

LEE KO, PETITIONER, VS. DIONISIO DE LEON, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND CHE TUNG, RESPONDENTS.

G.R. No. L-2484. May 18, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

The municipal court of Manila rendered on June 21, 1948, a decision ordering Che Tung to vacate the premises located at 734 Quezon Boulevard, to restore its possession to Lee Ko and to pay the latter rents at the rate of P250 a month from April 1, 1948, until the property is surrendered to Lee Ko.

Che Tung appealed and put up a supersedeas bond of P1,000 to stay the execution of the judgment. After the appeal had been docketed at the Court of First Instance of Manila, the rent of June, 1948, became due on July 10, 1948. On August 10, 1948, the rent for July, 1948 became also due, but said two monthly rents were neither paid to the plaintiff nor deposited in court.

On August 18, 1948, petitioner moved for an immediate execution of a judgment of the municipal court on the ground that the rents for June and July, 1948, have been overdue and not paid to the plaintiff nor deposited in court. On August 21, 1948, respondent judge, instead of ordering the execution prayed for, granted Che Tung ten days within which to deposit the rents for June and July, 1948. Lee Ko comes to us complaining against the action of respondent judge as done with lack of jurisdiction or grave abuse of discretion.

Upon the facts in this case, it appears to be clear that respondent judge should have granted the petition for the issuance of a writ of execution, as Che Tung failed to deposit the overdue rents for June and July, 1948, in violation of one of the conditions for the suspension of the execution of the judgment of the municipal court as provided by Rule 72. Respondent acted with grave abuse of discretion in granting Che Tung ten-day period from August 21, 1948, to deposit the rents for June and July, 1948, it appearing in the order complained of that Che Tung's failure to pay to plaintiff or to deposit in court said rents was not due to fraud, accident or error, the circumstances under which Rule 38 gives relief.

Granting the petition, the order of the respondent judge of August 21, 1948, is set aside, and the trial court is commanded to order the issuance of a writ for the execution of the judgment of the municipal court, with costs against Che Tung.

Moran, C. J., Ozaeta, Paras, Feria, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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