

EDWARD HEIMAN, PETITIONER, VS. GUILLERMO CABRERA, JUDGE OF MUNICIPAL COURT OF MANILA, AND R. SUZUKI, RESPONDENTS.

G.R. No. 48823. September 29, 1942

Ponente: OZAETA, J.

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OZAETA, J.:

This is a petition for certiorari to annul an order of the respondent judge in civil case No. 11-176 of the Municipal Court of Manila, entitled "R. Suzuki, plaintiff, vs. Edward Heiman, defendant."

It appears that on July 27, 1942, the plaintiff in said case filed a complaint for damages arising from the failure of the defendant to return to the plaintiff one overcoat and one spring coat which the latter had entrusted to the former for repair. The total value of said coats was alleged to be P284.80, which the plaintiff claimed, plus 25 per cent thereof, or P71.20, as attorney's fees, with interest at 6 per cent per annum from the date of the filing of the complaint. The respondent judge set the case for hearing on July 30, 1942, at 9 a. m.

On July 29, 1942, the defendant answered the complaint, alleging that the estimated value of the overcoat and the spring coat was P45 and P30, respectively, and that said articles were stolen from defendant's establishment on March 29, 1942, by one Zosimo Abanto, who subsequently admitted his guilt of robbery before the city fiscal and against whom criminal case No. 65166 was filed in the Court of First Instance of Manila. Together with his answer the defendant filed an "urgent motion" for the postponement of the trial on the ground that the defendant had been subpoenaed by the Court of First Instance of Manila to appear and testify before it on July 30, 1942, at 9.30 a. m., in the said criminal case against Zosimo Abanto. The respondent judge disregarded said motion and proceeded to hear and receive the evidence for the plaintiff on July 30, 1942, and immediately thereafter rendered judgment in favor of the plaintiff, granting all that was prayed for in his complaint, including the attorney's fee of P71.20.

Immediately after the rendition of said judgment on July 30, 1942, counsel for the plaintiff presented an "urgent petition" for the execution of said judgment, alleging:

"That the above claim of the plaintiff is not secured by any mortgage or pledge on the part of the defendant and considering the well reasoned decision of this Honorable Court in favor of the plaintiff, the latter therefore invoked Rule 39, section 2 of the Rules of Court in his favor praying for the immediate issuance of a Writ of Execution, unless the defendant offers a sufficient supersedeas bond condition for the performance of the judgment of this court, if said defendant intends to take an appeal of the decision of this Honorable Court."

Said "urgent petition" was heard on August 1, 1942, and was granted by the respondent judge on the same date over the strenuous objection of the attorney for the defendant, in an order which reads as follows:

"Vista la morion urgente del demandante, sometida este dia, pidiendo que se expida una orden de ejecucion de la decision dictada el 30 de Julio de 1942, por la razon de que la reclamacion del demandante no esta garantizada por ninguna hipoteca o prenda de parte del demandado, y de spues de oir a ambas partes, el Juzgado estima dicha motion, por estar bien fundada.

"Por la preaente se requiere al demandado que, dentro de siete (7) dias contados desde esta fecha, preste a favor del demandante Una fianza en la suma de P450 para responder del pago de la sentencia recaida en esta causa, o de lo contrario, se expedira la ejecucion pedida."

Without filing a supersedeas bond, the defendant perfected an appeal and instituted the present certiorari proceeding in this Court to annul said order, contending that the same was issued without authority of law and with grave abuse of discretion.

Rule 39 of the Rules of Court, which refers to the execution, satisfaction, and effect of judgments in Courts of First Instance, in its section 2 provides the following :

"SEC. 2. Execution, discretionary.—Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the special order shall be included therein. Execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part."

Without deciding at this time whether or not the above-quoted section, in relation to section 19 of Rule 4, is applicable to inferior courts, we shall proceed to inquire into the question of the alleged abuse of discretion.

Even a Court of First Instance is not authorized to order the execution of its judgment before the expiration of the time to appeal unless there are good reasons therefor, which must be stated in a special order. Such premature, discretionary execution is an exception to the rule stated in section 1 of Rule 39. The discretion granted is not absolute but dependent upon the existence of good reasons. Hence this question confronts us: Did the respondent judge state good reasons for ordering the immediate execution of its judgment?

The only reason stated by him in his order is that "the claim of the plaintiff is not secured by any mortgage or pledge on the part of the defendant." It must be borne in mind that the claim of the plaintiff is one for damages and for attorney's fees. The defendant denies his liability for the damages and also disputes the amount thereof. And as to the attorney's fees, the only basis of the claim as alleged in the complaint is that "defendant forces plaintiff to file this complaint." It cannot, therefore, be deduced from the facts and circumstances of the case that the appeal is frivolous, or that it is taken merely for the purpose of delay. As a matter of fact no such intimation is made either in the motion of the plaintiff or in the order of the court. The mere fact that the claim is not secured by any pledge or mortgage, without any allegation by the plaintiff and a finding by the court that the defendant is insolvent or that he has disposed or is about to dispose of his properties so as to render the judgment against him ineffectual, does not warrant the apprehension that the judgment on such claim may not be collected in due time. In other words, it is not a good reason. Indeed, if the trial court may order the immediate execution of its judgment on the sole ground that it is not secured by any pledge or mortgage, that would be tantamount to converting an exception into a general rule. Every judgment upon an unsecured claim would then be. subject to immediate execution as a matter of course notwithstanding the general rule established by both section 18 of Rule 4, governing inferior courts, and. section 1 of Rule 39, governing Courts of First Instance, that execution shall issue upon a final judgment after the time for perfecting an appeal has expired and no appeal has been perfected.

Upon all the facts and circumstances oi the case, we are constrained to hold that the respondent judge acted without legal authority and with abuse of discretion in ordering the execution of his judgment pending appeal unless the defendant gave a supersedeas bond, even assuming without deciding that section 2 of Rule 39 is applicable to inferior courts.

The order complained of is hereby set aside, with costs. So ordered.

Yulo, C. J., Moran, and Bocobo, JJ., concur.

PARAS, J.:

I concur in the result.

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