METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS. HON. REGINO T. VERIDIANO II, PRESIDING JUDGE, RTC–MANILA, BRANCH 31, AND DOMINADOR ONG, RESPONDENTS.

G.R. No. 118251. June 29, 2001

Ponente: DE LEON, JR., J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-118251/

DE LEON, JR., J.:

Before us is a Petition for Review on Certiorari of the Resolution,[1] dated July 13, 1994, of the Court of Appeals[2] which dismissed the petition for certiorari of petitioners assailing the validity of the Order[3] dated June 17, 1994 of the Regional Trial Court of Manila, Branch 4, granting the motion for the issuance of an alias writ of execution of its Decision[4] in Civil Case No. 91880 and the Break-Open Order[5] dated July 12, 1994 issued by the said trial court.

The undisputed facts are as follows:

On September 10, 1973, petitioners filed before the Regional Trial Court of Manila, Branch 4, a Complaint for Reconveyance Based on Constructive Trust With Preliminary Injunction, docketed as Civil Case No. 91880, against respondent China Banking Corporation. Respondent Sunday Machine Works, Incorporated (SMWI, for brevity) was subsequently impleaded in the complaint, being the buyer of the subject property of respondent bank. SMWI filed an answer to the complaint with a counterclaim which is in the nature of an ejectment case.

On December 2, 1977, the trial court rendered a decision in favor of the respondents, the dispositive portion of which states:

> IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered as followed:
>
> (1) Dismissing the plaintiffs' complaint for lack of merit;
>
> (2) Ordering plaintiffs and/or any and all persons claiming under, to surrender and/or turn over possession of the subject properties to the defendant Sunday Machine Works, Inc. to whom they rightfully belong being the owner thereof;
>
> (3) To account for, deliver to and turn over all the rentals equivalent to P6,000.00 per annum to China Banking Corporation covering the period from April 6, 1971 to September 5, 1973 up to the time actual possession thereon is delivered to said defendant, with interests thereon at the legal rate from the aforesaid dates until the full amount shall have been actually delivered to the aforenamed defendant; and
>
> (4) To pay defendant China Banking Corporation and Sunday Machine Works, Inc. the amount of P15,000.00 each by way of attorney's fees it appearing that said defendants were compelled to litigate and secure the services of counsel due to plaintiffs' filing of an unfounded suit.

Defendant Sunday Machine Works, Inc.'s crossclaim against defendant bank is, as it is hereby ordered dismissed for lack of merit.

Likewise, both defendants' counterclaim are, as they are hereby ordered dismissed for insufficiency of evidence.

SO ORDERED.[6]

The petitioners and respondent SMWI both filed their notices of appeal from the said decision. Respondent SMWI questioned the decision on the aspect of the monthly rentals to be paid by petitioners to the said respondent.

Upon motion of private respondent SMWI, the trial court issued an Order in Civil Case No. 91880 granting a writ of execution pending appeal in favor of respondents. On the other hand, the petitioners filed in the Court of Appeals Special Civil Action No. 07572 questioning the said Order of the trial court; however, the same was dismissed by the appellate court. The petitioners' motion for reconsideration was denied on November 16, 1978 but they were allowed to file a supersedeas bond inasmuch as the appellate court found that the counterclaim of respondent SMWI in Civil Case No. 91880 was in the nature of an ejectment case.

The trial court required the petitioners to post a supersedeas bond in the amount of P624,000.00. However, the petitioners questioned the amount by filing a motion for reconsideration. On October 18, 1979, the trial court issued an Order granting the ex-parte motion for execution of respondent SMWI. Consequently, the petitioners filed a petition for certiorari with the Court of Appeals but the same was dismissed on August 14, 1980 for lack of merit. This decision of the appellate court became final on August 31, 1980, after which an entry of judgment was issued.

The petitioners then filed with this Court a petition for review on certiorari docketed as G.R. No. 55080 of the said final decision of the Court of Appeals. In a Minute Resolution, dated December 7, 1987, we dismissed the said petition on the ground that certiorari is not a substitute for late appeal.

On October 28, 1991, or almost four (4) years thereafter, and upon motion of the respondents, the trial court issued an Order granting an alias writ of execution of its decision in Civil Case No. 91880. The motion for reconsideration filed by the petitioners from the said Order was denied by the trial court. In an apparent bid to delay the execution, the petitioners filed another petition for certiorari with the Court of Appeals which likewise dismissed the same on April 14, 1993. The pertinent portion of the Decision[7] of the appellate court reads:

> Technicalities cannot be countenanced to defeat the execution of a judgment for execution is the fruit and end of the suit and is the life of the law. A judgment cannot be rendered nugatory by the unreasonable application of a strict rule of procedure. A perusal of the records of the case reveals that the decision sought to be executed was rendered on December 2, 1977 but was not executed due to the numerous petitions filed by the petitioners before this Court and the Honorable Supreme Court. Significantly, the decision sought to be executed was upheld by the Supreme Court and which decision has become final and executory. Litigation must end sometime and somewhere. An effective and efficient administration of justice requires that, once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must, therefore, guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them. (italics supplied)[8]

Meanwhile, on May 22, 1992, and before the dismissal of the said petition, the respective appeals filed by both petitioners and respondent SMWI from the Decision of the trial court, dated December 2, 1977 in Civil Case No. 91880 were approved. The records, however, could not be elevated for the reason that there were stenographic notes that remained untranscribed.

On February 10, 1994, the private respondents moved for the issuance of an alias writ of execution for the third time on the ground that the legality of the issuance thereof was upheld by the Court of Appeals in its Decision in

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

CA-G.R. SP No. 27197, dated April 14, 1993. On June 17, 1994, the trial court issued the assailed Order granting the said motion, a portion of which reads:

x x x

The court resolves to grant the herein motion as it finds merit in the same.

> It should be noted that the Court of Appeals in its decision dated April 14, 1993, declared that:
>
> "A perusal of the records of the case reveals that the decision sought to be executed was rendered on December 2, 1977 but was not executed due to the numerous petitions filed by the petitioners before this court and the honorable Supreme Court. Significantly, the decision sought to be executed was upheld by the Supreme Court and which decision has become final and executory."[9]
>
> The above-quoted decision of the Court of Appeals has become final and executory as evidenced by an Entry of Judgment dated October 14, 1993.
>
> Furthermore, as early as December 7, 1987, the Supreme Court in its resolution (p. 763 of records) ruled that:
>
> "xxx Certiorari cannot be a substitute for a late appeal xxx."
>
> WHEREFORE, in view of the foregoing, the herein motion is hereby granted.
>
> Let a writ of execution issue against the plaintiffs in this case, the same to be executed by the Deputy Sheriff of this branch, Cezar Javier.
>
> SO ORDERED.[10]

On July 12, 1994, the trial court issued the assailed Break-Open Order[11] in the same case, stating that:

> WHEREFORE, the sheriff of this Court Cezar C. Javier is hereby ordered to use necessary force or to break open any gates/doors that cause the delay in the implementation of the writ of execution issued by this Court.
>
> SO ORDERED.

On the following day, July 13, 1994, petitioner Joseph Cochingyan, Jr. filed with the Court of Appeals a Petition for Certiorari with Preliminary Injunction and a Temporary Restraining Order, docketed as CA-G.R. SP No. 34488, seeking to restrain the respondent Judge and the sheriff from implementing the Order of June 17, 1994 and the Break-Open Order of July 12, 1994. In a Resolution[12] dated July 13, 1994, the Court of Appeals dismissed the petition for being insufficient in form and substance inasmuch as eighteen (18) of the pleadings and documents mentioned in the petition, which appear to be pertinent to the resolution of the same, have not been attached thereto.

Hence, the instant petition.

The petitioners raised the following assignment of errors:

> I
>
> THE RTC ERRED IN ISSUING IN THE MAIN CASE (CIVIL CASE NO. 91880) THE JUNE 17, 1994 ORDER FOR WRIT OF EXECUTION AND THE JULY 12, 1994 BREAK-OPEN ORDER BECAUSE (1) ITS DECEMBER 2, 1977 DECISION IN THE MAIN CASE IS STILL PENDING APPEAL; (2) PETITIONERS STAYED EXECUTION OF THAT JUDGMENT UNDER SECTION 8, RULE 70, RULES OF COURT (A) BY PERFECTING APPEAL FROM SAID DECISION, (B) BY POSTING SUPERSEDEAS BOND, AND (C) BY RELIGIOUSLY MAKING PERIODIC RENTAL PAYMENTS; AND (3) THE RTC UPON THE PERFECTION OF THE APPEAL HAD ALREADY LOST JURISDICTION OVER THE CASE

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

AND AUTHORITY TO ISSUE ANY WRIT OF POSSESSION OR BREAK-OPEN ORDER.

II

THE COURT OF APPEALS ERRED (1) IN DISMISSING THE PETITION IN CA-G.R. SP NO. 34488 DESPITE THE FACT THAT THE SAME COMPLIED WITH SECTION 2 (A), RULE 6, OF THE REVISED INTERNAL RULES OF THE CA (RIRCA) AS PETITIONERS APPENDED A CERTIFIED TRUE COPY OF THE CHALLENGED JUNE 17, 1994 RTC ORDER AND THE TRUE COPIES OF THE PLEADINGS AND OTHER MATERIAL PORTIONS OF THE RECORDS; AND (2) IN THUS ALLOWING THE RTC'S WRIT OF EXECUTION AND BREAK-OPEN ORDER AND CAUSING PETITIONERS IRREPARABLE DAMAGE AND PREJUDICE.

The petitioners assail the trial court's issuance of the writ of execution and the break-open order mainly on the ground that the said orders cannot yet be issued for the reason that their appeal in Civil Case No. 91880 is still pending with the Court of Appeals. Likewise, they contend that the execution of the judgment is stayed by their filing of a supersedeas bond and by paying monthly rental deposits. Moreover, the trial court lost jurisdiction by virtue of the perfection of the appeal with the Court of Appeals. Lastly, petitioners assail the Resolution of the Court of Appeals which dismissed their petition on a mere technicality, as erroneous.

On the other hand, respondents maintain that the trial court did not err in issuing the assailed Orders inasmuch as the Decision dated December 2, 1977 in Civil Case No. 91880 in favor of the respondents has become final due to the petitioners' abandonment of their appeal. Private respondents likewise maintain that the Court of Appeals properly dismissed the petition for certiorari questioning the assailed Orders on the ground that certain relevant documents were not attached thereto. They also submit that the petitioners cannot anymore question the same for the reason that the evaluation of the sufficiency of the documents appended to the petition is a question of fact which is not allowed in the instant petition.

In an ejectment case, the winning plaintiff (in the case at bar, the counter-claimant), upon his motion, is entitled to an immediate execution of the judgment in his favor. In order for the defendant to stay the execution thereof during the pendency of his appeal, he must perfect his appeal, file a sufficient supersedeas bond approved by the trial court, and deposit with the appellate court the amount of rent due from time to time.[13] In the case at bar, the private respondents procured a favorable judgment thereby entitling them to an immediate execution thereof. However, the petitioners moved to stay its execution by complying with the requirements for the suspension thereof. The question now presented before us is whether the judgment is ripe for execution inasmuch as petitioners have already abandoned their appeal thereby making the trial court's Decision of December 2, 1977 final and executory and the bond and deposits filed as ineffectual in staying the execution of the same.

From the facts presented before us, it appears that this case has been pending litigation for twenty eight (28) years from the time it was filed with the trial court in 1973. Meanwhile, the appeal by the petitioners from the adverse Decision of the trial court on December 2, 1977 has been pending with the Court of Appeals for twenty three (23) years. The private respondents moved three (3) times to execute the December 1977 judgment of the trial court but to no avail. We also take note of the fact that the petitioners' appeal was approved only in 1992, or fourteen (14) years after the filing of the notices of appeal by both parties in 1978. From 1993 up to the present, the appeal has not progressed from its present status for the simple reason that certain stenographic notes remain untranscribed.

This delay we cannot tolerate.

We have already ruled that an appellant's gross inaction for a period which exceeded one (1) year constitutes a ground for the dismissal of the appeal.[14] In the instant petition, the delay in the appeal has reached almost nine

(9) years counting from the time it was approved up to this date and without including the time the notice of appeal was filed in 1978 up to the time of its approval in 1992. In Philippine National Construction Corp. vs. Court of Appeals,[15] we reiterated a long settled jurisprudence:

> xxx while it is the duty of the clerk of the lower court to transmit the records of an appealed case to the appellate court, it is also the duty of the appellant to make the clerk of court act, and the failure of the clerk to perform his legal duty is no justification for the appellant's failure to perform his, and he cannot justify his failure by saying that the fault was that of the clerk of the lower court (italics supplied).

Quoting Fagtanac vs. Court of Appeals,[16] the Court went on to hold that:

> xxx A rule long familiar to practitioners in this jurisdiction is that it is the duty of the appellant to prosecute his appeal with reasonable diligence. He cannot simply fold his arms and say that it is the duty of the Clerk of Court of First Instance under the provisions of Section 11, Rule 41 of the Rules of Court, to transmit the record on appeal to the appellate court. It is the appellant's duty to make the Clerk act and, if necessary, procure a court order to compel him to act. He cannot idly sit by and wait till this is done. He cannot afterwards wash his hands and say that delay in the transmittal of the record on appeal was not his fault. For, indeed, this duty imposed upon him was precisely to spur on the slothful (italics suplied).

We find that the petitioners have not been reasonably diligent in pursuing their appeal. For this reason, the petitioners are deemed to have abandoned their appeal of the Decision dated December 2, 1977 of the trial court which has been pending with the Court of Appeals since 1978. While there was no formal resolution by the appellate court declaring the appeal as dismissed for failure to prosecute, we find this issue to have been submitted by both parties just the same for this Court's resolution. It should be noted that in their pleadings both parties raised and argued on the issue of whether the appeal is deemed abandoned for purposes of deciding the legality of the issuance of the writ of execution and the Break-Open Order in favor of the respondents.

In the case at bar, the petitioners' unreasonable delay in pursuing their appeal is inexcusable inasmuch as we have not found from the records any injunctive order from this Court enjoining the Court of Appeals from proceeding with the appeal. The only time the approval of the records on appeal submitted by the parties was formally held in abeyance was when respondent SMWI filed a motion to that effect which motion was granted through an Order[17] dated April 14, 1978. According to the Order, said intermission was conditioned upon the pendency of the petition for certiorari before the Court of Appeals in CA-G.R. No. 07572. When the appellate court rendered a decision in the said case on November 16, 1978, there was no more hindrance to the approval of the records on appeal.

While private respondent SMWI is ready to accept the fact that it has abandoned its appeal, the petitioners are not. But from the facts presented before us, the petitioners have likewise impliedly abandoned their appeal. Due to the numerous cases and motions filed by the petitioners, specially against the Orders of the trial court granting the issuance of a writ of execution, their appeal with the Court of Appeals has suffered prolonged and unjustifiable delay. With their inclination to file a petition for every slightest interlocutory order issued by the lower court, the petitioners, wittingly or unwittingly, have forgotten to litigate with vigilance their appeal before the appellate court. Thus, it seems that the petitioners are not concerned in winning a favorable decision in the main case but are more interested in delaying the execution of the judgment in favor of the respondents.

The petitioners claim that the approval of their supersedeas bond and their monthly rental deposits are enough proofs that their appeal is still pending litigation. The petitioners dispute any alleged intent on their part to abandon their appeal by filing motions for the completion of the records to be submitted to the Court of Appeals.

From the filing of their notice of appeal, the petitioners did not take the necessary steps to expedite the approval

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

of their appeal by the trial court. It was only after fourteen years (14) from the filing of their notice of appeal, or in 1992, that their appeal was approved by the trial court. From there, the problem of completing the records arose. The petitioners filed several motions to speed up the elevation of the records to the appellate court by trying to have certain notes transcribed. But, the efforts to locate the stenographers who typed the notes or to appoint a stenographer for the purpose of transcribing the same were made only in 1992.[18] In response to said motions, the trial court ordered the parties to inform it of the steps that the parties would take with respect to the untranscribed notes. However, the records do not show that any action was taken by the petitioners up to the present. To hasten the appeal, petitioners could have filed a motion to dispense with the consideration of said untranscribed testimonies or a motion to retake the testimonies, if necessary. The remedies are available to reasonably diligent appellants. Unfortunately, the petitioners were short of being so.

With respect to the filing of the supersedeas bond and monthly rental deposits, we find such actions not conclusive of the petitioners' intent to pursue their appeal. It must be remembered that the purpose of the supersedeas bond and the monthly rental deposits is to stay the execution of the judgment. It does not have any relevance whatsoever to the appeal pending in the Court of Appeals. They filed said requirement in order to stay the execution of the Order allowing the execution of the December 1977 Judgment, and not as a requirement for the progress of their appeal.

Inasmuch as there is in effect no more appeal involving the December 1977 Decision, the same has become final and executory. Pursuant to Section 1, Rule 39 of the Revised Rules of Civil Procedure, the execution of a Decision shall therefore issue as a matter of right, on motion of the respondents.

In view of the foregoing, it is no longer necessary to discuss whether or not the Court of Appeals erred in dismissing the petition for certiorari for being insufficient in form and substance.

WHEREFORE, the petition is DENIED for lack of merit, with costs against the petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

---

[1] Penned by Associate Justice Conchita Carpio Morales, and concurred in by Associate Justices Jaime M. Lantin and Ramon U. Mabutas, Jr., in CA-G.R. SP No. 34488; Rollo, pp. 123-124.

[2] Special Twelfth Division.

[3] Penned by Judge Vetino E. Reyes; Rollo, pp. 112-113.

[4] Penned by Judge Serafin Cuevas (a former Associate Justice of the Supreme Court); Rollo, pp. 192-213.

[5] Rollo, p. 114.

[6] Rollo, p. 6.

[7] Penned by then Associate Justice Justo P. Torres (now a retired Associate Justice of the Supreme Court) and concurred in by Associate Justices Reynato S. Puno (now an Associate Justice of the Supreme Court) and Pacita Canizares-Nye; Rollo, pp. 83-90.

[8] Rollo, pp. 89-90.

[9] Supra, note 3.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

[10] Rollo, p. 113.

[11] Supra, note 5.

[12] Supra, note 1.

[13] Revised Rules of Civil Procedure, Rule 70, Section 19.

[14] Estella v. Court of Appeals, 185 SCRA 732, 737 (1990).

[15] 272 SCRA 576, 579 (1997).

[16] 22 SCRA 1227, 1231 (1968).

[17] Court of Appeals Rollo, p. 37.

[18] Court of Appeals Rollo, pp. 44-46.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.