

FELIZA ARAGON, PETITIONER, VS. RAFAEL AMPARO AND FRUCTUOSA RECLA VDA. DE GONZALES, RESPONDENTS.*G.R. No. L-2813. November 29, 1949*

Ponente: REYES, J.

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The herein petitioner, Feliza Aragon, was one of the defendants in an ejection case brought by the respondent Fructuosa C. Recla Vda. de Gonzales in the Municipal court of Manila to oust said defendants from the land occupied by them which belonged to the Hacienda de Nuestra Señora de Remedios but leased to the respondent. Sentenced by said court to vacate the land and to pay back and current rents, the defendants appealed to the Court of First Instance. But as they failed to file a supersedeas bond and pay the current rents which had fallen due, that court, on February 10, 1948, at the instance of plaintiff, ordered execution to issue unless the unpaid rents were deposited in court within 15 days from the date of the order. This period having expired without the deposit being made, a writ of execution was issued but it was not obeyed, whereupon, on May 4, 1948, the respondent Judge handed down an order giving the defendants two months to remove their house from the land in question and to deposit in court the back rents adjudged by the municipal court as well as the current rents that had become due from the time of the appeal, with the warning that if the houses were not removed within the period given, a peremptory order would be issued for their removal. As this last order was also not obeyed, the respondent Judge, on July 9, 1948, and at the instance of the plaintiff, issued a special order commanding the sheriff to proceed with the demolition and removal of the houses in question and to place the plaintiff in possession of the land.

Six months later, that is, on January 14, 1949, the herein petitioner asked for the suspension of the order of demolition, alleging that her failure to deposit the rentals adjudged by the municipal court was due to financial difficulties but stating that she was ready and willing to deposit the sum of P425.11, representing unpaid rentals up to January, 1949. She made good the offer by actually depositing the said sum in court on the following day, January 15, 1949. The respondent Judge, however, denied her motion for suspension apparently on the ground that the deposit was made too late, the last extension of time given by the court within which to make the said deposit having expired on February 29 of the preceding year. Her Motion to have this last resolution reconsidered having been denied, petitioner has brought the present special action for certiorari to annul the orders of execution issued by the court below, alleging that in rendering those orders the respondent Judge has acted with grave abuse of discretion.

Rule 72, Section 3, of the Rules of Court reads:

"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, 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 proscribed 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."

Under this provision, petitioner would have been entitled to a stay of execution of the judgment rendered against her by the municipal court if she had filed a supersedeas bond to guarantee the payment of back rents down to the time of the judgment of the municipal court and, in addition, paid the monthly rents as they became due during the pendency of the appeal. But petitioner failed to do both of these things despite the various extensions of time given to her by the lower court, the last of which expired on February 29, 1943, and it was not until January 15, 1949, that is, more than 10 months after the expiration of the period last given, that she deposited the rents due. It is obvious that petitioner is not entitled to a stay of execution, this Court having already declared time and again that payment or deposit of the rents within the period fixed in the above Rule is mandatory. It has even been held that payment of the rents out of time, though prior to the order of the court, cannot be accepted as an excuse for not ordering the execution of the judgment. (*Lim Ching vs. Sandoval*, G. R. No. 49227, August 4, 1944; *II Moran*, Rules of Court, 2d rev. ed., p. 261.) As was said in the case of *Carbungco vs. Amparo*, L-2245, May 20, 1949, 46 Off. Gaz., (Supp. to No. 11), p. 91.[1]

"* * * The law has prescribed a period and this requirement should be complied with strictly, and its observance and compliance should be enjoined and enforced by the court, not only for the protection of the parties in whose favor the law happens to have been made and promulgated, but also for the information and guidance of these otherwise affected thereby. Otherwise, there would be confusion and misunderstanding as to whether or not in appellant in a forcible entry and detainer case could avoid execution if he shall have made the monthly deposit, say, on the 11th, 12th, 13th or 14th day etc. * * *. We hold and declare that pending appeal, failure to make the deposit of rental within the period fixed by law, however short the delay, gives the appellee the right to execution of the judgment, which the court is bound to grant and enforce."

Petitioner claims the right to a suspension of execution under Section 4 of Commonwealth Act No. 639, as amended by Republic Act No. 66. But the execution sought to be so suspended being on a judgment pending appeal, the right claimed by petitioner is not available according to the following rulings of this Court:

"Neither may the petitioners invoke the Rental Law (Commonwealth Act No. 669) allowing suspension of executions, for the simple reason that said law refers to execution of final and executory judgments, and not to execution pending appeal, * * *." (*Cunaan vs. Rodas*, L-1400, 1406, 1407, July 30, 1947, 44 Off. Gaz., 4927.)(2]

"Esta ley (Commonwealth Act No. 689), tal como fue enmendada en el ultimo periodo de sesiones de la

Legislatura, dispone que el Juzgado que haya dictado 'orden o sentencia ya firme y ejecutoria', a peticion del arrendatario y bajo las condiciones exigidas por dicha ley, suspendera la ejecucion por un periodo que no sera mayor de seis meses. Para que el Juzgado pueda ordenar la suspension de la ejecucion es necesario que exista una 'orden o sentencia firme y ejecutoria'." (Zamora contra Dinglasan, L-750, Agosto 16, 1946, 43 Gac., Of., 1625.)[1]

The orders complained of being in accordance with law, the petition for a writ of certiorari is denied, with costs against the petitioner.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.

[1] 83 Phil., 633.

[2] 78 Phil., 800.

[1] 77 Phil., 46.

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