

**HERMINIA ACBANG, PETITIONER, VS. HON. JIMMY H.F. LUCZON, JR.,
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 01, SECOND
JUDICIAL REGION, TUGUEGARAO CITY, CAGAYAN, AND SPOUSES
MAX...**

G.R. No. 164246. January 15, 2014

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

To stay the immediate execution of the judgment in an ejectment case, the defendant must perfect an appeal, file a supersedeas bond, and periodically deposit the rentals becoming due during the pendency of the appeal. Otherwise, the writ of execution will issue upon motion of the plaintiff.

The Case

By petition for prohibition, the petitioner, a defendant-appellant in Civil Case No. 6302 of the Regional Trial Court (RTC), Branch 1, in Tuguegarao City, Cagayan, assails the order issued on March 31, 2004 by respondent Judge Jimmy H.F. Luczon, Jr. (Judge Luczon) granting the motion for execution against her and her co-defendants on the ground that she had not posted any supersedeas bond to stay the execution.[1]

Antecedents

Respondent Spouses Maximo and Heidi Lopez (Spouses Lopez) commenced an ejectment suit against the petitioner, her son Benjamin Acbang, Jr. and his wife Jean (Acbangs) in the Municipal Trial Court (MTC) of Alcala, Cagayan (Civil Case No. 64). The defendants did not file their answer. Thus, the MTC rendered its decision on January 12, 2004 in favor of the Spouses Lopez, disposing thusly:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and as against defendants as follows:

- a) The plaintiffs are the true and lawful owners of the land covered by Transfer Certificate of Title No. T-139163.
- b) The defendants are directed to vacate immediately the land in suit which is covered and described in TCT No. T-139163, copy of the title is marked as Annex "A" of the complaint.
- c) The defendants are hereby ordered to pay jointly and severally to the plaintiffs the amount of P5,000.00 as attorney's fees.
- d) The defendants are ordered to pay the costs.[2]

The petitioner appealed to the RTC.

In the meantime, the Spouses Lopez moved for the execution of the decision pending appeal in the RTC,[3] alleging that the defendants had not filed a supersedeas bond to stay the execution. The Acbangs opposed the

motion for execution pending appeal,[4] insisting that the failure of the Spouses Lopez to move for the execution in the MTC constituted a waiver of their right to the immediate execution; and that, therefore, there was nothing to stay, rendering the filing of the supersedeas bond unnecessary.

In his assailed order dated March 31, 2004, Judge Luczon granted the motion for immediate execution, viz:

The Motion for Execution is hereby granted, there being no Motion to Fix Supersedeas bond filed by [the Acbangs] as of the date of the filing of the Motion.

The opposition of [the spouses Lopez] on the appeal taken by [the Acbangs] is hereby denied because under the rules the losing [sic] party may appeal the case even if they did not post their supersedeas [sic] bond. [The spouses Lopez] then are given 15 days from today within which to file their memorandum and [the Acbangs] are also given similar period to file their reply on the memorandum of [the spouses Lopez]. After which (sic) the case shall be submitted for decision with or without the memorandum from the parties.

SO ORDERED.[5]

The petitioner moved for reconsideration,[6] stressing that the filing of the supersedeas bond was for the purpose of staying the execution; and that she as a defendant would not be placed in a position to stay the execution by filing a supersedeas bond unless she was first notified of the filing of the motion for immediate execution.

The RTC denied the petitioner's motion for reconsideration on April 26, 2004,[7] viz:

The Motion for Reconsideration filed by defendant Herminia Acbang is denied, for the reason that the Court finds no cause or reason to recall the order granting appellees' motion for execution.

There was no supersedeas bond filed by [the Acbangs], so the execution of the decision is proper.

As the office of the supersedeas bond is to stay the execution of the decision, the same should be filed before the Motion For Writ of Execution is filed.

IT IS SO ORDERED.[8]

The petitioner then brought the petition for prohibition directly in this Court on July 2, 2004, submitting that Judge Luczon thereby committed grave error in granting the motion for immediate execution of the Spouses Lopez without first fixing the supersedeas bond as prayed for by the Acbangs.

It appears that the RTC rendered its decision in Civil Case No. 6302 on July 30, 2004,[9] finding that the petitioner had not received the summons, and that the sheriff's return did not show the steps taken by the server to insure the petitioner's receipt of the summons, like the tender of the summons to her; that the non-service of the summons on her resulted in the MTC not acquiring jurisdiction over her; and that the MTC's decision in Civil Case No. 64 dated January 14, 2004 was void as far as she was concerned. Thus, the RTC disposed as follows:

WHEREFORE, in the light of the foregoing, the Court declares that the decision rendered by the Municipal Trial Court of Alcala, Cagayan dated January 14, 2004 is null and void, as far as defendant Herminia Acbang is concerned.

The MTC of Alcala is Ordered to reopen the case and served [sic] the summons to Herminia Acbang and conduct the proceedings without any delay.

It is so adjudged.[10]

In the petition, the petitioner insists that the Spouses Lopez's motion for execution pending appeal should be filed before she posted a supersedeas bond. She argues that even if the MTC's decision was immediately executory, it did not mean that a motion for execution was dispensable; and that the Spouses Lopez waived their right to the

immediate execution when they did not file a motion for execution in the MTC.

On the other hand, the Spouses Lopez claim that the issuance of a writ of execution was ministerial because of the defendants' failure to file a supersedeas bond prior to or at the time of the filing of their notice of appeal in the MTC.

Ruling

Section 19, Rule 70 of the 1997 Rules of Civil Procedure reads:

Section 19. Immediate execution of judgment; how to stay same. — If judgment is rendered against the defendant, execution shall issue immediately upon motion unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff 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 determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial 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 of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the papers, to the clerk of the Regional Trial Court to which the action is appealed.

All amounts so paid to the appellate court shall be deposited with said court or authorized government depository bank, and shall be held there until the final disposition of the appeal, unless the court, by agreement of the interested parties, or in the absence of reasonable grounds of opposition to a motion to withdraw, or for justifiable reasons, shall decree otherwise. Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the appellate court, upon motion of the plaintiff, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on the merits.

After the case is decided by the Regional Trial Court, any money paid to the court by the defendant for purposes of the stay of execution shall be disposed of in accordance with the provisions of the judgment of the Regional Trial Court. In any case wherein it appears that the defendant has been deprived of the lawful possession of land or building pending the appeal by virtue of the execution of the judgment of the Municipal Trial Court, damages for such deprivation of possession and restoration of possession and restoration of possession may be allowed the defendant in the judgment of the Regional Trial Court disposing of the appeal.

Here, there was no indication of the date when the petitioner filed her notice of appeal. Her petition stated simply that she had filed a "timely notice of appeal which was given due course without the respondents filing a motion for execution in the Municipal Trial Court of Alcala, the court a quo." [11] On the other hand, the Spouses Lopez filed in the RTC their motion for execution pending appeal on February 19, 2004.

The ruling in *Chua v. Court of Appeals* [12] is instructive on the means of staying the immediate execution of a judgment in an ejectment case, to wit:

As a general rule, a judgment in favor of the plaintiff in an ejectment suit is immediately executory, in order to prevent further damage to him arising from the loss of possession of the property in question. To stay the immediate execution of the said judgment while the appeal is pending the foregoing provision requires that the following requisites must concur: (1) the defendant perfects his appeal; (2) he files a supersedeas bond; and (3) he periodically deposits the rentals which become due during the pendency of the appeal. The failure of the defendant to comply with any of these conditions is a ground for the outright execution of the judgment, the duty of the court in this respect being "ministerial and imperative." Hence, if the defendant-appellant perfected

the appeal but failed to file a supersedeas bond, the immediate execution of the judgment would automatically follow. Conversely, the filing of a supersedeas bond will not stay the execution of the judgment if the appeal is not perfected. Necessarily then, the supersedeas bond should be filed within the period for the perfection of the appeal.

In short, a judgment in favor of the plaintiff in an ejectment suit is immediately executory, but the defendant, to stay its immediate execution, must: (1) perfect an appeal; (2) file a supersedeas bond; and (3) periodically deposit the rentals becoming due during the pendency of the appeal.

Although the petitioner correctly states that the Spouses Lopez should file a motion for execution pending appeal before the court may issue an order for the immediate execution of the judgment, the spouses Lopez are equally correct in pointing out that they were entitled to the immediate execution of the judgment in view of the Acbangs' failure to comply with all of the three abovementioned requisites for staying the immediate execution. The filing of the notice of appeal alone perfected the appeal but did not suffice to stay the immediate execution without the filing of the sufficient supersedeas bond and the deposit of the accruing rentals.

The foregoing notwithstanding, the decision of the RTC favored the petitioner because it declared the judgment of the MTC void as far as she was concerned for lack of jurisdiction over her person. The RTC thus directed the MTC to cause the service of the summons on her and to conduct further proceedings without any delay. In effect, the supervening declaration of the nullity of the judgment being sought to be executed against her has rendered moot and academic the issue in this special civil action as far as she was concerned.

WHEREFORE, the Court DISMISSES the petition for prohibition for being moot and academic, without pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Villarama, Jr., and Reyes, JJ., concur.

[1] Rollo, p. 17.

[2] Id. at 40.

[3] Id. at 12-13.

[4] Id. at 14-16.

[5] Id. at 17.

[6] Id. at 18-20.

[7] Id. at 31.

[8] Id. at 21.

[9] Id. at 40-42.

[10] Id. at 42.

[11] Id. at 5.

[12] G.R. No. 113886, February 24, 1998, 286 SCRA 437, 444-445.

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