

ALICE DIOLATA, NENITA L. AGUILAR, CARMEN DOLLENTE, MARIFE DOLLENTE, EMILITA LORILLA, MELY DINO, MILA DUINO, NELIE REVERA, LOLITA PAPIONA, JERRY DOLLENTE, JANETH DOLLENTE, RANDY...

Ponente: BATO, JR., J.

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BATO, JR., J.:

In this petition for certiorari under Rule 65 of the Rules of Court, petitioners are assailing, for having been issued without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, the Order[1] dated October 17, 2013 issued by the Regional Trial Court (RTC) of Antipolo City, Branch 71, in Spl. Civil Case No. 12-1210, entitled San Isidro Resettlement Market and Multi-Purpose Cooperative vs. Alice Diolata, et al., which granted the Motion for Execution Pending Appeal[2] dated September 14, 2012 filed by private respondent San Isidro Resettlement Market and Multi-Purpose Cooperative (SIRMMPC).

The record shows that by virtue of a Decision dated April 25, 2012, the Municipal Trial Court in Cities (MTCC) of Antipolo City, Branch 2, in SCA Case No. 060-10, entitled San Isidro Resettlement Market and Multi-Purpose Cooperative vs. Alice Diolata, et al., an unlawful detainer suit, ordered the herein petitioners, and all other persons claiming rights under them:

- 1) to vacate the subject property they are occupying located at Block 41, Lot 1, Phase II, Bagong Nayon II, Barangay San Isidro, Antipolo City and to return possession thereof to the plaintiff;[3]
- 2) to pay plaintiff the amount of One Thousand (Php1,000.00) pesos a month for each defendants as reasonable compensation for the use and occupation of the subject property from the filing of the complaint until after possession thereof is restored to the plaintiff;
- 3) to pay plaintiff the amount of Twenty Thousand (Php20,000.00) Pesos representing attorney's fees; and
- 4) to pay plaintiff the cost of suit.

The petitioners appealed the MTCC decision to the court a quo. After the parties filed their respective Memoranda and before the court a quo could render a decision, SIRMMPC filed on September 14, 2012 a Motion for Execution Pending Appeal,[4] alleging that the MTCC decision is executory for not having been stayed by the filing of a supersedeas bond as provided for under Section 19, Rule 70 of the Rules of Court.

On October 17, 2013, the court a quo issued its now assailed Order which granted the Motion for Execution Pending Appeal. It held that:

x x x

Verily, the records clearly show that, indeed, defendants-appellants failed to post the required supersedeas bond as required by Section 19, Rule 70 of the 1997 Rules of Civil Procedure. Thus, by the aforesaid law, plaintiff-movant is entitled to an execution of the decision of the court a quo dated April 25, 2012 even

pending appeal of the same.

WHEREFORE, premises considered, the instant Motion for Execution Pending Appeal is hereby GRANTED.

Accordingly, let a Writ of Execution be issued for the immediate implementation of the decision of the court a quo dated April 25, 2012.

SO ORDERED.

In support of the instant petition for certiorari, the petitioners allege that:

- With due respect the Honorable Court erred in not providing a period for the Defendants to post a bond or to pay rentals considering the fact that herein Petitioners are indigent.

- With due respect the Honorable Court ruled on the Motion for Execution Pending Appeal first prior to the case itself on the merits thereof.[5]

Petitioners also prayed for the issuance of a Temporary Restraining Order or Preliminary Injunction, alleging that the assailed Order puts the petitioners in danger of being evicted and removed from the subject property.

The prayer for injunctive relief and, accordingly, the petition should both be denied.

Injunction, as a preservative remedy, aims to protect substantive rights and interests. To be entitled to a writ of injunction, the complainant must establish the following requisites: (1) there must be a right in esse or the existence of a right to be protected; and (2) the act against which injunction is to be directed is a violation of such right. The grant of the writ is conditioned on the existence of the complainant's clear legal right, which means one clearly founded in or granted by law or is "enforceable as a matter of law." [6]

Injunction, like other equitable remedies, will issue only at the instance of a suitor who has sufficient interest or title in the right or property sought to be protected. Hence, for the court to act, there must be an existing basis of facts affording a present right which is directly threatened by an act sought to be enjoined.[7]

More specifically, the grounds for issuance of preliminary injunction under Section 3, Rule 58 of the Rules of Court are:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

In the case at bar, the petitioners are seeking to prevent the implementation of the court a quo's Order which granted the motion for execution of the MTCC decision. An examination of the assailed Order, however, shows that it was issued pursuant to the clear provision of Section 19, Rule 70 of the Rules of Court which provides that:

SEC. 19. Immediate execution of judgment; how to stay same.—If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of

the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed.

x x x

Applying the aforequoted rule, the MTCC decision for the ejectment of the petitioners may immediately be executed unless (a) an appeal has been perfected, (b) the petitioners file a sufficient supersedeas bond, and (c) during the appeal, the petitioners deposit with the appellate court the amount of rent due from time to time as determined by the MTCC. In this case, petitioners were only able to perfect an appeal. They failed to file a sufficient supersedeas bond and to deposit the rent due. It has been held that the failure of the defendant to comply with any of these conditions is a ground for the outright execution of the judgment, the duty of the court in this respect being "ministerial and imperative." [8]

As earlier stated, the grant of injunctive relief is conditioned on the existence of the applicant's clear legal right, which means one clearly founded in or granted by law or is "enforceable as a matter of law." Since the petitioners failed to comply with Section 19, Rule 70 of the Rules of Court, they did not have a right to be protected. Ergo, their prayer for temporary restraining order (TRO) or preliminary injunction must necessarily fail.

Normally, after this Court preliminary resolves the prayer for provisional remedy like a TRO, it will then direct the respondent to file a Comment, that is "if the petition is sufficient in form and substance to justify such process," pursuant to Section 6, Rule 65 of the Rules of Court.

This case is different. A perusal of the allegations of the petition shows that the petition is patently without merit and was filed purely to delay the proceedings before the court a quo.

The extraordinary remedy of certiorari, under Section 1, Rule 65 of the Rules of Court is available when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

The purpose of a petition for certiorari is to determine whether the challenged tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. [9] Grave abuse of discretion was defined in *Tañada vs. Angara*, [10] thus:

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty, enjoined or to act at all in contemplation of law.

Grave abuse of discretion may also arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence. [11] The grave abuse of discretion must be sufficiently established. Otherwise, failure on the part of the petitioner to show grave abuse of discretion will result in the dismissal of the petition. [12]

The petitioners claim that the court a quo erred (a) in not providing a period for the defendants to post a bond or to

pay rentals, and (b) in ruling on the motion for execution pending appeal before deciding the appeal on the merits.

This Court is not convinced. The claims utterly fail to demonstrate lack or excess of jurisdiction, or grave abuse of discretion, on the part of the court a quo.

First, there was no duty on the part of the court a quo to provide a period within which to file a supersedeas bond. The rules say that it should be filed within the same period for the perfection of the appeal. Section 19, Rule 70 of the Rules of Court states that “[i]f judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond x x x.”

This was also the ruling in *Spouses Chua vs. Court of Appeals*,¹³ thus:

We agree with the Court of Appeals that the bond was filed out of time. The motion for execution was filed eighteen days from the date the petitioners received a copy of the MTC's decision, after the appeal had already been perfected. Because no supersedeas bond had been filed within the period for appeal, a writ of execution should have been issued as a matter of right. Petitioners manifestly failed to adduce a compelling reason to justify a departure from the aforesaid rule.

x x x

Coming back to the original question, the bond should be filed before the MTC or, where the records have been forwarded to the RTC, before the latter court. In either case, it should be done during the period of appeal.^[14]

In their Memorandum on Appeal,^[15] petitioners stated that they received a copy of the MTCC decision on May 3, 2012. They further stated that the period to appeal expired on May 18, 2012. Hence, they had until May 18, 2012 within which to file a supersedeas bond. But they did not file the said bond.

It is worth noting that SIRMMPC filed the Motion for Execution Pending Appeal only on September 14, 2012 or about four (4) months after the period to appeal had expired. There is nothing in the records to show that the petitioners attempted to comply with the requirement of posting the supersedeas bond. Worse, they are now using their alleged indigency or poverty as an excuse for their neglect to comply with the Rules of Court.

Their omission is inexcusable. They cannot find succor behind the policy of liberal application of the rules. As held in *Rural Bankers Association vs. Tanghal-Salvaña*:^[16]

Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction. Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.

Second, there is no merit to the petitioner's claim that the court a quo erred in ruling on the Motion for Execution Pending Appeal before deciding the appeal on the merits.

Execution pending appeal is sanctioned by the Rules of Court. It is provided for under Section 2, Rule 39 of the Rules of Court. Because it is “pending appeal” it can, therefore, be resolved even while the appeal is still being decided. Moreover, in the case at bar, the MTCC decision is executable, even while petitioners' appeal is still

pending, because the petitioners failed to stay or restrain the immediate execution thereof by complying with the conditions provided for under Section 19, Rule 70 of the Rules of Court.

WHEREFORE, in view of the foregoing, the instant petition for certiorari, with its prayer for issuance of temporary restraining order and/or preliminary injunction, is DENIED outright.

SO ORDERED.

[*]Gaerlan and Diy, JJ., concur.

[*] Vice J. Zalameda per Office Order No. 242-14-ABR dated May 23, 2014.

[1] Rollo, pp. 137-138.

[2] Rollo, p. 130.

[3] Herein SIRMMPC.

[4] Rollo, p. 130.

[5] Petition, p. 5; Rollo, p. 7.

[6] Vicente vs. Avera, G.R. No. 169970, January 20, 1990.

[7] Saulog vs. Court of Appeals, G.R. No. 119769, September 18, 1996.

[8] Spouses Chua vs. Court of Appeals, G.R. No. 113886, February 24, 1998

[9] Ocate vs. COMELEC, G.R. No. 170522, November 20, 2006.

[10] G.R. No. 118295, May 2, 1997.

[11] Republic vs. COCOFED, G.R. Nos. 147062-64, December 14, 2001.

[12] Tañada vs. Angara, *supra*.

[13] *Supra*, note 7.

[14] Emphasis ours.

[15] Rollo, p. 108.

[16] G.R. No. 175020 October 4, 2007.

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