

RITO V. CRUZ AND TEODORA CORONEL-CRUZ, PETITIONERS, VS. FRANCISCO E. JOSE, JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, SEVERO ABELLERA, SHERIFF OF RIZAL, AND DONATO DEL ROS...

G.R. No. L-3838. December 27, 1950

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a petition for a writ of prohibition to prevent execution of a judgment rendered by the respondent Court of First Instance of Bulacan.

Respondent Donato Del Rosario filed an action against petitioners Rito V. Cruz and Teodora Coronel Cruz, for recovery of the sum of P2,109. Parties entered into an amicable settlement by which the defendants paid P350 in cash and bound themselves to pay the balance of P1,759 in the following manner:

On or before February 15, 1950 P50.00

On February 28, 1950 200.00

On March 30, 1950 200.00

On April 30, 1950 200.00

On May 30, 1950 200.00

On June 30, 1950 200.00

On July 30, 1950 200.00

On August 30, 1950 200.00

On September 30, 1950 200.00

On October 30, 1950 109.00

Total P1759.00

Parties had agreed that "if the defendants fail for any reason whatsoever to pay any of the monthly installments when it respectively falls due, the whole balance of the account or indebtedness that still remain unpaid shall become due and demandable; and that execution will issue immediately against the defendants' motorboat 'DIONISIO' which stand as security of defendants' obligation in favor of the plaintiff and/or other property or properties not otherwise exempt from execution. * * *"

A judgment was rendered by the court in accordance with the terms and conditions of this amicable settlement.

On April 30, 1950, the defendants defaulted in the payment of the installment due on that date, whereupon on May 5, 1950, a motion for execution of the judgment was filed by plaintiff, Donato del Rosario. The defendants were notified of the motion on May 6, 1950, but on May 10, when the motion was called for hearing, said defendants failed to appear either personally or by counsel. The respondent court granted the writ of execution, hence this petition for prohibition to prevent the carrying out of the writ.

Petitioners alleged that their failure to pay on September 30, was due to the fact that such day was Sunday, and the next day was a holiday. But the respondent court rightly refused to accept such explanation because payment may be made either on Sundays or any holidays. Furthermore, if such explanation were true, when the motion for execution was filed on May 5, of which petitioners were notified on May 6, petitioners would have offered payment immediately. But they did not do so and when the motion for execution was called for hearing on May 10, petitioners failed to appear. And it was only on May 11, that they made offer of payment consigning the amount due in court. All this shows that if petitioners failed to make payment on September 30, it was not because of any Sunday or holiday, but because of lack of money, and this is corroborated by respondent Donato's statement in his answer to the effect that on May 5, one of the petitioners" came to him to ask for some more days of grace to pay their debt, a request that was flatly denied by him.

We are of the opinion and so hold that the writ of execution was properly issued by the respondent court.

Petition is denied with costs against petitioners.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

MORAN, C. J. :

Mr. Justice Paras and Mr. Justice Feria voted for denial.

Petition denied.

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