

CABMEN TOLENTINO, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF MANILA AND JOSEFA VDA. DE ALTONAGA, RESPONDENTS.

G.R. No. L-32. October 18, 1945

Ponente: BENGZON, J.

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BENGZON, J.:

This is a petition for mandamus to compel the Judge of the Court of First Instance of Manila, Third Branch, to order the immediate execution of the judgment of the municipal court in its case No. 70179, wherein the petitioner was plaintiff against Josefa Vda. de Altonaga in a complaint for desahucio (April, 1945) based on the termination of the verbal lease of the former's house at No. 785 San Sebastian Street, Manila, and defendant's failure to pay rent for several months. In that case, defendant interposed special defenses, and after hearing the parties, the municipal judge ordered her to vacate the premises and pay a monthly rental of P65 from March 1, 1945, plus costs. She appealed in due time, depositing for purposes of appeal P16 as docket fee, and P25 as appeal bond, plus, P260 to cover rents for March-June, 1945, but without filing a supersedeas bond to stay execution.

After the litigation had been docketed in the Court of First Instance of Manila, plaintiff on June 13, 1945 moved for immediate execution of the appealed judgment upon the ground that appellant had failed to submit the supersedeas undertaking. On July 10, 1945, the respondent Judge Pompeyo Diaz, denied the motion, requiring defendant-appellant to file a supersedeas bond in the sum of P700 within five days, which order was promptly complied with. Plaintiff, herein petitioner, asked for reconsideration, claiming it was beyond the court's power to fix or admit a bond at that stage of the proceedings. Denial of that request led to the commencement of this special civil action, planted on the legal propositions (1) that upon Altonaga's neglect to file a supersedeas bond in an amount approved by the municipal judge, plaintiff was entitled to immediate execution of the judgment of eviction, and (2) that Judge Diaz's order was legal error reversible by a directive to carry out instanter the municipal court's verdict of restitution.

Rule 72, section 8, provides that "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 justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance, * * *."

The rule substantially reproduces the provisions of Act No. 2588 (amending section 88 of Act No. 190), the law applied in *Igama vs. Soria* (42 Phil., 11) wherein this Court sustained the power of the judge of first instance to permit the appellant in forcible entry and detainer cases to present the bond which he had failed to submit to the justice of the peace court. Indeed, bearing in mind the purposes of the undertaking, we perceive no reason to prohibit its submission to, and admission by, the judge of first instance in the exercise of his lawful discretion. The attitude of the respondent judge perfectly dovetails the injunction to construe the rules liberally "in order to promote their object and to assist the parties obtaining just, speedy, and inexpensive determination of every action

and proceeding." (Rule 1, section 2.)

When it adopted the Rules of Court, and declined to modify the words of the statute as interpreted, this body practically reiterated its previous ruling.

But it is argued that this court modified or reversed *igama vs. Soria* when it promulgated its decision in *Felipe vs. Teodoro* (46 Phil., 409), and said:

"* * * The failure of the appellants from the judgment of, the justice of the peace to give the special bond required by section 88, supra, for rents and damages, prevents a stay of execution of the judgment as far as the restitution to the appellees of the possession of the land is concerned. The fact that the Court of First Instance in its order of June 17th required the appellants to file the special bond in nowise altered the previously existing situation; by operation of law, the appellees were entitled to the immediate execution of the judgment for possession * * *.

We do not see any modification and, if there was any, it does not necessarily favor the petitioner herein. It must be noted that in the latter case, no bond had been filed either in the justice of the peace court or in the court of first instance. In fact the losers or deforciantis objected to the filing of bond. No wonder this Supreme Court declared the judgment for possession had become executory at the time it was called upon to act in certiorari proceeding's.

The petition is denied. No costs.

Moran, C. J., Ozaeta, Jaranilla, Feria, De Joya, Pablo, Perfecto, and Briones, JJ., concur.

PARAS, J.:

I concur, because the deposit made by the appellant is equivalent to if not better than a supersedeas bond.

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