

BIENVENIDO ONCE, PETITIONER, VS. HON. CARLOS Y. GONZALES, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, BRANCH VI; PROVINCIAL SHERIFF OF ILOILO, AND JUANITO PEÑA, RE...*G.R. No. L-44806. March 31, 1977*

Ponente: AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0e507a6f9957/>**AQUINO, J.:**

The city court of Iloilo City, in a decision dated April 29, 1976, ordered Bienvenido Once to vacate an apartment in a building owned by Juanito Peña and to pay a monthly rental of P290 until the premises have been vacated, plus P1,000 as attorney's fees. It was not indicated in the decision when the payment of the monthly rental should commence. No back rentals were adjudged (Civil Case No. 11312).

Bienvenido Once filed a motion for reconsideration. He alleged that he had been occupying the apartment (one of the four doors of the said building made of cement hollow blocks and wood, with galvanized iron roofing) since 1966; that he was the only one singled out for ejectment; that the commissioner's report on the alleged dilapidated condition of the building was not set for hearing; that he occupied the apartment as residence and for use as a carinderia which allegedly was his sole means of livelihood, and that he should be given a preference to reoccupy the apartment after the completion of the repairs.

The city court denied the motion in its order of June 2, 1976. Bienvenido Once appealed. He deposited in the city court on June 17, 1976 P580 as rentals for April and May, 1976, Official Receipt No. 4763496. In the Court of First Instance, he deposited P290 on July 16, 1976 as rental for June, 1976, Official Receipt No. 1257740; P290 on August 11, 1976 as rental for July, 1976, Official Receipt No. 1977508, and P290 on September 9, 1976, as rental for August, 1976, Official Receipt No. 198832.

Juanito Peña, the owner of the apartment, filed in the Court of First Instance a motion dated July 9, 1976 for immediate execution of the city court's judgment. He invoked, as grounds, Once's alleged failure to file a supersedeas bond and the supposed untenable condition of the apartment.

Bienvenido Once, through his lawyer, Marietta J. Homena--Valencia, an employee of the Citizens Legal Assistance Office (CLAO), opposed the motion for execution. Once alleged that he had deposited the current rentals; that the apartment occupied by him was not in danger of collapsing; that the building was stable, as shown by the fact that the owner, Peña, and his family occupied the apartment adjoining the door leased to Once; that, if repairs were needed, all the occupants of the building should vacate it, and that the commissioner, who reported on the condition of the building, was not competent to assess its tenantable condition since he is not an engineer but a court interpreter.

Executive Judge Valerio V. Rovira granted the motion for execution in his terse order of August 9, 1976, which reads:

"It appearing that the defendant has not filed the supersedeas bond and considering the provisions of section 8, Rule 70 of the Rules of Court, let a writ of execution issue to effect the ejectment of the defendant from the premises."

Bienvenido Once filed a motion for reconsideration. He reiterated his contention that the execution was improper because he had deposited in court the current rentals. He cited the rule that a supersedeas bond is not necessary in case the tenant had deposited in court the rentals due (*Mitschiener vs. Barrios*, 76 Phil. 55; *Bagtas vs. Tan*, 93 Phil. 804).

The lower court denied the motion. It issued a writ of execution dated September 21, 1976. Bienvenido Once filed a motion for suspension of the execution. He offered to file a supersedeas bond. He stressed that he had occupied the apartment for ten years and that his ejection was in contravention of Presidential Decree No. 20. The motion was denied.

On October 14, 1976 Bienvenido Once, through three CLAO lawyers, filed in this Court the instant special civil actions of certiorari and prohibition in order to set aside the order and writ of execution. A temporary restraining order was issued by this Court but before it could be implemented Bienvenido Once was constrained to vacate the apartment in litigation.

The issue is whether the lower court erred in ordering execution of the city court's judgment pending appeal.

We hold that the lower court committed a patent error in ordering execution of the city court's judgment on the ground that Bienvenido Once did not file a supersedeas bond. No such bond was necessary because no back rentals were adjudged in the city court's judgment. The attorney's fees of P1,000 need not be covered by a supersedeas bond. (*De Laureano vs. Adil*, L-43345, July 29, 1976, 72 SCRA 148, 155).

Once's timely deposit of the rentals for April, May, June, July and August, 1976 stayed the execution of the judgment pending appeal. In such a situation, no supersedeas bond was required to stay execution of the city court's judgment. (*Sison vs. Bayona*, 109 Phil. 557, 561).

Consequently, the order of execution was groundless. It was not justified under section 8, Rule 70 of the Rules of Court. Section 8 requires a supersedeas bond only if there are accrued rentals in arrears. It dispenses with that bond if the defeated tenant deposits in court the rentals due from time to time. The execution proceeding already mentioned is void.

It may be noted that according to Once's manifestation of March 22, 1977, the lower court in its decision of February 5, 1977 reversed the city court's judgment and ordered that Once be allowed to reoccupy the leased premises.

WHEREFORE, the lower court's orders of August 9 and September 14, 1976 are set aside with costs against respondent Peña.

SO ORDERED.

Fernando, (Chairman), Barredo, Concepcion, Jr., and Martin, JJ., concur.
Antonio, J., no part.

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