Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-41750. June 16, 1976]

ATTY. FRANCISCO R. SOTTO and ONG TIAO, *petitioners,* *vs.* **HON. COURT OF APPEALS, CONSOLIDATED BANK & TRUST CORPORATION, THE SOLID GUARANTY INC., LEONARDO T. DE GUZMAN, and CITY SHERIFF OF MANILA,** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; MOTION TO SET ASIDE ORDER OF CONTEMPT MUST BE FILED WITH THE COURT AGAINST WHOM CONTEMPT WAS COMMITTED. — The joint motion praying for the setting aside of the order of contempt on the ground that the filing of the contempt motion was quite precipitate and uncalled for, must be filed before the court against whom the supposed contempt was committed, because only the court against whom the contempt is committed and not the appellate court to which the contempt order has been elevated, has the authority to act on the joint motion for the withdrawal and acknowledgment of the parties indicating that no contempt was intentionally committed.

R E S O L U T I O N

BARREDO, *J.*:

Petition for *certiorari* assailing as having been rendered in grave abuse of discretion the resolution of the Court of Appeals (Seventh Division) of August 29 and October 9, 1975 in CA-G.R. No. 57151-R, *Ong Tiao vs. Consolidated Bank & Trust Co., et al.,* finding Ong Tiao and his counsel, Atty. Francisco R. Sotto, herein petitioners, guilty of contempt of said court for having committed "acts of falsification" in the printing and filing of the record on appeal in said case.

Supreme Court E-Library

Finding sufficient ground on the face of the petition for a review of the impugned resolutions, We required respondents to answer, but after the hearing, and the submission of their respective memoranda, the parties filed on April 1, 1976 the following motion:

"COME NOW the petitioners and private respondents, the latter represented by its President and General Manager and duly authorized by the Board, upon suggestion made in open court during the oral argument on February 16, 1976, that the above-entitled case be settled amicably; further, this contempt proceedings arose out from mere misunderstanding and honest mistakes due to lack of communication between the parties; and furthermore, in the interest of justice and equity to all parties concerned, the herein private respondents hereby withdraw their (OMNIBUS MOTION dated May 26, 1975 (Annex 'S', petition) and petitioners and private respondents move that the RESOLUTIONS of the Court of Appeals (Annexes 'Y' and 'E') be both set aside.

WHEREFORE, it is respectfully prayed that the RESOLUTIONS (Annexes 'Y' and 'EE', petition) of the Court of Appeals be both set aside, and be declared without force and effect." (Page 240, Record.)

In other word, it is now virtually admitted by private respondent Bank that the filing by it in the Court of Appeals of its motion which resulted in the condemnatory resolution aforementioned was due to "mere misunderstanding and honest mistakes due to lack of communication between the parties." While the Court did gather at the hearing the impression that indeed the whole controversy between the parties arose more because of confusion as to the correct procedure to follow in the printing and filing of their respective records on appeal, both parties having decided to elevate the case to the Court of Appeals, than from any malicious intent on the part of petitioners to mislead the court and prejudice respondent Bank's appeal, for which reason, a member of the Court expressed the view then that it would be best to settle the matter amicably between the parties, now that respondent Bank has apparently come to the realization that its motion to declare petitioners in contempt was actually unwarranted, it is but proper that the prayer to set aside the resolutions in question should be addressed to the Court of Appeals. In other

Supreme Court E-Library

words, since it appears that the parties are not submitting the case now before us on the merits of their respective claims but because respondent Bank now concedes that its filing of the contempt motion in the Court of Appeals was quite precipitate and rather uncalled for, the Court of Appeals, against whom the supposed contempt was committed, must be the one to determine whether or not to recall its resolutions impugned in the petition. Only the court against whom contempt is committed, and not the appellate court to which the contempt order has been elevated, has the authority to act on a joint motion for withdrawal and acknowledgment of the parties indicating that after all no contempt was intentionally committed.

ACCORDINGLY, let this case be remanded to the Court of Appeals for appropriate action on the above-transcribed "omnibus" motion of the parties. No costs.

Fernando (Chairman), Antonio, Aquino and *Martin, JJ.*, concur.

Concepcion, Jr., J., is on leave.

Martin, J., was designated to sit in the Second Division.