

**AMBROSIO DIAZ, JOSE SAGUM AND OLYMPIA BAUTISTA,
PETITIONERS, VS. HON. J. ERMIN EARNEST LOUIE R. MIGUEL,
PRESIDING JUDGE, BRANCH XI-METC, MANILA; HON. LUCIA
PURUGGANAN, PRESIDING...**

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GONZALES-SISON, M., J.:[*]

In this petition for certiorari with prayer for temporary restraining order petitioners seek to annul and set aside, on ground of grave abuse of discretion, the Order[1] dated November 28, 2012 and Resolution[2] dated February 14, 2013 issued by public respondent Judge J. Ermin Ernest Louie Miguel of the Metropolitan Trial Court (MeTC) National Capital Judicial Region, Branch 11, Manila and the Decision[3] dated August 15, 2013 together with the Order[4] dated November 11, 2013 issued by public respondent Lucia P. Purugganan of the Regional Trial Court (RTC) National Capital Judicial Region, Branch 30, Manila.

The facts are undisputed, thus:

The controversy stemmed from a complaint for unlawful detainer filed by plaintiff, herein private respondent, Manotok Realty, Inc. (MRI) against defendants, herein petitioners. On October 4, 2001, the MeTC rendered a decision[5] in favor of private respondent, the decretal portion of which reads as follows, to wit:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants and ordering the defendants and all persons claiming rights under them:

1. To immediately vacate the subject premises known as Lot 1, Blk. 19, situated at No. 1106 Morong St., Manuguit, Tondo, Manila, and surrender its peaceful possession to the plaintiff;
2. To pay the plaintiff the sum of Php414,829.05 as back rentals and the additional sum of Php9,660.75 monthly beginning May 2001, and every month thereafter until they shall have finally and actually vacated the subject premises;
3. To pay the plaintiffs the sum of Php10,000.00 for and as attorney's fees; and
4. To pay the costs of the suit.

SO ORDERED.”[6]

On appeal, the RTC, Branch 15, Manila, affirmed, via a decision[7] dated April 15, 2004, the decision of the MeTC, the fallo thereof reads, to wit:

“WHEREFORE, premises considered, the appeal filed by the defendants is DENIED for lack of merit and the decision dated October 4, 2001 of the Honorable K. Casiano P. Anuncianon, Jr., Presiding Judge of Metropolitan Trial Court, Branch 11, Manila is hereby AFFIRMED IN TOTO.

SO ORDERED.”[8]

Unsatisfied, petitioners brought the case to this Court by filing a petition for annulment of judgment. However,

the same was denied due course and dismissed on September 15, 2004[9], thus:

“ACCORDINGLY, the petition is DENIED DUE COURSE and DISMISSED.”[10]

As per entry of judgment, the foregoing became final and executory on July 18, 2005. On June 22, 2006, the MeTC ordered the issuance of the writ of execution[11] that private respondent applied and prayed for on May 9, 2006.[12] However, the decision was not implemented because the MeTC had no sheriff assigned at that time in its branch.

Thereafter, petitioners filed the following, to wit: (1) Petition for Declaration of Nullity of Transfer of Certificate of Title No. 27257 as well as its Tax Declarations with Damages with prayer for TRO and/or Preliminary Injunction[13] with the RTC of Manila which was raffled to Branch 37 thereof, (2) Request to Hold in Abeyance of Writ of Execution, Notice to Vacate and Demolition, To Await the Pending Filed Case etc.[14], and (3) Motion to Hold in Abeyance of Writ of Execution, Notice to Vacate/Demolition to Await the Pending Filed Case etc.[15] both with the MeTC.

On February 27, 2009, the MeTC issued an Order denying petitioners' Motion to Hold in Abeyance of Writ of Execution, Notice to Vacate/Demolition, etc. on the ground that there was no restraining order issued by the RTC to implement the writ of execution.[16] The Acting Presiding Judge of the MeTC directed the designated sheriff of the court to proceed with the implementation of the writ that was issued on June 22, 2006. Again, as there was no sheriff assigned thereat, the writ of execution was not implemented. Private respondent then filed an ex-parte motion for the appointment of special sheriff.[17]

Meanwhile, on March 5, 2009, another motion to hold in abeyance the projected issuance of writ of execution/demolition[18] was filed by petitioners with the MeTC. Despite notice, private respondent did not file its comment.[19] The MeTC did not act on the pending motions[20] until a new counsel appeared for the private respondent and moved for the early resolution of the pending motions.[21]

Finding for private respondent, the MeTC on June 13, 2012, issued an Order[22] granting its motion for execution and denied that of petitioners. However, in an Order[23] dated July 7, 2012, it reversed itself when it acted favorably on the petitioners' motion for reconsideration. It ratiocinated that the private respondent did not take the necessary steps to obtain or cause the execution of the judgment within the time allowed by the Rules. Thus, it considered the issuance of the writ beyond the five-year period to be already void.

Private respondent immediately filed a motion for reconsideration stressing that it took every steps necessary to enforce its right on the judgment, and circumstances beyond its control caused the delay in the issuance of the writ being applied for.[24]

Via a Resolution [25] dated September 24, 2012, the MeTC reconsidered and set aside its July 7, 2012 Order and reinstated its earlier Order dated June 13, 2012. When the MeTC denied the motion for reconsideration[26] of the petitioners in an Order[27] dated November 28, 2012, they filed a Motion with Leave of Court to Reconsider Order dated November 28, 2012 and/or Defer Implementation of Writ of Execution.[28] After considering private respondent's Comment/Opposition thereto, the MeTC, via an Order[29] dated February 14, 2013, denied the motion. It reasoned out that the motion is a second motion for reconsideration and under the Rules, a second motion for reconsideration is a prohibited pleading.

Petitioners then filed an appeal. The case was raffled to RTC Branch 30, Manila (Court a quo), and was docketed as Civil Case No. 13-129760. In its decision[30] dated August 15, 2013, the Court a quo dismissed the appeal for being procedurally defective and substantially void, to wit:

“WHEREFORE, for being procedurally infirm and substantially wanting, the appeal is hereby

DISMISSED.”[31]

In dismissing the appeal procedurally, the Court a quo opined that the petitioners availed of the wrong mode of appeal in asking the writ of execution to be set aside. With regard to substance, it found that private respondent was able to move for the issuance of the subject writ within the five (5) year period allowed by the rules.

With the denial of their motion for reconsideration,[32] petitioners lodged the present petition for certiorari with prayer for a temporary restraining order. They maintain that the decision dated October 4, 2001, which has become final and executory on June 22, 2006 can no longer be enforced because private respondent neither filed a motion for execution within five (5) years from date of entry of judgment nor an independent action for revival of judgment after the lapsed of the said five (5) years with the Court a quo. With this, they claim that public respondents gravely abused their discretion in issuing the assailed resolution, decision and order.[33]

The private respondent vehemently opposed the petition via its Comment/Opposition.[34] It claim that We should dismissed outright the petition because We do not have jurisdiction to review the subject of the petition, Writ of Execution, which is now final and executory.

Private respondent added that the Court a quo did not commit reversible error in issuing the assailed Decision and Order because it has timely filed its motion for execution.

The parties maintain their stand in their respective memoranda.[35]

THE PETITION FAILS.

At the outset, the instant petition should be dismissed. The law on the Order of Writ of Execution is not appealable. This is provided under Sec. 1, Rule 41 of the Revised Rules of Civil Procedure, to wit:

“Section 1. Subject of appeal. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) xxx

xxx

(f) an order of execution;

xxx

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action for certiorari.”

Despite the clear foregoing rule, the petitioners appealed[36] the Order and Resolution dated November 28, 2012 and February 14, 2013 which denied petitioners' Motion for Reconsideration from the Order dated June 3, 2012 of the MeTC granting the issuance of the Writ of Execution. Hence, the Court a quo can not be faulted in dismissing the appeal as the same was erroneously resorted to by the petitioners.

The rule is that the erroneous filing of the appeal will not toll the running of the prescriptive period.[37] Accordingly, the Order dated June 3, 2012 of the MeTC, which is now the subject of the petition, had already become final and executory at the time the petitioners sought to have it reconsidered before this Court via this instant petition.

It has been held time and again that a decision that has acquired finality becomes immutable and unalterable, and

may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. This principle, commonly known as the doctrine of immutability of judgment, has a two-fold purpose, namely: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Verily, it fosters the judicious perception that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As such, it is not regarded as a mere technicality to be easily brushed aside, but rather, a matter of public policy which must be faithfully complied.[38]

Viewed from the foregoing, it is clear that the Order dated June 3, 2012 of the MeTC, cannot be made subject to further appellate review and now constitutes *res judicata* as to every matter offered and received in the proceedings below as well as to any other matter admissible therein and which might have been offered for that purpose.[39] Hence, the instant petition for certiorari should be dismissed.

Moreover, by virtue of the Decisions of the MeTC and the RTC, Branch 15, which both ruled in favor of private respondent in the unlawful detainer case, private respondent, is indeed, as a matter of right, entitled to a writ of execution pursuant to Sec. 21, Rule 70 of the Rules of Court,[40] to wit:

“Sec. 21. Immediate execution on appeal to the Court of Appeals or Supreme Court.—The judgment of the Regional Trial Court shall be immediately executory, without prejudice to a further appeal that may be taken therefrom.”

Thus, whilst the MTC issued the Order of the Writ of Execution after the resolution of this Court denying the petition for annulment of judgment of petitioners became final and executory, the Order of the Writ of Execution can not be nullified.

Petitioners now contend that the Decision dated October 4, 2001, of the MeTC could no longer be executed as private respondent neither filed a motion for execution within five (5) years from date of entry of judgment nor an independent action for revival of judgment after the lapsed of the said five (5) years with the Court *a quo*. WE DO NOT AGREE.

Sec. 6, Rule 39 of the 1997 Revised Rules of Civil Procedure provides that:

“Sec. 6. Execution by motion or by independent action. —A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.”

Clear from the foregoing that once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court within ten years from the time the judgment becomes final.[41]

In here, the Court *a quo* correctly agreed with the MeTC that private respondent moved for the execution of the decision of the MeTC within five (5) years from the date of entry of judgment; that it was not remiss in enforcing its rights to cause the execution of the decision, and that due to petitioners' several motions, the decision was not executed. These are borne out by the evidence at hand thus, We hereby quote with imprimatur the findings of the Court *a quo* affirming that of the MeTC, viz:

“In the case at bar, plaintiff-appellant was not in delay when he moved for the execution of the decision on May 9, 2006. Undoubtedly, the filing was within the reglementary period, having been made on March 9, 2009. Clearly, plaintiff-appellee was not remiss in its duty to enforce its rights as found and provided for in the decision of a court a quo. While plaintiff-appellee's determination to have the judgment executed is clear and evident, the same can also be said of defendants-appellants' resolve to bar or delay the execution of the lower court's decision as can be gleaned from the several motions that they filed for the purpose.

It is evident from the foregoing that the setbacks in the execution or issuance of the writ therefor were not attributable to plaintiff-appellee's acts or omission. Thus, it should not be prejudiced from the inaction or delay of the court a quo as caused by factors beyond the control of the concerned party. The reminder is made that the purpose of the law in prescribing time limitations for enforcing judgments or actions is to prevent obligors from sleeping on their rights. In the situation at bar, plaintiff-appellee was not slumbering on its prerogatives.”

Prescinding therefrom, it can be said that public respondents did not commit reversible error much more grave abuse of discretion in issuing the following: (1) MeTC Order dated November 28, 2012; (2) MeTC Resolution dated 14, 2013; (3) RTC Decision dated August 15, 2013, and (4) RTC Order dated November 11, 2013.

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." [42]

In here, petitioner failed to show that the issuance of the MeTC Order dated November 28, 2012; MeTC Resolution dated 14, 2013; RTC Decision dated August 15, 2013, and RTC Order dated November 11, 2013 were patent and gross that would warrant striking it down through this instant petition for certiorari. In fact, the aforesaid Orders are in accord with law and jurisprudence on the matter. Indeed, a special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. [43] It is likewise settled rule that there is grave abuse of discretion when an act is done contrary to the Constitution, the law or jurisprudence. [44]

WHEREFORE, the instant petition for certiorari with prayer for a temporary restraining order is, in light of the foregoing discussions, hereby DISMISSED. The Decision dated August 15, 2013 and the Order dated November 11, 2013 of the Court a quo which denied the appeal of the petitioners from the Order dated November 28, 2012 and Resolution dated February 14, 2013, of the MeTC, and their motion for reconsideration, respectively, are AFFIRMED.

SO ORDERED.

Ybañez, E.A.,[*] and Sorongon, E.D., JJ., concur.

[*] Vice Justice Rosmari D. Carandang as per Office Order No. 485-14-RSF dated November 24, 2014.

[*] Acting Senior Member as per Office Order No. 485-14-RSF dated November 24, 2014.

[1] Rollo, p. 158.

[2] Id., p. 159.

[3] Id., pp. 107-112.

[4] Id., pp. 120-122.

[5] Id., pp. 29-30.

[6] Id., penned by Judge K. Casiano P. Anuncianon, Jr.

[7] Id., pp. 31-33.

[8] Id., penned by Presiding Judge Mercedes Posada Lacap.

[9] Id., pp. 167-169.

[10] Id., penned by Associate Justice Ruben T. Reyes with Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr., concurring.

[11] Id., p. 49.

[12] Id., pp. 221-223.

[13] Id., pp. 35-47.

[14] Id., pp. 135-136.

[15] Id., pp. 137-140.

[16] Note 3 at p. 108, 1st par.

[17] Rollo, pp. 133-134.

[18] Id., 141-144.

[19] Note 16, 2nd par.

[20] Id.

[21] Id., pp. 145-146.

[22] Id., pp. 147-148.

[23] Id., pp. 150-153.

[24] Note 16, 4th par.

[25] Id., pp. 154-157.

[26] Id., pp. 65-71.

[27] Id., p. 158.

[28] Id., pp. 76-81.

[29] Id., p. 159.

[30] Note 3.

[31] Id., penned by Judge Lucia P. Purugganan.

[32] Note 4.

[33] Rollo, pp. 13-28 at pp. 22-24.

[34] Id., pp. 125-131.

[35] Id., Memorandum (For the Private Respondent Manotok Realty, Inc., pp. 186-193, Memorandum for the Petitioners, pp. 232-240.

[36] Id., 83-85.

[37] Calucag vs. COMELEC, et al., G.R. No. 123677, June 19, 1997.

[38] National Housing Authority vs. Court of Appeals, et al., G.R. No. 173802, April 7, 2014.

[39] Id.

[40] See PNB vs. DKS International, Inc., G.R. No. 179161, January 22, 2010.

[41] Rubio, et al., vs. Alabata, G.R. No. 203947, February 26, 2014 and Villeza vs. German Management and Services Inc., et al., G.R. No. 182937, August 8, 2010.

[42] Malayang Manggagawa ng Stayfast Philippines, Inc. Vs NLRC, GR No. 155306. August 28, 2013.

[43] Id.

[44] ATO vs. Hon. Court of Appeals, et al., G.R. No. 173616, June 25, 2014.

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