

## SPECIAL FOURTH DIVISION

[ CA-G.R. SP NO. 132948, November 26, 2014 ]

**AMBROSIO DIAZ, JOSE SAGUM AND OLYMPIA BAUTISTA,  
PETITIONERS, VS. HON. J. ERMIN EARNEST LOUIE R. MIGUEL,  
PRESIDING JUDGE, BRANCH XI-METC, MANILA; HON. LUCIA  
PURUGGANAN, PRESIDING JUDGE, BRANCH 30, RTC-MANILA;  
AND MANOTOK REALTY, INC., RESPONDENTS.**

### DECISION

**GONZALES-SISON, M., J.:**\*

In this petition for certiorari with prayer for temporary restraining order petitioners seek to annul and set aside, *on ground of grave abuse of discretion*, the Order<sup>[1]</sup> dated November 28, 2012 and Resolution<sup>[2]</sup> dated February 14, 2013 issued by public respondent Judge J. Ermin Ernest Louie Miguel of the Metropolitan Trial Court (MeTC) National Capital Judicial Region, Branch 11, Manila and the Decision<sup>[3]</sup> dated August 15, 2013 together with the Order<sup>[4]</sup> dated November 11, 2013 issued by public respondent Lucia P. Purugganan of the Regional Trial Court (RTC) National Capital Judicial Region, Branch 30, Manila.

The facts are undisputed, thus:

The controversy stemmed from a complaint for unlawful detainer filed by plaintiff, herein private respondent, Manotok Realty, Inc. (MRI) against defendants, herein petitioners. On October 4, 2001, the MeTC rendered a decision<sup>[5]</sup> in favor of private respondent, the *decreetal* portion of which reads as follows, to wit:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants and ordering the defendants and all persons claiming rights under them:

1. To immediately vacate the subject premises known as Lot 1, Blk. 19, situated at No. 1106 Morong St., Manuguit, Tondo, Manila, and surrender its peaceful possession to the plaintiff;
2. To pay the plaintiff the sum of Php414,829.05 as back rentals and the additional sum of Php9,660.75 monthly beginning May 2001, and every month thereafter until they shall have finally and actually vacated the subject premises;
3. To pay the plaintiffs the sum of Php10,000.00 for and as attorney's fees; and

4. To pay the costs of the suit.

SO ORDERED.”<sup>[6]</sup>

On appeal, the RTC, Branch 15, Manila, affirmed, *via* a decision<sup>[7]</sup> dated April 15, 2004, the decision of the MeTC, the *fallo* thereof reads, to wit:

“WHEREFORE, premises considered, the appeal filed by the defendants is DENIED for lack of merit and the decision dated October 4, 2001 of the Honorable K. Casiano P. Anuncianon, Jr., Presiding Judge of Metropolitan Trial Court , Branch 11, Manila is hereby AFFIRMED IN TOTO.

SO ORDERED.”<sup>[8]</sup>

*Unsatisfied*, petitioners brought the case to this Court by filing a petition for annulment of judgment. However, the same was denied due course and dismissed on September 15, 2004<sup>[9]</sup>, thus:

“ACCORDINGLY, the petition is DENIED DUE COURSE and DISMISSED.”  
<sup>[10]</sup>

As per entry of judgment, the foregoing became final and executory on July 18, 2005. On June 22, 2006, the MeTC ordered the issuance of the writ of execution<sup>[11]</sup> that private respondent applied and prayed for on May 9, 2006.<sup>[12]</sup> However, the decision was not implemented because the MeTC had no sheriff assigned at that time in its branch.

Thereafter, petitioners filed the following, to wit: (1) Petition for Declaration of Nullity of Transfer of Certificate of Title No. 27257 as well as its Tax Declarations with Damages with prayer for TRO and/or Preliminary Injunction<sup>[13]</sup> with the RTC of Manila which was raffled to Branch 37 thereof, (2) Request to Hold in Abeyance of Writ of Execution, Notice to Vacate and Demolition, To Await the Pending Filed Case etc.<sup>[14]</sup>, and (3) Motion to Hold in Abeyance of Writ of Execution, Notice to Vacate/Demolition to Await the Pending Filed Case etc.<sup>[15]</sup> both with the MeTC.

On February 27, 2009, the MeTC issued an Order denying petitioners' Motion to Hold in Abeyance of Writ of Execution, Notice to Vacate/Demolition, etc. on the ground that there was no restraining order issued by the RTC to implement the writ of execution.<sup>[16]</sup> The Acting Presiding Judge of the MeTC directed the designated sheriff of the court to proceed with the implementation of the writ that was issued on June 22, 2006. Again, as there was no sheriff assigned thereat, the writ of execution was not implemented. Private respondent then filed an *ex-parte* motion for the appointment of special sheriff.<sup>[17]</sup>

Meanwhile, on March 5, 2009, another motion to hold in abeyance the projected issuance of writ of execution/demolition<sup>[18]</sup> was filed by petitioners with the MeTC. Despite notice, private respondent did not file its comment.<sup>[19]</sup> The MeTC did not act on the pending motions<sup>[20]</sup> until a new counsel appeared for the private respondent and moved for the early resolution of the pending motions.<sup>[21]</sup>

Finding for private respondent, the MeTC on June 13, 2012, issued an Order<sup>[22]</sup> granting its motion for execution and denied that of petitioners. However, in an Order<sup>[23]</sup> dated July 7, 2012, it reversed itself when it acted favorably on the petitioners' motion for reconsideration. It ratiocinated that the private respondent did not take the necessary steps to obtain or cause the execution of the judgment within the time allowed by the Rules. Thus, it considered the issuance of the writ beyond the five-year period to be already void.

Private respondent immediately filed a motion for reconsideration stressing that it took every steps necessary to enforce its right on the judgment, and circumstances beyond its control caused the delay in the issuance of the writ being applied for.<sup>[24]</sup>

Via a Resolution <sup>[25]</sup> dated September 24, 2012, the MeTC reconsidered and set aside its July 7, 2012 Order and reinstated its earlier Order dated June 13, 2012. When the MeTC denied the motion for reconsideration<sup>[26]</sup> of the petitioners in an Order<sup>[27]</sup> dated November 28, 2012, they filed a Motion with Leave of Court to Reconsider Order dated November 28, 2012 and/or Defer Implementation of Writ of Execution.<sup>[28]</sup> After considering private respondent's Comment/Opposition thereto, the MeTC, via an Order<sup>[29]</sup> dated February 14, 2013, denied the motion. It reasoned out that the motion is a second motion for reconsideration and under the Rules, a second motion for reconsideration is a prohibited pleading.

Petitioners then filed an appeal. The case was raffled to RTC Branch 30, Manila (*Court a quo*), and was docketed as Civil Case No. 13-129760. In its decision<sup>[30]</sup> dated August 15, 2013, the *Court a quo* dismissed the appeal for being procedurally defective and substantially void, to wit:

“WHEREFORE, for being procedurally infirm and substantially wanting, the appeal is hereby DISMISSED.”<sup>[31]</sup>

In dismissing the appeal procedurally, the *Court a quo* opined that the petitioners availed of the wrong mode of appeal in asking the writ of execution to be set aside. With regard to substance, it found that private respondent was able to move for the issuance of the subject writ within the five (5) year period allowed by the rules.

With the denial of their motion for reconsideration,<sup>[32]</sup> petitioners lodged the present petition for certiorari with prayer for a temporary restraining order. They maintain that the decision dated October 4, 2001, which has become final and executory on June 22, 2006 can no longer be enforced because private respondent

*neither* filed a motion for execution within five (5) years from date of entry of judgment *nor* an independent action for revival of judgment after the lapsed of the said five (5) years with the *Court a quo*. With this, they claim that public respondents gravely abused their discretion in issuing the assailed resolution, decision and order.<sup>[33]</sup>

The private respondent vehemently opposed the petition *via* its Comment/Opposition.<sup>[34]</sup> It claim that We should dismissed outright the petition because We do not have jurisdiction to review the subject of the petition, Writ of Execution, which is now final and executory.

Private respondent added that the *Court a quo* did not commit reversible error in issuing the assailed Decision and Order because it has timely filed its motion for execution.

The parties maintain their stand in their respective memoranda.<sup>[35]</sup>

### **THE PETITION FAILS.**

At the outset, the instant petition should be *dismissed*. The law on the Order of Writ of Execution is not appealable. This is provided under Sec. 1, Rule 41 of the Revised Rules of Civil Procedure, to wit:

“Section 1. Subject of appeal. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) xxx

xxx

(f) an order of execution;

xxx

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action for certiorari.”

Despite the clear foregoing rule, the petitioners appealed<sup>[36]</sup> the Order and Resolution dated November 28, 2012 and February 14, 2013 which denied petitioners' Motion for Reconsideration from the Order dated June 3, 2012 of the MeTC granting the issuance of the Writ of Execution. *Hence*, the *Court a quo* can not be faulted in dismissing the appeal as the same was erroneously resorted to by the petitioners.

The rule is that the erroneous filing of the appeal will not toll the running of the