

ISIDRO MIRANDA, PETITIONER VS. HON. BIENVENEDO TAN, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, LUCIO M. TIANGCO, AS JUDGE OF THE MUNICIPAL COURT OF RIZAL CITY, THE SHERIF...

G. R. No. L-4119. August 30, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal by way of certiorari from a decision of the Court of Appeals denying the petition for certiorari, prohibition and mandamus filed by Isidro Miranda against the respondent Judge, Hon. Bienvenido A. Tan, his Honor, Lucio M. Tiangco, Judge of the municipal court of Rizal City, the sheriff of Rizal City and one Manuel Dominguez.

The facts as found by the Court of Appeals are:

"The petitioner herein was the defendant in an unlawful detainer case filed in the Municipal Court of Rizal City, and the respondent, the plaintiff, in which case a decision was rendered, which reads as follows:

'When this case was called for trial the parties accompanied by their respective attorney submitted as a written stipulation of fact³ which reads as follows:

'Come now the above named parties through their undersigned counsels and to this Honorable Court, respectfully alleges:

'That the parties agree to settle amicably the above case under the following terms:

'That defendant acknowledge to have a delinquency of back rentals in favor of plaintiff in the amount of P940;

'That defendant had paid to the plaintiff the sum of P200 last October 5, 1947, leaving a balance of P740 still due and payable in favor of the plaintiff;

'That defendant in order to pay his back rentals as above stated agree to pay P100 in addition to the monthly rental of the house occupied by him rented at P1 50 a month and on the lot also occupied by him the sum of P80 a month, thereby obliging him to pay the total amount of P330 to the plaintiff as of this date until the back rentals of P740 is fully paid. Payment to be made on the 15th and 30th of each month and the first payment to be made on October 15, 1947;

'That with this agreement the parties waive their rights to further proceed with the prosecution of the above case.'

'Wherefore, the parties in this case with the above settlement ask this Honorable Court to enter judgment as per stipulation without making any pronouncement as to costs.

Rizal City, October 10, 1947.

(Sgd.)

LORENZO S. RAMOS

(Sgd.)

Jesus B. Santos

Atty. for the plaintiff

Atty. for the defendant

(Sgd.)

M. P. DOMINGUEZ

(Sgd.)

I. MIRANDA

Plaintiff

Defendant

'Wherefore, judgment is hereby rendered in accordance with the foregoing stipulation of facts and the parties are hereby ordered to comply with the terms thereof, without special pronouncement as to the cost of this suit.

(Sgd.)

Ramon Blanco'

Judge

"On November 28, 1947 a writ of execution of the judgment just above quoted was issued by the Judge of the Municipal Court of Rizal City. On June 23, 1948, in order to suspend execution of said judgment issued on April 23, 1948, parties again entered into an agreement, paragraph 6 of which reads as follows:

'6. That the Second Party, further agrees that his failure to comply with any of the provisions of this agreement will be sufficient cause to order him vacate the above-mentioned leased premises within fifteen (15) days after having been served by the First Party with notice to that effect; and if he fails to vacate the premises within such time to be specified in the notice, First Party will revive the force and effect of the judgment above-mentioned in which case the Second Party shall bear all the expenses the First Party will incur in taking such action.'

"On November 2, 1948, parties entered into another agreement which was duly approved by the court for the purpose of giving the defendant in said case and petitioner herein until December 20, 1948 a chance to comply with their agreement dated June 23, 1948 and upon their failure to do so, the Judge of the Municipal Court of Rizal City issued the following order:

'On December 22, 1948, the plaintiff filed a petition for the execution of the terms of the amicable settlement of the parties dated June 23, 1948, as the defendant failed to comply with the provisions of the same. The said motion for execution was set for hearing on December 29, 1948, and evidence was submitted by the parties to

the effect that the defendant has not complied with the aforesaid agreement, notwithstanding the several opportunities given by the plaintiff.

'Wherefore, the court finding the motion for execution of the plaintiff well founded, the same is hereby granted. Let the corresponding writ of execution be issued for the enforcement of the agreement entered into by the parties dated June 28, 1948, and duly approved by the court.

'So ordered.

'Rizal City, January 8, 1949.'

"On motion of the plaintiff in said case and respondent in this petition, the judge of the municipal court of Rizal City issued the following order:

'On February 9, 1949, the plaintiff thru his attorney filed a petition for the demolition of the house of the defendant situated on the land object of the complaint. The court after hearing both parties, finds that said petition for demolition is well founded;

'Wherefore, the Sheriff of Rizal City is hereby ordered to demolish the house of the defendant situated at 570 Harrison, Rizal City, without prejudice to the collection of the rentals from the defendant due to the plaintiff for the premises occupied by the defendant.

'So ordered.

'Rizal City, February 18, 1949.'

"In order to stop and prevent the execution of the last abovequoted order, the defendant in said case and petitioner herein filed a complaint in the Court of First Instance of said City on April 7, 1949, known as Civil Case No. 813 of said court, asking, among other things for the issuance of a writ of preliminary injunction which was granted upon deposit of a bond for P1,000, enjoining the defendants therein from proceeding with said writ.

"Issues having been joined in said case and the same having been tried, the herein respondent Hon. Bienvenido A. Tan, Judge of the Court of First Instance of Rizal City, rendered his decision dismissing the case, with costs against the plaintiff and ordered the lifting of the writ of preliminary injunction, of which decision, dated October 3, 1949 notice was served on October 19 on said plaintiff who, on November 10, filed a motion for new trial which was denied on December 2. On December 20 counsel for plaintiff petitioned for an extension of period for the filing of his record on appeal and the respondent Judge granted said extension until January 10, 1950.

"On January 25, 1950, the respondent Judge issued the following order:

"The Record on Appeal presented in this case by the plaintiff will be approved upon his filing a bond in the sum of P3,000, which amount will be applied for the payment of the rents due on the premises.'

"On February 10, 1950, the plaintiff filed an urgent petition asking for the fixing of a period within which the bond ordered to be posted in the sum of P3,000 should be given and for the reduction of said bond to P1,000. Nowhere in the record appears the action taken by the respondent Judge on said urgent motion.

"Said plaintiff on February 25, 1950, filed a petition for certiorari, prohibition and mandamus in this Court. * *

The main purpose of the petition is to have an order issued by the Court of Appeals to compel the respondent Judge, Hon. Bienvenido A. Tan, to approve the record on Appeal filed by the petitioner without having to post the bond of P3,000 required by the judge in his order of January 25, 1950. The order makes the approval of the record on appeal dependent on the filing of the bond to be applied to the payment of the rents due. The Court of Appeals

found this requirement justifiable under section 5, Rule 41 of the Rules of Court, and denied the petition; hence this appeal.

We do not agree to this view of the Court of Appeals. It should be noted that the petition for certiorari filed in the Court of Appeals had its origin in an unlawful detainer case filed in the municipal court of Rizal City, which was submitted and decided on an agreed statement of facts. This decision became final and a writ of execution thereof was issued upon motion of the plaintiff. The execution was however, suspended because of several compromise agreements entered into between the parties to give to the defendant a chance to comply with the original stipulation. But defendant again failed to live up to his commitment and as a result the writ of execution was renewed. Plaintiff went further than that. He asked the court to issue an order for the demolition of the house of the defendant situated on the land object of the complaint, which was granted, and to stop and prevent the execution of this order the defendant filed a complaint in the Court of First Instance of Rizal praying, among other things, that a writ of preliminary injunction be issued enjoining the plaintiff from proceeding with the writ of execution and the demolition of the house of the defendant. Issues having been joined, and trial had, the court rendered decision dismissing the case and ordering the lifting of the writ of preliminary injunction. This decision, dated October 3, 1949, was served on October 19, on said plaintiff who, on November 10, filed a motion for new trial which was denied on December 2. On December 20, counsel for plaintiff asked for an extension of the period for filing his record on appeal and the court granted an extension until January 10, 1950. However, on January 25, 1950, the court issued the disputed order which required the plaintiff to put up a special bond of P3,000.

If civil case No. 813 instituted by the defendant, now petitioner, has been dismissed, and a writ of preliminary injunction dissolved, as above stated, and the judgment rendered in the case of unlawful detainer is already final and executory, so much so that a writ of execution has already been issued, and the court has ordered the demolition of the house of the defendant, we find no plausible reason nor justification for the action of the respondent judge in requiring the plaintiff to post a bond of P3,000 as a condition precedent to the approval of the record on appeal. As the records show, the main purpose of said case is to question the legality of the lease contract entered into between the parties which was allegedly executed in violation of Republic Act No. 76, known as the Rental Law, although incidentally plaintiff asked for the issuance of a writ of preliminary injunction. But this case was dismissed and the injunction dissolved, with the natural result that the defendant found himself free to enforce and carry out the writ of execution issued in the detainer case. There was, therefore, no need for requiring the plaintiff to post a special bond to perfect his appeal from the decision. Nor can that bond be considered a supersedeas bond because the purpose of the latter is "to stay an execution or other final process on the judgment" (Moran, Com. on the Rules of Court, Vol. I, p. 820). Here, there is no judgment to stay because the case was dismissed. The writ of injunction was dissolved and the defendant was free to enforce the writ of execution in the detainer case. Section 5, Rule 41 of the Rules of Court, which the Court of Appeals invoked to justify the action of the respondent judge has, therefore, been misapplied. The respondent judge should have approved the record on appeal with the usual bond of P60 which is the only one justified by the nature of the case. To require a further bond, as was done in this case, constitutes an abuse of discretion.

Wherefore, the decision of the Court of Appeals is hereby reversed. Let a writ of mandamus issue as prayed for by the petitioner.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes and Jugo, JJ., concur.

DISSENTING AND CONCURRING

FERIA, J.,:

This is an appeal by certiorari from the decision of the Court of Appeals which denied the petition for mandamus filed by the appellant against respondent Judge Bienvenido A. Tan of the Court of First Instance of Rizal, which required the appellant a bond of P3,000 before approving the record on Appeal filed by the appellant from an order of the said court dismissing his action filed in case No. 813 of said court and dissolving the writ of preliminary injunction issued in said case.

The action filed in said case No. 813 is an action for injunction or in which the whole or part of the relief demanded consists in restraining the execution of an order or judgment rendered against the herein appellant in another case, and for that reason the Court of First Instance of Rizal had issued a writ of preliminary injunction in said action. Because according to section 3 of Rule 60, "a preliminary injunction may be granted at any time after the commencement of the action and before judgment, when it is established (among others) that the plaintiff is entitled to the relief demanded and the whole or part of the relief consist in restraining the commission or continuance of the act complained of for a limited period or perpetually."

Under section 4, Rule 39, in an action for injunction, the final judgment or order granting, dissolving or denying the injunction, shall not be stayed after its rendition and before the appeal is taken or during the pendency of an appeal. "The trial court, however, in its discretion, when an appeal is taken for a judgment granting, dissolving, or denying an injunction may make an order suspending, modifying restoring or granting such injunction during the pendency of the appeal," upon petition of the interested party who shall be required to put up "a bond under such terms and conditions as it may consider proper for the security of the right of the adverse party."

< As an appeal from the order dismissing the appellant's action and dissolving the preliminary injunction issued in the Case No. 813 would not stay the execution of said order dissolving the injunction, which is final and executory after its rendition, the trial court acted in excess of its jurisdiction in requiring the appellant to file a bond of P3,000.00 for the perfection of his appeal. And the Court of Appeals erred in deciding that the trial judge or court did not act in excess of its jurisdiction or with grave abuse of discretion in requiring said bond of P3,000 before approving the Record on Appeal filed by the appellant in said case No, 813.

The amount of three thousand (P3,000) pesos required as bond by the trial court can not be considered as appeal bond under section 5, Rule 41, of the Rules of Court. Because under said section 5, "the appeal bond shall be in the amount of sixty (P60) pesos unless the court shall fix a different amount," and "is conditioned for the payment of costs which the appellate court may award against the appellant"; and as section 3 of Rule 131 provides that "when an action or an appeal is found to be frivolous, double or treble costs may be imposed on the appellant," it is obvious that the maximum amount of appeal bond which may be fixed by the court cannot exceed three times the sum of P60 fixed by said section 5, Rule 41.

And the trial court had no power to require said bond of three thousand (P3,000) pesos as a supersedeas bond, because the appeal filed by the appellant from the order dismissing the complaint and dissolving the preliminary injunction issued in the case No. 813, did not stay the execution of said order or the dissolution of the injunction. Had the appellant filed a petition for the restoration during the pendency of his appeal of the injunction dissolved, then and only then could the trial court, in granting such petition, require the petitioner, under the provisions of section 4 of Rule 39, to file a bond upon such terms as it might consider proper for the security of the rights of the adverse party.

Therefore I concur in the dispositive part of the decision of the majority for the reasons or on the grounds above

set forth.

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