

PILAR S. VERGEL DE DIOS, PETITIONER, VS. HON. HILARION U. JARENCIO, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH XXIII, AND PROCERFINA M. ...

G.R. No. L-44565. April 22, 1977

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari and mandamus, with preliminary injunction, to set aside the order of respondent judge dated August 5, 1976 in Civil Case No. 103069 granting the petition for relief, filed by private respondent Procerfina M. Elbo, from the judgment of the City Court of Manila dated April 22, 1976 in Civil Case No. 240489 ordering the ejectment of the latter from the premises leased to her by petitioner, as well as the order of August 25, 1976 denying reconsideration of said judgment. The Court required respondents to comment on said petition and after hearing the parties in oral argument resolved to consider the comment filed by private respondent as her answer and declared the case submitted for decision.

On March 14, 1975, petitioner sued private respondent Elbo in Civil Case No. 240489 of the City Court of Manila for ejectment from Rooms 313 and 408 Pilar Building No. 2, located at 507 Gastambide, Sampaloc, Manila used by Elbo as dormitory for students in the university belt, alleging failure to pay the agreed rentals on time. After several postponements, most of which were secured by respondent, petitioner was finally able to complete the presentation of her evidence almost a year after the action was filed. Reception of the evidence for the respondent was set for several times, namely, for March 5, 12, 18 and 30, 1976. The hearing set for March 5 was cancelled because of the sudden withdrawal of counsel Atty. Rufino Clarino, for respondent, and those of March 12 and 18, to give respondent and her new counsel, Atty. Jose Macahasa, opportunity to prepare. On March 30, neither respondent nor her new counsel appeared despite due notice to the latter. In view of such non-appearance, petitioner prayed for judgment on the basis of her evidence, which the court did render on April 22, 1976. And before the expiration of the reglementary period for appeal, upon motion of petitioner, a writ of execution was issued, the implementation of which was so delayed by the sheriff that it was overtaken by the filing of the petition for relief with respondent court and the issuance by said court of the assailed orders.

The parties have joined issues on several questions, among them: (1) whether or not certiorari is the proper remedy against the orders in controversy; (2) whether or not it was proper for the inferior court to have issued the writ of execution before the expiration of the period for appeal; (3) whether or not a petition for relief under Rule 38 can be filed against a judgment in an ejectment case; (4) whether or not respondent court acted with grave abuse of discretion in granting private respondent's petition for relief; (5) whether the procedure to be followed after the subject petition for relief was granted should be pursuant to Sec. 7 of Rule 38, as claimed by herein petitioner, under which respondent court should itself try the case "as if the same had been regularly brought by appeal," or that ordered by respondent court, namely, its judgment having been set aside, the inferior court should proceed with the reception of the evidence of respondent and there-after render a new judgment, as all the

evidence may warrant, and others, all of which are undoubtedly interesting.

The Court feels, however, that it is unnecessary to resolve all of these questions here. What is decisive in the case at bar is whether or not there was grave abuse of discretion in granting relief to respondent in the light of the circumstances extant in the record. Actually, the merits of the ejectment case of petitioner against respondent is not before Us now. Even the issue of whether or not respondent Elbo could have good and valid defenses, as held by respondent court, may be taken into account only if in fact she was prevented from proving the same without any fault on her part.

Nonetheless, it may be stated here that while as a rule, the remedy against an order granting relief under Rule 38 is appeal after the completion, as ordered, of the trial and rendition of a new judgment, certiorari may be availed of when, as in the instant case, the summary nature of the ejectment suit of petitioner has been practically rendered meaningless by the protraction of the trial thru the employment of various maneuvers on the part of the lessee-respondent that has enabled her to continue for more than a year in possession of the disputed premises without having to comply with the requirement that she should be up-to-date in the payment of the rentals due the petitioner. The resort to Rule 38 may not be used as an excuse for continued occupation of leased premises without the defendant paying the rentals, pending the rendition of the appropriate judgment. Any rule to the contrary would be unfair to the lessor.

It may also be stated here, in connection with the contention of petitioner that respondent court gravely erred in ordering the remand of the case to the City Court instead of treating it "as if the same had been regularly appealed to it", pursuant to Sec. 7 of Rule 38, that apparently His Honor had in mind that the cited provision of the rules has been correspondingly modified by Republic Act 6031 under which trial de novo in appeals from judgments of inferior courts, which have been made courts of record, to the Courts of First Instance was abolished. In other words, His Honor must have been of the view that after holding that the trial in the City Court was incomplete, without fault on the part of the respondent herein, it was not for the Court of First Instance to allow completion thereof before it, since under Republic Act 6031, its appellate function ceased to be a retrial and has become no more than to review the recorded evidence as presented in the City Court, a view which is not without plausibility. But We do not deem it imperative to make any ruling on that point here, in view of Our holding, to be discussed anon, that respondent court gravely abused its discretion in issuing the set-aside orders herein complained of.

We cannot agree that the failure of respondent Elbo and her counsel to appear at the hearing set on March 30, 1976 was due to either mistake or excusable neglect. In this connection, it is important to consider that the proceedings in the City Court had already suffered undue delay before that date thru maneuvers of respondent's counsel. Thus, as alleged by petitioner in her answer to the petition for relief below:

"Private respondent also submits that the contention of petitioner that she is deprived of her day in court is completely false because of the fact that the case before respondent Judge dragged for fifteen (15) months because of her numerous requests for postponements and resettings of the hearings. Her first counsel Atty. Rufino Carino requested the cancellation of the hearing on August 12, 1975 on the ground that he was sick with influenza; the cancellation of the hearing of September 22, 1975 on the alleged ground that his mother is seriously ill; and the cancellation of the hearings of March 5 and 12, 1976 (the dates, first set for the reception of their evidence) on the alleged ground that he would accept a provincial assignment for a corporation in the province, which of course is not true as he is still practicing in Manila and is even appearing before the sala of respondent Judge. Her second counsel Atty. Jose Macahasa and petitioner herself appeared for the hearing on March 18, 1976 (which date is also set for the reception of their evidence) and requested the resetting of the case to March 30, 1976 on the ground that he will study the case. On the said date, petitioner and her said counsel did not appear despite due notice.

Private respondent wonders how petitioner could possess the temerity to file the present petition after abusing

the liberality and generosity of respondent Judge in granting her numerous postponements and resettings; and in contemptuously mocking respondent Judge when petitioner and her cohorts continuously promised him that they would deposit the monthly basic rentals for one whole year, which was the bond required on the continuance by respondent Judge pursuant to Section 5 of Rule 70 of the Rules of Court (supra).

The records of the case before respondent Judge will show that she has only deposited not more than 3 months rental out of the 16 months that she has stayed and occupied the two (2) premises so that their present accrued rentals and water bills amount to P17,800 (P7,910 for R-313 and P9,890 for R-408) which surely is a big amount by any computation." (Pages 20-21, Record.)

which facts are not seriously denied by respondent.

Nor are We persuaded by respondent's claim that the premises in dispute are not commercial. At the hearing before this Court where some of the alleged relatives of respondent supposedly occupying said premises were present, their answers to questions from the Court were hardly impressive. We cannot see on the basis thereof adequate ground for reversal of the judgment in the main ejectment case herein involved declaring Presidential Decree No. 20 inapplicable to this case, considering that the rooms involved are located in a commercial place and are being used as a dormitory for students studying in the universities nearby.

Our conclusion, therefore, is that respondent court acted precipitately and without justifiable and legal basis in granting respondent's petition for relief. This is not the first occasion where repeated motions for postponement, abrupt change of counsel and pretended possibility of compromise have been resorted to to delay and strip of its summary character an ejectment action. These transparent excuses and maneuvers are actually hackneyed and deserve attention only from the naive. Hence, the action of respondent court in holding there was mistake or excusable neglect here within the contemplation of Rule 38 amounts to grave abuse of discretion.

WHEREFORE, the petition is granted and the order of respondent court of August 5, 1976 is hereby set aside. In consequence, the execution of the final decision of the City Court of Manila dated April 22, 1976 may now proceed according to law, with the issuance of a new writ of execution, and all moneys already deposited by respondent Elbo with the courts below should immediately be released to petitioner in partial payment of the monetary aspect of said judgment. Costs against private respondent Elbo.

Antonio, Aquino, Concepcion, Jr., and Martin,* JJ., concur.

Fernando, J., did not take part.

* Mr. Justice Ruperto G. Martin was designated to sit in the Second Division.

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