

SECOND DIVISION

[G.R. NO. 144117, February 27, 2003]

**MILAGROS B. NAYVE, PETITIONER, VS. HON. COURT OF APPEALS
AND ACRE DEVELOPMENT CORPORATION, RESPONDENTS.**

RESOLUTION

QUISUMBING, J.:

This petition for review seeks the reversal of: (a) the Resolution^[1] dated April 17, 2000 of the Court of Appeals in CA-G.R. SP No. 58205, which dismissed outright petitioner's petition, for non-compliance with the 1997 Rules of Civil Procedure; and (b) the Resolution^[2] dated July 12, 2000, denying petitioner's motion for reconsideration. Before the Court of Appeals, herein petitioner had sought to set aside the Orders dated August 5, 1999^[3] and March 17, 2000^[4] of the Regional Trial Court (RTC) of Manila, Branch 22, in Civil Case No. 99-94059. Said Orders granted herein private respondent's motion for execution pending appeal of the decision in an ejectment suit rendered in its favor by the RTC of Manila.

The factual antecedents of this case are as follows:

On January 31, 1997, private respondent Acre Development Corporation (ACRE) filed a Complaint for Unlawful Detainer with Damages against petitioner Milagros Nayve, with the Metropolitan Trial Court (MTC) of Manila, Branch 7, docketed as Civil Case No. 154426. Private respondent alleged that on August 26, 1996, it entered into a Contract of Lease with petitioner over a property in Sampaloc, Manila with a monthly rental of p15,000.00 for the period September 1, 1996 to September 1, 1997. As part of the agreement, petitioner issued twelve (12) postdated checks equivalent to one (1) year rentals to ACRE. Said checks were subsequently dishonored by the bank by reason of "ACCOUNT CLOSED". Despite demands made by ACRE for the payment of the arrears in rental payments, Nayve refused to pay, thus constraining ACRE to file said ejectment suit.

In her Answer, petitioner Nayve denied the material averments in the Complaint. She claimed that the Complaint stated no cause of action as the property in question, which is their family's house and lot, was the subject of a private arrangement between her and Congressman Manolet Lavidés, the president of ACRE. Nayve stated that she obtained a loan from Lavidés, putting up said property as her collateral. She executed a Deed of Sale with Right of Repurchase, which was subsequently registered in the name of ACRE, but with the understanding that the same shall remain her property. Later, petitioner was compelled to sign a Lease Contract with the understanding that the postdated checks she would issue would serve to guarantee the unpaid loan she had previously obtained from Lavidés.

For failure of Nayve and her counsel to attend the pre-trial conference despite due

notice, ACRE moved to submit Civil Case No. 154426 for decision. The lower court granted said motion and accordingly decided the case as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff, as follows:

1. Ordering the defendant and all persons claiming rights under her to vacate Apt. No. 314 Valencia St., Nagtahan, Sampaloc, Manila and to surrender possession of the same to the plaintiff;
2. Ordering the defendant to pay plaintiff the sum of p75,000.00 representing her rental arrearages from September, 1996 up to January, 1997 and the amount of P15,000.00 a month representing her monthly rentals from February, 1997 and every month thereafter as reasonable compensation for the use and occupancy of said premises plus legal interest from the filing of the complaint;
3. Ordering the defendant to pay plaintiff the amount of P10,000.00 as and by way of attorney's fees and to pay the costs of suit.

SO ORDERED.^[5]

Nayve seasonably appealed the foregoing decision to the Regional Trial Court (RTC) of Manila, Branch 22, which docketed the appeal as Civil Case No. 99-94059.

During the pendency of the appeal, ACRE filed with the RTC a Motion for Execution Pending Appeal claiming that Nayve had not deposited with the RTC the monthly rentals of P15,000.00 as adjudged by the MTC thus making the decision immediately executory, pursuant to Section 19, Rule 70^[6] of the 1997 Rules of Civil Procedure.

In an Order dated August 5, 1999, the RTC granted ACRE's motion for execution pending appeal, thus:

Acting on plaintiff's motion for execution (pending appeal) the Court, after considering the allegations thereof and it appearing that defendant, in violation of the decision of the trial court and of the provision of Rule 70, Sec. 19 of the 1997 Rule[s] of Civil Procedure, failed to deposit the monthly rentals of P15,000, as adjudged by the trial court since March 1999, when the appeal was perfected, up to the present, and there being no opposition to the motion despite receipt thereof by defendant's counsel, resolves to grant the same.

WHEREFORE, let the appropriate writ issue.

SO ORDERED.^[7]

As a result, on August 12, 1999, a Notice to Vacate was issued by Sheriff Elmer G. Muyot of the RTC, which gave petitioner five (5) days to voluntarily vacate the disputed premises.

On August 16, 1999, petitioner filed a Manifestation and Motion for Reconsideration of the Order dated August 5, 1999 claiming that ACRE's motion had no factual or

legal basis under Section 19, Rule 70. Nayve alleged that she had filed a sufficient supersedeas bond to stay the execution.

On August 31, 1999, Nayve filed a Supplemental Manifestation and Omnibus Motion with prayer for injunctive reliefs citing the lack of good reasons to warrant execution pending appeal. ACRE filed an Opposition asserting that the supersedeas bond cannot answer for the required periodic deposit. Petitioner then filed a Supplemental Motion, alleging that the jurisdiction of the RTC over execution pending appeal was discretionary.

On March 17, 2000, the RTC issued an Order denying petitioner's Motion for Reconsideration, Omnibus Motion and Supplemental Motions. On the same date, ACRE filed a Motion to Break-Open Subject Premises.

On April 5, 2000, Sheriff Muyot issued a Final Notice to Vacate, giving petitioner three (3) days from notice thereof to surrender the premises to ACRE.

On April 10, 2000, petitioner filed with the Court of Appeals a special action for certiorari seeking the annulment of the RTC Orders dated August 5, 1999 and March 17, 2000, respectively. The action was docketed as CA-G.R. SP No. 58205. Nayve likewise assailed in the same action the Sheriff's Notice to Vacate and the Second and Final Notice to Vacate issued on August 12, 1999 and April 5, 2000, respectively.

The Court of Appeals, however, dismissed the petition outright, on several technical grounds, thus:

Upon perusal of the present petition for certiorari with prayer for injunctive reliefs, We note that the same suffers from the following infirmities, to wit:

1. There is no express allegation therein that respondent Judge acted with grave abuse of discretion in issuing his Order dated August 5, 1999 granting execution pending appeal;
2. Absence of several material dates (when petitioner received copy of the August 5, 1999 Order, when she filed her motion for reconsideration thereto, and when she received the Order dated March 17, 2000 denying her motion for reconsideration) thus precluding this Court from determining if the petition was timely filed;
3. The affidavit of service does not include the mandatory written explanation why respondents had to be furnished with copies of the petition by way of registered mail rather than thru the preferred personal service (Sec. 11, Rule 13 of the **1997 Rules of Civil Procedure**, as amended);
4. The petitioner failed to attach as annexes thereto copies of "all" pleadings and documents relevant and pertinent thereto, such as but not limited to a copy of the MTC decision which was appealed to respondent Court, private respondent's motion for execution