

MARIANO TOLEDO AND ELENA TOLEDO, PETITIONERS, VS. HON. JUDGE BERNARDO P. PARDO, COURT OF FIRST INSTANCE OF CALOOCAN, BRANCH XXXIV AND JUN LOPEZ, RESPONDENTS.

G.R. No. 56761. November 19, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

Challenged in this Petition for Certiorari and Prohibition are three Orders of the respondent Judge in Civil Case No. C-8495 dated October 2, 1980, January 6, 1981 and March 30, 1981. The first of said Orders directed the issuance of a writ of preli-minary injunction in said case, while the other two denied the two motions for reconsideration of the first order.

The petitioners own a residential house located in the Morning Breeze Subdivision, Caloocan City, the ground floor of which was leased to private res-pondent Jun Lopez on a month-to-month basis at an agreed rental of ONE HUNDRED FIFTY (P150.00) PESOS a month.

On May 16, 1979, the petitioners filed an ejectment suit against the private respondent in the City Court of Caloocan docketed therein as Civil Case No. 13153 praying therein that private respondent vacate the premises in view of the need of their son Ishmael Bernal to use the same as his residence. Private respondent filed his answer to the complaint in the ejectment case alleging, among others, that the City Court lacked jurisdiction to entertain the ejectment suit inasmuch as the peti-tioners have failed to comply with the requirement of giving the lessee three (3) months notice in advance of their intention to repossess the property, as provided in Section 5(c) of Batas Pambansa Blg. 25. Private respondent pointed out that the said law became effective on April 10, 1979, and the letter of demand of the petitioners was sent to the private respondent only on March 27, 1979 and, there-fore, the three months' notice had not been complied with by them by the time the complaint was filed on May 16, 1979. Moreover, private respondent further claimed that it could not be true that the petition-ers needed the premises for their son Ishmael Bernal who is a noted movie director, who has a house of his own, and who would not think of staying in the ground floor of the apartment being rented by the private respondent.

The subsequent proceedings in the ejectment case had been characterized by repeated failures on the part of the private respondent to cooperate in the orderly and prompt disposition of the action. He prayed for several postponements and the City Court, at one instance, allowed the petitioners to present their evidence ex-parte, without prejudice to cross-examination by the private respondent at the next hearing. When the private respondent failed to appear at the next scheduled hearing, the Court con-sidered the case submitted for decision and rendered judgment on the basis of the evidence presented by the plaintiff. The decision of the City Court dated March 24, 1980 was served on the private respondent on April 1, 1980.

On May 10, 1980, private respondent filed a motion for new trial which the City Court denied in the order dated May 14, 1980. A motion for re-consideration of said denial met a similar fate. On motion of the petitioners, the City Court issued a Writ of Execution on July 11, 1980 which was served on the private respondent on July 24,

1980. The private respondent failed to vacate the subject premises within the period allowed by the Sheriff; instead, on July 28, 1980, private respondent filed a Petition for Certiorari in the Court of First Instance of Caloocan City docketed therein as Civil Case No. C-8495 assigned to herein respondent Judge, assailing therein the actuations of the City Court in allegedly violating the right of the private respondent to due process in not affording him the opportunity to present his evidence in the ejectment case.

On August 1, 1980, the respondent Judge issued a restraining order enjoining the herein petitioners and the City Court of Caloocan from implementing the writ of execution issued in Civil Case No. 13153, and setting the petition for hearing on August 12, 1980. On October 2, 1980, the respondent Judge issued the Order granting the private respondent's prayer for the issuance of a writ of preliminary injunction. Two subsequent motions for reconsideration filed by the petitioners to lift the said writ of preliminary injunction were both denied by the respondent Judge in his questioned Orders of January 6, 1981 and March 30, 1981.

The respondent Judge justifies his having issued the writ of preliminary injunction to stop the execution of the judgment rendered by the City Court in the ejectment case for the reasons explained in his Order of March 30, 1981 which reads as follows:

"Resolving respondents' second motion for reconsideration dated February 4, 1981, and finding no merit of the same, the motion is hereby DENIED. The denial is final.

It must be stressed that the petitioner not only assailed the orders of January 7 and February 22, 1980 but also questioned as void the decision rendered on March 24, 1980 and the writ of execution issued pursuant thereto. To determine whether there was showing of nullity of the proceedings had in the lower Court, sufficient for this Court to issue a writ of preliminary injunction, suffice to examine the facts alleged in the petition which are undenied or undeniable. These are as follows:

First, ejectment is sought on the sole reason that the respondent Toledo needed the premises in question for the use of his son, Ishmael Bernal.

Second, the case was filed in the City Court of Caloocan on May 16, 1979; the letter of demand was sent on March 27, 1979 giving defendant three months to vacate the premises.

Under Batas Pambansa 25, the tenant is entitled to notice of at least three (3) months within which to vacate the premises. In this case, the respondents filed the case for ejectment before the lapse of the three month period, consequently, all proceedings had under that complaint which was prematurely filed were void." (Annex "J" of Petition; Rollo, p. 65.)

The petitioners, for their part, assail the actuations of the respondent Judge as having been characterized by excess of jurisdiction and/or grave abuse of discretion, upon the grounds that he lacked authority (1) to entertain the Petition for Certiorari for having been filed out of time; (2) to reverse findings of fact made by the City Court; and (3) to enjoin the enforcement of a judgment that had already become final and executory.

We find no jurisdictional infirmity in the questioned actuations of the respondent Judge as would warrant the issuance of the writs prayed for in this proceeding.

Petitioners admit that compliance with the three-month notice requirement under Batas Pambansa Blg. 25 is jurisdictional. (Memorandum for Petitioners, p. 13, Rollo, p. 113.) If it is true, therefore, that the filing of the ejectment suit was done in disregard of the statutory requirement, the City Court clearly lacked jurisdiction to take cognizance of the ejectment suit, and all the proceedings had therein in said Court would be a nullity, and the propriety of filing a special civil action for certiorari to annul the said proceedings may hardly be questioned.

The period of filing a petition for certiorari is not the same as that prescribed for taking an appeal. Indeed, there is no rule which prescribes when such a petition should be filed. The yardstick to measure the timeliness of a petition for certiorari is the reasonableness of the length of time that had expired from the commission of the actuations complained of up to the institution of the proceeding to annul the same.

"In the special civil action for certiorari under Rule 65, Rules of Court, no time frame, except that it be filed within a reasonable time, is required. Hence, it is unnecessary to discuss whether or not the decision of the lower court of August 7, 1978, had become final and executory." (*Dimayacyac v. Court of Appeals*, 93 SCRA 265; *Contreras v. Villa-raza*, 99 SCRA 329)

In the case at bar, the filing of the certiorari proceeding in the court of the respondent Judge on July 28, 1980 was less than four (4) months from the time private respondent received a copy of the decision of the City Court on April 1, 1980. In the meanwhile, private respondent's actuations negate any implication that he had slept on his rights or lost interest in the case. He filed a motion for new trial on May 10, 1980, and after it was denied in the order of the City Court dated May 14, 1980, he filed a motion for reconsideration of the same on June 2, 1980. After having been given by the Sheriff a period up to July 28, 1980 within which to vacate the subject premises, he instituted on the following date, July 28, 1980, his petition for certiorari. We see no unreasonable delay in pursuing said remedy.

The respondent Judge did not reverse any finding of fact made by the City Court. While it may be true that, as contained in the decision of the City Court, testimonial evidence was presented by the petitioners to the effect that a notice to vacate was allegedly sent to the private respondent as early as February 3, 1979, the respondent Judge apparently chose to ignore such testimony in view of the allegations contained in the complaint for ejectment that the demand to vacate was sent to the private respondent only on March 27, 1979 which is less than three (3) months before the complaint was filed on May 16, 1979. These facts are recited in the questioned Order of the respondent Judge dated March 30, 1981. (Rollo, pp. 65-66.) Neither in the instant petition nor in their Memorandum did the petitioners question the correctness of such statement made by the respondent Judge, particularly as regards the letter of demand having been sent, according to the complaint they filed in the ejectment case, only on March 27, 1979.

The circumstance that the judgment rendered by the City Court in the ejectment case had already become final and executory due to the failure to take an appeal therefrom within the reglamentary period is no legal obstacle to the issuance of the writ of preliminary injunction in the certiorari case filed to annul the said decision. (*Dimayacyac v. CA*, supra) Should the private respondent's petition for certiorari prosper, and the respondent Court sustains the contention of the private respondent that the City Court acted without jurisdiction, the issuance of an injunctive writ to stop the execution of the judgment rendered by it becomes not only proper but imperative. Otherwise, the respondent Court would be sanctioning by neglect or inaction the enforcement of a judgment which in law does not exist for having been rendered without jurisdiction.

WHEREFORE, the Petition is hereby DISMISSED. With costs against the petitioners.

SO ORDERED.

Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

Teehankee, (Chairman), in the result.

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