

INLAND TRAILWAYS, INC., PETITIONER, VS. COURT OF APPEALS, HON. ROBERTO L. MAKALINTAL, REYNALDO T. NEPOMUCENO AND SOLAR RESOURCES, INC., RESPONDENTS.

G.R. No. 117667. March 18, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

On February 10, 1994, private respondent Solar Resources, Inc. filed a complaint[1] for ejectment against petitioner for failure to pay rent.

On May 26, 1994, the Metropolitan Trial Court of Parañaque, Branch 77, rendered judgment ejecting the petitioner from the leased premises and ordering it to pay the rental arrearages. Petitioner having received a copy of the MTC decision on June 3, 1994, filed a Notice of Appeal on June 7, 1994.

Thereafter, private respondent filed a Motion for Immediate Execution of the decision with the MTC based on Section 8, Rule 70 of the Revised Rules of Court.

Due to petitioner's failure to post the required supersedeas bond to stay execution of the ejectment decision, the MTC issued a Writ of Execution on June 30, 1994 to enforce the said decision. The following day, July 1, 1994, the Sheriff levied on the properties of the petitioner pursuant to the Writ of Execution.

On July 6, 1994, petitioner filed with the Regional Trial Court of Parañaque, Branch 259, a Petition for Certiorari,[2] challenging the writ of execution by the Metropolitan Trial Court for being issued without jurisdiction. While the RTC issued a temporary restraining order enjoining the enforcement of the said writ of execution, it rendered judgment dismissing the Petition for Certiorari filed by the petitioner.

On August 26, 1994, petitioner filed with the Court of Appeals a Petition for Review[3] assailing the decision of the RTC, but on October 27, 1994, the appellate court rendered judgment dismissing the petition.

On November 10, 1994, petitioner brought before us the instant Petition for Review under Rule 45 to set aside the decision of respondent Court of Appeals. Thereupon, we issued a temporary restraining order enjoining the enforcement of the writ of execution issued by the MTC.

In essence, the petitioner vehemently maintains that the MTC acted without jurisdiction when it issued the subject Writ of Execution on June 30, 1994, upon the claim that the Motion for Immediate Execution, which was dated June 23, 1994,[4] was filed by the private respondent one day late, that is, on June 24, 1994. Petitioner contends that when the private respondent received a copy of the MTC decision on June 8, 1994, he had only until June 23, 1994 to file a motion for execution, it being the last day of the fifteen-day period to perfect the appeal and, likewise the last day for the MTC to have jurisdiction over the ejectment case. Hence, the contention is that, when the motion for execution was filed on June 24, 1994, the MTC clearly had lost jurisdiction over the case, and the motion for immediate execution under Section 8, Rule 70 of the Rules of Court, should have been brought before the Regional Trial Court.

Private respondent contends otherwise. According to the private respondent, the motion for execution was filed with the MTC on June 22, 1994 and not June 24, 1994 as erroneously submitted by the petitioner. Hence, the motion was brought well within the private respondent's fifteen-day period to appeal.

We sustain the private respondent in the circumstances.

Apparently, the sole issue presented before us is:

What is the true date of filing of the motion for execution with the MTC? Is it June 22, 1994 as averred by the private respondent or June 24, 1994 as alleged by the petitioner?

This is indubitably a pure issue of fact. It is settled that pure questions of fact may not be the proper subject of an appeal by certiorari under Rule 45 of the Rules of Court. This mode of appeal is generally limited only to questions of law which must be distinctly set forth in the petition,[5] subject only to a few well-defined exceptions not present in the case at bench.

Verily, both the Regional Trial Court and the Court of Appeals, before whom the same question was earlier raised by the petitioner, were unanimous in finding that the Motion for Execution was actually filed with the MTC on June 22, 1994 and not June 24, 1994 as falsely alleged by the petitioner. Respondent Court of Appeals held:

"x x x The Motion for Execution was actually filed on June 22, 1994 x x x. As a matter of fact, a copy of said motion was received by counsel for the petitioner on June 21, 1994. Also, Solar received a copy of the Decision only on June 8, 1994 and not June 3, 1994, as pretended by the petitioner. Computation wise, cut off time therefore of the period to appeal was June 23. Necessarily, the Court [MTC] still has jurisdiction when aforesaid motion was filed."

We see no circumstance to disturb this factual finding of the appellate court. We have consistently and emphatically declared that review of the findings of fact of the Court of Appeals is not a function that this Court normally undertakes inasmuch as such findings, as a rule, are binding and conclusive.[6]

Furthermore, the failure of the petitioner to file with the MTC a supersedeas bond to stay execution, pursuant to Section 8 of Rule 70 rendered the issuance of a Writ of Execution by the MTC not only proper but also unavoidable. Section 8 of Rule 70 on Forcible Entry and Detainer reads:

"Section 8. Immediate execution of judgment. How to stay same. - 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 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 justice of the peace or municipal 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. The supersedeas bond shall be transmitted by the justice of the peace or municipal court, with the other papers, to the clerk of the Court of First Instance to which the action is appealed. x x x"

The requirement for the filing of a supersedeas bond is mandatory and so, if the bond is not filed, the execution of the judgment is a ministerial duty of the court.[7] This rule was reiterated in our recent pronouncement in *San Pedro vs. Court of Appeals*[8] where we held that:

"Judgments in ejectment cases which are favorable to the plaintiff are immediately executory. They can be stayed by the defendant only by: a) perfecting an appeal; b) filing a supersedeas bond; and c) making a periodic deposit of the rental or the reasonable compensation for the use and occupation of the property during

the pendency of the appeal. These requisites must concur."

WHEREFORE, the instant petition is DENIED and the Decision of the Court of Appeals dated October 27, 1994 is hereby AFFIRMED.

Cost against the petitioner.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Docketed as Civil Case No. 8778.

[2] Docketed as Civil Case No. 94-0089.

[3] Docketed as CA-G.R. SP No. 34992.

[4] Annex "C"; Rollo, pp. 36-37.

[5] Section 2; Rule 45 of the Revised Rules of Court.

[6] De la Serna v. Court of Appeals, 233 SCRA 325 [1994] citing Constantino v. Mendez, 209 SCRA 18; Alitalia Airways v. Court of Appeals, 187 SCRA 763; Remalante v. Tibe, et al., 158 SCRA 138; Korean Airlines, Co., Ltd. v. Court of Appeals, 154 SCRA 213; Pan American World Airways, Inc. v. Intermediate Appellate Court, 153 SCRA 521, Hernandez v. Court of Appeals, et al., 149 SCRA 97; Collector of Customs of Manila v. Intermediate Appellate Court, 137 SCRA 3.

[7] Regalado, Florenz D., Remedial Law Compendium, Volume 1, Fifth Revised Edition, pp. 518-519 citing Fuentes v. Bautista, et al., L-31351, October 26, 1973.

[8] 235 SCRA 145 [1994].

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