

**CITY OF MANILA AND HON. JOSE B. JIMENEZ, CFI JUDGE OF
MANILA AND THE CITY SHERIFF OF MANILA, PETITIONERS, VS.
HONORABLE COURT OF APPEALS AND AUGUSTO SANTOS,
RESPONDENTS.**

G.R. No. L-42364. April 09, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari[*] of the decision of the Court of Appeals in CA-G.R. No. 04293-SP[1] which voided the Writ of Execution issued by the Court of First Instance of Manila.

It appears that after the expiration of its contract of lease involving two market stalls (owned by the City of Manila) in the Lacson Underpass in Quiapo, Manila, the lessor-City wanted to increase the lease rentals. Despite the refusal of the lessee (herein private respondent) to agree to the increased rates, it refused to vacate the premises, prompting the City to file ejectment proceedings against it. The City Court rendered a decision, the decretal portion of which reads:

“WHEREFORE, judgment is hereby rendered ordering the defendant to pay for the premises referred to in the Complaint at the rate of P3,500.00 for January 1974; beginning February up to September, 1974, at the rate of P5,000 monthly, or a total of P35,000.00, the same to be paid within ten (10) days from the date of receipt hereof. The rental for October, 1974 and every succeeding month should be at the latter rate payable within the first five (5) days of the month. Failure of the defendant to pay any rent on or before the due date spelled out herein shall entitle the plaintiff to the issuance of a Writ of Execution for ejectment and collection of rent.

"No pronouncement as to attorney's fees and costs." (Annex B, p. 15, Rollo).

Thus the Court fixed new rental rates and allowed the eventual ejectment of the lessee in case of non-compliance.

The City of Manila, as lessor of the stalls appealed to the Court of First Instance (CFI) because it was not satisfied with the increased rentals granted by the City Court. In the meantime, in view of the lessee's adamant refusal to pay the increased rates, the City (without filing any supersedeas bond), asked for immediate execution of the City Court's judgment pending appeal. The lessee opposed this execution on the theory that the judgment was a "conditional" one; that, there must first be a hearing or a new action for ejectment to determine whether or not the lessee's refusal to pay was justified; and that there can be no execution pending appeal because the City had not filed any supersedeas bond. The CFI granted the writ of execution prayed for.

On appeal to the Court of Appeals, the appellate tribunal reversed the CFI and set aside the writ of execution, explaining that Sec. 8, Rule 70 of the Rules of Court (execution pending appeal in ejectment cases) does not apply for said provision operates only when it is the lessee (not the lessor) who appeals, for in such a case, it is the lessee who is supposed to file a supersedeas bond and to deposit the monthly rentals in court, as said rentals fall due citing the decision in *CRUZ, ET AL. vs. FERNANDO JUGO, ET AL.*, 77 Phil. 18-21, as authority for the

ruling. The appellate court further ruled that the proper provision to apply is section 2, Rule 39, of the Rules of Court, which ordains that generally execution can issue only after a judgment becomes final (not during the pendency of the appeal), unless a special reason therefor exists.

We find merit in this petition filed by the City.

We rule that Sec. 8 of Rule 70 can apply even if it is the lessor who appeals in the sense that in such a case, if the lessee desires to prevent execution pending appeal, he (the lessee) must still file the supersedeas bond and deposit in court the accruing rentals. Our doctrine in *CRUZ, ET AL. vs. FERNANDO JUGO, ET AL.* (supra) is reversed insofar as it conflicts with the present case. The rationale for Our ruling is simple: why should the lessee continue occupying the premises without filing the supersedeas bond and making the necessary deposit for ensuing rentals (particularly when, by his failure to appeal, the lessee does not question said accrued and incoming rents)?

And even if We were to apply Rule 39 of the Rules of Court, the very circumstances referred to in the preceding paragraph (continued stay on the premises, and acquiescence to the new rates) would constitute "special reasons" for authorizing an execution pending appeal.

WHEREFORE, We hereby SET ASIDE the assailed decision and reinstate the writ of execution issued, and We hereby render a new decision ordering the lessee to vacate the premises and to pay the rentals fixed by the City Court from the time the complaint was filed until the premises are vacated and full payment is made, with twelve (12%) per cent interest yearly. No pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Gancayco, J., no part.

Yap, J., on leave.

[*] This petition, originally assigned to the Second Division of this Court, was referred to and accepted by the Court en banc.

[1] Penned by Justice Mariano Serrano; concurred it by Justices Gaviola and Gancayco.

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