

CITY OF MANILA REPRESENTED BY MAYOR GEMILIANO C. LOPEZ, JR., PETITIONER, VS. HON. COURT OF APPEALS AND THE ARMY & NAVY CLUB, INC., RESPONDENTS.

G.R. No. 100626. November 29, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

Respondent Court of Appeals is faulted in this action for certiorari for having set aside the order of execution dated June 10, 1991, and the writ of execution issued by Judge Wilfredo Reyes of the Regional Trial Court of Manila in Civil Case No. 91-56335.

This was a complaint for unlawful detainer filed by the City of Manila against private respondent Army and Navy Club for violation of the lease agreement between them over a parcel of land on Roxas Boulevard in the said city. A summary judgment in favor of the petitioner was rendered by the Metropolitan Trial Court of Manila[1] and seasonably elevated to the Regional Trial Court. To stay its execution, ANC filed a supersedeas bond in the amount of P2,700,000.00, which was approved by Judge Reyes.[2] He subsequently affirmed the appealed judgment on June 7, 1991.[3]

On June 10, 1991, the petitioner filed an ex parte motion for execution on the ground that the judgment had already become final and executory under RA 6031. Judge Reyes granted the motion the same day[4] and at 4:00 o'clock that afternoon the writ of execution was served on ANC.

ANC moved to quash the writ on June 11, 1991, but hours later, sensing that the motion could not be acted upon, filed a petition for certiorari and prohibition with the Court of Appeals.

On July 3, 1991, that court issued the questioned decision,[5] prompting the filing of the present petition for certiorari.

The petitioner assails the action of the respondent court and contends that decisions of the regional trial court in cases exclusively cognizable by inferior courts are final and executory under RA 6031. Thus:

Sec. 1. x x x

In cases falling under the exclusive original jurisdiction of municipal and city courts which are appealed to the courts of first instance, the decision of the latter shall be final: Provided, That the findings of facts contained in said decision are supported by substantial evidence as basis thereof, and the conclusions are not clearly against the law and jurisprudence; in cases falling under the concurrent jurisdictions of the municipal and city courts with the courts of first instance, the appeal shall be made directly to the Court of Appeals whose decision shall be final: Provided, however, that the Supreme Court in its discretion may, in any case involving a question of law, upon petition of the party aggrieved by the decision and under rules and conditions that it may prescribe, require by certiorari that the case be certified to it for review and determination, as if the case had been brought before it on appeal. (Emphasis supplied.)

The respondents argue on the other hand that under BP 129 decisions of the regional trial court in cases originating from and within the exclusive jurisdiction of the metropolitan or municipal trial courts are not final but subject to appeal in a petition for review to the Court of Appeals. Such decisions cannot be executed where the period of time for the defendant to perfect his appeal has not yet expired. Thus:

Sec. 22. (BP 129) - Appellate jurisdiction. - Regional Trial Courts shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective territorial jurisdiction. Such cases shall be decided on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Courts. The decision of the RTC in such cases shall be appealable by petition for review to the Intermediate Appellate Court which may give it due course only when the petition shows *prima facie* that the lower court has committed an error of fact or law that will warrant a reversal or modifications of the decision or judgment sought to be reviewed. (Emphasis supplied.)

It is useful at this point to review the distinction between a "final" judgment and one which has become "final and executory."

In *PLDT Employees Union v. PLDT Free Telephone Workers Union*,^[6] the Court observed:

x x x (A)n order or judgment is deemed final when it finally disposes of the pending action so that nothing more can be done with it in the trial court. In other words, a final order is that which gives an end to the litigation x x x when the order or judgment does not dispose of the case completely but leaves something to be done upon the merits it is merely interlocutory.

The case of *Antonio v. Samonte*^[7] elaborated on this matter thus:

A final order of judgment finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, either on the entire controversy or on some definite and separate branch thereof, and concludes them until it is reversed or set aside x x x. Where no issue is left for future consideration, except the fact of compliance or non-compliance with the terms of the judgment or order, such judgment or order is final and appealable.

By contrast, in *Investments, Inc. v. Court of Appeals*,^[8] we declared:

Now, a "final judgment" in the sense just described becomes final "upon expiration of the period to appeal therefrom if no appeal has been duly perfected" or an appeal therefrom having been taken, the judgment of the appellate tribunal in turn becomes final and the records of the case are returned to the Court of origin. The "final" judgment is then correctly categorized as a "final and executory judgment" in respect to which as the law explicitly provides, "execution shall issue as a matter of right." It bears stressing that only a final judgment or order i.e., "a judgment or order that finally disposes of the action of proceeding" can become final and executory.

A judgment becomes "final and executory" by operation of law. Finality of judgment becomes a fact upon the lapse of the reglementary period to appeal if no appeal is perfected. In such a situation, the prevailing party is entitled to a writ of execution and issuance thereof is a ministerial duty of the court.

Both RA 6031 and BP 129 provide that decisions of the regional trial court in its appellate capacity may be elevated to the Court of Appeals in a petition for review. In effect, both laws recognize that such judgments are "final" in the sense that they finally dispose of, adjudicate, or determine the rights of the parties in the case. But such judgments are not yet "final and executory" pending the expiration of the reglementary period for appeal. During that period, execution of the judgment cannot yet be demanded by the winning party as a matter of right.

In the present case, the private respondent had up to June 25, 1991, to appeal the decision of the regional trial

court. The motion for execution was filed by the petitioner on June 10, 1991, before the expiration of the said reglementary period. As the decision had not yet become final and executory on that date, the motion was premature and should therefore not have been granted. Contrary to the petitioner's contention, what the trial court authorized was an execution pending appeal.

While it is true that execution pending appeal is allowed under Rule 39, Sec. 2, of the Rules of Court, this provision must be strictly construed, being an exception to the general rule. The reason allowing this kind of execution must be of such urgency as to outweigh the injury or damage of the losing party should it secure a reversal of the judgment on appeal. Absent any such justification, the order of execution must be struck down as flawed with grave abuse of discretion.[9]

We see no such justification in the case before us.

It is worth remarking that as the case was not tried under the Rule on Summary Procedure, the writ of execution did not even fall under the following Section 18 thereof:

Sec. 18. Appeal. - The judgment or final order, including that rendered under Section 5 hereof, shall be appealable to the appropriate regional trial court which shall decide the same on the basis of the records, in accordance with Section 22 of Batas Pambansa Blg. 129. The decision of the regional trial court in such civil cases shall be immediately executory.

To stay the execution, a supersedeas bond is necessary except where one has already been filed in the lower court. This bond continues to be effective if the judgment of the regional trial court is appealed. But during the pendency of the appeal, the defendant-appellant must continue depositing with the appellate court the payments required in the appealed judgment. The rentals accruing during the pendency of the appeal must be deposited on or before the date stipulated, if there is one, and in the absence thereof, on or before the dates provided for in Sec. 8 of Rule 70. Failure to make such deposits or payments is ground for execution of the judgment.[10]

Since the private respondent in the case at bar has filed a supersedeas bond and the stipulated rental is yearly,[11] execution may issue only when it fails to make the yearly deposit of the rental, and after notice and hearing. Such default has not yet been established.

The Court notes with disapproval the arbitrary manner in which Sheriff Dominador Cacpal and Deputy Sheriff Reynaldo Cordero acted in delivering possession of the leased premises to the petitioner. The evidence shows that they enforced the writ of execution on the same date they received it, forcibly taking out movables from the said premises, including chandeliers, furniture and furnishings, music organs, stereo components, lighting fixtures and computers. They turned off the water, cut off the electricity, and disconnected the telephones. They also unreasonably prevented ANC members from entering the premises to get their personal belongings.

Cacpal and Cordero are hereby sternly reprimanded and warned that a repetition of similar arbitrariness will be dealt with more severely. Their conduct was a clear violation of the requirement that:

Under the Rules of Court the immediate enforcement of a writ of ejectment execution is carried out by giving the defendant notice of such writ, and making a demand that defendant comply therewith within a reasonable period, normally from three (3) to five (5) days, and it is only after such period that the sheriff enforces the writ by the bodily removal of the defendant and his personal belongings.[12]

On the issue of the propriety of a special civil action for certiorari to assail an order of execution pending appeal, this Court has held that -

x x x Although Sec. 1, Rule 65 of the Rules of Court provides that the special civil action of certiorari may only be invoked when "there is no appeal, nor any plain, speedy and adequate remedy in the (ordinary) course

of law" this rule is not without exception. The availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of certiorari where the appeal is not an adequate remedy or equally beneficial, speedy and sufficient. It is the inadequacy - not the mere absence of all other legal remedies and the danger of failure of justice without the writ that usually determines the propriety of certiorari.[13]

While appeal is normally employed to question an order or writ which varies the terms of the decision being executed, it is nevertheless not the sole and exclusive remedy. The special civil action of certiorari and prohibition under Rule 65 was available to the private respondent on-the-allegation that the regional trial court, in issuing the writ of execution, committed grave abuse of discretion and acted beyond its jurisdiction and that the ordinary remedy of appeal was inadequate.

The last question to be resolved is, Assuming that the decision of the regional trial court had already become "final and executory," could the said court order its execution?

The rule is that if the judgment of the metropolitan trial court is appealed to the regional trial court and the decision of the latter is itself elevated to the Court of Appeals, whose decision thereafter became final, the case should be remanded through the regional trial court to the metropolitan trial court for execution.[14] The only exception is the execution pending appeal, which can be issued by the regional trial court under Sec. 8 of Rule 70 or the Court of Appeals or the Supreme Court under Sec. 10 of the same Rule.

As previously observed, the petitioner has shown no weighty justification for the application of the exception. Hence, the respondent court committed no error in reversing the Regional Trial Court of Manila and annulling the writ of execution issued by it on June 10, 1991, pending appeal of its decision.

ACCORDINGLY, the petition is DISMISSED and the challenged decision of the Court of Appeals is AFFIRMED in toto. No costs.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., and Romero, JJ., concur.
Fernan, C.J., on leave.

[1] Rollo, pp. 25-32.

[2] Ibid., p. 51.

[3] Id., pp. 35-46.

[4] id., pp. 140-141.

[5] id., pp. 49-62. Kapunan, J., ponente; Chua & Victor, JJ., concurring.

[6] 97 Phil. 424, per Mr. Justice Cesar Bengzon.

[7] 1 SCRA 1072, per Mr. Justice J.B.L. Reyes.

[8] 147 SCRA 334, per Mr. Justice Andres R. Narvasa.

[9] Valencia v. Court of Appeals, 184 SCRA 561.

[10] De Laureano v. Adil, 72 SCRA 148.

[11] Rollo, p. 26.

[12] *Reformina v. Adriano*, 189 SCRA 723.

[13] *Jaca v. Davao Lumber Co.*, 113 SCRA 107.

[14] Regalado, *Remedial Law Compendium*, Vol. 1, p. 276.

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