

**NG LIT, PETITIONER, VS. THE HONORABLE FRANCISCO R. LLAMAS  
IN HIS CAPACITY AS PRESIDING JUDGE OF THE CITY COURT OF  
PASAY CITY, BRANCH IV, ATTY. LORENZO C. STA. ANA IN HIS  
CAPA-CI...**

*G.R. No. L-49004. November 10, 1982*

Ponente: RELOVA, J.

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**RELOVA, J.:**

This Court, on April 16, 1979, resolved, among others, to consolidate G.R. No. L-49004 (Ng Lit vs. Hon. Francisco R. Llamas, et al) and G.R. No. L-50188 (Ng Lit vs. Hon. Enrique A. Agana, Sr., et al).

Petitioner, in these two petitions for certiorari and prohibition, seeks to annul (1) the writ of execution issued by the City Court of Pasay, Branch IV, in Civil Case No. 13402; and, (2) the writ of execution issued by the Court of First Instance of Rizal, in Pasay City, in Civil Case No. 6719-P, after Civil Case No. 13402 was appealed to it.

Records show that -

On June 29, 1978, private respondent Patria Juguilon filed a complaint for ejectment against petitioner with the City Court of Pasay City. The same was docketed as Civil Case No. 13402 and was assigned to Branch IV, presided by respondent Judge Francisco R. Llamas. The basis of the action was the refusal of petitioner, despite repeated demands by private respondent, to pay the monthly rental of P900.00 from September 1, 1977 to June 1978, or a period of ten (10) months, in the sum of P9,000.00, and the sum of P2,000.00 as attorney's fees and the costs of suit.

Within the reglementary period, petitioner, as defendant, filed an answer with counterclaim.

After trial, the decision was rendered by the City Court on August 15, 1978, the dispositive portion of which states:

"WHEREFORE, this Court hereby renders its decision in the above-entitled case resolving this case for the plaintiffs DR. PATRIA JUGUILON, assisted by her husband AURELIO T. JUGUILON and against the defendant NG LIT, ordering the latter and all persons claiming under him to vacate the commercial premises in question located at 145-147-B Libertad Street, Pasay City, Metro Manila, restore the plaintiff forthwith in the possession thereof; to pay to the plaintiff rentals in arrears at the monthly rate of NINE HUNDRED PESOS (P900.00) from September 1, 1977 until the premises shall have been vacated and plaintiffs restored therewith; to pay by way of reasonable attorney's fees the total sum of TWO THOUSAND PESOS (P2,000.00) and to pay costs of suit. Dismissing for lack of merits and basis defendant's counterclaim."

On September 6, 1978, petitioner filed a notice of appeal to the Court of First Instance of Rizal, in Pasay City, and the case which was docketed as Civil Case No. 6719-P was assigned to Branch XXVIII, presided by Judge Enrique A. Agana, Sr.

On September 7, 1978, respondent City Judge Francisco R. Llamas issued an order, as follows:

"Defendant Ng Lit thru counsel having last September 7, 1978, inter-posed a written notice of appeal, appealing the decision of this court to the Court of First Instance of Rizal, Pasay City Branch, and having accordingly paid the appellate docket fee and appeal fee;

"WHEREFORE, this court, finding said appeal to have been seasonably interposed, hereby approves the same and directs the Clerk of Court to immediately transmit the entire record of this case on appeal to the Court of First Instance, Pasay City Branch, in accordance with the provisions of the Rules of Court."

On September 9, 1978, private respondent filed an "Opposition to Appeal with Counter Motion for a Writ of Execution" on the ground that petitioner failed to file a supersedeas bond.

On September 25, 1978, Judge Llamas issued an order granting private respondent's motion for execution and reiterated approval of petitioner's appeal.

With the filing of the petition in G.R. No. L-49004, this Court, on September 29, 1978, issued a temporary restraining order enjoining respondent City Sheriff from enforcing the order of execution, dated September 26, 1978, issued in Civil Case No. 13402, entitled: "Dra. Patria F. Juguilon etc. vs. Ng Lit," in the City Court of Pasay City, Branch IV, and respondent Judge from proceeding further with the aforesaid case.

On October 23, 1978, this Court, gave due course to the petition for certiorari and prohibition and required both parties to submit simultaneous memoranda within thirty (30) days from notice.

On December 4, 1978, this Court issued another resolution as follows:

"L-49004 (Ng Lit vs. Hon. Francisco Llamas, etc., et al.). - Considering the allegations, issues and arguments contained in the Motion filed by respondent on November 13, 1978 and the Opposition thereto filed by petitioner on November 20, 1978, the Court RESOLVED: to ORDER the petitioner (1) to file a supersedeas bond executed in favor of the respondent, Dr. Patria F. Juguilon, to pay the rents, damages and costs accruing from September 1, 1977 up to December 31, 1978 on the basis of the amount of P900.00 monthly rental, and (2) to deposit on or before the tenth day of every month with the Court of First Instance of Rizal in Civil Case No. 6719-P the monthly rentals due beginning on January 1, 1979."

On February 1, 1979, petitioner filed with the Court of First Instance of Rizal, Branch XXVIII, Pasay City, a supersedeas bond in the amount of P14,000.00.

In G.R. No. L-49004, petitioner raised the following issues: (a) Whether or not respondent Honorable Judge had the authority to grant respondent Patria Juguilon's motion for execution and to issue a writ of execution; and (b) Whether or not supersedeas bond is a condition requirement to the perfection of an appeal.

It is the position of petitioner that upon perfection of the appeal in Civil Case No. 13402, respondent Judge had no more jurisdiction over the case and, therefore, could no longer issue an order for the filing of super-sedeas bond or direct the execution of the judgment; that a perfected appeal shall operate to vacate the judgment of the inferior court in which case there is nothing to be executed or to stay; hence, there is nothing more "to talk about supersedeas bond."

The issue whether an appeal taken from the decision of an inferior court to the Court of First Instance in a forcible entry or detainer case has the effect of vacating the said decision as is the case in ordinary actions as provided for in Section 9, Rule 40 of the Rules of Court, is already settled. The judgment rendered by an inferior court is not vacated by the appeal but it continues in force and may be executed upon failure of the appellant to put up the supersedeas bond and monthly deposits required by law, during the pendency of the appeal. Section 8, Rule 70 of

the Rules of Court, provides that "if the 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 municipal or city court and executed to the plaintiff to enter the action in the Court of First Instance and to pay rents, damages and costs accruing down to the time of the judgment appealed from x x x. The supersedeas bond shall be transmitted by the municipal or city court, with the other papers, to the Clerk of the Court of First Instance to which the action is appealed." And, it has been held that the Court of First Instance which has acquired jurisdiction over the case by the perfection of the appeal has the power to permit the appellant to present the supersedeas bond which he failed to submit to the inferior court (*Quan vs. Sheriff of Manila*, 57 SCRA 145).

However, the filing of supersedeas bond is required merely to stay execution and not as a condition for the perfection of the appeal which is done by (a) filing a notice of appeal; (b) depositing the docket fee; and (c) paying the appeal bond.

Petitioner, in the same ejectment case filed against him by private respondent and which is pending appeal before the Court of First Instance of Rizal, in Pasay City (Civil Case No. 6719-P), seeks the annulment of the order dated March 15, 1979 of respondent Judge Enrique A. Agana, Sr. which reads:

"ACTING on the motion for a writ of execution filed, thru counsel, by the plaintiff dated February 15, 1979 to which an opposition was filed by counsel for the defendant and finding that the defendant has not complied with the resolution of the Supreme Court dated December 4, 1978 in G.R. No. L-49004, entitled: *Ng Lit vs. Hon. Francisco Llamas, etc.*, for him to deposit on or before the tenth day of every month with this Court the monthly rentals due beginning on January 1, 1979 considering that he was in delay in making said deposit for the months of January, February and March, 1979;

"WHEREFORE, let a writ of execution be issued to enforce the decision issued by the City Court of Pasay, Branch IV, in Civil Case No. 13402 dated August 15, 1978."

and the writ of execution, dated March 20, 1979, issued by the Deputy Clerk of Court, Hermino T. Ubana.

Petitioner claims that if there was any delay in making his monthly deposits it was only for the month of February 1979, but that even then he had already deposited his monthly rental for March before the hearing of said motion; and that when the motion for execution was granted on March 15, 1979 he had already updated his rental deposits.

We find no merit in the petitions. Official Receipt No. 9122081-V shows that the rental deposit in Civil Case No. 6719-P for the months of January and February 1979 was paid on February 19, 1979, which shows that there was delay in the payment of the rental for the month of January 1979. As held in the case of *Bernardo vs. Jose*, 5 SCRA 1005, Section 8, Rule 70 of the New Rules of Court, pre-scribes two modes of payment of the rents during the pendency of an appeal, to wit: (1) payment of the rent as stipulated in the lease contract, or (2) in the absence of a contract, payment of the reasonable value of the use and occupation of the premises on or before the tenth day of each calendar month, for the preceding month at the rate determined by the judgment. In actions for unlawful detainer, the law in this jurisdiction is that, if the inferior court renders judgment against the defendant and the latter appeals to the Court of First Instance, his failure to file a supersedeas bond and/or to pay on time the monthly reasonable value of the use of the property or the rents fixed in the judgment will entitle the plaintiff, as a matter of right, to the immediate execution of the judgment both as to the payment of rents and the restoration of possession (*De Pages vs. Canonoy*, 6 SCRA 583). Said Section 8, Rule 70 of the Revised Rules of Court, not only authorizes but also requires the immediate execution of a judgment in plaintiff's favor. The said provision, taken in relation to that of Section 10 of the same rule, is mandatory, the only exception being when the delay is due to fraud, accident, mistake or excusable negligence (*Quimpo vs. de la Victoria*, 46 SCRA 189). The appellate

court is left no discretion to either extend the period of deposit prescribed by law, postpone the making of said deposit, or otherwise relieve the petitioner of the consequences of his failure to make the deposit within the precise period prescribed by law (*Carbungco vs. Amparo*, 83 Phil. 638).

ACCORDINGLY , the petitions are hereby DISMISSED, and the Court's temporary restraining orders enjoining the enforcement of the questioned Orders of Execution issued by respondent Judges in Civil Case No. 13402 of the City Court of Pasay City and in Civil Case No. 6719-P of the Court of First Instance of Rizal, in Pasay City, dated September 29, 1978 and March 23, 1979, respectively, are hereby SET ASIDE effective immediately.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

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