

**TOMAS MAPUA ET AL., PETITIONERS, VS. JOSE GUTIERREZ DAVID,
JUDGE OF FIRST INSTANCE OF MANILA, AND SUBURBAN THEATERS,
INC., RESPONDENTS.**

G.R. No. L-697. August 30, 1946

Ponente: MORAN, C. J.

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MORAN, C. J.:

This is a petition for certiorari to set aside an order of the Court of First Instance of Manila alleged to have been issued with grave abuse of discretion.

Petitioners filed against Suburban Theaters, Inc., in the municipal court of Manila, an action for ejectment in connection with the theater building known as "Cine Apolo" situated in Rizal Avenue, upon the ground that their contract of lease had expired and defendant refuses, after demand, to vacate the premises. The action was dismissed in the municipal court, but on appeal to the Court of First Instance, judgment was rendered after trial ordering defendant to vacate the premises. Before the expiration of the time to appeal, plaintiffs filed a motion for execution of the judgment upon special reasons therein stated. Defendant, in its turn, filed a motion stating its desire to file a supersedeas bond to stay the execution and asking the court to fix the amount of that bond. The court granted defendant five days to file a supersedeas bond in the amount of P10,000. Plaintiffs filed a motion for reconsideration, which was denied. Plaintiffs offered to file a counter-bond in the amount of P50,000, or, if necessary P100,000, to answer for any damages which defendant might sustain pursuant to the execution of the judgment—offer which was disregarded. Hence, this petition for certiorari wherein it is maintained that the order of the court allowing defendant to file supersedeas bond in the amount of P10,000 is a grave abuse of discretion.

Rule 39, section 2, of the Rules of Court, is as follows:

"Execution discretionary.—Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the special order shall be included therein. Execution issued, before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part."

Supposing this provision to be applicable in this case, the respondent court is vested with discretion to stay the execution of the judgment upon the filing of a sufficient supersedeas bond by the appellants. The reason given by petitioner to maintain that the stay granted by the respondent court is a grave abuse of discretion, is the merits of their own case. They allege that defendant has absolutely no right of possession and has, therefore, no defense whatsoever. But the merits of the case should not be determined at this stage of the proceedings, in advance of the appeal taken by both parties from the judgment rendered by respondent court in the principal case.

Petition is denied, with costs against petitioners.

Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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