

PURIFICACION PASCUA, PETITIONER, VS. HONORABLE PASTOR ENDENCIA, ETC., ET AL., RESPONDENTS.*G.R. No. 47897. October 11, 1941*

Ponente: OZAETA, J.

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This is a petition for certiorari to annul an order issued by the respondent judge requiring the petitioner to file a bond of P720 to answer for damages and back rentals of certain premises belonging to the respondent Camila de Liza and occupied by the petitioner.

Said order was entered in civil case No. 57647 of the Court of First Instance of Manila in an unlawful detainer case appealed thereto from the municipal court in which the herein respondent Camila de Liza was the plaintiff and the herein petitioner Purificacion C. Pascua, the defendant. In the municipal court, judgment was entered ordering the defendant to vacate the premises in question and to pay to the plaintiff P200 a month as rent from June 1, 1940, until she vacates the said premises. The plaintiff, on the other hand, was ordered to pay to the defendant the sum of P350 for the improvements introduced by her in said premises, which sum should be deducted from the accrued rentals. The defendant appealed from said judgment to the Court of First Instance but failed and refused to file the special bond required by section 8 of rule 72 to cover damages and the back rentals, claiming that there was no need for her to do so in view of her approved counterclaim of P350 against the plaintiff. Thereupon the plaintiff moved the respondent judge to issue a writ of execution, and said judge issued the order herein complained of.

The only question to decide is whether or not the respondent judge exceeded his jurisdiction in requiring the petitioner to file the special bond above referred to notwithstanding the existence of a counterjudgment against the respondent Camila de Liza in the sum of P350.

We find that the order of the respondent judge is in accordance with section 8 of rule 72, which provides in part as follows:

"Sec. 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 down to the time of the final judgment in the action, and unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance 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, or, in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment. * * *"

The respondent judge held that the counterclaim of P350 awarded to the defendant cannot serve the purpose of the bond required by said section, the object of which is to secure the plaintiff against any damages that the defendant may cause to plaintiff's property during the pendency of the appeal. In so holding, the respondent judge

committed no abuse of discretion, in our opinion. Under the law, it is not enough that the defendant deposit in court the monthly rents as they fall due; she is also required to file a bond to secure the payment of the rents due, damages, and costs. These are not adequately covered by defendant's counterclaim of P350. The order of the respondent judge is also sanctioned by our decision in *Igama and Reyes vs. Soria and Nepomuceno*, 42 Phil., 11.

The order complained of is affirmed, with costs. So ordered.

Abad Santos, Diaz, Moran and Horrilleno, JJ., concur.

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