

**FLAVIANO ROMERO, PETITIONER, VS. POTENCIANO PECSON, AS  
PRESIDING JUDGE OF SALA NO. VI OF THE COURT OF FIRST  
INSTANCE OF MANILA, MACARIO OFILADA, AS SHERIFF OF THE  
CITY OF MANILA...**

*G.R. No. L-2745. April 13, 1949*

Ponente: FERIA, J.

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**FERIA, J.:**

This is a special civil action of certiorari instituted by the petitioner against Judge Pecson of the Court of First Instance of Manila, et al., on the ground that the respondent judge acted with grave abuse of discretion in ordering under section 2 of Rule 59, the execution of the judgment of the Court of First Instance in the civil case No. 3280, which sentenced the petitioner to pay Dolores P. de Espedido the monthly rental of P150 a month from February, 1947 to April, 1948, and to vacate the premises in an action of forcible entry and illegal detainer.

According to Exhibit A of the petition or complaint, which is a copy of the judgment of the Court of First Instance in the civil case No. 3280 of forcible entry and illegal detainer, the petitioner was sentenced by the Municipal Court of Manila to pay the monthly rental of P120 and to vacate the premises. He appealed from the decision, but as he did not file a supersedeas bond nor made a deposit with the Municipal Court of the rentals in arrears since the month from February, 1947, he was ordered to vacate, and the petitioner vacated, the leased premises on April 21, 1947, on a writ of execution. On appeal the respondent judge rendered a judgment sentencing the petitioner to pay to the respondent Dolores P. de Espedido a monthly rental of P150 from February, 1947, to April 21, 1948, and to vacate the premises. The petitioner appealed from said decision.

The respondent Espedido moved for the execution of the judgment of the Court of First Instance and the latter granted the petition on the ground that the defendant appellant had failed to pay the monthly rental neither had he filed a supersedeas bond or deposited the rental in arrears with the Clerk of the Court, and that the appeal interposed by the petitioner is a dilatory tactic which constitutes a great drawback to the administration of justice.

The petitioner alleges that the order of execution was issued with grave abuse of discretion, because the petitioner had already perfected his appeal and the order of execution did not contain any special reason except that the petitioner had not filed a supersedeas bond in the inferior court and the appeal was a dilatory tactic, and there was no need for the filing of said supersedeas bond since the petitioner, who is a party defendant in said case, was no longer occupying the premises therein involved.

The petitioner's contention is untenable. The order of execution was issued under section 9, Rule 72, and not under section 2, Rule 39 of the Rules of Court. Under the provision of said section 9, the decision of the Court of First Instance on appeal from a judgment of the inferior court in an action of forcible entry and illegal detainer, shall not be stayed unless the appellant pays either to the plaintiff or into the appellate court the amounts referred to in section 8 of the same Rule. The petitioner having failed to pay, either to the plaintiff respondent Espedido, or to the Clerk of the Court of First Instance or appellate court, the rents for the months, from February to April 21,

1948, determined by the judgment of the respondent judge or to file a supersedeas bond to secure the payment of the rent in arrears determined by the municipal court, and for that reason the decision of the inferior court was executed, the judgment of the Court of First Instance shall not be stayed by the appeal therefrom taken by the petitioner. Therefore, the respondent judge acted, not with grave abuse of discretion, but in accordance with law in ordering the execution of the judgment, because the execution of the judgment is not only for the restoration of the possession of the premises leased but also for the payment of the rents due and payable as determined by said judgment.

The original provision of section 88 of Act No. 190 provided that appeal by the defendant from the judgment of the justice of the peace in forcible entry and illegal detainer to the Court of First Instance, shall not be allowed unless the defendant files an obligation with sufficient sureties to answer for the rents already accrued and to become due from time to time down to the time of the final judgment in the action, and that if no such obligation were filed the appeal would not become perfected and the judgment shall be executed. Said section was amended by Act No. 1778 so as to provide that the appeal shall not be allowed if the defendant appellant did not file an obligation with sufficient sureties to answer for the rents, damages, and costs, and after it had been allowed it shall be dismissed, upon motion of the plaintiff, should the appellant fail to pay during the pendency of the appeal to the plaintiff or into the court the amount of rents or damages which is the reasonable value of the use and occupation of the premises due from time to time during the pendency of the appeal; and "the dismissal of the appeal shall revive the judgment of the justice of the peace, which judgment may be enforced by execution as though no appeal has been taken."

Subsequently Acts 2588 and 4115 amended said section 88 by providing that if, during the pendency of the appeal the defendant-appellant fails to pay the plaintiff or into court the amount of rents or damages due from time to time, the court shall not dismiss the appeal and this may proceed, but order the execution of the judgment of the inferior court relative to the possession of the property in litigation; and that "in any case wherein it appears that the defendant has been deprived of the lawful possession of land and a building pending the appeal by virtue of the execution of the judgment of the justice of the peace, 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 above quoted provisions of section 88 of Act No. 190, as amended by Acts Nos. 2558 and 4115, were incorporated in section 8 of Rule 78 of the Rules of Court, with the amendment, which the Supreme Court has the power to make, for it is a matter of procedure, that should the defendant appellant fail to make the payments of rents or reasonable value for the use and occupation of the premises from time to time, the court shall order the execution of the judgment appealed, without any limitation or qualification, that is, not only relative to the possession of the property in litigation but also the rents or damages due from the defendant to the plaintiff if there is any adjudged in the judgment, as if no appeal has been taken. Because under the provisions of said section 8, the stay of the immediate execution of the judgment of the inferior court is conditioned, not only upon the filing of a supersedeas bond, but upon the periodical payment to the plaintiff, or into the court of the rents or damages due from time to time; while under section 88 of Act 190, as amended by Act 2588 and incorporated in Act No. 4115, the execution of the judgment after its rendition is stayed by the filing of a supersedeas bond; and during the pendency of the appeal, the stay of the execution of the judgment relative to the possession of the property in litigation is conditioned upon the payment to the plaintiff or into the court of the rents or damages due from time to time, and if no such payment is made the judgment relative to possession shall be executed. The provision of section 8 of Rule 72 adopts substantially those of section 88 of Act No. 190, as amended by section 1778, except that, instead of providing for the dismissal of the appeal and execution of the judgment as if no appeal has been taken according to Act 1778, it provides for the execution of the judgment and not for the dismissal of the appeal.

The provision of section 9 of Rule 72 which requires, as the only condition for staying the execution of the judgment of the Court of First Instance, that the defendant appellant shall pay, during the pendency of the appeal, to the plaintiff or into the court the rents or the reasonable value of the use and occupation of the premises as found by the Court of First Instance, is predicated on the assumption that a supersedeas bond or obligation to answer for the rents and damages determined by the inferior court has been filed and the required payments of rents or damages due from time to time has been made during the pendency of the appeal, as it is generally the case. But if no supersedeas bond had been filed with the inferior court or the rents or damages determined by the inferior court until the judgment of the Court of First Instance had not been paid, the defendant appellant must file a supersedeas bond to secure the payment of all the back rents or damages determined by the Court of First Instance, and also make the payments above referred to in said section 9 in order to stay the execution of the judgment of the Court of First Instance. Otherwise, the defendant, by appealing, may continue in possession of the premises without paying or giving any guarantee or security for the payment of the rents or damages due and unpaid up to the rendition of the final judgment of the appellate court, contrary to the rationale of the law relative to execution of the judgment in forcible entry and illegal detainer.

Therefore, the petition of certiorari is dismissed. So ordered.

Moran, C.J., Pablo, Perfecto, Bengzon, Briones, Tuason, Montemayor, and Reyes, JJ., concur.

Paras, J., I concur in the result. Failure to file a supersedeas bond or to make a deposit in lieu thereof, made or rendered the original decision executory.

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