



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

HARBOUR CENTRE PORT G.R. No. 213080
TERMINAL, INC.,
Petitioner, Present:

-versus-

LEONEN, J., *Chairperson*,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ J., JJ.

HON. LYLIHA L. ABELLA-
AQUINO, AS PRESIDING JUDGE
OF REGIONAL TRIAL COURT,
BRANCH 24, MANILA, LA
FILIPINA UYGONGCO
CORPORATION, and
PHILIPPINE FOREMOST
MILLING CORPORATION,
Respondents.

Promulgated:
May 3, 2021

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DECISION

LEONEN, J.:

The Regional Trial Court can rule on a motion for execution pending appeal if it still has jurisdiction over the case and is in possession of either the original record or the record on appeal. Furthermore, there must be good reasons before an execution pending appeal is allowed under the Rules of Court.

For this Court's resolution is a Petition filed under Rule 45 seeking to assail the Court of Appeals' Resolutions, which dismissed for being moot the petition questioning the Regional Trial Court's partial execution of its

Decision¹ in favor of La Filipina Uygongco Corporation and Philippine Foremost Milling Corporation.

La Filipina Uygongco Corporation and Philippine Foremost Milling Corporation (collectively, La Filipina) are both engaged in the importation of various products.² La Filipina Uygongco Corporation imports fertilizers, milk and dairy products, soybean meal, and trading sugar,³ while Philippine Foremost Milling Corporation is engaged in the importation of wheat, animal feeds, as well as milling of flour and animal feeds.⁴

Harbour Centre Port Terminal, Inc. (Harbour Centre) operates a port in the Manila Harbour Centre.⁵

Sometime in 1997, negotiations began for La Filipina to be a locator at Manila Harbour Centre.⁶ These negotiations were eventually concretized on November 19, 2004 when La Filipina and Harbour Centre executed a Memorandum of Agreement outlining their rights and obligations, particularly on berthing and dredging, as well as port and cargo handling charges.⁷ For dredging, the parties agreed that Harbour Centre shall regularly dredge the navigational channel and berthing area to maintain it at -11.5 meters Mean Lower Low Water (MLLW)⁸ at all times.⁹

In 2008, several of La Filipina's vessels touched bottom.

On November 10, 2009,¹⁰ La Filipina filed a complaint in the Regional Trial Court for compliance with maritime law, regulation and contract, specific performance, and damages against Harbour Centre for its failure to comply with the Memorandum of Agreement.¹¹

La Filipina argued that Harbour Centre failed to dredge regularly and maintain the required depth of its navigational channel and berthing area, which caused several of its vessels to touch bottom. It further claimed that Harbour Centre violated its priority berthing rights and did not follow the formula provided in the Memorandum of Agreement when it increased the port and cargo handling charges.¹²

¹ *Rollo*, pp. 86–121. The October 11, 2011 Decision in Civil Case No. 08-119957 was penned by Judge Antonio M. Eugenio, Jr. of Branch 24, Regional Trial Court, Manila.

² *Id.* at 86.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 87. Harbour Centre was developed by R-II Builders, Inc.

⁶ *Id.*

⁷ *Id.* at 89.

⁸ MLLW is the standard of measure in maritime science, which refers to as mean lower low water, or the depth of the seabed at low tide.

⁹ *Rollo*, p. 98.

¹⁰ *Id.* at 702.

¹¹ *Id.* at 86.

¹² *Id.* at 92.

Harbour Centre, on the other hand, denied the allegations and claimed that it is entitled to the payment of rentals and overhang charges for La Filipina's use of cargo space in its port for unloading equipment.¹³

In an October 11, 2011 Decision,¹⁴ the Regional Trial Court found that Harbour Centre failed to comply with the Memorandum of Agreement, and that it violated La Filipina's priority berthing rights.¹⁵ The trial court also noted that due to Harbour Centre's failure to regularly dredge, La Filipina's vessels touched bottom. Moreover, both La Filipina and Harbour Centre conducted hydrographic surveys, which revealed that the water's depth did not meet the standard of -11.5 meters MLLW.¹⁶

The trial court also ruled that Harbour Centre overcharged La Filipina for the port and cargo rates, as Harbour Centre did not follow the specified formula in the Memorandum of Agreement for its increase.¹⁷ The trial court also denied Harbour Centre's claim for rental fees, citing Philippine Ports Authority issuances¹⁸ which state that areas in the port that are "officially designated as parking spaces. . . and stacking or storage areas" for cargo handling equipment are exempt from rental payments.¹⁹ Thus:

ACCORDINGLY, judgment is hereby rendered in favor of plaintiffs and against defendant Harbour Centre Terminal, Inc. as follows:

1. Defendant Harbour Centre is hereby ordered to (a) undertake within fifteen (15) days from receipt hereof the dredging of the berthing area and the navigational channel to a depth of -11.5 meters MLLW; (b) to abide by the formula stated in the Memorandum of Agreement in computing the port and cargo handling charges and increases thereto; (c) to honor the provisions of the MOA relative to the priority berthing rights and use of the port granted to plaintiffs;
2. Defendant Harbour Centre is likewise ordered to pay plaintiffs the following damages:
 - (i) Liquidated damages of US\$ 2,000/day beginning December 6, 2004 until such time that defendant Harbour Centre shall have complied with its obligation to maintain the depth of -11.5 meters MLLW plus legal interest at 6% per annum which as of September 30, 2011 had already reached US\$ 4,978,000.00;

¹³ Id. at 107.

¹⁴ Id. at 86–121. The Decision was penned by Judge Antonio M. Eugenio, Jr., of the Regional Trial Court, Manila, Branch 24.

¹⁵ Id. at 98.

¹⁶ Id. at 100.

¹⁷ Id. at 106.

¹⁸ PPA Memo. Circular No. 32-96 (1996) and PPA Adm. Order No. 01-2006 (2006).

¹⁹ *Rollo*, p. 109.

- (ii) Actual damages in the amount of ₱7,333,971.90 representing the costs incurred arising from the delay in berthing the twenty (20) barges and the costs of the underwater surveys of the vessels that touched bottom plus interest at 6% per annum from the filing of the Amended and Supplemental Complaint;
 - (iii) Exemplary damages in the amount of Ten Million (₱10,000,000.00) PESOS;
 - (iv) Attorney's fees in the amount of Ten Million (₱10,000,000.00) PESOS;
3. Defendant Harbour Centre is further ordered to credit to plaintiffs the amount paid to the former under protest representing the excess of the sum paid for the ₱95 per metric ton port and cargo handling charges, plus interest at 6% per annum from the time the amended and Supplemental complaint was filed;
 4. The Office of the Clerk of Court is likewise ordered to release to the plaintiffs all sums deposited with it representing the excess of the port and cargo handling charges which as of May 19, 2011 had already reached ₱100,578,360.86 including those deposited after the said date;
 5. The preliminary injunction heretofore issued is hereby made permanent.

The cash bond of ONE HUNDRED FIFTY MILLION (₱150,000,000.00) PESOS posted by plaintiffs is likewise ordered released to the plaintiffs.

The counterclaim interposed by defendant Harbour Centre is hereby ordered dismissed for lack of merit.

With costs against defendant Harbour Centre Port Terminal, Inc.

SO ORDERED.²⁰

On October 28, 2011, La Filipina filed a Motion for Partial Reconsideration,²¹ alleging that Harbour Centre ought to be further made liable due to the storage and trucking costs that La Filipina incurred for being prevented to berth at the Manila Harbour Centre.²²

On November 2, 2011, Harbour Centre filed a notice of appeal (Main Appeal).²³

On November 9, 2011, La Filipina filed a Motion for Partial Execution Pending Appeal.²⁴ It prayed for the execution of some portions of the Regional Trial Court's October 11, 2011 Decision, particularly that Harbour

²⁰ Id. at 119–121.

²¹ Id. at 379.

²² Id. at 454–455.

²³ Id. at 122.

²⁴ Id. at 128.

Centre be directed to immediately: (1) dredge the navigation channel and berthing area to a depth of -11.5 meters MLLW; (2) pay actual damages for the costs that La Filipina incurred from the delay in berthing 20 barges, along with the underwater surveys of the vessels that touched bottom; (3) pay liquidated damages until it has met the dredging requirement; and (4) credit to it the excess amounts that La Filipina paid under protest for port and cargo handling charges.²⁵

La Filipina reasoned that the immediate execution of these orders from the October 11, 2011 Decision will: (1) minimize damage to its vessels; (2) avoid the disruption of the supply chain of its imported products; (3) prevent it from incurring additional costs; and (4) not cause any injury to Harbour Centre if the Decision is reversed.²⁶ It also argued that the liquidated damages, actual damages, and the amounts paid under protest for port and cargo handling charges are fixed and certain. In any case, it showed willingness to put up a bond to cover the amounts that Harbour Centre will be entitled to should the Decision be reversed.²⁷

Harbour Centre filed a Comment/Opposition²⁸ to the motion, arguing that La Filipina failed to show good reasons for its grant.²⁹ It maintained that there was no evidence of any damage done to La Filipina's vessels or any disruption in the supply chain of flour or animal feeds.³⁰ Further, it denied that it violated the Memorandum of Agreement so as to be held liable for liquidated damages.³¹

Harbour Centre also maintained that the adjusted port and cargo handling rates were in accordance with the Memorandum of Agreement. Finally, it argued that since it already filed its notice of appeal, the Regional Trial Court was ousted of its jurisdiction to hear the Motion for Partial Execution. Thus, the records should have been elevated to the Court of Appeals³²

In a February 28, 2012 Order,³³ the Regional Trial Court granted La Filipina's Motion for Partial Execution Pending Appeal. It stated that it may properly exercise jurisdiction over the case because of the pendency of La Filipina's separate motions for partial reconsideration and partial execution.³⁴

²⁵ *Id.* at 141–142.

²⁶ *Id.* at 133.

²⁷ *Id.* at 135.

²⁸ *Id.* at 145–153.

²⁹ *Id.* at 145.

³⁰ *Id.* at 148.

³¹ *Id.* at 149–150.

³² *Id.* at 151.

³³ *Id.* at 71–82.

³⁴ *Id.* at 72.

The Regional Trial Court found that there was good reason to grant partial execution. It noted that dredging was a continuing commitment under the Memorandum of Agreement,³⁵ and that Harbour Centre confirmed this when it asserted that it had conducted maintenance dredging.³⁶ It lent more credence to the hydrographic surveys, one of which was commissioned by Harbour Centre, and found that even if no vessel had run aground or touched bottom since its Decision, several of La Filipina's foreign chartered vessels still touched bottom.³⁷ Thus, the damage that could be caused to La Filipina was not a hypothetical situation.³⁸ It also noted that the masters of La Filipina's foreign chartered vessels refused to proceed to the berthing area because of the risk of their hulls touching bottom.³⁹

Furthermore, the trial court noted that before dredging, a survey would be conducted to determine whether dredging was necessary, so as to ensure that Harbour Centre would not incur unnecessary costs. It likewise found that the costs that Harbour Centre would incur in causing the immediate dredging should not be deemed as incurred damage, because any outcome of the case would not release Harbour Centre's obligation to maintain the depth of the seabed at its cost. Even if it was found that the seabed was at the correct depth, Harbour Centre was still obliged to maintain that depth at a different time.⁴⁰

Moreover, the trial court found that Harbour Centre was evading its obligation and intending to further delay compliance, as it refused to comment on La Filipina's offer to shoulder the costs of the joint hydrographic survey, if the seabed were at its correct depth. The joint hydrographic survey is even advantageous to Harbour Centre as it can stop the increase in the liquidated damages. In any case, the trial court's findings of the need to dredge were sufficiently grounded on evidence.⁴¹

As to the increase in port and cargo handling charges, the Regional Trial Court noted that Harbour Centre admitted to the correctness of the formula provided in the Memorandum of Agreement.⁴² It also found that La Filipina was willing to post a bond, and thus, Harbour Centre would not be prejudiced if the excess amounts paid by La Filipina for port and cargo handling charges were credited and released to it. However, the Regional Trial Court denied the immediate execution for the payment of actual and liquidated damages.⁴³

The dispositive portion of the Order reads:

³⁵ Id. at 72-73 and 75.

³⁶ Id. at 73.

³⁷ Id. at 74-76.

³⁸ Id. at 76.

³⁹ Id. at 77.

⁴⁰ Id. at 76.

⁴¹ Id. at 77.

⁴² Id. at 78-79.

⁴³ Id. at 79.

ACCORDINGLY, the motion for partial execution pending appeal is hereby granted. Let writ of execution issue,

Directing

1. defendant Harbour Centre to (i) cause the dredging of the navigation channel and berthing area of the Manila Harbour Centre to -11.5 meters MLLW in accordance with the provisions of the 2004 MOA; (ii) immediately credit the amount paid to defendant HCPTI under protest representing the excess of the sum paid for the ₱95 per metric ton port and cargo handling charges, plus interest at 6% per annum from the time the Amended and Supplemental Complaint was filed.
2. the Office of the Clerk of Court to release to plaintiffs all sums deposited with it representing the excess of the port and cargo handling charges which as of May 19, 2011 had already reached ₱103,578,360.86, including those deposited after the said date.

SO ORDERED.⁴⁴

On the same day, the Regional Trial Court directed the Branch Clerk of Court to elevate the records to the Court of Appeals pursuant to Harbour Centre's Notice of Appeal.⁴⁵

A Writ of Execution was issued on March 8, 2012. On June 7, 2012, pursuant to the writ of execution, La Filipina then filed before the Regional Trial Court a motion to authorize it to enter into a contract with a dredging contractor. This motion was granted in a July 3, 2013 Order, which became final and executory. On April 16, 2014, La Filipina entered into a contract for dredging with F.F. Cruz & Co., Inc. (FFC Cruz).⁴⁶

Harbour Centre sought to reconsider the Regional Trial Court's Order and moved to quash the Writ of Execution. However, the Regional Trial Court denied this in a May 9, 2012 Joint Order.⁴⁷

Harbour Centre thus questioned the validity of the writ of partial execution in the Court of Appeals. In a March 3, 2014 Resolution,⁴⁸ the Court of Appeals dismissed the petition for being moot. It found that since the records of the case have already been elevated to the Court of Appeals, there is no more justiciable controversy. It further noted that if the execution pending appeal was found to be invalid, then it will just order the elevation of the records of the case.⁴⁹ If it is concluded that the grant of the execution has

⁴⁴ Id. at 79–80.

⁴⁵ Id. at 127.

⁴⁶ Id. at 704.

⁴⁷ Id. at 82–84.

⁴⁸ Id. at 32–35. The Resolution was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam and Priscilla J. Baltazar-Padilla (now retired members of this Court) of the Seventh Division, Court of Appeals, Manila.

⁴⁹ Id. at 34.

no justification, then it will be of no practical use since nothing else needs to be ordered.⁵⁰

The Court of Appeals also refused to issue a writ of prohibition to prevent the execution of the Regional Trial Court Decision, ruling that a writ of prohibition is not the correct remedy for accomplished acts.⁵¹ It further found that it was unclear whether the writ of execution had already been implemented, “specifically the dredging of the navigation channel and berthing area of the Manila Harbour Centre[,]” along with the “releasing of the sums deposited before the Clerk of Court[.]”⁵² However, assuming that these acts have been executed, the Court of Appeals cannot undo them anymore even if it annuls the Regional Trial Court’s Order granting execution pending appeal.⁵³

In its June 16, 2014 Resolution, the Court of Appeals denied the motion for reconsideration.⁵⁴ It found that Harbour Centre admitted to the necessity of dredging and, even without the writ, Harbour Centre “would still dredge the navigational channel and berthing as part of its regular maintenance[.]”⁵⁵

Thus, Harbour Centre filed a Petition for Review on Certiorari⁵⁶ before this Court.

Petitioner questions the writ of partial execution pending appeal, insisting that there is no good reason for its issuance.⁵⁷ It further insists that its appeal is not dilatory,⁵⁸ and that there is no pending insolvency that would be caused to La Filipina.⁵⁹ Neither is there any proof that any damage was or will be caused to La Filipina’s vessels, much less to the country’s supply of flour and animal feed ingredients⁶⁰ as claimed. Petitioner insists that La Filipina’s willingness to post a bond is not a good reason for its issuance.⁶¹

Petitioner likewise points out that the evidence supporting the necessity of execution is still being questioned on appeal.⁶² The issues regarding the violation of the Memorandum of Agreement, the depth of the berthing areas and navigational channel, grant of liquidated damages, grounding of the vessels, and the port and cargo handling charges, are yet to be resolved by the

⁵⁰ Id.

⁵¹ Id.

⁵² Id. at 35.

⁵³ Id.

⁵⁴ Id. at 38-40.

⁵⁵ Id. at 39-40.

⁵⁶ Id. at 8.

⁵⁷ Id. at 15.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id. at 21.

⁶¹ Id. at 25.

⁶² Id. at 24-25.

Court of Appeals.⁶³ Thus, the writ's execution will pre-judge the appeal and render these questions moot.⁶⁴

Petitioner further claims that there is no need for immediate dredging since it has been regularly maintaining its depth as part of its maintenance program.⁶⁵ It insists that its dredging of the areas does not render moot its petition to nullify the writ of execution, and neither is it an admission that there is a good reason for execution pending appeal.⁶⁶

On November 24 2014, La Filipina filed its Comment, arguing that partial execution pending appeal was warranted because there were good reasons for the grant.⁶⁷

It contends that the dredging is indispensable to its business and that it has presented enough evidence to show the need to dredge. It argues that dredging is a continuing commitment of petitioner as provided for in the Memorandum of Agreement. Respondent further points that several of its foreign chartered vessels have touched bottom and continue to touch bottom at the berthing area. One of the vessels also could not proceed to the berthing area because its instruments indicated that it had no clearance from the seabed of the navigational channel.⁶⁸

Moreover, respondent claims that the insufficient depth of the berthing area places its vessels at risk of serious damage, which also caused it to incur additional costs because it had to lighten its foreign chartered vessels before proceeding to the berthing area. It argues that these damages would affect the animal feed industry and the flour supply in the country, leading to an increase in the prices of bread products.⁶⁹ Further, it points that petitioner is compromising maritime safety in insisting that they have been maintaining the right depth of the seabed of the berthing areas,⁷⁰ and puts at risk the value of the cargo and damaging a vessel worth over US\$50,000,000.00 each.⁷¹

Respondent further argues that no damage will be caused to petitioner if the berthing area and navigational channels were dredged. Petitioner itself has acknowledged its obligation to dredge the areas in accordance with the Memorandum of Agreement.⁷² In any case, it is standard to have a pre-dredge hydrographic survey to determine the need to dredge. Respondent points out that its joint hydrographic survey with petitioner showed that there was a need

⁶³ Id. at 23-24.

⁶⁴ Id. at 25.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id. at 382, Comment.

⁶⁸ Id. at 383-384.

⁶⁹ Id. at 385.

⁷⁰ Id. at 388.

⁷¹ Id.

⁷² Id. at 386.

to dredge the areas.⁷³ Furthermore, the dredging will benefit petitioner, as it will be able to service bigger vessels and collect bigger port and handling charges. The dredging will also toll the penalty under the Memorandum of Agreement, as awarded by the Regional Trial Court's Decision.⁷⁴

Respondent further manifests that after petitioner still refused to comply with the writ of execution, it filed a motion with the Regional Trial Court to enter into a contract of dredging with a third party. The Regional Trial Court granted this motion after the hydrographic survey—which petitioner agreed to—revealed that the depth of wide portions of the berthing area at the navigational channel is shallower than -11.5 meters MLLW. Respondent thus entered into a Contract of Dredging with FFC Cruz. FFC Cruz began dredging on September 24, 2014 and completed it on October 22, 2014.⁷⁵

In its Reply, petitioner reiterates that there was no good reason to order execution pending appeal, because it has been complying with its obligations under the Memorandum of Agreement.⁷⁶

Petitioner alleges that the cause of the grounding of the chartered vessels of La Filipina is pilot error, and not the shallowness of the berthing area and navigational channel.⁷⁷ Moreover, petitioner contends that the pieces of evidence supporting the damage caused to respondent's vessels are inadmissible for being hearsay.⁷⁸ Petitioner argues that the sea protests are incredulous because respondent did not file a case for damages against petitioner when the alleged grounding occurred. Furthermore, petitioner also points that the marine protests relating to the vessels touching the bottom were neither presented during trial nor formally offered as evidence.⁷⁹

Petitioner likewise reiterates that respondent's willingness to file a bond is not a good reason for ordering execution pending appeal.⁸⁰ It further added that the dredging by FFC Cruz should not have been allowed, as it was not in accordance with Rule 39, Section 11 of the Rules of Court, considering that respondent had no right to cause the performance of the judgment by some other person other than petitioner. Thus, the dredging should not have been done by any other entity.⁸¹

On June 15, 2015, the Court of Appeals rendered a Decision in the Main Appeal affirming with modification the Regional Trial Court's ruling. Both

⁷³ Id. at 388.

⁷⁴ Id. at 388-389.

⁷⁵ Id. at 381-A.

⁷⁶ Id. at 507.

⁷⁷ Id. at 503.

⁷⁸ Id. at 505-506.

⁷⁹ Id. at 505.

⁸⁰ Id. at 508.

⁸¹ Id. at 510

parties then appealed to this Court, and thus filed their respective Petitions for Review. These cases were then consolidated and docketed as G.R Nos. 230159 and 229490.⁸²

On December 3, 2015, respondent La Filipina filed a Motion to Dismiss Petition on the Ground of Forum Shopping, alleging that petitioner willfully engaged in forum shopping when it raised as an issue in the Main Appeal⁸³ the validity of the partial execution pending appeal, despite the pendency of this case.⁸⁴ Petitioner allegedly pointed in its Appellant's Brief that the execution was not done in accordance with Rule 11 of Rule 39 of the Rules of Court.⁸⁵

On March 21, 2016, petitioner filed a Comment/Opposition to the Motion to Dismiss Petition on the Ground of Forum Shopping, arguing that it did not commit forum shopping considering that the subject matter, issues, and reliefs sought are very different such that the judgment of this Court will not constitute *res judicata*. It points out that this case questions the grant of the partial execution pending appeal.⁸⁶

On the other hand, the appeal pending with the Court of Appeals seeks the reversal of the Regional Trial Court's October 11, 2011 Decision, finding petitioner liable for damages. Petitioner argues that this case questions interlocutory orders, while the appeal in the Court of Appeals questions a judgment.⁸⁷ It claims that it simply provided the Court of Appeals a background on the Regional Trial Court's decision to grant the motion for partial execution pending appeal.⁸⁸

On February 29, 2016, petitioner manifested that respondents Contract of Dredging with FFC Cruz is not in accord with the provisions of Rule 39, Section 11 of the Rules of Court.⁸⁹ It claims that Section 10 of the same rule should likewise not apply, because the judgment of the Regional Trial Court requires petitioner to perform a specific act (dredging),⁹⁰ and thus, the act must

⁸² Id. at 705.

⁸³ Id. at 559. *La Filipina Uyongco Corporation and Philippine Foremost Milling Corporation v. Harbour Centre Port Terminal, Inc.*, C.A. G.R. CV No. 101600, Court of Appeals Manila, Thirteenth Division.

⁸⁴ Id. at 558–559. The Appellant's Brief dated October 1, 2015 included in its assignment of errors the granting by the Regional Trial Court of the Motion for Partial Execution pending Appeal. Motion to Dismiss Petition on the Ground of Forum Shopping.

⁸⁵ Id. at 602.

⁸⁶ Id. at 672–673.

⁸⁷ Id. at 672.

⁸⁸ Id. at 673.

⁸⁹ Id. at 627. RULES OF COURT, Rule 39, sec. 11 states:

SECTION 11. *Execution of Special Judgments.* — When a judgment requires the performance of any act other than those mentioned in the two preceding sections, a certified copy of the judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.

⁹⁰ RULES OF COURT, Rule 39, sec. 10 states:

SECTION 10. *Execution of Judgments for Specific Act.* — (a) *Conveyance, Delivery of Deeds, or Other Specific Acts; Vesting Title.* — If a judgment directs a party to execute a conveyance of land or personal

be performed only by petitioner.⁹¹ Moreover, petitioner points out that respondent filed an indirect contempt case⁹² which was dismissed. Respondent's Motion for Reconsideration was denied.⁹³

In respondent's April 18, 2016 Counter-Manifestation, it argues that Rule 39, Section 11 does not apply since it pertains to acts that must be executed by particular persons based on their personal qualifications and circumstances. Respondent further argues that petitioner has not shown what qualifications it has or what circumstances are present to make the dredging fall under Section 11.⁹⁴

In any case, the Order issuing the writ of execution merely directed petitioner to cause the dredging of the navigational channel and berthing area in accordance with the provisions of the Memorandum of Agreement. Since petitioner failed to do so, the Regional Trial Court correctly applied Rule 39, Section 10. Respondent likewise contends that the dismissal of the petition for indirect contempt filed against petitioner is being appealed in the Court of Appeals.⁹⁵ Nevertheless, the indirect contempt case does not have any relevance to the issue pending in this Court, which is the validity of the partial execution pending appeal.⁹⁶

On November 5, 2018, petitioner filed a Manifestation stating that while these cases were pending in this Court, respondent filed a Motion for

property, or to deliver deeds or other documents, or to perform any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effects as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law. (10a)

(b) *Sale of Real or Personal Property.* — If the judgment be for the sale of real or personal property, to sell such property, describing it, and apply the proceeds in conformity with the judgment. (8[c]a)

(c) *Delivery or Restitution of Real Property.* — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money. (13a)

(d) *Removal of Improvements on Property Subject of Execution.* — When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court. (14a)

(e) *Delivery of Personal Property.* — In judgments for the delivery of personal property, the officer shall take possession of the same and forthwith deliver it to the party entitled thereto and satisfy any judgment for money as therein provided. (8a)

⁹¹ *Rollo*, p. 627, Manifestation.

⁹² The case was heard by the Regional Trial Court, City of Manila, Branch 42, and was docketed as Civil Case No. 09-121953.

⁹³ *Rollo*, p. 629, Manifestation.

⁹⁴ *Id.* at 680-681, Counter-Manifestation.

⁹⁵ *Id.* at 682-683.

⁹⁶ *Id.* at 683.

Payment with the Regional Trial Court, seeking reimbursement for the costs for the dredging conducted by FFC Cruz. The Regional Trial Court granted the motion. However, this was reversed by the Court of Appeals, which found that since the Main Appeal had already been perfected and the records have already been forwarded to this Court, the Regional Trial Court no longer had jurisdiction to rule on the Motion for Payment. Petitioner claims that this ruling reinforces their argument that all orders and merits issued by the Regional Trial Court relating to the execution pending appeal, including the dredging, are void.⁹⁷

On November 16, 2018, respondent filed a Counter-Manifestation stating that the Court of Appeals' ruling on the Motion for Payment has not attained finality, and deals with a separate issue.⁹⁸

Thus, the issues for this Court's resolution are:

First, whether or not the grant of the motion for partial execution pending appeal was valid; and

Second, whether or not petitioner Harbour Centre Port Terminal, Inc. is guilty of forum shopping.

I

As to the validity of the execution pending appeal, this Court partially grants the Petition. The grant of the motion for partial execution pending appeal and the issued writ of execution is valid as to the immediate dredging of the navigation channel and berthing area of the Manila Harbour Centre to -11.5 meters MLLW. However, it is invalid as to the crediting of the amounts paid to petitioner for port and cargo handling charges and its release by the Office of the Clerk of Court to respondent.

As a general rule, the execution of a judgment is allowed only when it has become final and executory.⁹⁹ This arises when: (1) the right of appeal has been renounced or waived; (2) the period for appeal has lapsed without an appeal having been taken; or (3) the appeal has been resolved and the records of the case have been returned to the court of origin.¹⁰⁰ In these instances, execution shall issue as a matter of right.

⁹⁷ Id. at 695–697.

⁹⁸ Id. at 725–726.

⁹⁹ RULES OF COURT, Rule 39, sec. 11 in relation to Rule 51, sec. 11.

¹⁰⁰ RULES OF COURT, Rule 39, sec. 11 in relation to Rule 51, sec. 11.

However, an execution of a judgment or final order may be allowed even *before* the expiration of the period to appeal under Rule 39, Section 2(a) of the Rules of Court, thus:

SECTION 2. Discretionary Execution. —

(a) Execution of a judgment or a final order pending appeal. — On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

Thus, the discretionary execution pending appeal has two requirements: (1) the jurisdictional requirement which relates to when and where it can be filed; and (2) the grounds for its issuance.

A motion for execution pending appeal may be filed before the Regional Trial Court while it still has jurisdiction over the case and is still in possession of the original record or the record on appeal at the time the motion is filed.

In *National Power Corporation v. Heirs of Rabie*,¹⁰¹ this Court ruled that the trial court still had jurisdiction to hear the motion for execution pending appeal because it was filed within the period for filing an appeal, and because the records of the case had not yet been transmitted to the Court of Appeals:

In this case, the motion for execution pending appeal was filed by respondents seven days after their receipt of the trial court's order denying the motions for reconsideration filed by both parties. Clearly, respondents filed the motion for execution pending appeal before the lapse of the period to file an appeal, which is fifteen days from notice of the order denying the motion for reconsideration. Therefore, the trial court still had jurisdiction when respondents filed their motion for execution pending appeal.

Further, prior to transmittal of the records of the case, the trial court does not lose jurisdiction over the case and in fact, may issue an order for execution pending appeal. Section 9, Rule 41 of the Rules of Court provides:

¹⁰¹ 793 Phil. 479 (2016) [Per J. Carpio, Second Division].

SEC. 9. *Perfection of appeal; effect thereof.* — A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.

In this case, the trial court issued its Order granting the motion for execution pending appeal on 11 July 2013. That Order expressly stated that the trial court was still in possession of the original record of the case at the time. In fact, the records were transmitted to the Court of Appeals on 19 July 2013. In other words, the trial court issued the Order granting the motion for execution pending appeal before the transmittal of the records to the Court of Appeals. Hence, contrary to NAPOCOR's contention, the Court of Appeals correctly ruled that the trial court still had jurisdiction when the motion for execution pending appeal was filed and when the trial court resolved such motion.¹⁰² (Citations omitted)

Here, the motion for execution pending appeal was also filed within the period for filing an appeal, while a motion for partial reconsideration was pending, and the case records were not yet transmitted to the Court of Appeals. The records were transmitted only after the motion for execution pending appeal was granted. Thus, the Regional Trial Court still had jurisdiction to hear the motion.

As to the granting of execution pending appeal, the following are the requisites: (1) the prevailing party must file a motion with the court and serve notice to the adverse party; (2) a good reason must exist; and (3) a special order stating the good reason is issued after hearing.¹⁰³

¹⁰² Id. at 487–488.

¹⁰³ *Manacop v. Equitable Banking Corporation*, 505 Phil. 361, 381 (2005) [Per J. Ynares-Santiago, First Division].

Discretionary power is given to a court to determine what constitutes good reasons for the grant of the execution pending appeal.¹⁰⁴ Thus, the issuance of the writ of execution is controlled only by the judge whose judgment must be in accordance with his own conscience and sense of justice and equity.¹⁰⁵

If execution pending appeal is granted, the appeal on the merits still continues. If the appeal is granted, such that the judgment executed is reversed or annulled, the trial court may order restitution or reparation of damages taking in consideration justice and equity.¹⁰⁶ However, considering there are damages that may arise which may no longer be fully compensated, it is necessary that “superior circumstances demanding urgency” exists before ordering execution pending appeal.¹⁰⁷ Thus, what is most essential for the grant of execution pending appeal is “the existence of good reasons[.]”¹⁰⁸ Jurisprudence has established guidelines to determine what constitutes as a good reason for the grant of execution pending appeal.

In *Villamor v. National Power Corporation*,¹⁰⁹ this Court held that there must be a compelling circumstance to justify the grant of execution pending appeal. It must be shown that if the motion is denied, then the judgment will be rendered illusory or useless. Perhaps the prevailing party will be unable to enjoy the award granted because of the delay caused by the other party’s appeal. Thus, there must be an urgency in the superior circumstances, and it must outweigh the damage that will be caused to the losing party in case the latter’s appeal is granted.

In *Philippine Bank of Communications v. Court of Appeals*,¹¹⁰ this Court provided examples of good reasons contemplated by the Rules:

1. When in an intestate proceeding which has been pending for almost 29 years, one group of heirs has not yet received the inheritance due them when the others have already received theirs, or are about to do so;
2. The advanced age of the prevailing party;
3. When the defeated party is in imminent danger of insolvency;
4. When the appeal is dilatory and the losing party intends to encumber and/or dispose of the property subject of the case during the pendency of

¹⁰⁴ *Intramuros Tennis Club v. Philippine Tourism Authority*, 395 Phil. 278 (2000) [Per J. Gonzaga-Reyes, Third Division].

¹⁰⁵ *Geologists, Inc. v. Gateway Electronics Corp.*, 601 Phil. 432 (2009) [Per J. Tinga, Second Division].

¹⁰⁶ RULES OF COURT, Rule 39, sec. 5; *Archinet International, Inc. v. Becco Philippines, Inc.*, 607 Phil. 829 (2009) [Per J. Ynares-Santiago, Third Division].

¹⁰⁷ *Maceda, Jr. v. Development Bank of the Philippines*, 372 Phil. 107 (1999) [Per J. Panganiban, Third Division].

¹⁰⁸ *Intramuros Tennis Club v. Philippine Tourism Authority*, 395 Phil. 278, 297 (2000) [Per J. Gonzaga-Reyes, Third Division].

¹⁰⁹ 484 Phil. 298 (2004) [Per J. Carpio Morales, Third Division].

¹¹⁰ 344 Phil. 777 (1997) [Per J. Melo, Third Division].

the appeal in order to defraud or deprive the plaintiff of proprietary rights and defeat the ends of justice; and

5. Deterioration of commodities subject to litigation.¹¹¹ (Citations omitted)

This Court has also determined what does not constitute as good reasons for the grant of execution pending appeal.

In *Geologists, Inc. v. Gateway Electronics Corp.*,¹¹² this Court found that the admission of liability does not automatically mean that a good reason exists considering the amount due is still being contested in an appeal before the Court of Appeals. The process of appeal must still take its course until finality of judgment for the determination of the incidents of the suit.

This Court has consistently held that the posting of a bond does not justify the issuance of a writ of execution pending appeal. There must be a combination of circumstances that impels its grant, such that the bond is not the only reason for its issuance.¹¹³ Otherwise, the filing of the bond will automatically give rise to the grant as a matter of course, thus precluding the need to exercise discretion on what constitutes as good reasons, as required under the Rules of Court.¹¹⁴

In *International School, Inc. (Manila) v. Court of Appeals*,¹¹⁵ this Court elucidated on the rationale behind not considering the posting of a bond as a good reason for the issuance of a writ of execution:

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*, 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.”

¹¹¹ Id. at 785.

¹¹² 601 Phil. 432 (2009) [Per J. Tinga, Second Division].

¹¹³ *Flexo Manufacturing Corp. v. Columbus Foods Inc.*, 495 Phil. 254, 259–260 (2005) [Per J. Ynares-Santiago, First Division].

¹¹⁴ See *Valencia v. Court of Appeals*, 263 Phil. 501, 507 (1990) [Per J. Regalado, Second Division] citing *Roxas v. Court of Appeals*, 241 Phil. 380 (1988) [Per J. Narvasa, First Division].

¹¹⁵ 368 Phil. 791 (1999) [Per J. Gonzaga-Reyes, Third Division].

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.” 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.¹¹⁶ (Citations omitted)

The review of jurisprudence indicates that the “good reasons” mentioned in Rule 39, Section 2(a) of the Rules of Court are not just any reason.

First, they come close, if not synonymous, to equitable considerations. This can mean that execution is necessary not only to ensure that the judgement creditor would be able to enjoy the fruits of the trial court's decision, but also because there are good policy reasons such as fairness or public benefit associated with the discretionary grant pending appeal.

Second, the question for consideration is whether the immediate execution of a portion or all of the judgment is more equitable to the judgment creditor or the public in general, as compared with a final ruling on the appeal. Normally, a positive response to this question may mean that the judgment debtor would either be free from damage by the immediate execution or would be compensated in case the decision is reversed on appeal.

Given these parameters, the credit and release of the amounts for port and cargo handling charges to respondent should not have been allowed. Since this matter is still being contested in the Main Appeal, it cannot yet be said that the amounts are already fixed and definite. The amount due is still being challenged. Furthermore, the bond that respondent is willing to post is not sufficient to be deemed as a good reason for the grant of execution pending appeal. Thus, the amounts for port and cargo handling charges should not have yet been released to respondent.

However, this Court finds that the immediate execution of the order to dredge is justified.

First, the issue of whether petitioner should conduct dredging is not an issue in this case or in the Main Appeal. Petitioner has acknowledged that it is obliged to dredge the berthing area in accordance with the required depth

¹¹⁶ Id. at 803.

under the Memorandum of Agreement. Thus, its undertaking to dredge still holds whether it was compliant at the time of filing the case.

Second, in granting execution pending appeal, the Regional Trial Court considered the hydrographic surveys showing that the depth of the berthing area and navigational channel were shallower than -11.5 meters MLLW. It also relied on evidence showing that several of respondent's vessels have touched bottom or are unable to proceed to the berthing area.¹¹⁷

Thus, this Court sees the good reason behind immediately ordering the dredging. Respondent would incur serious costs if dredging is delayed further. It cannot be denied that the insufficient depth of the berthing area can place vessels at risk of considerable damage, which in turn can put at risk the value of the cargo. It may also cause additional charges if respondent is constrained to lighten its vessels before proceeding to the berthing area.

The serious risk of damage to the vessels and the cargo demands urgency and outweighs the potential damage that will be caused to petitioner if it is immediately required to dredge. At most, petitioner will incur costs for the conduct of the dredging. Further, there is no need to dredge if the pre-dredge hydrographic survey reveals that the depth of the berthing area and navigational channel is in -11.5 meters MLLW. Thus, the Regional trial Court did not gravely abuse its discretion in allowing the immediate dredging.

In any case, the joint hydrographic survey was already conducted and it was shown that there was indeed a need to dredge. Thus, respondent had entered into a Contract of Dredging with FFC Cruz, and FFC Cruz completed the dredging on October 22, 2014.¹¹⁸

II

As to the second issue, this Court holds that petitioner did not commit forum shopping.

Rule 7, Section 5 of the Rules of Court states the rule against forum shopping:

SECTION 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge,

¹¹⁷ *Rollo*, pp. 75–76.

¹¹⁸ *Rollo*, p. 381-A.

no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

(n)

Forum shopping exists “when in the two or more cases pending there is identity of parties, rights or causes of action and reliefs sought.”¹¹⁹ The identity of the parties in the two or more cases must at least be such that they are representing the same interests in both actions. The rights asserted and the reliefs prayed for must also be the same and founded on the same facts. Further, the identity of these particulars must be such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.¹²⁰

In *In Re: Ferrer*,¹²¹ this Court ruled, thus:

In *Asia United Bank v. Goodland Company, Inc.*, this court enumerated the instances where forum shopping takes place:

There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." The different ways *by which forum shopping may be committed were explained in Chua v. Metropolitan Bank & Trust Company*:

Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal

¹¹⁹ *International School, Inc. vs. Court of Appeals*, 368 Phil. 791, 798 (1999) [Per J. Gonzaga-Reyes, Third Division].

¹²⁰ *Dasmariñas Village Association, Inc. vs. Court of Appeals*, 359 Phil. 944 (1998) [Per J. Romero, Third Division].

¹²¹ 781 Phil. 48 (2016) [Per J. Leonen, Second Division].

is litis pendencia); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendencia* or *res judicata*).

In *Dy v. Mandy Commodities Co, Inc.*, the court elaborated on the purpose of the rule against forum shopping:

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, this Court strictly adheres to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.¹²² (Emphasis supplied, citations omitted)

Respondent contends that petitioner willfully engaged in forum shopping when it raised as an issue the validity of the partial execution pending appeal in its Appellant's Brief in the Main Appeal, despite the pendency of this case.¹²³ However, petitioner's Appellant's Brief only raised as an issue the manner by which the execution was done. Petitioner points out that the execution was done in accordance with Section 10 of Rule 39, instead of Section 11 of Rule 39.¹²⁴ It did not question the granting of the Motion for Partial Execution by the Regional Trial Court per se. It questioned the manner by which the execution was completed.

Here, the issue is the validity of the partial execution pending appeal. On the other hand, the issue in the Main Appeal is the finding of liability against petitioner. Thus, there is no filing of multiple cases based on the same cause of action asking for the same prayer. Considering the issues raised in the two cases are different, petitioner did not commit forum shopping.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The February 28, 2012 Order of the Regional Trial Court granting respondent La Filipina Uygongco Corporation's Motion for Partial Execution Pending Appeal and the March 8, 2012 Writ of Execution are valid as to the immediate dredging of the navigation channel and berthing area of the Manila Harbour Centre to -11.5 meters MLLW. However, it is invalidated as to the crediting


¹²² *id.* at 58.

¹²³ *Rollo*, pp. 558-559. Motion to Dismiss Petition on the Ground of Forum Shopping.

¹²⁴ *Id.* at 602, Appellant's Brief.

of the amounts paid to petitioner Harbour Centre Port Terminal, Inc. under protest representing the excess of the sum paid for port and cargo handling charges, and its release by the Office of the Clerk of Court to La Filipina.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice