

PHILIPPINE HOLDING CORPORATION, PETITIONER, VS. HON. MANUEL E. VALENZUELA, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF PASAY CITY, BRANCH XXXIX, AND ROMULO C. FIGUEROA, RE...

G.R. No. L-55972. May 13, 1981

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

This is a special civil action of certiorari and mandamus complaining of the Order dated October 1, 1980 as well as the Order dated December 1, 1980 of the Court of First Instance of Pasay, Branch XXXIX, as having been issued with grave abuse of discretion, the first Order recalling the writ of execution issued on June 18, 1980 in Civil Case No. 7222-P, entitled "Philippine Holding Corporation vs. Romulo Figueroa" and the second Order denying the motion for reconsideration filed by herein petitioner. Petitioner prays to compel respondent Judge to order immediate execution of the judgment of eviction and to issue the corresponding writ of preliminary mandatory injunction for the purpose.

The Court hereby sets aside the two orders and grants the writ of mandamus prayed for, since the said orders were issued in violation of the specific and mandatory provisions of Section 8, Rule 70 of the Rules of Court.

For a brief statement of the undisputed facts:

In a decision dated October 17, 1978 of the City Court of Pasay, Branch IV, respondent Romulo Figueroa was ordered evicted from the premises owned by petitioner corporation located at 1400 Roxas Boulevard corner Salud Street, Pasay City by virtue of the expiration of the contract of lease thereon between said respondent as lessee and herein petitioner as lessor. For un-explained reasons, petitioner did not receive a copy of the decision until after it filed, on January 15, 1979, a motion for the early decision of the case and City Judge Francisco Llamas issued an order that a copy of the decision be sent to petitioner's counsel. Surprisingly also, respondent Figueroa received a copy of the decision only much later on March 5, 1979.

After respondent's motion for reconsideration of the decision of eviction had been denied, the City Court issued the corresponding writ of execution on petitioner's motion.

On May 4, 1979, respondent Figueroa filed a notice of appeal dated May 2, 1979 from the decision of the Pasay City Court and at the same time filed a supersedeas bond consisting of a first lien or mortgage executed in favor of petitioner over two parcels of land located at Agoo, La Union.

In the Court of First Instance, after respondent failed to deposit the monthly rentals that had fallen due since the perfection of the appeal, petitioner moved for execution on February 12, 1980. This was reiterated on May 13, 1980 and again on June 13, 1980. Finally, on June 18, 1980, respondent Judge granted the motion and ordered execution of the lower court's decision. On July 23, 1980, respondent, on his own behalf, filed an ex-parte Motion to Recall Writ of Execution Pending Appeal. The following day, or on July 24, 1980, respondent Judge issued an

order suspending the writ of execution and thereafter recalled the same on October 1, 1980, reasoning thus:

"The Court ordered the execution of the appealed decision on the ground that the defendant failed to pay or deposit the current monthly rental of the premises. Upon review of the motion to recall writ of execution, the Court noted that the defendant, to stay execution, offered real estate property the value of which, according to defendant, is more than sufficient to cover up the money judgment as well as current and future monthly rentals. On the firm and honest belief that this property is sufficient to pay the current monthly rentals, the defendant did not anymore pay the same in Court. The defendant is offering another parcel of land situated in Baguio City to answer for the current monthly rentals.

The Court, although aware of the mandatory provisions of Sec. 8, Rule 70, Revised Rules of Court, deems it a wiser policy and a more sound exercise of discretion to liberalize its application in the interest of justice and equity."

When petitioner's motion for reconsideration was denied, the instant petition for certiorari and mandamus was filed wherein petitioner submits that respondent judge's Order dated October 1, 1980 recalling the writ of execution previously issued in the case and Order dated December 1, 1980 denying its motion for reconsideration were issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner accordingly prays that mandamus issue to compel respondent Judge to perform his ministerial duty of ordering immediate execution of the lower court's decision of eviction against respondent for non-payment of rentals falling due during respondent's appeal.

Respondent Judge, while admitting in his questioned Order that the provisions of Section 8, Rule 70 of the Revised Rules of Court are mandatory, recalled the writ of execution because he "deems it a wiser policy and more sound exercise of discretion to liberalize its application in the interest of justice and equity." This is patently grave abuse of discretion and officiousness on the part of respondent Judge.

Section 8, Rule 70 of the Rules of Court mandatorily provides that in ejectment cases, "if judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond, approved by the municipal or city court and executed to the plaintiff to enter the action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as found by the judgment of the municipal or city court to exist. In the absence of a contract, he shall deposit with the court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment, on or before the tenth day of each succeeding month or period. x x x."

The law is explicit and is beyond respondent Judge's discretion or notion of what would be a "wiser policy." In a case where the defendant in an eviction case did not file a supersedeas bond or, as in the case at bar, did not make any monthly deposit of the rentals, the lessor, like petitioner in the case at bar, is entitled as a matter of right to the immediate execution of the municipal or city court's judgment for the restoration of possession and the payment of the accrued rentals or compensation for the use and occupation of the premises.[1] In such cases, execution is mandatory.[2] The only exceptions are the existence of fraud, accident, mistake or excusable negligence which prevented the defendant from posting the supersedeas bond or making the monthly deposit, or the occurrence of supervening events which brought about a material change in the situation of the parties and which would make the execution inequitable[3] - none of which holds in the case at bar.

When the supersedeas bond is not filed or the current rents are not deposited with the court as required by the cited Rule, the duty of the court to order the immediate execution of the appealed decision is ministerial and imperative.[4]

The mere offer of additional bond by respondent in lieu of the required monthly deposit of rentals does not justify the recall of the writ of execution already issued. For when the judgment in an ejectment case is appealed, the stay of the execution is conditioned upon the monthly payment to plaintiff or deposit in court of the accruing rentals or compensation for the property. The failure of the defendant-lessee to make cash deposits for current rentals calls for immediate execution of the judgment, even if the supersedeas bond filed covers both the back rents and current rents[5] and the Court of First Instance has no discretion in the matter and no power to extend the time for making such payment.[6] It has long been settled that the supersedeas bond answers only for the rents or damages down to the time of the perfection of the appeal and not for the future rents or damages arising during the appeal, which rents are guaranteed to be covered by the monthly cash deposits required by the Rule. The Court of First Instance has no authority to accept a bond in lieu of cash deposit for future rents.[7]

ACCORDINGLY, the orders of respondent Judge dated October 1, 1980 and December 1, 1980 are hereby set aside and annulled. The writ of mandamus is likewise issued commanding respondent Judge to immediately issue upon receipt hereof the corresponding writ of execution. With costs against private respondents. This decision is immediately executory.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

[1] De Pages and Vda. de Rodriguez vs. Hon. Canonoy, 116 Phil. 898; Paulino Sr. vs. Hon. Surtida, 109 Phil. 621; De Laureano vs. Adil, 72 SCRA 148.

[2] Arcega vs. Dizon, 76 Phil. 164; Carbungco vs. Amparo, 83 Phil. 638; Chieng Hung vs. Tam Ten, 21 SCRA 211.

[3] Cunaan vs. Rodas, 78 Phil. 800; Laurel vs. Abalos, 30 SCRA 281; De Laureano vs. Adil, supra.

[4] De la Cruz vs. Burgos, 28 SCRA 977.

[5] Acibo vs. Macadaeg, 11 SCRA 446.

[6] Lapuz vs. CFI of Pampanga, 46 Phil. 77.

[7] Ysrael vs. CA, 78 Phil. 831; Acibo vs. Macadaeg, supra, citing Moran, 3 Comments on the Rules of Court, 300; 304; 305 (1963).

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