

**FERNANDO HERNANDEZ AND FELICIDAD B. HERNANDEZ,
PETITIONERS, VS. EMILIO PEÑA, JUDGE OF THE COURT OF FIRST
INSTANCE OF MANILA, AND INES OLIVEROS, RESPONDENTS.**

G.R. No. L-2777. May 19, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

Ines Oliveros, as defendant in an unlawful detainer case pending before the respondent Judge Emilia Peña on appeal from the Municipal Court, failed to deposit with the Clerk of Court the rent of P200 corresponding to the month of October, 1948, in accordance with the judgment of the Municipal Court. A motion for the issuance of a writ of execution was filed by the petitioners on November 23, 1948, which was opposed by the respondent on the ground that her failure to make the deposit was due to the fact that she had instituted in this court a petition for certiorari and prohibition (G.R. No. L-2602), in which she prayed to be relieved of the obligation of making a monthly deposit of P200.

Acting upon said motion and the reply thereto, the respondent judge on December 21, 1948, issued the following order:

"The Court orders the defendants to deposit in Court the rents corresponding to the months of October and November, 1948, within five days from the receipt of a copy of this order, and should they fail to do so, it is hereby ordered that the corresponding writ of execution be issued."

The above-quoted order, which is the subject of the present petition for certiorari and mandamus, is contrary to section 8 of Rule 72 and the decisions of this court in various cases. Said rule provides that should the defendant fail to make the payment or deposit of the rent during the pendency of the appeal, "the Court of First Instance, 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 * * *." This court has repeatedly held that the Court of First Instance has no jurisdiction to allow extensions of time for such payments. (*Lapuz vs. Court of First Instance of Pampanga*, 46 Phil. 77; *Arcega vs. Dizon*, 42 Off. Gaz., 2138; *Meneses vs. Dinglasan*, 46, Off. Gaz., [Supp to No. 1], 252.

The mere filing by the respondent Ines Oliveros of a petition for certiorari and prohibition, praying that she be relieved of the obligation of making the monthly deposit, did not ipso facto relieve her of such obligation, as the respondent judge himself impliedly held by requiring her to make the deposit within five days.

The order complained of is set aside, and the respondent judge is hereby directed to issue the writ of execution prayed for by the petitioners, with costs against the respondent Ines Oliveros.

Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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