

**HERMINIGILDO BASE AND PAQUITA FUENTES, PETITIONERS, VS.
HON. OSCAR LEVISTE IN HIS CAPACITY AS JUDGE OF THE COURT
OF FIRST INSTANCE OF CAPIZ, BRANCH II AND GREGORIO DUNO,
RESPOND...**

G.R. No. 52762. August 29, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

In this special civil action of certiorari and mandamus with preliminary injunction, petitioners-spouses Herminigildo Base and Paquita Fuentes seek to annul and set aside the orders dated July 3, 1979 and August 27, 1979 of the respondent Judge in the Civil Case No. V-4137, entitled "Herminigildo Base and Paquita Fuentes, plaintiffs vs. Gregorio Duno, defendant", denying the motion for immediate execution of the judgment pending appeal.

The judgment was one rendered in an ejectment case involving Market Stall No. 10 in the Public Market of Pontevedra, Capiz. The facts on record show that on September 16, 1958, the herein petitioners became the lessees of the aforementioned market stall having been awarded to them by the Municipal authorities of Pontevedra, Capiz. Later, in the year 1961, petitioners tolerated the respondent to occupy the said market stall because petitioner Paquita Fuentes, by reason of health, was unable to utilize the market stall for purposes of trade.

On June 10, 1972, petitioners made a written demand for the respondent to vacate the market stall but, the respondent refused to accede with the petitioners' demand. Consequently, the petitioner filed on September 18, 1972 an action for unlawful detainer against respondent in the Municipal Court of Pontevedra, which, after trial, rendered its decision dated October 1, 1976 ordering among others, the respondent to vacate the said market stall, to restore its possession to the petitioners and to pay the petitioners the sum of P17.00 a month until the market stall is restored to the petitioners' possession. Respondent appealed to the Court of First Instance of Capiz, Branch II (Civil Case No. V-4137). Pending appeal, petitioners on April 24, 1979 filed a motion for immediate execution of judgment of the Municipal Court for failure of private respondent to pay petitioners the rentals at the rate of P17.00 a month starting from October, 1976 to April, 1979. Same respondent opposed the motion for immediate execution of judgment alleging that he delivered to petitioners two Postal Money Orders amounting to P523.00 covering the payment of rentals from December, 1976 to April 1979.

On July 3, 1979, the respondent Judge issued an order^[1] denying the motion for immediate execution of judgment which is quoted as follows:

"Considering the motion for immediate execution of judgment and the opposition thereto, the jurisprudence and arguments cited by both counsel, this Court exercises its discretion to deny the said motion, prejudice to the proper motion for consignation being filed.

"SO ORDERED

"City of Roxas, July 3, 1979

(SGD). OSCAR LEVISTE,
Judge."

From the said order, the petitioner filed a motion for reconsideration which was, however, denied on August 27, 1979.[2] Whereupon petitioners filed on November 27, 1979 this instant petition assailing the order denying the motion for immediate execution of judgment.

The sole question for Us to determine in this instant petition is whether or not the respondent Judge can exercise discretion, as he stated in his Order, to deny the immediate execution of the judgment pending appeal of the Municipal Court notwithstanding failure of the respondent to pay the monthly rentals as adjudged in the decision.

The petitioners' contention that the respondent Judge gravely abused his discretion in denying their motion for the immediate execution of the Municipal Court's judgment pending appeal is well-taken. Section 8, Rule 70 of the Rules of Court provides in part as follows:

"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 accruing down to the time of 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 found by the judgment of the justice of the peace or municipal court to exist x x x."

As explicitly provided for by this rule, the judgment must be executed immediately when it is in favor of the plaintiff in order to prevent further damages to him arising from the loss of possession.[3] However, the defendant may stay execution (a) by perfecting an appeal and filing a supersedeas bond and (b) by paying from time to time either to the plaintiff or to the Court of First Instance the reasonable value of the use and occupation of the property as may be fixed by the justice of the peace court in its judgment.[4] In case the defendant fails to make the monthly deposit of the current rentals, it is mandatory for the Court of First Instance to order execution of the appealed judgment. Its duty to do so is ministerial and imperative.[5]

Respondent's claim that he delivered on April 26, 1979, Postal Money Order Nos. E-4767386 and E-4767387 in the amount of P523.00 in payment of the monthly rentals from October, 1976 to April, 1979 after the petitioners' motion for immediate execution of judgment was filed on April 24, 1979 is unavailing. The delivery of the said postal money orders would not warrant the stay of execution of the judgment on the ground that mere delay in the payment of the rentals, unless excused by mistake, accident or fraud,[6] would render the function of the court of executing the judgment ministerial and imperative.[7] Herein respondent did not allege, much less prove, any of such exceptions. The appellate court has been held to have no power to extend the time for making the monthly deposits or to excuse defaults therein.[8]

As already stated, the respondent who was the defendant in the ejectment suit appealed to the Court of First Instance of Capiz without paying the monthly rentals fixed by the Municipal Court for his use of the premises. In accordance with Section 8, Rule 70 of the Rules of Court and the rulings in the cases herein cited, the respondent Judge should have ordered the immediate execution of the decision of the Municipal Court instead of denying it. Consequently, We find a grave abuse of discretion attending the issuance of the disputed orders dated July 3, 1979 and August 27, 1979 of the respondent Judge. Respondent Judge cannot exercise his discretion in denying the motion for execution. We have repeatedly held that the payment of the monthly rentals is mandatory and cannot be dispensed with by the courts if execution is to be stayed. When the fixed monthly rentals are not paid nor

deposited, the duty of the court to order the appealed decision executed is ministerial and imperative. We find no cogent reason why this principle should not be applied here, private respondent having failed to comply with one of the conditions, that is, his failure to pay nor deposit the monthly rentals, for the stay of execution of the judgment against him. It is therefore patent that in refusing to order the immediate execution, the respondent Judge is guilty of an evasion of a positive duty and his orders were issued as petitioners contended, in grave abuse of discretion.

WHEREFORE, the writ of certiorari is granted, setting aside respondent Judge's orders of July 3, 1979 and August 27, 1979, here complained of, Mandamus Writ is, likewise granted and said respondent is directed to issue execution order for the restoration of possession of the premises to petitioners, without prejudice to the appeal taking its course. No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

[1] p. 29, Rollo.

[2] p. 30, Rollo.

[3] Dehesa vs. Macalalag, 81 SCRA 543; De Laureano vs. Adil, 72 SCRA 148; Borden vs. Hontanosas, 42 SCRA 401; Vda. de Palanca vs. Chua Keng Kian, 27 SCRA 356.

[4] Borden vs. Hontanosas, supra; Sison vs. Bayona, 109 Phil. 1088; Yu Tiong Tay vs. Barrios, 79 Phil. 597; Romero vs. Pecson, 63 Phil. 308 and cases therein cited.

[5] Geronimo Realty Company vs. Court of Appeals, 83 SCRA 543; De Laureano vs. Adil, supra; Quan vs. The Sheriff, City of Manila, 57 SCRA 145; Borden vs. Hontanosas, 42 SCRA 401; De la Cruz vs. Burgos, 28 SCRA 977; Chieng Hung vs. Tam Ten, 21 SCRA 211; Acibo vs. Macadaeg, 11 SCRA 446; Pages vs. Canonoy, 6 SCRA 583; Centeno vs. Gallardo, et al., 93 Phil. 63; Yu Tiong Tay vs. Barrios, supra; Peck vs. Concepcion, et al., 74 Phil. 653; Pascua vs. Noble, 71 Phil. 186; Lapuz vs. Hernandez, 52 O. G., 10; Lopez Inc. vs. Phil. Trading, etc., L-8010, January 31, 1956; Alvarez vs. Lacson, 52 O. G. No. 10, 480.

[6] Borden vs. Hontanosas, supra; Cunanan vs. Rodas, 78 Phil. 800.

[7] Pañgilinan vs. Peña, 89 Phil. 122; Galewsky vs. De la Rama, 79 Phil. 583; Basilio vs. Natividad, 80 Phil. 52; De la Cruz vs. Burgos, 28 SCRA 977.

[8] Chieng Hung vs. Tam Ten, supra; Zamora vs. Dinglasan, 77 Phil. 46; Cunanan vs. Rodas, supra; Israel vs. Court of Appeals, 78 Phil. 327; Meneses vs. Dinglasan, 81 Phil. 470; Lee Ko vs. De Leon, 46 O.G. No. 11; Hernandez vs. Peña, 86 Phil. 411.

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