

**MERCY ALMONIDOVAR DE VERA AND JUAN DE VERA, PETITIONERS,
VS. HON. GUILLERMO S. SANTOS, JOSE S. BIAGTAN, INC., AND
SHERIFF OF MANILA, RESPONDENTS.***G.R. No. L-24351. September 22, 1977*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ed2fd2623d4e/>

Petition for certiorari and injunction, with preliminary injunction, to restrain the respondent Sheriff of Manila from proceeding with the sale at public auction of two buildings belonging to the petitioners, set for March 30, 1965, and, after hearing, to annul and set aside the order of respondent Judge in Civil Case No. 35710 of the Court of First Instance of Manila, dated January 16, 1965, ordering the immediate execution of its decision, pending appeal, and the order denying the motion for its reconsideration.

It appears that on January 15, 1954, the Manila Investment & Construction Co., Inc. and Mercy Almonidovar entered into a building contract whereby the former agreed to construct for the latter a building worth P200,000.00 along Claro M. Recto Avenue. Manila, in accordance with the plans and specifications submitted by Mercy Almonidovar. One Bienvenido Castillo signified his conformity and consent to the execution of the contract as the husband of Mercy Almonidovar. In due time the building was constructed and upon its completion, the building was turned over to Mercy Almonidovar who inspected the same. Upon inspection, she found certain defects in the construction which were corrected and repaired to her satisfaction. She: thereafter, made payments to the builders pursuant to their building contract. However, she was not punctual in her payments. As of May 7, 1957, Mercy Almonidovar was indebted to the Manila Investment & Construction Co., Inc. in the amount of P71,774.05.

It also appears that the Manila Investment & Construction Co., Inc. was, in turn indebted to the Jose S. Biagtan, Inc. in the amount of P108,515.52. In partial payment thereof, the Manila Investment & Construction Co., Inc. assigned its credit due from Mercy Almonidovar to the Jose S. Biagtan, Inc. on August 27, 1956. The assignee then tried to collect from Mercy Almonidovar. and when she failed to pay, the Jose S. Biagtan, Inc. filed a suit against Bienvenido Castillo and Mercy Almonidovar Castillo before the Court of First Instance of Manila. The case was docketed therein as Civil Case No. 35710 and assigned to herein respondent Judge Guillermo S. Santos.[1]

Bienvenido Castillo admitted the execution of the building contract in question, but claims that the assignor, Manila Investment & Construction Co., Inc. made changes and alterations in the building plans as a result of which he suffered liquidated damages in the amount of P10,000.00. By way of a cross-claim, Castillo alleged that he and Mercy Almonidovar had agreed to live together as husband and wife without benefit of clergy and to engage in business, among which was the construction and lease of the building, subject matter of the contract with the Manila Investment & Construction Co., Inc. Their relationship, however, was terminated in July, 1957, when Mercy Almonidovar married Juan de Vera. Wherefore, he prayed that the defendant Mercy Almonidovar make a complete accounting and division of all their assets and property acquired during their coverture.[2]

Mercy Almonidovar denied the cross claim, but admitted the execution of the building contract with the Manila Investment & Construction Co., Inc. In avoidance, she claimed that the Manila Investment & Construction Co.,

Inc. is liable to her for damages amounting to more than P60,000.00 for breach of the said building contract.[3]

Since the affirmative defenses were directed at the Manila Investment & Construction Co., Inc., the complaint was amended to implead it as party plaintiff.[4]

Trial was thereafter conducted and after the plaintiffs had rested their case, the defendant Mercy Almonidovar moved for a two-week adjournment of the hearing in order to allow her sufficient time to settle the case amicably. The court granted the request and set the hearing for May 13, 1964.[5]

On May 12, 1964, however, counsel for said defendant Mercy Almonidovar filed an urgent motion before the court, praying for the postponement of the hearing set for May 13, 1964, for the reason that on that same date and hour, counsel had to attend a hearing of an administrative case before the Supreme Court in Baguio City, which hearing could not be postponed.[6]

On May 13, 1964, the case was called for hearing as previously set, and finding the defendant and her counsel absent, the court denied the motion for postponement and considered defendant Mercy Almonidovar as having waived her right to present evidence in support of her answer. The plaintiffs were given 15 days within which to submit their memoranda.[7]

On December 18, 1964, a decision was rendered in the said civil case, the dispositive portion of which reads, as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter, jointly and severally — (1) to pay the plaintiff the sum of P99,708.52, with interest at the rate of 8% per annum on the sum of P67,992.55 from 5 May 1963, until fully paid; (2) to pay the plaintiff 20% of the amount due, as and for attorney's fees; and the costs of this action.

"All other causes of action are hereby dismissed."[8]

Upon motion of the plaintiff, Jose S. Biagtan, Inc.,[9] the respondent judge issued an order for the immediate execution of the judgment, pursuant to Sec. 2, Rule 39 of the Revised Rules of Court, on January 16, 1965.[10] Accordingly, the respondent Sheriff of Manila levied on two houses of strong materials owned by Mercy Almonidovar located along Claro M. Recto Avenue, Manila, and advertised its sale at public auction on March 30, 1965, at 9:00 A.M.

Claiming that the respondent judge had acted with grave abuse of discretion in issuing the order of January 16, 1965, granting the immediate execution of its judgment, and the order of May 13, 1964, denying her motion for postponement and declaring her as having waived her right to present evidence in support of her answer, Mercy Almonidovar, assisted by her husband, Juan de Vera, filed the instant recourse before this Court. As prayed for, this Court issued a writ of preliminary injunction on March 29, 1965, restraining the respondents from proceeding with the sale at public auction of the two buildings belonging to petitioners, set for March 30, 1965.[11]

The private respondent, Jose S. Biagtan, Inc. prays for the dismissal of the petition for the reason that the petitioners lost their right to avail of the remedy of certiorari when the petitioner Mercy Almonidovar perfected her appeal from the judgment of the trial court.

Indeed, Mercy Almonidovar had filed a notice of appeal, appeal bond, and record on appeal before the respondent court. It is further shown that on March 13, 1965, the respondent judge disapproved the record on appeal and appeal bond and dismissed the appeal in view of the failure of the appellant to serve a copy of the same upon counsel for the appellee, Manila Investment & Construction Co., Inc.[12] This order, however, was set aside on March 24, 1965 and the appeal was given due course.[13] The appeal was docketed in the Court of Appeals as

CA-G.R. No. 35926-R.[14]

On August 27, 1965, the Court of Appeals dismissed the appeal in view of the failure of Mercy Almonidovar to file her printed record on appeal within the period provided therefor.[15] Apparently, this resolution was set aside by the Court of Appeals for on October 6, 1965, Mercy Almonidovar filed a motion before the Court of Appeals, praying that the case be elevated to the Supreme Court upon the ground that the appellant is raising only questions of law over which the Supreme Court has exclusive appellate jurisdiction,[16] which motion the Court of Appeals resolved to consider when the case is decided on the merits.[17] The appellant, however, stood pat on her belief and ignored the order of the Court of Appeals for her to file the appellant's brief.[18] As a consequence, the Court of Appeals dismissed her appeal on August 27, 1965.[19]

Under the Rules,[20] the special civil action of certiorari may only be invoked when an inferior court, or any of the entities or officers specified therein has acted without or in excess of jurisdiction or with grave abuse of discretion, and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. Although the petitioner Mercy Almonidovar had already perfected an appeal from the judgment of the respondent court, she is not barred from applying for the extraordinary remedy of certiorari since appeal is not an adequate remedy to correct lack or excess of jurisdiction because appeal cannot promptly relieve the petitioner from the injurious effects of an invalid order.[21]

The petitioners contend that the respondent judge acted without or in excess of his jurisdiction in issuing the order of May 13, 1964, denying their urgent motion for postponement and in declaring that the petitioner Mercy Almonidovar had waived her right to present evidence in support of her answer.

As a rule, motions for postponement are addressed to the sound discretion of the court and its action thereon will not be disturbed by appellate courts in the absence of clear and manifest abuse of discretion resulting in a denial of substantial justice. It would appear that during the hearing of Civil Case No. 35710 of the Court of First Instance of Manila on February 21, 1964, Atty. Mario Bengzon, counsel for Mercy Almonidovar, manifested to the court that there was a possibility of an amicable settlement of the case and requested for the period of two weeks within which to bring about a compromise. Counsel for the adverse party agreed to the postponement and the respondent judge set the hearing of the case on May 13, 1964. Atty. Mario Bengzon was specifically enjoined to inform the respondent judge of the results of his efforts at settlement within one month therefrom.[22]

On April 22, 1964, this Court issued its resolution dated April 17, 1964, setting the hearing of Administrative Case No. 355 for May 13, 1964, at 9:30 A. M. in Baguio City.[23]

Despite the apparent conflict, and notwithstanding the fact that the petitioners had ample time to ask for the postponement of the hearing in either case, the petitioners filed the motion for postponement of the hearing in Civil Case No. 35710 at the very last moment, or on May 32, 1964.[24]

It further appears that the aforementioned motion for postponement did not conform with the rule regarding the giving of notice to the adverse party.

The Rules of Court provide that no motion shall be acted upon by the court without the proof of service of notice thereof, together with a copy of the motion and other papers accompanying it, to all parties concerned at least time (3) days before the hearing thereof, stating the time and place for the hearing of the motion.[25]

To make things worse, the petitioners did not even bother to be present in court on the day set for the hearing of the case to find out at least how the respondent judge would rule on the motion for postponement. They just took for granted that the motion for postponement of their lawyer would be acted upon favorably. This Court has repeatedly held that motions for postponement are addressed to the sound discretion of the court and that movant

has no right to assume that his motion would be granted, especially on less than three days' notice, and must be in court on the day of the hearing so that if his motion is denied, he can proceed with the trial.[26]

In view of thereof, the respondent judge committed no abuse of discretion in denying the petitioners' motion for postponement and in declaring that petitioner Mercy Almonidovar had waived her right to present evidence in support of her answer.

The petitioners also contend that the respondent judge acted with grave abuse of discretion when he granted the motion for the immediate execution of the decision pending appeal although no special reason exists, such as where the defendant is insolvent or where there is no valid cause of action or defense.

Section 2, Rule 39 of the Rules of Court does not enumerate the good reasons to justify the immediate execution of a decision pending appeal. This matter is left to the discretion of the trial court which discretion will not be interfered with by the appellate court unless it be shown that there has been an abuse thereof or a subsequent change of conditions.[27]

The order of January 16, 1965, ordering immediate execution of the decision, states:

"Considering the 'Motion for Immediate Writ of Execution,' filed by plaintiff, Jose S. Biagtan, inc., thru counsel on 11 January 1965 and the 'Petition for Postponement of Hearing,' filed by defendant Mercy Almonidovar de Vera, thru counsel, on 14 January 1965, 'and finding the former in order, pursuant to Rule 39, Sec. 2, Revised Rules of Court, it appearing that the defendants, in their answers, did not deny the fact that plaintiff Manila Investment and Construction, Inc., actually constructed for them the building, subject matter of the case; that said defendants are obligated to plaintiff for the construction thereof; that the defendants have no material and substantial defenses and failed to present any evidence in this proceeding; and that defendant Mercy Almonidovar failed and refused to comply with the Order of this Court to deposit the monthly rentals of said building with this Court, motion GRANTED.' Let a writ of execution issue.

"And it appearing that the petition for postponement is dilatory, DENIED." (p. 51, rollo)

As could be seen therefrom, the decision was ordered executed immediately because the appeal of Mercy Almonidovar spro forma and that she failed and refused to comply with the order of the court to deposit the monthly rentals of the building with the court. The fact that the appeal is pro forma is good and sufficient reason upon which to issue execution of the judgment under Section 2, Rule 39 of the Revised Rules of Court because the appeal taken will be a mere dilatory tactic which is not countenanced by the courts. The respondent judge, therefore, did not act arbitrarily in ordering the immediate execution of the judgment.

WHEREFORE, the petition should be, as it is hereby dismissed for lack of merit. The writ of preliminary injunction heretofore issued is dissolved. Costs against the petitioners.

SO ORDERED.

Barredo and Guerrero, J.J., concurs in the result.

Antonio, J., concurs in main opinion and in the separate opinion of Justice Ramon C. Aquino.

Aquino, J., see concurring opinion below.

Fernando (Chairman) and Santos, JJ., took no part.

Guerrero, J., was designated to sit in Second Division in lieu of Mr. Justice Santos who did not take part in the deliberation of this case.

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- [1] Complaint. Annex A, p. 8. rollo.
- [2] Sec Decision. Annex E, p. 19, rollo.
- [3] See Answer, Annex B, p. 10. rollo.
- [4] See Decision. Annex E, p. 19, rollo.
- [5] p. 60. rollo.
- [6] See Annex C. p. 17, rollo.
- [7] See Annex D, p. 18, rollo.
- [8] See Annex E, p. 19, rollo.
- [9] See Annex A of Answer, p. 53. rollo.
- [10] See Annex B of the Answer, p. 57, rollo.
- [11] p. 25, rollo.
- [12] p. 58, rollo.
- [13] p. 59, rollo.
- [14] See par. 2 of Reply to Manifestation, p. 69, rollo.
- [15] p. 95, rollo.
- [16] p. 83, rollo.
- [17] p. 93, rollo.
- [18] See par. 5, Opposition to Dissolve Writ of Preliminary Injunction, p. 81. rollo.
- [19] p. 95, rollo.
- [20] Sec. 1. Rule 65. Revised Rules of Court.
- [21] *Silvestre vs. Torres & Oben*, 51 Phil. 885.
- [22] See Order of Feb. 21, 1974, p. 60, rollo.
- [23] p. 61, rollo.
- [24] Annex C. p. 17, rollo.
- [25] Sections 4. 5. and 6. Rule 15. Rules of Court.
- [26] *Republic vs. Gumayan*, G.R. No. I.-16780. May 31, 196). 2 SCRA 582. and other cases cited therein.
- [27] *Naredo vs. Yutco*, 80 Phil. 220.
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CONCURRING:**AQUINO, J.,**

I concur because the question as to the propriety of the execution pending appeal had become moot. It became moot after the judgment sought to be executed pending appeal became final and executory in 1965 when the Court of Appeals dismissed petitioner Mercy de Vera's appeal. The instant certiorari case is directed, not against the said judgment, but against the execution pending appeal. (This concurrence is premised on the assumption that the two buildings levied upon in 1965 still exist).

Antonio, J., concurs.

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