

MIGUEL J. YSRAEL, PETITIONER, VS. THE COURT OF APPEALS AND LA PERLA DE LA INDIA, RESPONDENTS.

G.R. No. L-1302. July 31, 1947

Ponente: BENGZON, J.

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BENGZON, J.:

On May 8, 1946, the petitioner, Miguel J. Ysrael, filed, in the municipal court of Manila, a complaint for ejectment against the La Perla de la India, a duly registered partnership that was detaining plaintiff's property under a contract of lease.

After due hearing, the defendant was ordered to vacate, and to pay the amount of two thousand pesos per month for the occupation of the premises.

Defendant La Perla de la India appealed to the Court of First Instance, wherein it submitted on July 27, 1946, pending the appeal, a motion for permission to substitute a surety bond for the monthly cash deposits of rentals that it is required to pay, in order to stay execution, in accordance with section 8, Rule 72 of the Rules of Court. That motion was denied. Wherefore, La Perla de la India made the corresponding monthly deposits.

On October 9, 1946, the Court of First Instance rendered judgment ousting the defendant and requiring it to pay one thousand four hundred pesos (P1,400) a month until it shall have left the premises. From this judgment, La Perla de la India appealed to the Court of Appeals.

Before the transmission of the record to the latter court, the defendant-appellant again asked the Court of First Instance on December 10, 1946, for permission to file a surety bond in lieu of the monthly cash deposits. The petition was again denied. Notwithstanding the denial, the bond was filed, and a motion for reconsideration was presented. For the third time the permission to submit a bond was refused.

On January 3, 1947, the record was elevated to the Court of Appeals wherein the plaintiff Miguel J. Ysrael lost no time in moving for execution of the judgment, by reason of the failure of his lessee to pay the rentals for November, 1946. The partnership opposed the motion alleging that it had filed a bond and had complied with the law.

On January 25, 1947, the Court of Appeals, holding that the partnership was in default, nevertheless gave it ten days from notice within which it could deposit the rents. Its order, as amended, reads as follows:

"The petition for execution is granted unless the defendant deposits the amount of P1,400 per month for the months of November and December, 1946 and January, 1947, within ten (10) days from notice of this resolution, and deposits an equal amount on or before the tenth day of each succeeding month, as required by the Rules of Court".

Miguel J. Ysrael requested for a reconsideration, which was denied. Then he came to us with this petition for certiorari and allied remedies, contending that the Court of Appeals exceeded its jurisdiction or abused its discretion in giving the lessee an extension of time, after the latter had wilfully and deliberately refrained from

making the periodic payments.

During the pendency of his appeal in the Court of First Instance, the defendant in a detainer case must pay to plaintiff or deposit in court the monthly rentals on or before the 10th day of each calendar month. (Section 8, Rule 72.) Execution will issue immediately if he fails to make such payments. These deposits are to be made in addition to the bond he must submit, guaranteeing payment of "the rents, damages and costs down to the time of the final judgment in the action".

And when the defendant-lessee appeals from the Court of First Instance, section 9 of Rule 72 provides that execution of the judgment shall not be stayed unless he makes the corresponding payments or deposits every month. The section does not indicate any bond. And there is no authority to accept a bond instead of the cash payments. The Court of Appeals was, therefore, correct in its view that a bond will not do.

However, we believe it erred in extending the time for payment or deposit. It had no power to do so.

In *Lapuz vs. Court of First Instance of Pampanga* (46 Phil., 77), it was held:

"The provisions of section 88 of the Code of Civil Procedure that in an appeal by the defendant from the judgment of the justice of the peace in an action of forcible entry and detainer the Court of First Instance shall, upon motion of the appellee, order the execution of the judgment in regard to the possession of the premises if the appellant fails, during the pendency of the appeal, to make payment of rent or the reasonable value of use and occupation as fixed by the judgment, are mandatory and the Court of First Instance has no discretion in the matter and no power to extend the time for making such payment."

In *Guillena vs. Borja and Sumampan* (53 Phil., 379), the same views were reiterated concerning the mandatory character of the rule on execution of the ejectment order upon failure to pay or deposit the rents. We said, such failure "shall cause the judgment to be executed" and the law "is mandatory and cannot be evaded" the court having "no discretion to give or not to give this effect to such failure to pay."

In *Zamora vs. Dinglasan and Hilario* (77 Phil., 49), we ordered the execution of the ouster judgment for failure of the tenant to pay two months rent on time, notwithstanding the fact that said rents were deposited immediately after motion for execution had been filed and the Court of First Instance had excused the default and denied the motion for execution. And recently, we approved the execution of an ejectment order pending the appeal, for failure of the tenant timely to pay the monthly rent.^[1] It should be observed, in this connection, that those of us who dissented from that ruling by reason of Rep. Act No. 66 may (now) properly join the majority, because there is here no showing that a dwelling is involved (Rep. Act No. 66 applied only to residential buildings) and also because the failure to pay was deliberate and wilful.

Wherefore, the resolution of the Court of Appeals is annulled and execution may now issue for petitioner, without prejudice to the appeal of respondent *La Perla de la India*. With costs.

Moran, C.J., Feria, Pablo, Hilado, Hontiveros, Padilla, and Tuason, JJ., concur.

[1] *Cunaan vs. Rodas*, p. 800, ante.

DISSENTING

PERFECTO, J.:

Because the respondent lessee failed to pay on time the rent for November, 1946, petitioner moved in the Court of Appeals that the execution of the judgment of the Court of First Instance to oust said lessee be ordered.

Said monthly rent amounts to P1,400, P600 less than the amount awarded in the Municipal Court of Manila, where the original complaint for ejectment was filed.

The Court of Appeals, instead of ordering immediately the execution of the judgment, issued on January 25, 1947, an order granting lessee ten days from notice to deposit the monthly rent of November, 1946, and those of the two succeeding months, with the warning that otherwise, execution will be ordered.

Petitioner was adamant. Insisting in the immediate ouster of the lessee, moved for the reconsideration of the order. The motion was denied.

Petitioner, not satisfied with the denial, filed a petition before us, praying that we order the immediate execution of the judgment.

In the resolution of January 31, 1947, denying the motion for reconsideration, the Court of Appeals stated that lessee filed a bond on December 10, 1946, covering expressly rents "up to March, 1947," and that in view of the rule established by this Court in *Mitschiener vs. Barrios* (76 Phil., 55), "it was not unreasonable for defendant to believe that the bond it filed prevented its being in default until May 10, 1947, when the April rent fell due."

The position of the Court of Appeals is absolutely correct from the point of view of substantial justice. The rule must not be held against tenants with the same implacability with which Drenus placed his sword in the balance to impose his will upon the vanquished Romans.

We vote to deny the petition.

PARAS, J.:

I concur in the foregoing dissenting opinion.

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