

GABRIELA VDA. DE MENDOZA, PLAINTIFF AND APPELLEE, VS. GREGORIO PALACIO, DEFENDANT AND APPELLANT.

G.R. No. L-658. October 25, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

On August 21, 1946, appellee filed a motion praying for the execution of the decision of the Court of First Instance of Manila rendered, on January 22, 1946, in order that appellant may be ousted from the premises in question, because he failed to pay or deposit on or before August 10, 1946, the rent of P25 for the preceding month of July.

Not denying said failure, appellant alleges (a) that, besides having filed the appeal bond of P60, he deposited with the clerk of the court of first instance on October 6, 1945, a four-month rent supersedeas bond which, according to the appellee, amounted only to P80; and (b) that section 9 of Rule 72 of the Rules of Court does not require the monthly rentals to be paid or deposited within the first ten days of the calendar month.

The supersedeas bond in the amount of P80, deposited by appellant, does not relieve him from the obligation of paying or depositing the current rents pending his appeal to the Supreme Court, as we had already declared in the case of *Mitschiener vs. Barrios*, (76 Phil., 55), that the purpose of the supersedeas bond in ejectment cases is to insure the payment of the unpaid back rents or reasonable value of the use of the premises in question, but not to take the place of the payment or deposit of the current ones.

Section 9 of Rule 72 provides:

"SEC. 9. Stay of execution on appeal to Court of Appeals or Supreme Court.—Where defendant appeals from judgment of the Court of First Instance, execution of said judgment shall not be stayed unless the appellant pays either to the plaintiff or into the appellate court the same amounts referred to in the preceding section to be disposed of in the same manner as therein provided."

Although it is a fact that the above provision does not specify when the monthly rents, as found in the decision of the court of first instance, must be paid, reason counsels that the payment or deposit of said rents pending appeal to the Supreme Court can not be left to the discretion of appellant. Section 8 of Rule 72 provides:

"SEC. 8. Immediate, execution of judgment. How to stay same.—If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond approved by the justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance, and to pay the rents, damages, and costs down to the time of the final judgment in the action, and unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist, or, in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth 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. All

moneys so paid to the Court of First Instance shall be deposited in the provincial treasury, or in the City of Manila in the Insular Treasury, and shall be held there until the final disposition of the appeal. 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. If the case is tried on its merits in the Court of First Instance, any money paid into court by the defendant for the purposes of stay of execution shall be disposed of in accordance with the provisions of the judgment of the Court of First Instance, and in any case wherein it appears that the defendant has been deprived of the lawful possession of land or building pending the appeal by virtue of the execution of the judgment of the justice of the peace or municipal court, damages for such deprivation of possession may be allowed the defendant in the judgment of the Court of First Instance disposing of the appeal. The bond above referred to shall be transmitted by the justice of the peace or municipal court, with the other papers, to the clerk of the Court of First Instance to which the action is appealed."

There being an analogy between the legal position of the parties when the case is pending appeal from the justice of the peace court to the Court of First Instance the one when the case is pending appeal from the Court of First Instance to the Supreme Court, it is logical that similar procedure must be followed in both situations, and this interpretation, besides being fair to both parties, is in a sense more favorable to the tenant as he is given ten additional days within which to pay or deposit the rent, as otherwise he will ordinarily be compelled to make said monthly payment or deposit not later than the last day of the month for which the rent must be paid.

Appellee's petition for the execution of the appealed decision of the lower court is granted, without prejudice to the appeal interposed by defendant.

Paras, Pablo, Bengzon, Padilla, and Tuason, JJ., concur.

CONCURRING

FERIA, J., with whom concurs MORAN, C. J.:

We concur in the result.

We have already decided in the case of *Mitschiener vs. Barrios*, (76 Phil., 55), that a supersedeas bond filed in the justice of the peace or municipal court does not relieve the defendant-appellant from making the payments required in section 8, Rule 72, to suspend the execution of the judgment during the pendency of the appeal. Therefore the only question for us to determine is whether or not, under section 9 of the same Rule, if the defendant appeals from the judgment of the Court of First Instance, he is required to make the payments in the manner provided in section 8 of rents or compensation for the use and occupation of the property due from time to time during the pendency of the appeal, to prevent the execution of the judgment appealed from.

Section 8 of Rule 72 provides:

"SEC. 8. Immediate execution of Judgment. How to stay same.— If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond approved by the Justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance, and to pay the rents, damages, and costs down to the time of the final judgment in the action, and unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time under the contract, if any, as found by the

judgment of the justice of the peace or municipal court to exist, or, in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth 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. All moneys so paid to the Court of First Instance shall be deposited in the provincial treasury, or in the City of Manila in the Insular Treasury, and shall be held there until the final disposition of the appeal. 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. * * *

And section 9 of the same rule reads as follows:

"SEC. 9. Stay of execution on appeal to Court of Appeals or Supreme Court.—Where defendant appeals from judgment of the Court of First Instance, execution of said judgment shall not be stayed unless the appellant pays either to the plaintiff or into the appellate court the same amounts referred to in the preceding section to be disposed of in the same manner as therein provided."

It is a well settled that "the rule that a relative or qualifying word refers to its last antecedent is not invariable. It will yield to the evident sense and meaning of the statute. It is a rule of grammar, and a statute is presumed to be grammatically expressed. But this will not be told in the fact of the apparent and rational interpretation of the act. 'It is true that in strict grammatical construction, the relative ought to apply to the last antecedent; but there are numerous examples in the in best writers to show that the context may often require a deviation from this rule, and that the relative may be connected with nouns which go before the last antecedent, and either take from it or give to it some qualification.' * * * Also it is said that general words occurring at the end of a sentence are presumed to refer to and qualify the whole, * * *." (Black on Interpretation of Laws, pp. 224-226, Second Edition)

For instance, in the case of Hart vs. Kennedy, (14 Abb. Prac. [N. Y.] 432), a statute provided that certain officers should not be "liable to military or jury duty, nor to arrest on civil process, or to service of subpoenas from civil courts, whilst actually on duty." According to the usual rules, of English composition, the qualifying phrase "whilst actually on duty" would apply only to the last antecedent, "service of subpoenas," etc. But it was held that this would not carry out the plain and evident intention of the legislature, and consequently the act should be read as exempting these persons, whilst actually on duty, both from arrest and from the service of process. Again in Eby's Appeal, (70 Pa. 311), a statute authorized extraterritorial service of process on nonresident defendants in suits in equity "concerning goods, chattels, lands, tenements, or hereditaments, or for the perpetuating of testimony concerning any lands, tenements, and so forth, situate or being within the jurisdiction of such court." It was held that the qualifying phrase "situate or being within the jurisdiction" referred not merely to the last antecedent, "perpetuating of testimony," etc., but also to the first clause of the sentence quoted. (Black on Interpretation of Laws, p. 225.)

Applying the above rule in construing the above quoted provision of section 9, the words "in the same manner as therein provided" must be considered as qualifying not only the words "to be disposed of" immediately preceding, but also the words "the appellant pays either to the plaintiff or into the appellate court the same amounts," which go before the last antecedent, in order to effect a meaning clearly shown by, or to carry out an intent expressed in, the above quoted provision of section 8 of the said Rule.

The reason of the law or section 8, Rule 72 in requiring the payment or deposit of rents or reasonable compensation for the use of the premises by defendant-appellant due from time to time during the pendency of the appeal, is to seoure or guarantee the right of the plaintiff to such rents and compensations should the Court of First

Instance affirm the judgment of the lower court. As the same reason exist during the pendency of the appeal from the Court of First Instance to the Court of Appeals or the Supreme Court, it is evident that the intention of the law making body in providing in section 9 for the payment by defendant appellant to the plaintiff or into the appellate court the same amounts referred to him in section 8, is to have said payments effected in the same manner as provided in said section 8, Rule 72.

CONCURRING

HILADO, J.:

I concur in the foregoing resolution. However, I would make it clear that, in my opinion, under section 9, in relation with section 8 of Rule 72, when there is a contract of lease between the parties, the time for the payment or deposit of the rentals, during the pendency of the appeal in this court, the same as during the pendency of the appeal in the Court of First Instance, is determined by the contract of lease: so that in such a case, in my opinion, said rentals should be paid or deposited as they become "due from time to time under the contract", in the textual words of said section 8. As I construe this section, the payment or deposit required by it to be made "on or before the tenth day of each calendar month" (textual words of the section) refers to the payment of "the reasonable value of the use and occupation of the premises for the preceding month" (again textual words of the section), of course, where there is no contract between the parties. There being a contract, any change in the due date determined by the contract would impair the obligation thereof.

BRIONES, M., disidente:

No estoy conforme con la resolucion de la mayoria, por las siguientes razones:

(a) Es verdad que el apelante no deposito en la Escribania de esta Corte el alquiler correspondiente a Julio proximo pasado antes del 10 Agosto, pero algunos dias despues lo hizo y, ademas, deposito por adelantado el alquiler de Agosto. El Articulo 9, regla 72, del Reglamento de los Tribunales, no provee especificamente que los alquileres deberan depositarse en la Escribania de esta Corte durante los diez primeros dias de cada mes, en notorio contraste con el articulo 8 que contiene esa disposicion concreta y especifica con relacion a los Juzgados de Primera Instancia. El mencionado articulo 9 solo dice que se dispondra de los alquileres depositados en la forma provista en el articulo anterior.

Se arguye, sin embargo, que como quiera que el articulo 9 no señala plazo para los depositos, por analogia debe regir el plazo de que habla el articulo 8. Convento en que estamos facultados para formular esta interpretacion. Desde luego lo mejor y mas correcto seria que se enmendase antes el precepto, eslabonando ambas disposiciones legales con la fraseologia propia, clara, categorica y pertinente. Pero si se quiere el camino mas corto, estoy dispuesto a conformarme con que ello se haga por medio de interpretacion judicial simplemente. Lo que no me parece aceptable y justo es que la doctrina se aplique de hoy en adelante, es decir, in futuro. Razones de equidad aconsejan este proceder. La ejecucion de la sentencia en un caso de desahucio es siempre algo oneroso, maxime en las presentes circunstancias en que el problema del albergue es extraordinariamente dificil; asi que no se debe favorecer durante la pendencia de la apelacion a menos que lo justifique una disposicion legal terminante o una doctrina firmemente establecida, y no es este el caso que tenemos, pues ya hemos visto que la fraseologia del articulo 9 arriba citado es vaga e imprecisa, siendo esta, la primera vez que lo interpretamos ampliandolo, por analogia, en relacion con el articulo 8.

(b) Consta en autos que el apelante, ademas de su fianza de apelacion, registro en la escribania del Juzgado de Primera Instancia otra fianza para suspender la ejecucion de la sentencia (supersedeas bond) por suma de P80,

esto es equivalente a cuatro meses de alquiler. Teniendo en cuenta que el retraso en esta instancia del deposito del alquiler correspondiente a Julio ha sido solo por algunos dias y que inclusive el alquiler de Agosto se ha depositado por adelantado, de suerte que ahora el apelante estal al corriente de su obligacion, creo que no se causa ningun perjuicio a la parte apelada no ordenando la ejecucion de la sentencia a su favor. La Filosofia de la ley no es que se trate de de favorecer particularmente a la parte demandante y vencedora con a la ejucucion de la sentencia durante la pendencia de la apelacion, sino tan solo de asegurar sus intereses contra la morosidad del demandado; asi que cuandro de autos resulta evidente, como en el presente caso, que los intereses de la demandante y apelada estan asegurados con exceso y ningun daño puede seguirse de la no ejecucion de la sentencia, esta no debe decretarse so pena de darle un caracter estrictamente punitivo, lo cual no es la intencion de la ley.

(c) El espiritu de algunas de nuestras recientes decisiones abona en favor de la tesis que sostengo en esta desidencia. En el asunto de Mitschiener contra Barrios y otros (76 Phil., 55) hemos declarado que la fianza para suspender la ejucucion de la sentencia (supersedeas bond) tiene por objeto asegurar el pago de los alquileres atrasados o devengados. Pero la decision mas aplicable al caso que nos ocupa es la recaida en el asunto de Caluag DOmingo contra Juzgado de Primera Instancia de Nueva Ecija. (p. 170, ante), en el cual tambien se pidio la ejecucion de la sentencia la pendencia de la apelacion por no haber el demandando pagado ni depositado los alquileres vencidos. Alli hemos dejado sin afecto la orden de ejucucion de la sentencia expedida por el tribunal inferior porque de autos resultaba que el demandado habia depositado una "supersedeas bond" de P1,000—fianza que cubria con exceso alquileres atrasados, los cuales montaban solamente a P290. Alli hemos hecho justicia sustancial, por encima de tecnicismos. El asunto que nos ocupa es perfectamente analogo al citado ultamamente, porque, como ya se ha dicho, el apelante en el presente caso presto ante el Juzgado de Primera Instancian una fianza de "supersedeas" por la suma de P80, esto es, equivalent a 4 meses de alquiler, y el retraso en esta instancia ha sido solo por un mes, y aun eso ya se halla subsanado. Mas todavia: la posicion del demandado en el presente caso es hasta mejor que en el asunto de Caluag, supra, porque alli la morosidad del demandado cubria varios meses.

Mi conclusion, pues, es que debe denegarse el pedimento de ejucucuion sin perjuico de sentar desde hoy la doctrina de que el articulo 9 debe interpretarse por analogia en relacion con el articulo 8, a saber: que los alquileres deben depositarse en la Escribania de este Corte dentro de los primeros 10 dias de cada mes al igual que en los primeros 10 dias de cada mes al igual que en los Juzgados de Primera Instancia.

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