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SECOND DIVISION

[G.R. No. L-41684. February 21, 1979]

ANTONIO CRUZ, *petitioner*, *vs.* **HON. ONOFRE VILLALUZ, as Presiding Judge of the Court of First Instance of Rizal, Quezon City, Branch XVII, and EFREN GARCIA**, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; WRIT OF EXECUTION; PREMATURE, WHERE MOTION FOR RECONSIDERATION REMAINS UNRESOLVED.** — Where both the plaintiff and the defendant moved to reconsider the trial court's judgment in favor of defendant, and the court considering said motion and the oppositions thereto, denied defendant's motion for reconsideration, but made no mention of plaintiff's motion, and it appears that the court had not issued any subsequent order which may be inconsistent with the relief sought in plaintiff's motion, the issuance of a writ of execution is premature since the decision sought to be enforced is not yet final as the trial judge has not yet resolved plaintiff's motion for reconsideration.

2. **ID.; ID.; MOTIONS; *PRO FORMA* MOTION; WHEN MOTION FOR RECONSIDERATION SAID TO BE *PRO FORMA*.** — A motion for reconsideration is *pro forma* when it does not specify the findings of conclusions in the judgment which are not supported by evidence or which are contrary to law, making express reference to the pertinent evidence or legal provisions, as expressly required in the third paragraph of Section 2, Rule 37 of the Rules of Court. Thus, where in his motion for reconsideration, the plaintiff questioned specific findings and conclusions in the decision and had taken pains in pinpointing the pages in the decision where the findings and conclusions appear, the pages of the transcript of stenographic notes where the alleged contrary evidence is to be found, the names of witnesses whose testimonial evidence is referred to, and the exhibit numbers of the documentary evidence relied upon, there is enough in the said motion for reconsideration to persuade

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an impartial observer that there is substantial compliance with the requirements of the rules, hence, not *pro forma.*

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RESOLUTION THEREOF, LIMITED TO THE ISSUE RAISED.** — Where the only question posed in the petition for *certiorari* is the nature of petitioner's motion for reconsideration, *i.e.*, whether it has sufficiently complied with the requirements of the Rules of Court and therefore not *pro forma*, the resolution of such issue does not concern with the correctness of the trial court's conclusion as to the ownership of the payloader in question which was not raised in the petition.

4. **ID.; ID.; ID.; ABUSE OF DISCRETION; ENFORCEMENT OF A DECISION WHILE THE MOTION FOR RECONSIDERATION IS PENDING IS ABUSE OF DISCRETION.** — It is grave abuse of discretion to direct the issuance of a writ of execution to enforce a judgment which is not final such as when the motion for reconsideration which is not pro forma has not yet been resolved, because such motion tolls the running of the period to appeal.

APPEARANCES OF COUNSEL

Benjamin C. Santos Law Offices for petitioner.
Arturo Limoso for private respondent.

D E C I S I O N

CONCEPCION JR., *J.*:

Petition for *certiorari*, with preliminary injunction, to annul and set aside the order of the respondent judge for the issuance of a writ of execution in Civil Case No. Q-16356 of the Court of First Instance of Rizal, entitled: "*Antonio Cruz, plaintiff, versus Efren Garcia, defendant,*" as well as the order denying the motion for its reconsideration.

The record shows that on March 13, 1972, the herein petitioner Antonio Cruz filed a complaint with the Court of First Instance of Rizal, against the private respondent Efren Garcia and the

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Chief of Police of Pasay City for the recovery of a "payloader" valued at ₱48,000.00, the possession of which had been allegedly withheld from him by the defendants.[1] Upon filing of a replevin bond, the "payloader" was restored to him on May 23, 1972.[2] After trial, a decision was rendered, the dispositive portion of which reads, as follows:

"IN VIEW OF THE FOREGOING, We find the preponderance of evidence in favor of the defendant. This case is ordered dismissed without pronouncement as to costs. The plaintiff, having failed to pay the rentals for the payloader for two (2) months, is ordered to pay the defendant the sum of Twelve Thousand (₱12,000.00) pesos. The payloader is ordered to be returned to the defendant."[3]

On October 25, 1974, the plaintiff Antonio Cruz filed a motion for the reconsideration of the decision upon the ground that there is a material contradiction and misappreciation of facts in the decision; indicating therein the pertinent portions of the judgment which are not supported by the evidence or which are contrary to law.[4] The defendant Efren Garcia likewise moved for the reconsideration of the decision, asking for the payment of accrued rentals on the "payloader" from May 23, 1972, when the said "payloader" was returned to the plaintiff.[5] The plaintiff filed an opposition thereto, citing the grounds stated in his motion for reconsideration which he asked to be "incorporated and likewise taken into consideration for purposes of stress, side by side this opposition"; and for the reason that the claim was not included in defendant's answer and counterclaim. Besides asking for the denial of the defendant's motion, the plaintiff further prayed that "his previous Motion for Reconsideration be duly approved and the Decision aforesaid be duly set aside."[6]

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[1] *Rollo*, p. 26.

[2] *Id.*, pp. 79, 167.

[3] *Id.*, pp. 40, 44.

[4] *Id.*, p. 45.

[5] *Id.*, p. 78.

[6] *Id.*, p. 166.

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On July 18, 1975, the respondent judge declared that the motions for reconsideration of the parties, as well as the oppositions thereto, are deemed submitted for resolution.[7]

On July 25, 1975, the respondent judge issued the following order:

"Considering the allegations of, the issues raised and the arguments adduced in the defendant's motion for reconsideration dated October 3, 1974, as well as the opposition thereto, the Court finds the motion to be without merit and therefore denies it."[8]

and on August 18, 1975, the defendant asked for the issuance of a writ of execution.[9] The plaintiff opposed the execution of the judgment for being premature since the motion for reconsideration of the decision filed by him has not yet been resolved.[10] The respondent judge, however, granted the defendant's motion, saying:

"Considering that the filing of a motion for reconsideration does not stop the running of the period for filing an appeal, and considering the allegations of the issues raised and the arguments adduced in the defendant's motion for issuance of a writ of execution, the Court finds the said motion to be meritorious, the decision in this case having become final unappealable and executory.

"WHEREFORE, the motion for issuance of a writ of execution is hereby granted. The Acting Deputy Clerk of this Court is ordered to issue the writ of execution prayed for."[11]

When the respondent judge denied[12] the motion for the reconsideration of this order,[13] the plaintiff filed the instant petition

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[7] *Id.*, p. 173.

[8] *Id.*, p. 85.

[9] *Id.*, p. 86.

[10] *Id.*, p. 88.

[11] *Id.*, p. 90.

[12] *Id.*, p. 100.

[13] *Id.*, p. 91.

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for *certiorari*, to annul and set aside the order for the issuance of a writ of execution, as well as the order denying the motion for its reconsideration. A writ of preliminary injunction was issued upon the filing of a bond in the amount of ₱12,000.00 to restrain the enforcement of the questioned orders.[14]

The only issue to be resolved, considering the above facts, is whether or not the respondent judge committed a grave abuse of discretion in issuing the order for the issuance of a writ of execution.

The petitioner contends that the controversial order for the issuance of a writ of execution was premature since the decision sought to be enforced is not yet final and executory as the respondent judge had not yet resolved his motion for the reconsideration of the said decision. The respondent, Efren Garcia, upon the other hand, contends that the facts and circumstances obtaining in the case show that the plaintiff's motion for reconsideration of the decision was resolved by the respondent judge in his order dated July 25, 1975; and that the plaintiff's motion for reconsideration is a *pro forma* motion. Quoting the order of July 25, 1975, the respondent argues thusly:

"From the reading of the Order, it is very clear that the respondent judge considered the Opposition of plaintiff dated December 18, 1974. And in considering the said Opposition, he also considered plaintiff's Motion for Reconsideration because plaintiff prayed that 'In this connection, plaintiff's motion for reconsideration aforesaid is hereby incorporated and likewise taken into consideration for purposes of stress, side by side this opposition.' And besides, the Notice of Hearing dated June 30, 1975, specifies the two Motions for Reconsideration, that of plaintiff and defendant. Hence, it cannot be said that the respondent judge did not consider plaintiff's Motion for Reconsideration dated October 25, 1974."[15]

There is merit in the petition. While it may be true that the plaintiff had asked the court that this motion for reconsideration

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[14] *Id.*, p. 107.

[15] *Id.*, pp. 133-134.

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be incorporated in, and taken into consideration with, his opposition to the defendant's motion for the issuance of a writ of execution, and that the respondent judge had stated that the motions for reconsideration of the parties, as well as their opposition, are deemed submitted for consideration, the denial of the plaintiff's motion for reconsideration cannot be implied from the order of July 25, 1975. Only the defendant's motion for reconsideration was explicitly denied and no mention was made of the plaintiff's motion for reconsideration. Neither could it be implied from subsequent acts or orders since there is no order issued which may be considered inconsistent with the granting of the relief sought in the motion for reconsideration.

It is also claimed that the plaintiff's motion for reconsideration is a *pro forma* motion intended merely to delay the proceedings and does not interrupt or suspend the period of time for the perfection of an appeal.

A motion for reconsideration is *pro forma* when it does not specify the findings or conclusions in the judgment which are not supported by evidence or which are contrary to law, making express reference to the pertinent evidence or legal provisions, as expressly required in the third paragraph of Section 2, Rule 37 of the Rules of Court.

In his motion for reconsideration, the plaintiff questioned specific findings and conclusions in the decision and had taken pains in pinpointing the pages in the decision where the findings and conclusions appear, the pages of the transcript of stenographic notes where the alleged contrary evidence is to be found, the names of witnesses whose testimonial evidence is referred to, and the exhibit numbers of the documentary evidence relied upon. By and large, there is enough in the said motion for reconsideration to persuade an impartial observer that there is substantial compliance with the requirements of the rules.

It is pointed out that the issues raised in the petitioner's motion for reconsideration is a "mere repetition of the issue already passed upon by the trial court;" that these "matters were raised

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in the trial and in the memorandum of the defendant dated August 18, 1974," and that the decision of the trial court is based on evidence and facts of the case so that it "cannot be argued that said decision is contrary to the evidence or against the law."[16] We are not here concerned, however, with the correctness of the trial court's conclusion as to the ownership of the "payloader." The question posed is the nature of the petitioner's motion for reconsideration and is whether it has sufficiently complied with the requirements of the Rules and therefore, not *pro forma*.

It results that the petitioner's motion for the reconsideration of the decision is not a *pro forma* motion and consequently, tolled the running of the period for appeal. Hence, the respondent judge abused his discretion in ordering enforcement of the decision dated September 13, 1974.

WHEREFORE, the petition is granted and the orders dated August 25, 1975 and October 3, 1975 issued in Civil Case No. Q-16356 of the Court of First Instance of Rizal are hereby annulled and set aside. The respondent judge is hereby ordered to resolve the motion for reconsideration filed by the petitioner on October 25, 1974 in the said case. The writ of preliminary injunction heretofore issued is made permanent. With costs against the respondent Efren Garcia.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Aquino, Santos, and *Abad Santos, JJ.*, concur.

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[16] *Id.*, p. 136.