

P.M. SILVA, PETITIONER, VS. COURT OF APPEALS AND ESTANISLAO DE OCAMPO, RESPONDENTS.

G.R. No. L-3749. June 23, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

During the pendency before the Court of Appeals of a case of unlawful detainer, in which P. M. Silva is the defendant-appellant and Estanislao de Ocampo, the plaintiff-appellee, the appellant Silva made the following tardy deposits of the rents adjudged by the trial court:

For the month of November, 1949, on December 13, 1949;

For the month of December, 1949, on January 12, 1950;

For the month of January, 1950, on February 13, 1950.

On February 17, 1950, Estanislao de Ocampo filed a motion before the Court of Appeals praying that, upon the filing of a bond in the sum of P3,000, he be allowed to withdraw the deposits for rents made by the appellant Silva.

On February 20, 1950, long before said motion to withdraw was acted upon by the Court, Estanislao de Ocampo, having discovered that the deposits of the rents had not been made on the 10th day of the month as required by section 8 of Rule 72, filed a petition for immediate execution of the appealed judgment, which was objected to by Silva on the ground that execution did not lie because he had already complied with the law by depositing the rents corresponding to the months in question. On March 7, 1950, the Court of Appeals granted the petition and ordered the issuance of a writ of execution as prayed for.

To annul that order of the Court of Appeals and to prohibit the execution of the judgment, Silva filed the present petition for certiorari and prohibition in this Court against the Court of Appeals and Estanislao de Ocampo.

After considering the petition and the answer as well as the arguments adduced by counsel during the hearing, we find said petition to be totally devoid of merit. Sections 8 and 9 of Rule 72 provide that the appellant in a desahucio case shall pay to the plaintiff or into the court, "on or before the 10th day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment"; and that should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the court, upon motion of the plaintiff, of which the defendant shall have notice, and upon proof of such failure, "shall order the execution of the judgment appealed from." We have repeatedly held that the issuance of the writ of execution for failure to pay or to deposit the rent on time, is mandatory upon the court and that the latter is powerless to grant any extension of time within which to make such payment or deposit.

The contention of the petitioner that the respondent de Ocampo had tolerated petitioner's belated deposits by not asking for a writ of execution immediately upon petitioners default, is not meritorious. The law does not require the plaintiff-appellee in a case like the present to ask for a writ of execution immediately upon

defendant-appellant's default on pain of forfeiture of his right to ask for it later. The law requires the defendant to make the deposit on or before a specified date, but it fixes no date or period on or within which the plaintiff should file the motion for execution for failure of the defendant to make the deposit on time.

The other contention of the petitioner—that "said respondent was in estoppel by ratification to question petitioner's belated deposits, because on February 17, 1950, precisely after said petitioner had deposited his last rents then due on February 13, 1950, said respondent prayed for the withdrawal upon a bond of all of petitioner's deposits for rent"—is likewise untenable. By asking for the conditional withdrawal of the deposited rents (subject to the approval of a bond to respond for same), the petitioner cannot be held to have expressly consented to the tardiness of the deposit. At the time he filed the petition for withdrawal he had not yet discovered that the petitioner had not made the deposits on time. Immediately after discovering that fact and without waiting for the resolution of the court on his petition for withdrawal, the respondent de Ocampo filed a petition for execution of the judgment. The petition for withdrawal of the deposits, having been objected to by Silva, was denied by the court. Had the petition for withdrawal been consented to by the petitioner and granted by the court, and had the respondent de Ocampo received the rents before filing a motion for execution, a different situation would have arisen wherein the petition for execution might be successfully resisted.

The petition is denied, and the writ of preliminary injunction heretofore issued by this Court is dissolved, with costs against the petitioner.

Paras, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

PABLO, M., disidente:

Disiento.

El demandado deposits las rentas en 13 de Diciembre de 1949, 12 de Enero y 13 de Febrero de 1950. El demandante podria haber pedido la ejecuci6n de la sentencia en 11 o 12 de Diciembre y en 11 o 12 de Febrero o en 11 de Enero. Pero no lo ha hecho. EL articulo 8, Regla 72 dispone que "should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the Court of First Instance, upon motion of the plaintiff, of which the defendant shall have notice, and upon proof of such failure, shall order the execution of the judgment appealed from, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on its merits." Este articulo expresamente dispone que si se prueba la falta de pago (en este caso, depdsito), entonces se ordenara" la ejecucion. Como el demandante no presento su mocion de ejecucion a tiempo; esto es, cuando no se habia hecho aun el deposito, su inaccion debe interpretarse como renuncia. No hay nada anormal en ello. El derecho para pedir la ejecuci6n de la sentencia es renunciabile. Inclusive se puede no recibir la renta por generosidad. Si el demandante en 17 de Febrero de 1950 pidifii al Juzgado que se le permitiese, bajo fianza, retirar los depositos hechos por el demandado, de suponer es que no tenia reclamacion en cuanto a ellos; pero porque fracas6 en su peticion, por la oposicion del demandado, pidio la ejecucion de la sentencia alegando que los dep6sitos no se han hecho a tiempo. Eso es obrar como obr6 el lobo de la fibula. Si el demandante no pidid a tiempo,—cuando no se habla hecho aun el deposito— la ejecucion de la sentencia, no tiene derecho a exigir que el demandado debi6 haber hecho el depdsito con precision cronometrica.

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