with this Court a Manifestation and Urgent Motion contending *inter alia* that the lower court committed grave abuse of discretion in denying their motion for resumption of the execution proceedings.

On August 17, 1999, this Court issued a Resolution denying spouses Ishwar's Manifestation and Urgent Motion and sustaining the challenged orders of the RTC.

Hence, the present Motion for Reconsideration of the said Resolution.

In their motion, spouses Ishwar contend that we are rewarding bad faith and fraudulent maneuverings on the part of the Choitram family. To allow non-compliance with the terms of the Tripartite Agreement and, therefore, a deviation from our May 7, 1991 Decision and February 26, 1992 Resolution is an act of injustice.

Spouses Ishwar specified in their motion the reprehensible acts of Choithram, among them:

> a) Patent violation of a clear compromise agreement burdensome to Ishwar Ramnani;
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> b) In spite of Ishwar's generous concessions, Choithram repaid the favors with bad faith, delaying tactics and sinister moves intended to thwart him (Ishwar) from getting what is justly due him, resulting in extreme anxiety, considerable distress and needless expenses on his part;
>
> c) Filing fabricated charges with the BIR regarding Ishwar's alleged tax liabilities, all of them found without basis but only after causing the delayed settlement of what Choithram promised to pay under the compromise agreement; and
>
> d) Continued maneuver to delay or prevent the execution of this Court's Decision dated May 7, 1991 and February 26, 1992.

In what spouses Ishwar call a "plea for simple justice," they now ask, "Should deceit and unscrupulous(ness) be rewarded?"

It is elementary that nothing beneficial or lucrative should arise from subterfuge or deception. Bad faith has characterized the history of this case. It started with Choithram's violations of the trust agreement and has continued throughout the execution stage. Dilatory tactics, including a misleading report to the BIR, have resulted in non-implementation <u>for ten (10) years</u> of a final and executory Decision of this Court. Moreover, there have been late and faulty payments under a compromise agreement.

We rule that under the above circumstances, the Choitram family should strictly comply with the terms of the compromise agreement in an expeditious manner.

A compromise is defined in the Civil Code as:

> "Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."

A compromise is intended to prevent or put an end to a lawsuit. The parties adjust their difficulties by mutual consent. Each of the parties prefers the terms of the compromise to their earlier hope of gaining, balanced by the danger of losing. It is intended to end litigation because of the uncertainty of its result. Prolonging a litigation is anathema to a compromise agreement.

In this particular case, there is no longer any uncertainty over the result of litigation.

Judgments were rendered ten (10) years back. Spouses Ishwar have won their cases. The Choithram family should have accepted this settled matter a long time ago. Spouses Ishwar agreed to the compromise simply because after more than a decade of litigation, their lots or the value thereof have not been returned to them. In fact, up to the present time, or 17 years from the filing of the complaint and more than nine (9) years after our "denied-with-finality judgment," they have not been fully paid.

A compromise agreement is valid and binding, not because it is the settlement of a controversy. Once the compromise is perfected, the parties are bound to abide by it in good faith.

In the cases at bar, the Choithram family persisted in dilatory tactics even after the court battle was supposed to have ended with finality. Their claims have been adjudged invalid but they continued the conflict.

Under the compromise agreement, the post-dated check for P10,000,000.00 should have been cashed not later than August 4, 1993, and the P15,000,000.00 check not later than September 3, 1993. The post dated checks could not be cashed. Instead, a P10,000,000.00 check was tendered on September 12, 1993, or 8 days late. The checks were personal checks payable to the Clerk of Court, meaning that spouses Ishwar could not even encash them until ordered by the trial court. The check for P15,000,000.00 was tendered on September 12, 1993, or 8 days late. It has to be emphasized at this point that the compromise agreement is evidently in amounts substantially less than what the Choitram family should pay spouses Ishwar. The compromise is spouses Ishwar's concession to the Choithram family for them to end the seemingly interminable litigation.

We thus rule that the trial court committed reversible error when it applied equitable considerations under Article 1229 of the Civil Code to justify the defaults of Choithram and Ortigas.

In *Commercial Credit Corporation of Cagayan de Oro v. Court of Appeals,*[4] this Court held:

> "(Article 1229) . . . applies only to obligations or contract, subject of a litigation, the condition being that the same has been partly or irregularly complied with by the debtor. The provision also applies even if there has been no performance, as long as the penalty is iniquitous or unconscionable. <u>It cannot apply to a final and executory judgment.</u>"

Moreover, equity does not apply to a situation when fraud and dilatory schemes exist. The incidents, during the supposed tender of payment, support a finding of continuing insincerity, recalcitrance, and bad faith on the part of the Choitram family. But these were not taken into account by the trial court.

In the first place, the tender of payment was effected late with no valid reason for the delay.

Second, the tender of payment is of doubtful validity. It bears reiterating that the checks were personal checks payable, not to spouses Ishwar, but to the RTC Branch Clerk of Court. They were not manager's or cashier's checks. Spouses Ishwar also state that the tender was conditional. It carried what they called "unacceptable conditions." The checks could not be indorsed to them because they were "Not transferable." The term and maturity were limited in nature.

Third and most important, the intent to really pay as agreed upon was missing. It was not a genuine or sincere tender. Instead of making good on the stipulated payment, the Choithram family created a situation in such a way that the balance of P25 million was to be paid to the Bureau of Internal Revenue, not to spouses Ishwar. Thus, Choitram peremptorily wrote a poison letter to the BIR requesting "clarification" on the alleged tax liabilities of spouses Ishwar, and of his (Choithram's) "obligations" as payor. Choithram maliciously concealed from the BIR the material fact that Ishwar, although an alien, is a permanent resident of the Philippines, and his income and amounts received under the Tripartite Agreement are, therefore, not subject to 30% withholding tax at source. Under the Tax Code, a final 30% withholding tax at source is mandated to be collected only from non-resident aliens. The BIR promptly issued an assessment based on an incomplete presentation of facts by Choithram, directing him to withhold Twenty Million One Hundred Fifty Thousand Pesos (P20,150,000.00)

For the mischief of the Choithram family, spouses Ishwar were needlessly compelled to litigate before the Court of Tax Appeals and subsequently before the Court of Appeals, and in the process wasted time and incurred expenses just to correct the harm done by the said family. The Court of Tax appeals reversed the BIR and ruled that Ishwar is a resident alien and his income is not subject to 30% automatic final withholding tax at source. Subsequently, the Court of Appeals affirmed the CTA ruling on the status of Ishwar as a resident alien.

The administrative and judicial processes which Ishwar had to undergo because of the deceit and unscrupulous acts of the Choithram family consumed five (5) exhausting years, from 1993 until the dispute was finally resolved in 1998. Indeed, incessant bad faith on the part of the Family Choithram is evident.

A second hard look at the history of these cases shows that it was a mis-step and when we upheld the orders of the trial court dated January 7, 1994 and April 5, 1994. They should be rescinded.

By way of conclusion, it is elementary that if a party fails or refuses to abide by a compromise agreement, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand.[5] This rule must be followed. For indeed, "it is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves without regard to its wisdom or folly as the court cannot supply material stipulations or read into the contract words which it does not contain."[6]

WHEREFORE, this Court's Resolution dated August 17, 1999 is reconsidered. The January 27, 1994 and April 5, 1994 orders of the Regional Trial Court, Branch 119, Pasay City, in Civil Case No. 0534-P are set aside. The trial court is ordered to speedily enforce and execute this Court's final and executory Decision dated May 7, 1991 and the Resolution dated February 26, 1992; and to expeditiously resume and complete the proceedings in execution, including the valuation of the parcels of land covered by TCT Nos. 403150 and 403152 of the Registry of Deeds of Pasig City for the purpose of determining the final and total monetary entitlement of spouses Ishwar Jethmal and Sonya Jethmal Ramnani, less the amount of Forty Million (40,000,000.00) Pesos received by them, strictly according to the tenor of the above Decision and Resolution of this Court. The trial court is further directed to report the progress of its compliance within 15 days from notice and every 10 days thereafter, until the execution is terminated.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Ynares-Santiago, and *De Leon, Jr., JJ.*, concur.
Quisumbing, J., on official leave.
Gonzaga-Reyes, J., on leave.

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[1] Vol II, G.R. 85494, pp. 1083.

[2] *Ibid*., pp. 1084-1085; empahasis supplied.

[3] Vol. II, pp. 1263, Annex 19.

[4] 169 SCRA 1, p. 8, (1989).

[5] Canonizado vs. Benitez, 127 SCRA 610 [1984].

[6] Cuizon vs. Court of Appeals, 260 SCRA 645 [1996].