

**LETICIA G. ACUÑA, JOINED BY HER HUSBAND ALBERTO ACUÑA,
REPRESENTED HEREIN BY THEIR ATTORNEY-IN-FACT, ATTY.
BENJAMIN Y. GOLEZ, PETITIONERS, VS. THE HONORABLE
HERMINIGILDO C. CRUZ...**

G.R. No. 61304. January 17, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for a writ of certiorari to set aside the July 27, 1982 order of the respondent court denying a motion for an alias writ of execution. The petitioners ask us to compel the court to issue an alias writ of execution and the respondent sheriff to implement it on the ground that a judgment in an ejectment case is executory pending appeal unless the appellant files a sufficient supersedeas bond and deposits the monthly rentals from time to time. We treat the respondents' comment, to which the petitioners filed a reply, as an answer and, accordingly, resolve this petition.

The background facts are stated in the decision of the Court of Appeals in CA-G.R. No. 13816-SP as follows:

"Petitioner Leticia G. Acuña is the owner of a house and lot located at 654 Boni Avenue, Mandaluyong, Metro Manila covered by TCT No. 99778 issued in her name by the Register of Deeds of Rizal. On April 20, 1973, she leased the said house and lot to respondent Lourdes Nepomuceno. The Contract of Lease executed by them stipulates a monthly rental of P650.00 payable in advance or before the 10th day of each month. The period agreed upon is eight (8) years commencing from May 16, 1973 and terminating on May 15, 1981.

"The period of eight (8) years expired and Nepomuceno, despite demands therefor from the petitioner, refused to vacate the aforementioned leased premises and instead, continued occupying the same. Hence, on July 1, 1981, Acuña filed before the Municipal Court of Mandaluyong an ejectment suit against Lourdes Nepomuceno. The case was docketed in the said Court as Civil Case No. 9101.

"Nepomuceno filed her Answer with special and affirmative defenses and compulsory counterclaim on September 28, 1981. Thereafter, the case was calendared for trial on November 12, 1981 but defendant now respondent Nepomuceno as well as her counsel failed to appear despite due notice. Plaintiff now petitioner was then allowed to present her evidence ex-parte.

"On November 13, 1981, judgment was rendered in the aforementioned ejectment case, the dispositive portion of which reads:

""1) Ordering the defendants and all persons claiming rights under them to vacate the aforementioned premises;

""2) To pay the sum of P5,000.00 a month beginning May 15, 1981 until they finally vacate and surrender the premises in question;

""3) To pay the sum of P5,000.00 as and for attorney's fees; and

""4) To pay costs.'

"Respondent Nepomuceno was served with a copy of the Municipal Court's decision on November 19, 1981. A little earlier, however, more specifically on November 16, 1981, petitioner filed an Urgent Ex-parte Motion for Execution pending Appeal. On November 25, 1981, Nepomuceno filed a Motion for Reconsideration of the aforementioned decision which was denied in an order dated December 14, 1981. On January 13, 1982, the Municipal Court of Mandaluyong issued an Order directing the issuance of a writ of execution thereby acting favorably upon Acuña's urgent ex-parte motion for execution pending appeal. No appeal was interposed by Nepomuceno from the aforesaid decision ordering her to vacate the leased premises. Instead, she filed with the Court of First Instance of Rizal a petition for certiorari with preliminary injunction against the Hon. Herminigildo Cruz, the Provincial Sheriff, the Deputy Sheriff Antonio B. Mariñas, and the herein petitioner. The case was docketed in the aforesaid court as Civil Case No. 44385 and assigned to Branch XX thereof which is presided by the Hon. respondent Judge. In the aforesaid petition, the Nepomuceno prayed for the immediate issuance of a temporary restraining order pending resolution of the petition on its merits and for an order setting aside the judgment of the respondent municipal Judge as well as the writ of execution issued by way of implementing the aforesaid decision.

"On January 25, 1982, respondent Judge issued an Order denying petitioner's prayer for the issuance of a temporary restraining order but calendared the application for preliminary injunction on February 26, 1982 at 8:30 in the morning. Likewise, respondents (now petitioners) were ordered to file their answer within ten (10) days from receipt of a copy thereof.

"Thru an order issued on January 28, 1982, respondent Judge acted favorably on Nepomuceno's application for the issuance of a writ of preliminary injunction conditioned upon the latter's posting a bond in the amount of P55,000.00 to answer for all damages which petitioner Acuña may suffer if the Court finds that the Nepomucenos are not entitled thereto.

"On February 22, 1982, the Nepomucenos amended their petition principally for the purpose of alleging therein the filing by them on May 18, 1981 and prior to the ejectment suit filed against them, of Civil Case No. 41275 for Specific Performance with Consignation attaching to the aforesaid amended petition a xerox copy of their complaint in Civil Case No. 41275.

"On January 29, 1982, respondent Acuña now petitioner, filed a motion to dismiss alleging therein that the petition filed by the Nepomucenos does not allege facts constituting grave abuse of discretion and that if at all error was committed by the respondent Municipal Judge, said error is one of judgment which is correctible by appeal and not by certiorari citing in support of their aforesaid stand, the case of *Carandang vs. Cabatuando*, 55 SCRA 383 wherein it was held—

"Where petitioner had failed to timely appeal from the trial Court's order, he can no longer avail of the remedy of the special civil action for certiorari in lieu of his loss right of appeal, if there is no error of jurisdiction committed by the trial court."

"The petition being prima facie sufficient in form and substance, We required respondent to answer the same pursuant to our resolution of March 5, 1982. Respondents, after having been granted an extension, filed their Answer on April 15, 1982."

On May 31, 1982, the Court of Appeals rendered a decision finding the Court of First Instance of Rizal, Branch XX, to have acted with grave abuse of discretion in giving due course to a petition for certiorari in Civil Case No. 44386 and in enjoining the execution of the decision in Civil Case No. 9101. The orders dated January 25, 1982 and January 28, 1982 were accordingly nullified and set aside.

The grounds for this appellate judgment are given as follows:

"Civil Case No. 9101 filed by petitioner Acuña against Lourdes Nepomuceno before the Municipal Court of Mandaluyong is an unlawful detainer case. It was decided in favor of Acuña the dispositive portion of which decision is herein earlier quoted. The decision being in favor of the owner-lessor, pursuant to Rule 70, Sec. 8 of the Rules of Court immediate execution may be had unless defendant perfects his appeal, files a sufficient supersedeas bond and makes a monthly deposit of the rentals due as found by the judgment of the Municipal Court. If the defendant-lessee fails to comply with any of the aforesaid requisites then execution becomes a matter of right on the part of the lessor-owner. (Laureano vs. Adil, 72 SCRA 148) Even the filing of a petition for relief does not exempt the defendant from paying the rentals found and adjudged by the Municipal Court (De Dios vs. Jarencio, 76 SCRA 505). By analogy, resort by the defendant-lessee to certiorari does not exempt him from complying with the aforementioned three (3) requisites in order to forestall immediate execution.

"In the case at bar, no appeal was interposed, much less perfected by respondents Nepomucenos from the judgment against them. Neither is there any supersedeas bond posted by them to cover up the rentals in arrears. There is likewise no showing that monthly deposits had been made by them pursuant to the aforementioned decision and in consonance with the jurisprudence on the matter. In ejectment cases, upon the rendition of a judgment in favor of the plaintiff, immediate execution thereof is authorized. (Sec. 8, Rule 72, Samia vs. Reyes, L-14760, May 31, 1963, 8 SCRA 135, Nacorda vs. Yatco, L-19520, August 12, 1966, 17 SCRA 920; De la Cruz vs. Burgos, L-28095, July 30, 1969, 28 SCRA 977; Laurel vs. Abalos, L-26098, October 31, 1969, 30 SCRA 281; Borden vs. Hontanosas, 42 SCRA 401; Quimpo vs. de la Victoria, 46 SCRA 139; Fuentes vs. Bautista, 53 SCRA 420; Sanchez vs. Zosa, 68 SCRA 171; Laureano vs. Adil, 72 SCRA 148). Instead, what the Nepomucenos did was to go on Certiorari before the Court of First Instance of Rizal which case was, as herein earlier mentioned, docketed and assigned to Branch XX thereof presided by the Hon. respondent Judge. It is however, clear and un rebutted that the period for appeal had already prescribed by the time this Certiorari proceedings were instituted by the Nepomucenos before the Court of First Instance of Rizal, and execution of a final judgment in ejectment cannot be enjoined (Nacorda vs. Yatco, L-19520, August 12, 1966, 17 SCRA 920). The same holds true in execution of a judgment in ejectment for failure to pay current rentals which is mandatory. (Philippine Molding Corporation vs. Valenzuela, p. 401) It becomes clear then that resort to Certiorari was made by the respondent Nepomucenos because of the loss of their right to appeal which they could have very well done had they chosen to do so within the reglementary period for appeal after having been served with the judgment of the Municipal Court. On this score alone, their petition therefore should have been denied due course by the respondent Court.

"Respondents however, argue that the decision complained of in that ejectment case is null and void for lack of due process since it does not contain but merely adopted verbatimly the allegations of the complaint; and secondly, the alleged Attorney-in-fact who filed the said ejectment case concealed from the court the fact that defendant Nepomucenos had already filed a consignment case with up-to-date monthly deposit of rentals that the Acuña refused to receive.

"We cannot ride along with respondent's aforementioned formulation. We have judiciously examined the decision complained of and We are very much convinced that there is nothing on its face that will suffice for its declaration of nullity. The Nepomucenos admit having been served with notice of the hearing in the Municipal Court but Lourdes Nepomuceno and her counsel failed to appear for the reason, that allegedly her counsel got sick. Nepomuceno's Motion for Reconsideration was denied and there is nothing on the records that will show said denial to be whimsical, capricious or without any basis. For aside from the barren allegation in the aforesaid motion as to the alleged illness of Nepomuceno's lawyer, no evidence indubitable in character was presented in support thereof, thus making said excess of doubtful veracity.

"Respondents made capital of the fact that at the time the ejectment suit was filed against them, there was already a pending case for specific performance and consignment filed by them against the petitioner. The filing and/or pendency of that specific performance and consignment case does not bar nor is it an obstacle to the progress and disposition of the ejectment case by way of defense the grounds relied upon by them for

specific performance and consignment. It is however, our considered opinion that consignment may be pointless since ejectment is sought not on the basis of non-payment of rentals but because of the expiration of the period of the lease."

Armed with the decision of the Court of Appeals, the petitioners asked the respondent sheriff to execute and implement the decision in the ejectment case, which had not been appealed, but execution of which was delayed by the filing of the petition for certiorari found unmeritorious by the appellate court.

The respondent sheriff refused on the ground that the sixty (60) days life of a writ of execution had expired.

The petitioners filed a motion for the issuance of an alias writ of execution with the respondent judge of the Municipal Court of Mandaluyong. The court denied the motion on July 27, 1982 on the ground that there was a pending motion for reconsideration in CA-G.R. No. 13816-SP with the Court of Appeals.

Instead of both parties awaiting finality of the Court of Appeals decision through the resolution of the motion for reconsideration, the petitioners elevated the matter to us in the instant petition for certiorari and mandamus with preliminary mandatory injunction.

On the other hand, the Nepomucenos filed still another petition for certiorari with another branch of the Court of First Instance of Rizal, Branch I, presided by Judge Eutropio Migriño, as Civil Case No. 46303, to declare null and void the decision of the respondent municipal court in the original ejectment case.

The court dismissed Civil Case No. 46303 with the following findings:

"To the Court's mind plaintiffs are trying to resuscitate and revivify a dead, though not yet buried, issue between the parties. Petitioners in the Court of Appeals (defendants herein) precisely raised the issue of the nullity of the Orders dated January 25 and 28, 1982 in Civil Case No. 44386 (restraining order and order for the issuance of a writ of preliminary injunction, respectively), because said orders tended to uphold the position of respondents (plaintiffs herein) that the ejectment decision was a nullity. It follows that the issue of whether or not said ejectment decision was a nullity was considered, passed upon and resolved by the Court of Appeals, when it handed down its Decision of May 31, 1982. At any rate, in black and white, said Decision of the Court of Appeals, in part, says -

"Respondent however, argue that the decision complained of in that ejectment case is null and void for lack of due process since it does not contain but merely adopted verbatimly the allegations of the complaint. . . .

"We cannot ride along with respondent's aforementioned formulation. We have judiciously examined the decision complained of and we are very much convinced that there is nothing on its face that will suffice for its declaration of nullity. The Nepomucenos admit having been served with notice of the hearing in the Municipal Court but Lourdes Nepomuceno and her counsel failed to appear for the reason that allegedly her counsel got sick. Nepomuceno's Motion for Reconsideration was denied and there is nothing on the records that will show said denial to be whimsical, capricious or without any basis. For aside from the barren allegation in the aforesaid motion as to the alleged illness of Nepomuceno's lawyer, no evidence indubitable in character was presented in support thereof, thus making said excuse of doubtful veracity.'

"As to the pendency of plaintiff's motion for reconsideration in the Court of Appeals, this Court believes that it is of no moment. For if it is listened to and the Court of Appeals turns around and gives its nod to them, then the case at bar would serve no purpose, since the issues raised herein would be resolved in Civil Case No. 44386. On the other hand, if the Court of Appeals maintains its posture, the instant case would similarly be useless, since the Court of Appeals would have written 'finis' to the issues herein."

The only obstacle to the execution of the decision in the ejectment case was removed when the Court of Appeals denied the motion for reconsideration in CA-G.R. No. 13816-SP on November 4, 1982, copy of which was

furnished us on December 2, 1982. The decision of the Court of Appeals may now be considered final and executory as we have carefully examined all the facts and issues involved and find no error in the decision. It would be both redundant and dilatory for us to consider still another petition for review of that decision.

WHEREFORE, the petition is hereby granted. The respondent Judge is directed to issue the alias writ of execution in Civil Case No. 9101 and the respondent Sheriff is ordered to expeditiously attend to its implementation. Costs against the private respondents. This decision is immediately executory.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Relova, JJ., concur.

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