

FLORA AYLON, PETITIONER, VS. FERNANDO JUGO, JUDGE OF FIRST INSTANCE OF MANILA, AND RAMONA S. DE PABLO, RESPONDENTS.*G.R. No. L-1082. July 31, 1947*

Ponente: PADILLA, J.

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In a detainer case judgment was rendered ordering the petitioner and one Arsenio Japson, who for failure to appear was declared in default, "(a) to vacate the land and building designated and known as No. 727 Lepanto Street, City of Manila, the premises subject matter of the complaint; (b) to pay to plaintiffs the rentals thereof at the rate of P60 per month beginning July 1, 1946 until they vacate and surrender said premises to the plaintiffs; and (c) to pay the costs of suit." On 6 September, the petitioner appealed to the Court of First Instance. To stay execution of the judgment, she and the Luzon Surety Co. filed a supersedeas bond for P300 which was approved by the Municipal Court. On 14 September, respondent Pablo moved for execution of the judgment for failure of the petitioner to pay or deposit the rentals for July and August 1946. On 24 September, the respondent Court granted the motion as prayed for. On 10 October, acting upon the motion for reconsideration filed by the petitioner, the respondent Court granted her a period of ten days after receipt of a copy of the order within which to deposit the rentals for July and August 1946, and warned that failure to so deposit would cause the automatic execution of the judgment.

Petitioner comes to us for relief against the order issued by the respondent Court directing the execution of the judgment rendered by the municipal court and the other order granting ten days from notice within which to deposit the rentals for July and August 1946, on the ground that both orders constitute a grave abuse of discretion.

Respondents admit the material allegations of the petition. Their denial refers to the petitioner's interpretation of the provisions of section 8, Rule 72.

The proceeding in forcible entry and detainer cases is summary. For that reason, execution of judgments rendered against the defendants is issued forthwith. The only way to stop it is to perfect an appeal and to file a bond. The appeal was duly perfected by the petitioner. The bond for P300 was approved by the Municipal Court. It was executed to the respondent Pablo, and by it the principal and surety bind themselves, jointly and severally, "to enter the action in the Court of First Instance, and to pay the rents, damages, and costs down to the time of the final judgment in the action, * * *." The amount of the obligation to be assumed by the petitioner and her surety in the bond "to pay the rents, damages, and costs down to the time of the final judgment in the action," is difficult to ascertain and fix, for the time to be taken up by the courts to decide the case finally is uncertain. Under the provisions of section 8 of the Rule, a justice of the peace or a municipal court may require the defendant to file a bond for an amount which would cover the stipulated rentals, as found by the judgment of the Court, or the reasonable value for the use and occupation of the premises, at the rate determined by the judgment, damages, and costs down to the time of the final judgment in the action. The reasonable value for the use and occupation of the premises, the possession of which is sought to be recovered, is that fixed by the Court in the judgment, because the rental stipulated in the contract of lease that has expired or terminated may no longer be the reasonable value

for the use and occupation of the premises as a result or by reason of the change or rise in values. But the bond together with the appeal is only to prevent the immediate execution of a judgment rendered against the defendant in forcible entry and detainer cases. Such execution must be prevented further by paying to the plaintiff or depositing with the Court of First Instance, during the pendency of the appeal, the stipulated rental due from time to time under the contract, as found by the judgment of the Court, or, in the absence of a contract, the reasonable value for the use and occupation of the premises for the preceding month, on or before the tenth day of each calendar month, at the rate determined by the judgment.

There is no dispute that, by virtue of the petitioner's appeal perfected on 6 September, the case was transmitted to, and docketed in, the Court of First Instance of Manila on 10 September. Beginning from this last date or at the earliest from 6 September, when the Municipal Court lost jurisdiction over the case by virtue of the appeal perfected by the petitioner, the case may be said to be pending on appeal in the Court of First Instance. Whether the bond filed by the petitioner as appellant is sufficient to answer for what the rule contemplates it must answer is not involved herein. The fact is that the bond was approved by the municipal court. Such being the case, the only question to determine is whether on the date of the order of execution of the judgment of the municipal court issued by the respondent court or during the pendency of the appeal, the petitioner, as appellant, failed to pay to respondent Pablo or to deposit into court the stipulated rental or the reasonable value for the use and occupation of the premises. The judgment rendered by the municipal court on 20 August 1946 ordered the defendants to pay to the plaintiffs the rentals thereof at the rate of P60 per month beginning 1 July 1946 until they vacate and surrender said premises to the plaintiffs. The first rental to be paid by the petitioner, as appellant, to the respondent Pablo, as appellee, or to the Court, was for the month of September 1946 which had to be paid on or before the 10th day of October 1946. The payment of rentals for the preceding months of July and August is guaranteed by the bond for P300 filed by the petitioner, as appellant and principal, and the Luzon Surety Co., as surety. Consequently, the writ issued by the respondent Court on 24 September for the execution of the judgment rendered by the municipal court on 20 August and the order of 10 October denying in effect the motion for reconsideration of the previous order constitute a grave abuse of discretion which may be corrected by means of certiorari applied for herein.

For the foregoing reasons, the order of the respondent Court dated 24 September 1946 directing the sheriff to execute the judgment rendered by the Municipal Court on 20 August 1946, and the order dated 10 October 1946 denying petitioner's motion for the reconsideration of the previous order are hereby annulled and set aside, without costs.

Writ granted.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, Hontiveros, and Tuason, JJ., concur.

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