

ELISA VDA. DE OCHOA, ET AL., COMPLAINANTS, VS. HON. GERINO M. TOLENTINO, JUDGE, CITY COURT OF MANILA, RESPONDENT.

A.M. No. 702-CTJ. November 15, 1982

Ponente: PLANA, J.

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PLANA, J.:

Complainants, who were the plaintiffs in an unlawful detainer case (Elisa vda. de Ochoa and Aida O. Veloso vs. Johnny Galicia and Gertrudes Galicia, Civil Case No. 214063) assigned to Branch IV of the City Court of Manila presided over by the respondent, have filed a sworn complaint against the respondent judge for undue delay in resolving a motion for reconsideration and partiality.

Regarding the first charge, it was alleged -

"That the parties in the said (unlawful detainer) case submitted a compromise agreement...which was approved by the respondent judge in the decision rendered in said case.

"That the pertinent terms and conditions of said compromise agreement...are -

'1. The defendants admit and acknowledge their balance of the rental due and payable unto the plaintiff the sum of P22,700.00 and hereby obligate themselves to pay same in installment basis at the rate of P2,000.00 a month, payable within the first five (5) days of each month, the first payment thereof, shall be made on or before January 5, 1973.'

'2. That it is an express agreement by and among the parties herein that failure of the defendants to pay two consecutive installments on date it falls due of the P2,000.00 as herein above stated and/or failure to pay the daily installments on current rentals as hereinabove specified for a period of fifteen (15) days, the defend-ants agree to vacate voluntarily the premises within a period of five (5) days from notice in writing, otherwise execution shall immediately take place.'

"That on June 15, 1973, after due notice to the defendants..., the plaintiffs filed a petition for execution, alleging failure of the defendants to pay the installments from February up to the date of the filing of said petition, which the respondent Judge granted, and by virtue of which, the corres-ponding Writ of Execution was issued.

"That the defendants sought the reconsidera-tion of the order of execution, (which was denied).

"That upon a Second Motion for Reconside-ration filed by the defendants, the respondent Judge granted the same, recalling the Writ of Execution and granting said defendants a period of five (5) days within which to pay the unpaid installments.

"That on September 7, 1973, the plaintiffs filed a Motion for Reconsideration of the Order dated August 21, 1973 (recalling the Writ of Execution) on the following grounds:

'1. The defendants failed to avail of the period of grace given them in said order within which to pay the unpaid installments;

'2. Assuming that the tender of P4,900.00 on August 29, 1973, or the next day, be considered as substantial compliance by stretching liberality of construction to its breaking point in favor of the defendants, it is an undeniable fact that the defendants defaulted in two successive installments;

'3. The order dated August 21, 1973 runs counter to law. The previous two grounds were under the assumption that the order in question is in accordance with law;

'4. Finally, the order in question was issued without or in excess of jurisdiction.'

"That on September 17, 1973 the defendants filed their Answer to said motion and the plaintiffs' Motion for Reconsideration was deemed submitted as of that date.

"That on January 3, 1974, the plaintiffs filed a Manifestation and Petition itemizing the outstanding judgment obligations of the defendants as of that date, which were payable within the first five (5) days of each month, and the default in the payment of two successive installments of which entitled the plaintiffs to an immediate execution, which are as follows:

P 2,900.00, for June, 1973, including the unpaid balance for May, 1973

2,000.00, for July, 1973

2,000.00, for August "

2,000.00, for Sept., "

2,000.00, for Oct., "

2,000.00, for Nov., "

700.00 , for Dec., "

P13,600.00 - Total

and praying that their pending Motion for Reconsideration since September 17, 1973, be resolved.

"That the defendants filed an answer claiming that in view of the refusal to accept their tenders of payment (the last in August 29, 1973), which were never followed by consignment of the amounts tendered, they invested the money due the plaintiffs in a business engagement and they need sufficient time to recover the same, in effect admitting non-payment of their outstanding judgment obligations.

"That on February 4 and 15, 1974, the complainants filed their Second and Third... petitions to resolve their Motion for Reconsideration.

"That on February 25, 1974, the complainants received a copy of the order issued by the respondent, finding the complainants' Motion for Reconsideration to be 'well founded', but nevertheless, granting the defendants another, this time much longer than in the order sought to be reconsidered, a grace of sixty (60) days within which to pay their unpaid judgment obligation.

"That although said order is dated February 13, 1974, yet when complainants' counsel filed his Third Petition to have his pending motion resolved, on February 15, 1974, and when he filed another pleading on February 19, 1974, said order was not yet a part of the records of the case."

Regarding the second charge of partiality, the complainants alleged that on one occasion, when their lawyer (Atty. Rosales) visited respondent in his private office to ask him to resolve the pending motion for reconsideration, the respondent confided that the defendants had asked him to intervene in their behalf; that the respondent pleaded with him (Atty. Rosales) to allow the defendants to remain in the plaintiffs' apartment, promising to ask the

defendants to deposit a substantial portion of the installments in arrears; and that in a subsequent visit, the respondent informed him (Atty. Rosales) that the defendants could not yet make the deposit because they could not secure a loan due to the sizeable amount that was needed to settle the ejectment case.

Referred to the then Executive Judge Jose C. Colayco of the Court of First Instance of Manila, the charges were investigated. In his report dated April 16, 1982, Judge (now Justice) Colayco submitted the following findings:

"It is obvious that the order resolving the motion was issued beyond the 90-day period. Excluding September 17, 1973 when the motion was considered submitted with the filing of the opposition of the defendants, one hundred forty-nine (149) days lapsed from September 18, 1973 to February 13, 1974 when the order was issued, fifty-nine (59) days beyond the reglementary period. The question which is relevant to this complaint is whether the failure of the respondent to act on the motion for reconsideration can be justified. It is believed that neither the reason given by him in his answer ('that he was of the honest belief that the parties, especially the defendants in the case in question, were trying to settle the case amicably'), nor the reason cited by him in his order of February 23 ('if the defendants are really sincere in their desire to pay the balance of their account with plaintiffs') can justify his conduct. Under Rule 70, Sec. 8 of the Rules of Court the court cannot extend the period for making the monthly payments. This doctrine was enunciated in the case of *Chieng Hung vs. Tam Ten, et al.*, L-21209, September 27, 1967, where our Supreme Court speaking through Mr. Justice J.B.L. Reyes said:

'It is expressly provided by Revised Rule 70, section 8 (and by old Rule 72, sec. 8) that where judgment is rendered against a defendant in a case for forcible entry or illegal detainer, 'execution shall issue immediately, unless an appeal had been perfected, and the defendant, to stay execution, files a sufficient bond' and 'in the absence of contract, he (defendant) shall deposit with the Court the reasonable value of the use and occupation of the pre-mises for the preceding month or period, at the rate determined by the judgment, on or before the tenth day of each succeeding month or period.' In the case at bar, this means that the adjudged P850.00 for the month of January 1962 should have been deposited by appellant (herein respondent Tam Ten) not later than February 10, 1962.

'The rule further provides (sec. 8, par. 2) that 'should the defendant fail to make the payment above prescribed from time to time during the appeal, the appellate court, 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 with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on its merits.

'Since it is confessed that the deposit was made in this case only on February 21, said deposit was made eleven days late, and entitled the petitioner, as winning party, to immediate restoration of possession. That is the settled rule, and it has always been strictly applied as mandatory. And the appellate Court has been held to have no power to extend the time for making the monthly deposits or to excuse defaults therein.

'Considering this uniform and persistent jurisprudence, it is plain that in refusing to enforce the previous order for execution issued by Judge Antonio, the respondent Judge Arca is guilty of an evasion of positive duty, and his orders were, as petitioner contended, in grave abuse of discretion, amounting to lack of jurisdiction.' (pp. 213-214, *id.*)

"But there is here more than a mere error of judgment; it is believed that the respondent judge was guilty of gross partiality to the defendants. In his order of August 21, 1973 he found that the defendants were owing for the months of June and July 1973, plus the amount of P900.00 for the month of May 1973. The defendants admit this in their motion for reconsideration, dated July 23, 1973 (pp. 35-38, record of Civil Case No. 214063). Notwithstanding this clear violation of the compromise agreement, he recalled the writ and gave the defendants five (5) days to pay the installments in arrears. The most that he should have done was to require the defendants to pay the arrears first, before recalling the writ. Although the plaintiffs protested in their motion for reconsideration

that they did not comply with this order, he issued an order denying the motion in effect and gave them sixty (60) days more to pay the back rentals which had increased to P13,600.00 in the meantime, after holding action for one hundred forty-nine (149) days."

We have examined the records and found the report of the Investigating Judge amply supported by the evidence.

WHEREFORE, the respondent is found GUILTY of undue delay in the resolution of the motion for reconsideration in question and partiality. The Investigating Judge, now Justice Jose C. Colayco, and the present Executive Judge of the Court of First Instance of Manila, Judge Jose P. Alejandro, have recommended that the respondent be suspended for three (3) months without pay and ordered to pay a fine equivalent to three (3) months' salary. So has the Court Administrator. We believe however that it would be sufficient to impose, as we hereby impose, upon the respondent a fine equivalent to three (3) months' salary.

SO ORDERED.

Fernando, C.J., Teehankee, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Escolin, and Gutierrez, JJ., concur.

Makasiar, Vasquez, and Relova, JJ., no part.

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