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WHEREFORE, the petition is dismissed and the decision of respondent court adverse to petitioners is hereby declared final. No costs.

Fernando (Chairman), Antonio, Aquino, Concepcion, Jr., and *Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-28454. May 18, 1978]

EMILIO APACHECHA and ROSITA OTERO, *petitioners, vs.* **HONORABLE VALERIO V. ROVIRA, as Judge of the Court of First Instance of Iloilo (Branch IV); EUSTAQUIO AGOS, MARIA BALAJADIA and PACIFICO LUMAUAG,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; STAY OF EXECUTION PENDING APPEAL; FILING OF SUPERSEDEAS BOND.** — Execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned upon the performance of the judgment or order appealed from in case it be affirmed wholly or in part.

2. **ID.; ID.; ID.; ID.; WHEN SUPERSEDEAS BOND MAY BE PROCEEDED AGAINST.** — The supersedeas bond may be proceeded against on motion before the trial court, with notice to the surety, after the case is remanded to it by the appellate court.

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3. ID.; ID.; ID.; ID.; **BOND REFERRED TO IN SECTION 9 OF RULE 58 IN CONNECTION WITH SECTION 20 OF RULE 57 IS NOT SUPERSEDEAS BOND.** — The bond referred to in Section 9 of Rule 58 in connection with Section 20 of Rule 57 refers to a claim for damages resulting from an improper preliminary injunction which requires the filing of an application for damages before the entry of final judgment and a hearing thereon with notice to surety before it can be proceeded against. It is not identical with the supersedeas bond.

4. ID.; ID.; **APPEAL; JURISDICTION; FACTUAL ISSUES SHOULD BE THRESHED OUT IN THE TRIAL COURT.** — Where a claim by one litigant that the parties have already amicably settled their case is denied by the other party, the issue becomes a factual issue which should be threshed out in the trial court.

5. ID.; ID.; **JUDGMENT; EXECUTION; EXTENT OF LIABILITY OF SUPERSEDEAS BOND.** — Before execution may issue against a person who files a supersedeas bond, the exact amount of the liability of the judgment-debtor, which may not necessarily be the full amount of the bond filed, must be clarified in the lower court.

APPEARANCES OF COUNSEL

Glicerio G. Gimotea for petitioners.

Nicanor D. Sorongon for respondents Eustaquio Agos and Maria Balajadia.

Gellada & Gellada for respondent Pacifico Lumauag.

D E C I S I O N

BARREDO, *J.*:

Petition for *certiorari* impugning as a grave abuse of discretion the order of respondent judge of September 16, 1967 in Civil Case No. 5911 of the Court of First Instance of Iloilo, entitled *Emilio Apachecha and Rosita Otero vs. Eustaquio Agos and Maria Balajadia*, which denied petitioners' motion praying that private respondent Pacifico Lumauag be made to pay, as surety on the supersedeas bond filed to stay the execution pending appeal of the judgment that petitioners had secured against

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Agos and Balajadia in the same Civil Case No. 5911, said appeal having been dismissed by the Court of Appeals, ultimately affirmed by the Supreme Court, for failure of the appellants to submit the printed record on appeal on time and after the record had been remanded to the trial court and the execution against the judgment debtors had been returned unsatisfied.

In denying petitioners' motion in question, respondent judge sustained the contention of Lumauag that under Section 9 of Rule 58 in connection with Section 20 of Rule 57, and the rulings of the Supreme Court thereunder, in order that a surety may be bound under a bond for damages, the application for damages must be filed before the entry of final judgment and there must be a hearing with notice to the surety. Respondent judge paid no heed to the contention of petitioners that the matter on hand is not a claim for damages in a case of preliminary injunction governed by the rules just referred to but a motion to enforce the supersedeas bond filed by Lumauag and two other persons to secure the stay of the immediate execution of a judgment in favor of petitioners, which is specifically governed by Section 3 of Rule 39 providing thus:

"SEC. 3. *Stay of execution.* — Execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned upon the performance of the judgment or order appealed from in case it be affirmed wholly or in part. The bond thus given may be proceeded against on motion before the trial court, with notice to the surety, after the case is remanded to it by the appellate court."

The petition must be granted. Petitioners are correct that what they seek is not damages resulting from an improper preliminary injunction. Rather, they are after the execution of a judgment in their favor which was stayed on the strength of the supersedeas bond filed by Lumauag. And it appearing that the appeal in question has been finally dismissed and the record of the case has already been remanded to respondent court, the filing of petitioners' motion seeking relief against private respondent Lumauag was perfectly in order.

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Anent Lumauag's contention in his answer here that apparently, his principals, the judgment debtors, have amicably settled with petitioners, the same was not raised by him in the court below. Besides, it is denied by petitioners and, therefore, becomes a factual issue not appropriate for Us to resolve here. It should be threshed out in the trial court.

Before concluding, however, We deem it opportune to draw attention of the respondent court to the terms of the judgment in issue which reads thus:

"PREMISES CONSIDERED, the Court hereby renders judgment in favor of the plaintiffs and against the defendants, hereby ordering the defendants to resell to the plaintiffs the land described in paragraph 2 of the complaint in consideration of the sum of ₱3,000.00; the defendants shall execute in favor or, sign and deliver to the plaintiffs, the corresponding deed of sale, otherwise, the Clerk of Court shall execute the same once this decision becomes final and after the plaintiffs shall have deposited with him the sum of ₱3,000.00 representing the repurchase price of the land; the defendants shall immediately vacate the land and deliver its possession to the plaintiffs; they shall also reimburse the plaintiffs the sum of ₱6,123.30 for the produce of the land which the defendants received and which the plaintiffs could have received for the period from January, 1961 up to October 27, 1964; to pay a monthly damage of ₱278.33 beginning November 1, 1964 until possession of the land shall have been delivered to the plaintiffs; pay the plaintiffs attorney's fees in the amount of ₱1,000.00, plus the costs." (Page 37, Record.)

Although the questioned order here has already resolved the matter of the execution of the instrument of resale ordered in the above judgment, what needs to be clarified before execution may issue against Lumauag is the exact amount of the liability of the judgment debtors, which does not seem to be necessarily the full amount of the ₱10,000-supersedeas bond he had filed.

ACCORDINGLY, the petition is granted and the impugned orders of respondent judge of April 22, 1967 and October 21, 1967 are hereby set aside, and said respondent is directed to proceed to act on petitioners' motion of April 22, 1967 pursuant to the above opinion. Costs against private respondent Lumauag.

Fernando (Chairman), Antonio, Aquino, Concepcion Jr., and *Santos, JJ.*, concur.