

RONALD PECK, PETITIONER, VS. THE HON. ROBERTO CONCEPCION AND INES E. VDA. DE MONTENEGRO, RESPONDENTS.

G.R. No. 49140. June 26, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

Certiorari to annul an order of the respondent judge of March 6, 1944, in civil case No. 1550 of the Court of First Instance of Manila.

That case is an appeal from the judgment of the municipal court of Manila which reads as follows:

"Judgment is hereby rendered for plaintiff and against defendant for the restitution of the premises described in the complaint and for a monthly rental of P55 from October, 1943, up to the date of restitution, and for costs.

"However, in line with the provisions of Executive Order No. 212 of the Philippine Executive Commission, defendant is hereby given three (3) months from October 1, 1943, within which to vacate the premises herein in question.

So ordered.

"Manila, October 20, 1943."

During the pendency of the appeal the herein petitioner (defendant below) failed to pay to the plaintiff or to deposit in court the sum of P55 as rental for the month of January 1944 within the first ten days of said month, he having done so only on the 19th of January; whereupon the respondent Mrs. Montenegro (plaintiff below) moved for the immediate execution of the judgment appealed from under section 8 of Rule 72, which motion was granted by the respondent judge. The petitioner then filed a "motion for reconsideration and petition for extension for issuance of execution," alleging that under the rule above cited he had until February 10 within which to deposit the rental corresponding to the month of January and representing that "should our motion for reconsideration be denied the execution should not issue till after March 31, 1944, as it will reasonably give justice to the defendant who has already paid his rental until March 31, 1944." Said motion and petition were denied by the respondent judge upon the ground that the issuance of the writ of execution was mandatory and that he had no authority to grant the extension of time prayed for by the defendant.

The question raised is the interpretation of the following provisions of section 8 of Rule 72:

"If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected * * * 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 10th 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 petitioner contends that since the judgment of the municipal court did not expressly find that there existed a

contract between the parties, the monthly rental required in said judgment to be paid must be considered as "the reasonable value of the use and occupation of the premises" and that, therefore, it should be paid or deposited within the first ten days of the month succeeding that to which it corresponded, as provided in the last clause of section 8 of Rule 72 above quoted. The respondents, on the other hand, contend that since the complaint for unlawful detainer alleged the existence of a written contract of lease between the parties on a month-to-month basis at a monthly rental of P55, payable in advance, which contract, attached to the record, has not been denied by the petitioner, the fact that the judgment of the municipal court for the monthly rental was in accordance with said contract made it obligatory upon the defendant to pay or deposit said rental in accordance with said contract.

We find respondents' contention to be correct. To assume that there was no contract between the parties and that the monthly rental of P55 mentioned in the judgment of the municipal court was merely based on a finding as to the reasonable value of the use and occupation of the premises, is not only unwarranted by the language of the judgment itself but contrary to the record before the respondent judge. As a matter of fact, with the exception of the months of November 1943 and January 1944, the petitioner has been depositing the monthly rental in question in advance within the first ten days of each month, and the petitioner alleged as an excuse for the delay of the deposit corresponding to the month of January 1944 "that counsel was out in the provinces, and defendant wanted to pay to the plaintiff directly the rental for January 1944, which rental was refused." This shows that the petitioner himself understood that it was his obligation to pay or deposit the monthly rental in advance in accordance with the contract. The respondent Mrs. Montenegro did not invoke the failure of the petitioner to pay or deposit in advance the rent corresponding to the month of November 1943 because at that time the three months' grace granted to the petitioner in the judgment of the municipal court had not yet expired. The trial court did not find that the respondent Mrs. Montenegro had refused to accept payment of the January rent, and such allegation is not relied upon by the petitioner in this instance.

In forcible entry and unlawful detainer cases under Rule 72, the judgment of the municipal court is immediately executory unless the conditions precedent for the stay of execution specified in section 8 of said Rule are complied with; and upon failure of the defendant to comply with any of said conditions, it is mandatory upon the court to issue the writ of execution. (*Lapuz vs. Court of First Instance of Pampanga*, 46 Phil., 77; *Guillena vs. Borja and Sumanpan*, 53 Phil., 379.) In the first case the trial court refused to issue the writ of execution after the defendants had failed to pay or deposit the rent required in the judgment, but granted them five days within which to deposit it with the clerk of court. This Court by mandamus ordered the trial court to issue the writ of execution applied for by the plaintiff. In the second case the trial court refused to issue the writ of execution after the defendant had failed to deposit the monthly rental, on the ground that the improvements on the premises in question had been made by the defendant, and allowed the latter to remain in the premises upon filing a bond of P1,000. This Court set aside that order, declaring that the law "insofar as it provides that failure to make this payment shall cause the judgment to be executed, is mandatory and cannot be evaded. The court has no discretion to give or not to give this effect to such failure of payment."

Under section 8 of Rule 72 the rental of the premises in question must be paid or deposited during the pendency of the appeal "from time to time under the contract, if any," and in the absence of a contract the reasonable value of the use and occupation of the premises as found by the court must be paid on or before the 10th day of the next succeeding month. Since in the instant case there is a contract between the parties for the payment of the rent of P55 in advance within the first ten days of each month, and since the petitioner as defendant below failed to pay or deposit the rent for the month of January 1944 on or before the 10th day of said month, the respondent judge had no alternative but to grant the petition for execution prayed for by his correspondent Mrs. Montenegro.

The order complained of is affirmed, the petition for certiorari is dismissed, and the writ of preliminary injunction

heretofore issued by this Court is hereby dissolved, with costs against the petitioner.

Yulo, C. J., Moron, Horrilleno, Paras, and Bocobo, JJ, concur.

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