

BALAGTAS REALTY CORPORATION, PETITIONER, VS. HON. MANUEL V. ROMILLO, JR. AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL IN PASAY CITY, BURT RAYMOND, YU CHUN HIAN, EDWARD FINLA...

G.R. Nos. L-48376-85. July 16, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

The original petition for certiorari and prohibition with prayer for preliminary injunction docketed as G.R. No. 48376-85 entitled "Balagtas Realty Corporation, petitioner, versus Hon. Manuel V. Romillo, Jr. as Judge of the Court of First Instance of Rizal in Pasay City, Burt Raymond, Yu Chun Hian, Edward Finlan, Jack Lerner, Cornelius Breed, Marsha Baecher, Lourdes Ang, Victoria Teves, and Josephine Ting, respondents" was decided by this Court in the decision promulgated May 22, 1982 (See 114 SCRA 28) with the following dispositive portion:

"WHEREFORE, judgment is hereby rendered setting aside respondent Judge's order dated March 30, 1978 in Civil Cases Nos. 5779-P to 5788-P and ordering immediate execution of the judgment of the Pasay City Court in Cases Nos. 11967, 11968, 11971, 11973, 11975, 11976, 11977, 11978 and 11979 without prejudice to the appeals taking their due courses.

Costs against respondents.

SO ORDERED."

The above-cited cases for ejectment having been appealed to the Court of First Instance of Rizal, Pasay City, Branch XXXVII, the Presiding Judge thereof, respondent herein, Judge Manuel V. Romillo, Jr., on December 21, 1982 reversed the decision of the City Court of Pasay City, Branch IV, ruling thus:

"WHEREFORE, in view of the foregoing, the Court hereby sets aside the decision of the lower court dated January 25, 1977 and renders judgment as follows:

(a) Dismissing the Complaints in Civil Cases Nos. 11967, 11968, 11971, 11973, 11975, 11976, 11977; 11978 and 11979 in toto as well as the counterclaims of defendants-appellants;

(b) Ordering plaintiff-appellee to credit any sum in excess of the rentals originally consigned by defendants-appellants with the City Court to future rentals; and

(c) Releasing the supersedeas bond of the defendants-appellants without pronouncement as to costs.

IT IS SO ORDERED."

The reversal of the decision promulgated by the lower court, which We had previously ordered executed pending appeal, rendered Our decision of May 22, 1982 moot and academic. Petitioner moved for reconsideration of the

decision of respondent Judge. Petitioner likewise moved for the immediate issuance of writs of ejectment pursuant to the judgment of this Court. Respondent Judge denied both motions in his Order of February 11, 1983, holding that "the Court believes it improper to order the execution of the judgment appealed from considering that it has already rendered a decision on the appeal reversing the judgment now sought to be executed. The appeal had already been terminated by the rendition of the judgment by this Court, such that an execution pending appeal is now inappropriate and untimely. It should have been pursued by the then prevailing party (herein movant) during the pendency of the appeal."

Petitioner, claiming that respondent Judge deliberately disobeyed this Court's final and executory ejectment order and the Interim Rules of Court, filed a Motion before Us dated February 16, 1983 praying that respondent Judge be ordered not only to forthwith issue the writs of ejectment but also to show cause why he should not be held in contempt of this Court. We directed respondent Judge to comment on said motion, to which he complied.

Thereafter, petitioner filed a supplemental petition for review, praying that the decision of respondent Judge be reversed and that the judgment of the Trial City Court of Pasay City be affirmed. Petitioner assigns the following errors:

- I. Respondent Judge erred in relying in his decision on private respondents' exhibits which were neither offered, much less admitted in evidence in the trial court nor otherwise legally before him as a judge of the appellate court.
- II. Respondent Judge erred in holding that Exhibit "A" did not constitute the agreement between the parties, in plain disregard and contravention of Art. 1320 and 1321 of the Civil Code.
- III. Respondent Judge erred in holding that the demand letters to vacate (Exhs. "E") served on private respondents were invalid.
- IV. Respondent Judge erred in holding that no liquidated damages are due to petitioner.
- V. Respondent Judge erred in not holding that even if Exh. "A" be not considered the agreement between the parties, private respondent should nonetheless be ejected from the leased premises.
- VI. Respondent Judge erred in holding that petitioner has no absolute right to increase rentals.
- VII. Respondent Judge erred in holding that the increase in rentals fixed by petitioner was unreasonable.
- VIII. Respondent Judge erred in holding that the tenders of payment and consignment effected by private respondents were valid.
- IX. Respondent Judge erred in reversing the decision of the trial court.

The principal issue raised in the supplemental petition is whether the increase in the rental payments demanded by the petitioner as the new owner of the apartments leased and occupied by private respondents is reasonable or not. According to the decision of the trial court, the City Court of Pasay City, "it is clear that the rental rate was P750.00 commencing on June 1, 1975. That P750.00 was in fact the monthly rental as of June 1, 1975 until the plaintiff (petitioner herein) increased it to P2,000.00 effective on May 1, 1976 is corroborated not only by twenty (20) other tenants who paid P750.00 from June 1, 1975 to April 30, 1976 but also by the defendant Yu Chun Hian who has no arrears for rentals up to April 30, 1976 and the defendants Raymond and Lerner who updated their accounts at P750.00 monthly from June 1, 1975, as reflected in the schedule of arrears, Exh. "G". Otherwise stated, because the defendants' evidence was joint and cumulative, the fact that some of them paid P750.00 from June 1, 1975 has established that the rental rates from June 1, 1975 to April 30, 1976 was indeed P750.00."

As to the rentals beginning May 1, 1976, the City Court held that the lessees became bound by the terms and

conditions of Exhibit "A", the letter-contract dated April 21, 1976, which became the lease agreement between each of the lessees and the lessor when each of the lessees elected to accept by continuing occupancy of their respective premises beginning May 1, 1976. In its decision, the City Court said:

"It thus appear significant that the material thrust of defendants' testimonies tend to corroborate plaintiff's evidence that as of April 1976 all the original lease periods in the contracts of the defendants with the predecessor of the plaintiff had already expired so that the defendants were on a month-to-month lease basis, in view of which the plaintiff by its identical letters to each of the defendants, Exhibits "A" (common to all cases) terminated their respective month-to-month lease ending April 30, 1976 and in the same letter offered to each of the defendants a new lease commencing on May 1, 1976 at an increased monthly rental of P2,000.00 payable within the first three days of each month, with a discount of P1,000.00 when each monthly rental is paid on time within the first three days of each month. Exhibits "A" (common in all these cases) gave to each defendant the free choice to accept or to reject the offer, namely: non-acceptance by vacating their respective premises on or before April 30, 1976, while acceptance was by continued occupancy of their respective premises commencing on May 1, 1976. Each of the defendants notwithstanding receipt of Exhibit "A", continued occupancy of their respective premises on May 1, 1976 so that thereby they respectively accepted Exhibits "A" as the lease agreement to govern their relationship, the plaintiff as the lessor and each defendant as the lessee, commencing on May 1, 1976."

The defunct Court of First Instance of Rizal, Branch XXXVII, Pasay City, reversing the above finding of the court a quo ruled that said letter-contract, Exhibit "A", dated April 21, 1976, did not constitute an agreement between the parties because, "(t)he preponderance of the evidence adduced show that there was no meeting of the minds in respect to the conditions contained therein, or better yet, no acceptance of the offer made therein by plaintiff-appellee. As a matter of fact, the same was specifically rejected by defendants-appellants in their letter-reply to plaintiff-appellee dated April 30, 1976. We agree with defendants-appellants that as there was nothing definite as yet between the parties or no agreement on all material points, there was no meeting of the offer and the acceptance within the intendment of Article 1319 of the Civil Code, as well put by an eminent authority."

Be that as it may, the right of the lessor to increase the rental payment of the premises occupied by the lessee upon termination of the lease period is recognized in law and jurisprudence, although such right is not absolute since the increase must satisfy the test of reasonableness. We have these legal precedents:

In *Pilar G. Vda. de Kraut vs. Manuel Lontoc*, 7 SCRA 281, a lease on a month-to-month basis may be terminated at the end of any month, and shall be terminated upon the lessee's refusal to pay the increased monthly rental demanded by the lessor, provided the same is not exorbitant.

In *Singson Encarnacion vs. Baldomar*, 77 Phil. 470, the continuance and fulfillment of the contract of lease cannot be made to depend solely and exclusively upon the free and uncontrolled choice of the lessees between continuing paying the rentals or not, completely depriving the owner of all say in the matter. For if this were allowed, so long as defendants elected to continue the lease by continuing the payment of the rentals, the owner would never be able to discontinue it; conversely, although the owner should desire the lease to continue, the lessees could effectively thwart his purpose if they should prefer to terminate the contract by the simple expedient of stopping payment of the rentals. This, of course, is prohibited by Article 1256 of the Civil Code."

"The rule is settled that the owner of the land leased has the right not only to terminate the lease at the expiration of the term, but also to demand a new rate of rent. The tenant or lessee has the option either to accept the new rent or vacate the premises. (*Iturralde vs. Alfonso*, 7 Phil., 576; *Iturralde vs. Evangelista*, 7 Phil. 588; *Iturralde vs. Magcauas*, 9 Phil. 599; *Cortez vs. Ramos*, 46 Phil. 189). As plaintiffs, after the termination of their lease, refused either to pay the new rent or to vacate the lots after the termination of their lease, they have

evidently become deforciants, and can be ousted judicially without the need of a demand. (Co Tiamco vs. Diaz, 75 Phil., 672; Art. 1669, new Civil Code)." (cited in Bulahan, et al. vs. Tuazon, et al., 109 Phil. 254.)

"Only where the rental demanded is clearly exorbitant or unreasonable would the courts intervene as a matter of fairness and equity. The burden of proof to show that the rental demanded is exorbitant and unreasonable rested upon the lessee, and since the lessee presented no evidence in substantiation of his claim other than the original cost to the lessor of the property, he has manifestly failed to discharge its burden." (Vda. de Roxas vs. CA, 63 SCRA 302).

In the case at bar, petitioner Balagtas Realty Corporation as the new owner of the residential apartments located at Balagtas St., Pasay City and successor-in-interest of the previous owner, the Perez-Rubio Trust, may terminate, as it did, the old lease agreement under the previous owner and impose, on a month-to-month basis an increased rental. According to the letter-contract, Exhibit "A", dated April 21, 1976, the respective month-to-month leases ending April 30, 1976 were terminated and in the same letter offered to each of the lessees a new lease commencing on May 1, 1976 at an increased monthly rental of P2,000.00 payable to the lessor, petitioner Balagtas Realty Corp., with a discount of P1,000.00 if paid on time within the first three days of each month. It further gave to each lessee the free choice to accept or to reject the offer, namely: non-acceptance by vacating their respective premises on or before April 30, 1976, while acceptance was by continued occupancy of their respective premises on May 1, 1976.

Since the lessees rejected the increased rentals and insisted on the old rate, We must resolve the controversy on the question of the reasonableness of the rental increase.

The decision herein assailed holds that "after a careful review of the evidence presented, this Court finds, and so holds, that the increased rentals of P2,000.00 a month imposed by plaintiff-appellee does not appear reasonable" and respondent Judge supports his ruling, thus:

"For one, it amounts to an increase of more than 200% from the previously existing rental. It is not amiss to note that under Batas Pambansa Bilang 25, a lessor of residential units not exceeding P300.00 can increase his rentals once a year only by 10%. While this Court does not here state that a rental increase of 10% as mandated by the edict is squarely applicable or should have been observed by plaintiff-appellee in demanding its increased rental, it believes, however, that the rate of increase therein fixed can be used as a benchmark or as a guideline for aiding courts in determining the reasonableness of rental increases imposed by lessors. Based upon this consideration, it is plain that an increase of more than 200% is not only unreasonable but also unconscionable. Parenthetically, this conclusion becomes ineluctable if we consider the fact that the cited causes for such a gigantic increase have not been established. On the contrary, no proof was adduced by plaintiff-appellee to rebut the evidence submitted by defendants-appellants that certain obligations of plaintiff-appellee under the lease pertaining to security services and repairs have not been complied with. Not only that, plaintiff-appellee likewise did not refute the testimony of Mr. Francisco Tantoco, Sr. on the reasonable rental valuation of the property."

On the other hand, the trial court upheld the reasonableness of the increase, citing the following considerations, to wit:

"In accordance with the ruling in Cortez vs. Ramos, supra: 'Whether or not the rent demanded by the owner is reasonable, is a question to be decided according to the evidence. The plaintiff introduced evidence that another person was willing to lease the same' premises at the new rental rate, the plaintiff's witness, its manager Atty. Alcantara, testified that twelve other tenants of the 32 apartments compound were paying the new rental rates under Exhibits "A", for which they were not impleaded in ejectment. This is strengthened by an additional eight of the original nineteen defendants who settled by paying the said new rate under Exhibits "A".

Maybe in accordance with the ruling in *Cortez vs. Ramos*, supra, that plaintiff's proof that others were paying the new rate is merely 'prima facie proof that the increase of the rent is reasonable,' and that the defendants' testimonies to the contrary is 'no ground' to overcome said prima facie proof, while almost each of the defendants who testified stated that the new rental rate was unreasonable and that the reasonable rate should be only P750.00; they presented a licensed real estate appraiser in the person of Francisco P. Tantoco, Sr. under whose appraisal report Exhibit "112" the reasonable monthly rental rate is set at P770.00. This Court has observed that while Tantoco in Exhibit "112" set forth many methods of appraisal, the only one used to arrive at said P770.00 was the cost approach method. However, in cross-examination by the plaintiff's counsel, the following bases of Tantoco's cost approach method were established to be erroneous: while the land is 10,442 sq.m., Tantoco erroneously used only 7,848 sq.m. because he overlooked one sheet of the technical description annexes of his report Exhibit "112". In connection with the land while his report appraised the fair market value at P230.00 per sq.m. he admitted on cross-examination that the fair market value could be double. Therefore, 10,442 sq.m. at P460.00 per sq.m. divided by the 32 apartments of the compound would mean that the share of each apartment in the land was P150,000.00. Then, while Tantoco admitted that each storey floor of each apartment has an area of 80 sq.m., however, in computing the current construction cost of P1,000.00 per sq.m. he used only 80 sq.m. and did not multiple 80 sq.m. by three storeys notwithstanding that each apartment has three storeys. Using Tantoco's own formula under the cost approach method whereby 75% of the current construction cost is deducted by way of depreciation for the thirty years age of the buildings, the present depreciated value of one building portion of each apartment would be P60,000.00, arrived at by multiplying P1,000.00 by 25% by 80 sq.m. by 3. The P150,000.00 for the land plus the P60,000.00 for the building multiplied by the annual rate of return of 12% set by Tantoco divided by the twelve months of the year would amount to P2,100.00 as the reasonable monthly rate per apartment. Thereby, the defendants' evidence has instead established that the P2,000.00 monthly rate under Exhibits "A" is indeed reasonable. And more so by the P1,000.00 discount given to each tenant who pays on time within the first three days of the corresponding month, because thereby a timely paid rental would amount to only 1/2 of the reasonable monthly rental."

We find for the petitioner.

The appraisal report, Exhibit "112", presented by witness Francisco R. Tantoco, Sr., a licensed real estate appraiser who was presented by the lessees themselves, is, to Us, crucial in determining the reasonableness of the increased rentals. As correctly analyzed by the City Court and observed that the appraiser erroneously used 7,848 sq. meters while the land is 10,442 sq. meters; that while his report appraised the fair market value at P230.00 per sq. meter, he admitted that the fair market value could be doubled or P460.00 per sq. meter; and that while Tantoco admitted that each storey floor of each apartment has an area of 80 sq. meters, however, in computing the current construction costs of P1,000.00 per sq. meter, he used only 80 sq. meters and did not multiply 80 sq.m. by 3 storeys notwithstanding that each apartment has 3 storeys; and moreover, using Tantoco's own formula under the cost approach method where-by 75% of the current construction cost is deducted by way of depreciation for the 30 years age of the buildings, the present depreciated value of one building portion of each apartment would be P60,000.00 arrived at by multiplying P1,000.00 by 25% by 80 sq.m. by 3, so that the P150,000.00 for the land plus the P60,000.00 for the building multiplied by the annual rate of return of 12% set by Tantoco, divided by the 12 months of the year would amount to P2,000.00 as the reasonable monthly rate per apartment. We agree with the trial court that the lessees' own witness has established instead that the P2,000.00 monthly rate under Exhibit "A" is reasonable. And We affirm the Court's observation that "more so by the P1,000.00 discount given to each tenant who pays on time within the first three days of the corresponding month, because thereby a timely paid rental would amount to only one-half (1/2) of the reasonable monthly rental."

Indeed, the fact that each apartment unit leased to the private respondents comprises three storeys or levels with an area of 80 sq. meters each or a total area of 240 sq. meters if leased at P600.00 a month as claimed by some

lessees would render a rental of only P2.50 per sq. meter a month, P3.125 per sq. meter if leased at P750.00 a month, the rate claimed by other lessees, whereas if leased at P2,000.00 a month, the rental would render an amount of P8.33 per sq. meter a month as demanded by petitioner - has not been given the proper significance by respondent court.

In the business of renting or leasing apartments in which petitioner is engaged, being the owner of the row of some 32 apartment units located in Balagtas St., Pasay City, it is the usual and normal trade practice in fixing the reasonable rental to take into account the location of the apartment including the neighborhood, the area per floor or storey, the number of rooms, bedrooms, kitchen, closet the facilities provided therefor, and other material factors as the description of the building, its type and construction, as well as the age of the building. While neither of the decision of the trial court nor of the Court of First Instance considered the above factors, We find in the records a brief description of the apartments in question, thus: "These apartments are concrete apartments of three-storey building; there is a big space at the back, it's a common playground, there is a garage. x x x" (Memorandum of Private Respondents Raymond and Ang, Rollo, p. 171, quoting the testimony of the Building Administrator).

In fine, We hold that the respondent Judge erred in reversing the judgment of the trial court. We find grave abuse of discretion in his conclusion that the increased rentals of P2,000.00 a month was unreasonable, a conclusion that is not only without factual basis but also contrary to the evidence on record. His reliance on Batas Pambansa Bilang 25 although as a benchmark or as a guideline for aiding courts in determining the reasonableness of rental increases is arbitrary, whimsical and capricious. And by ignoring the correct observation of the trial court on the appraisal report of the real estate appraiser specifically referring to the actual land area and the number of storeys or levels in each apartment unit, the assailed judgment has been shown clearly to have been based on a misapprehension of facts. Said judgment must, therefore, be set aside, and that of the trial court reinstated.

However, We find no justification for the award of liquidated damages in the sum of P4,000.00 to be paid by each of the lessees for there is no clear showing that the lessees agreed expressly to the payment thereof under the terms and conditions set forth in the letter-contract, Exh. "A".

As to the other alleged errors which are but ancillary or secondary to the principal issue herein already resolved, We deem it needless and unnecessary to resolve the same.

Considering the motion for contempt filed by petitioner against respondent Judge for deliberate disobedience to the final and executory ejectment order issued by this Court and to the interim Rules of Court, citing the specific grounds supporting the same, and the comment of the respondent Judge. We find said motion for contempt without merit as it is clear that petitioner did not file any motion for the immediate execution of the decision of the Pasay City Court in cases Nos. 11967, 11968, 11969, 11971, 11973, 11975, 11976, 11977, 11978, and 11979 immediately when this Court rendered its decision of May 22, 1982. Petitioner filed its motion for writs of execution only on January 29, 1983, or after the respondent court had already rendered its decision on December 21, 1982 reversing the decision of the Pasay City Court and dismissing the complaint in the Civil Cases enumerated above. With the reversal of the City Court's decision, there is nothing more to execute.

Now to G. R. No. 63387 entitled "Balagtas Realty Corporation vs. Hon. Manuel V. Romillo, Jr. and Dominga Mapa" which We ordered consolidated with the first petition, the former being for certiorari with preliminary injunction assailing the order of the same respondent Judge which reinstated the petition for certiorari filed by private respondent Dominga Mapa after petitioner filed the contempt charge against respondent Judge for refusing to execute this Court's aforesaid decision.

In this second petition, petitioner originally filed an action for unlawful detainer against private respondent

Dominga Mapa, who is similarly situated as the private respondents in G. R. Nos. L-48376-85. Unlike the private respondents in the latter case, she interposed the defense of ownership, alleging that the apartment unit she is occupying could have been her commission if the members of the Perez-Rubio family who are the stockholders of herein petitioner Balagtas Realty Corporation did not renege on their intention of selling the properties to one, Mr. Antonio Roxas Chua.

For her failure to appear in the hearing which was scheduled on May 26, 1976, herein private respondent Dominga Mapa was declared in default. Subsequently, the Pasay City Court rendered judgment by defaults ordering herein private respondent: 1. to vacate her apartment; 2. to pay rentals in arrears and current monthly rentals; and 3. to pay P12,000.00 liquidated damages.

Private respondent assailed the abovesited judgment, through a petition, for certiorari with preliminary injunction to the Regional Trial Court, Pasay City, presided by herein respondent Judge.

On November 15, 1982, respondent Judge *motu proprio* dismissed the petition on the following grounds: 1. failure to prosecute; and 2. private respondent resorted to the wrong legal remedy because she should have appealed the order denying the motion to set aside the order of default instead of filing a petition for certiorari which is in effect an appeal from the judgment by default. The order of the respondent Judge which is fully supported by authorities, reads:

"This case was filed on August 19, 1976; up to this date petitioner has not even started presentation of her evidence. For the last three (3) years, i.e., since late 1979 to date, petitioner has not taken any steps whatsoever to prosecute the case, thereby indicating lack of interest, and warranting dismissal for failure to prosecute.

It may also be noted from the allegations of the basic Petition that there is no clear showing of either excess or lack of jurisdiction or grave abuse of discretion of respondents Judge and Sheriff; in fact, there is no allegation to that effect; furthermore, the proper remedy of petitioner appears to have been an appeal from the respondent Judge's Order denying the Motion to Set Aside Judgment by Default (Annex "K" of the Petition, and the Order denying Motion for Reconsideration and/or Motion for New Trial, Annex "V" of the Petition), as clearly ruled by the Supreme Court:

'A proper motion to set aside the judgment by default under Section 13 of Rule 5 when denied, may give the defaulted defendant the right to appeal but the appeal in that case would be from the order denying the motion and not from the judgment by default itself.' (Strachan & MacMurray, Ltd. vs. Court of Appeals, 62 SCRA 109, 113, quoting Luzon Rubber Mfg. Co. vs. Estares, 52 SCRA 391).

Petitioner choose not to appeal, hence lost the right to do so. She cannot be allowed to resort to certiorari as a substitute therefor ('Certiorari cannot be maintained if appeal is available as a plain, speedy and adequate remedy.' - *Matanguihan vs. Tenco*, 95 SCRA 478). There seems no point therefore, in continuing with these proceedings.

It is further noted that by filing and maintaining this certiorari case instead of appealing from the order denying her motion to set aside the default, petitioner avoided putting up a supersedeas bond to cover the judgment award up to the date thereof, and avoided depositing the current monthly rentals, which is a sizeable amount already, considering the six (6) years this case has been pending. Delay therefore is on petitioner's side and renders clear the pattern of delay noted in her numerous motions for postponements, as well as changes of counsel (note that Atty. Andresito X. Fornier who personally handled this case for the original counsel 'Ablan, Santiago & Fornier' and then 'Santiago & Fornier' and later 'Santiago, Fornier and Associates' is back handling the case for the firm 'Santiago, Fornier, Tinga & Associates' after an interregnum during which petitioner's counsel was 'Quisumbing, Caparas, Ilagan, Alcantara & Mosqueda'.)

WHEREFORE, the Petition is hereby DISMISSED for failure to prosecute, with costs against petitioner.

IT IS SO ORDERED."

Then, on February 11, 1983, respondent Judge completely reversed himself and issued the following order without any legal or factual basis therefor, to wit:

"As prayed for by petitioner through counsel, the Order dismissing the petition for failure to prosecute is hereby reconsidered and set aside.

The instant petition is hereby reinstated.

IT IS SO ORDERED."

Hence, petitioner was constrained to file the instant petition for certiorari with preliminary injunction before this Court, praying for the setting aside of the order issued on February 11, 1983 on the ground that respondent Judge was without jurisdiction to entertain the petition for certiorari a quo, much less reinstate the same without any legal justifications.

The instant petition is impressed with merit. The first order of respondent Judge dated November 15, 1982 dismissing private respondent's petition for certiorari is correct, the same being in full conformity with the law and jurisprudence as the order itself cites. But by setting it aside in a subsequent order issued without any legal or factual basis therefor, respondent Judge acted arbitrarily, capriciously and frivolously, which is a clear and grave abuse of discretion amounting to excess or lack of jurisdiction. The second order which also reinstated the petition for certiorari must be set aside.

The circumstances under which the order of reinstatement was issued by respondent Judge in the manner related by petitioner where said order was issued after respondent Judge had been charged for contempt before the Supreme Court by the petitioner, may lend belief and credibility to the allegations of bias and partiality against respondent Judge but We are not concerned here with the motives of the Judge in issuing the questioned order. It suffices that the said order, on legal grounds, is a reversible error.

The records clearly disclose that private respondent Dominga Mapa has lost her right to appeal since she cannot be allowed to resort to certiorari as a substitute therefor. The judgment rendered by the City Court of Pasay City in Civil Case No. 11964 has become final and executory except that which orders her to pay P12,000.00 in the concept of liquidated damages, which in conformity with Our judgment herein is set aside.

This We are constrained to order and direct in the interest of a speedy administration of justice.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the supplemental petition for review filed in G. R. No. L-48376-85 is granted and We hereby REVERSE and SET ASIDE the decision of respondent Judge dated December 21, 1982. The judgment of the Trial City Court of Pasay City is hereby AFFIRMED but MODIFIED in that the award of P4,000.00 as liquidated damages is excluded and rejected.

In G. R. No. 63387, the order of respondent Judge dated February 11, 1983 is hereby REVERSED and SET ASIDE and We hereby order the dismissal of the petition for certiorari filed by private respondent in Civil Case No. 5187-P before the Regional Trial Court, National Capital Judicial Region, Pasay City Branch CX, and the execution of the final judgment of the City Court of Pasay City, Branch IV in Civil Case No. 11964 as modified herein in that the award of liquidated damages is similarly excluded and rejected.

Costs against respondents.

SO ORDERED.

Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

Makasiar, (Chairman), and Abad Santos, JJ., no part.

Aquino, J., in the result.

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