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promulgated on December 23, 1981 has become final and executory.

SO ORDERED.

Teehankee (Chairman), Plana and *Gutierrez, Jr., JJ.*, concur.
Makasiar, J., on leave.
Melencio-Herrera and *Vasquez, JJ.*, concur in the result.

FIRST DIVISION

[G.R. No. 60687. August 31, 1982]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, petitioner, *vs.* THE HONORABLE MINERVA C. GENOVEA, in her capacity as Judge of the Court of First Instance of Rizal, Branch XIII, Pasig, ROMULO VICTORIA, in his capacity as Sheriff of Branch XIII, and BETTER BUILDINGS, INC., respondents.

SYNOPSIS

Better Buildings, Inc. (BBI), which supplies the Philippine Long Distance Telephone Company (PLDT) janitorial maintenance and sanitation services, filed an action for the balance of the amount of readjustment of its monthly billings together with the balance of regular billings and special jobs, and attorney's fees. Defendant PLDT denied any liabilities. After the termination of the pre-trial, respondent Judge admitted all of BBI's documentary evidence over PLDT's objections and set the case for the reception of the latter's evidence. Several postponements were sought by the latter's counsel until PLDT was considered to have waived its right to present its evidence, and judgment was rendered awarding to BBI all the amounts it prayed for. PLDT's motion for reconsideration was denied and respondent Judge granted BBI's "Motion for Immediate Execution" and issued the corresponding writ on the ground that there was a "clear intention" on the part of the PLDT "to delay the proceeding" in the case. In this present action, PLDT claims that there existed no good or special reasons to warrant immediate execution. In the meantime, PLDT had perfected its appeal and BBI's Bill of Costs was approved by respondent judge.

The Supreme Court held that the existence of good reasons is what confers discretionary power on a Court of First Instance to issue a writ of execution

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pending appeal, and the "delay" cited by respondent Judge as the rationale behind the issuance of execution pending appeal is not *per se* a good and valid reason; that the approval by respondent Judge of the Bill of Costs *ex-parte* was grave abuse of discretion because the judgment had not yet become final due to the appeal and the items listed depart from the basic meaning of judicial costs, and the Bill of Costs is initially passed upon by the Clerk of Court; that attorney's fees are not taxable in this case because this is not an instance where the rules of civil law allow them as costs; and the approval of 21% as basis for computation of interest due was a patent error.

Writs prayed for granted. Writ of Execution and Decision rendered by respondent Judge set aside and the case ordered reopened for reception of evidence.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION THEREOF PENDING APPEAL; GOOD REASON, BASIS FOR THE INSTANCE THEREOF; DELAY IN PROCEEDINGS OF CASE NOT *PER SE* GOOD REASON TO JUSTIFY THE SAME IN CASE AT BAR.— The existence of "good reasons" is what confers discretionary power on a Court of First Instance to issue a writ of execution pending appeal. The "delay" in the proceedings of the case "cited by respondent Judge as the rationale behind the issuance of execution pending appeal is not *per se* a good and valid reason. Neither is the apprehension that the appeal of a defeated party is merely dilatory sufficient to justify execution pending appeal for" . . . Unless the appeal is unquestionably dilatory, the allusion made by the trial court that the appeal being taken by respondent is only for the purpose of delay cannot be a valid reason. This assumption prematurely judges the merits of the appeal (City of Bacolod *vs.* Enriquez, et al., cited in Tabuena, et al. *vs.* The Hon. Court of Appeals, etc., et al., 113 Phil. 402 [1961]).

2. ID.; ID.; ID.; ID.; ID.; ID.; GRANT OF REASONABLE POSTPONEMENT TO GIVE DEFENDANT HIS DAY IN COURT, MORE JUDICIOUS.— Faced with the contentions expounded by the defendant in the Motion for New Trial and/or Reconsideration, it behooved respondent Judge to have reopened the case for the reception of PLDT's evidence. Even granting the PLDT had sought several postponements, the requirements of substantial justice mandate that PLDT should have been given its day in Court. The grant of a reasonable continuance would have been sounder judicial discretion to ferret out the truth. It thus becomes obvious that the urgency of

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the execution was not clearly patent nor the right of BBI as the prevailing party to the relief of execution pending appeal undeniable.

3. ID.; ID.; ID.; PAYMENT OF COSTS; ITEMS RECOVERABLE AS SUCH.— Judicial costs mean the expenses of litigation as between litigants or the statutory allowance to a party to an action for his expenses incurred in the action, and having reference only to the parties and the amounts paid by them. Section 10, Rule 142 of the Rules regulates the costs that may be recovered by a prevailing party in Courts of First Instance. The monetary sums awarded in a judgment are never taxed as costs. The proper mode for securing satisfaction therefor is through execution pursuant to the Rules.

4. ID.; ID.; ID.; ID.; *EX-PARTE* APPROVAL OF THE BILL OF COSTS, IN GRAVE ABUSE OF DISCRETION.— The approval by respondent Judge of BBI's Bill of Costs *ex-parte* was in grave abuse of discretion. Firstly, the judgment had not yet become final because of PLDT's appeal. Secondly, the items listed depart from the basic meaning of judicial costs. Thirdly, a Bill of Costs, in the first instance, is passed upon by the Clerk of Court although either party may appeal to the Court from the Clerk's taxation. In acting on the Bill of Costs initially and approving it immediately, respondent Judge contravened Section 8, Rule 142 of the Rules of Court.

5. ID.; ID.; ID.; ID.; ATTORNEY'S FEES NOT NORMALLY TAXABLE AS COSTS.— In respect of attorney's fees as costs, Sec. 6 of Rule 142 explicitly provides: "No attorney's fees shall be taxed as costs against the adverse party, except as provided by the rules of civil law. But this section shall have no relation to the fees to be charged by an attorney as against his client." Clearly, attorney's fees are not normally taxable as costs. Those fees are not included within the expenses and costs of any trial or proceeding.

6. ID.; ID.; ID.; PAYMENT OF INTERESTS; COMPUTATION OF LEGAL RATE; BASIS USED AND APPROVED BY RESPONDENT JUDGE ERRONEOUS.— BBI used 21% as the basis for the computation of interest, which rate was immediately approved by respondent Judge. This is patent error. The Decision on the case stipulated "legal rate of interest," BBI's ratiocination that it was the rate of interest paid by it when it borrowed money from the banks with which to pay its janitors because of PLDT's refusal to make such payment is absolutely untenable. That factor is completely immaterial and irrelevant in the computation of the legal rate of interest awarded in a judgment.

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APPEARANCES OF COUNSEL

Perez, Olan, Lazo, Trinidad, Palabrica and *Associates* for petitioner.

Doroja Law Office for private respondents.

DECISION

MELENCIO-HERRERA, *J.*:

The instant Petition for "Certiorari, Mandamus and Prohibition with Preliminary Injunction" seeks to set aside the Order, dated June 7, 1982, of respondent Judge in the case entitled "Better Buildings, Inc. *vs.* Philippine Long Distance Telephone Company" (Civil Case No. 39943), authorizing execution pending appeal of the judgment requiring payment by petitioner-defendant of the sum of ₱311,328.78 to respondent-plaintiff, Better Buildings, Inc.

The Better Buildings, Inc. (BBI, for brevity) had been supplying the Philippine Long Distance Telephone Company (PLDT) janitorial maintenance and sanitation services at the latter's different offices for more than ten years already.

Sometime in 1977, BBI requested PLDT for readjustment of its monthly billings due to the increase in prices of cleaning materials and the payment of more benefits to its employees as mandated by the Labor Code and other Presidential Decrees. On September 18, 1978, PLDT agreed to the readjustment but in the reduced amount of ₱550.00 monthly per janitor instead of the proposed price of ₱595.00. According to BBI, based on PLDT's counter offer, a total of ₱315,906.03 became due and payable to BBI, but that PLDT paid only ₱103,281.25 leaving unpaid the sum of ₱212,624.78.

On February 4, 1981, BBI filed a complaint against PLDT before the Court of First Instance of Rizal, Branch XIII (CC No. 39943), presided by respondent Judge, for the recovery of said balance plus the amounts of ₱29,038.25 and ₱7,400.00 representing the balance of regular billings and special jobs, respectively, and attorney's fees equivalent to 25% of its claim.

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In its Answer, PLDT denied any liabilities contending mainly that BBI is an independent contractor, the true and actual employer of its employees and is, therefore, liable and responsible for the payment of all benefits and compensation due them under existing laws; that BBI can not hold PLDT liable for any amount in excess of the agreed payment of ₱550.00 per month; and that the invoices submitted by BBI to substantiate its claims have been either paid already, exaggerated, or of doubtful validity.

At the pre-trial on October 15, 1981, respondent Judge allowed BBI to mark its documentary evidence, terminated the pre-trial, and set the case for trial on the merits. The Order read in part:

"Considering that the only issue in this case is payment which is raised as a defense by the defendant, the parties agreed to terminate the pre-trial."

On January 6, 1982, respondent Judge admitted all of BBI's documentary evidence over PLDT's objections and set the case for reception of PLDT's evidence.

After several postponements, when the case was again set for reception of PLDT's evidence on March 18, 1982, PLDT's counsel moved for postponement on the ground of sudden illness of its witness. Objected to by the BBI attorney, postponement was denied and PLDT was "considered to have waived its right to present its evidence and the case is deemed submitted for decision."

On April 27, 1982, a Decision was rendered awarding to BBI all the amounts it had prayed for, thus:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant directing the latter to pay the former the following:

a) The sum of ₱212,624.78 representing the adjustment from May 1976 to December, 1977 to take care of the extra fringe benefits advanced by plaintiff to its personnel embodied in the Labor Code, and P.Ds. 825, 851, 928 and 1123, together with the legal rate of interest due thereon, computed from May 1976 until such time as defendant shall have paid in full the said ₱212,624.78;

b) The sum of ₱29,038.25 representing the balance of its regular billings;

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c) The sum of ₱7,400.00 representing cost of special job rendered by plaintiff;

d) Attorney's fees equivalent to 25% of plaintiff's claim and

e) Costs of suit

SO ORDERED."[1]

On May 27, 1982, twenty-three (23) days after receipt of the Decision, PLDT filed a Motion for New Trial and/or Reconsideration contending that PLDT had never admitted its liability during the pre-trial, that BBI's documentary evidence consisting of requests for adjustments were not shown to have been approved by it (PLDT), and that PLDT was deprived of its day in Court as it was not permitted to adduce evidence in its defense.

On a date that does not appear of record, BBI filed a "Motion for Immediate Execution and Opposition to Motion for New Trial and/or Reconsideration."

On June 7, 1982, respondent Judge issued the assailed Order denying reconsideration and/or new trial on the ground that she found no valid reason to alter her Decision, and that "after the lapse of seven (7) months, it (PLDT) can not be allowed to raise in issue the correctness or accurateness of the contents of the pre-trial order."

In the same Order of June 7, 1982, respondent Judge granted BBI's "Motion for Immediate Execution" on the ground that there was a "clear intention" on the part of PLDT "to delay the proceedings in this case" adding that:

"The defendant was given ample opportunity to prove its defense of payment. It failed to avail itself of the chance.

"Since the liability has already been admitted, and it appears from the records that the plaintiff has already advanced the sums due it to the laborers/janitors entitled to what is being claimed in this case, the Court finds the motion for immediate execution meritorious."

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[1] p. 35, Rollo.

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The aforestated Order was followed the day after, or on June 8, 1982, with the corresponding Writ of Execution, which is also challenged herein.

On June 9, 1982, PLDT filed the instant Petition praying for a judgment declaring the Order dated June 7, 1982 authorizing execution, as well as the Writ itself under date of June 8, 1982, null and void for having been issued with grave abuse of discretion as there exist no good and special reasons to warrant the same.

On June 14, 1982, this Court required BBI to Comment, and issued a temporary Restraining Order enjoining respondents from enforcing the Writ of Execution dated June 8, 1982.

Subsequent pleadings submitted by the parties show that on June 8, 1982, PLDT had filed a Notice of Appeal and a cash bond. This was followed on June 14, 1982 with a Record on Appeal.[2]

Further, on June 15, 1982, BBI filed a "Motion for the Approval of the Bill of Costs,"[3] attaching thereto the following:

"BILL OF COST

Claim on Par. (a)	₱212,624.78
Legal Rate of interest: 21% Duration: Six (6) years and one (1) month ₱212,624.78 x 21% x 6 years and one month = ₱673,980.66	
Total	₱673,980.66
Add: Claim on Par. (b) & (c)	- 36,438.25
	₱710,428.91
Add: Claim on Par. (d) 25% as Attorney's fees	- 177,607.22
	₱888,036.13
Add: Claim on Par. (e) Cost of suit	1,000.00
Total Claim	₱889,036.13

[2] Respondents' Rejoinder, p. 95, *ibid.*

[3] Annex "A", PLDT Reply, p. 85, *ibid.*

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(Eight Hundred Eighty Nine Thousand Thirty Six and Thirteen Centavos)"[4]

The Bill of Costs was approved in an Order issued by respondent Judge on the same day directing four specified banks

". . . to deposit to the Court the sum of ₱888,036.13 (sic) representing the principal amount awarded in the decision, dated April 27, 1982, with interest at the rate of 21% p.a. from May, 1976 up to the present, plus attorney's fees equivalent to 25% thereof and costs of suit, excluding sheriff's fee."[5]

Required to comment on the instant Petition, BBI maintains that after three pre-trial conferences, respondent Judge had stripped the case of "sham and futile" issues until the "defense of payment remained as the sole triable question of fact to be resolved"; that PLDT was given ample opportunity to prove its defense of payment but failed to avail itself of the chance and instead sought unjustified postponements; that PLDT's Motion for Reconsideration and/or New Trial was *pro forma* and did not interrupt the period of appeal; that "delay for the tactic of buying time by the PLDT was a valid compelling reason to warrant the execution pending appeal"; that since PLDT's defense of payment was not and could not be proven, any appeal interposed by it was frivolous and dilatory.

BBI also justified its Bill of Costs and the approval thereof by respondent Judge averring that it merely reproduced the award adjudged in the Decision, and, as to the rate of interest, it explained:

". . . The reason the interest was computed at 21% is due to the fact that the amount of ₱212,624.78 advanced by private respondent to its janitors assigned at petitioner's premises was just borrowed from a private commercial bank which charged private respondent the same rate of interest and even more. . . ."[6]

1. PLDT underscores the absence of "good reasons" as a basis for the issuance of execution pending appeal. We agree. The existence of good reasons is what confers discretionary power on

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[4] p. 87, *ibid.*

[5] Annex "B", PLDT Reply, p. 88, *ibid.*

[6] Rejoinder of BBI, p. 97, *ibid.*

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a Court of First Instance to issue a writ of execution pending appeal.[7] The "delay" cited by respondent Judge as the rationale behind the issuance of execution pending appeal is not *per se* a good and valid reason. Neither is the apprehension that the appeal of a defeated party is merely dilatory sufficient to justify execution pending appeal.

". . . unless the appeal is unquestionably dilatory, the allusion made by the trial court that the appeal being taken by respondent is only for the purpose of delay (Annex Q) cannot be a valid reason. This assumption prematurely judges the merits of the appeal (City of Bacolod *vs.* Enriquez, et al., *supra*) . . .."[8]

Moreover, the impression of respondent Judge that "the only issue in this case is payment, which is raised as a defense by the defendant,"[9] is based on a misappreciation of PLDT's position. As early as its Answer, PLDT denied any liability. At the pre-trial, its counsel also had occasion to clarify its stand:

"Atty. Palabrica—

"Our records show that full payments had been made to them in accordance with the agreement. So, we are not admitting our liability for the said amounts."[10]

In its Motion for New Trial and/or Reconsideration,[11] PLDT also specifically contended:

". . . Although defendant agreed to the adjustment, plaintiff was not able to prove by substantial evidence as to the number of its employees who actually rendered service to the defendant during the disputed period in order to determine the actual amount due the plaintiff. . . ."

Faced with those contentions, it behooved respondent Judge to have reopened the case for the reception of PLDT's evidence. Even granting that PLDT had sought several postponements, the

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[7] Francisco's Revised Rules of Court, p. 608, Vol. II (1966) citing Lusk *vs.* Stevens, et al., 64 Phil. 154; Sec. 2, Rule 39, Revised Rules of Court.

[8] Tabuena, et al. *vs.* The Hon. Court of Appeals, etc., et al., 113 Phil. 402 (1961).

[9] Pre-trial Order, p. 32, Rollo.

[10] T.s.n., Pre-trial held on June 25, 1981, pp. 2-3, pp. 39-40, Rollo.

[11] p. 37, Rollo.

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requirements of substantial justice mandate that PLDT should have been given its day in Court. The grant of a reasonable continuance would have been sounder judicial discretion to ferret out the truth.

It thus becomes obvious that the urgency of the execution was not clearly patent nor the right of BBI as the prevailing party to the relief of execution pending appeal undeniable.

2. The approval by respondent Judge of BBI's Bill of Costs *ex-parte* was likewise in grave abuse of discretion. Firstly, the judgment had not yet become final because of PLDT's appeal.

Secondly, the items listed depart from the basic meaning of judicial costs, that is the expenses of litigation as between litigants,[12] or the statutory allowance to a party to an action for his expenses incurred in the action, and having reference only to the parties and the amounts paid by them.[13] Section 10, Rule 142 of the Rules regulates the costs that may be recovered by a prevailing party in Courts of First Instance.[14] The monetary sums awarded in a judgment are never taxed as costs. The proper mode for securing satisfaction therefor is through execution pursuant to the Rules.

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[12] 10 Am. Jur. 946.

[13] Hontiveros *vs.* Altavas, 39 Phil. 228 (1918).

[14] SEC. 10. *Costs in Courts of First Instance.* — In an action or proceeding pending in a Court of First Instance, the prevailing party may recover the following costs, and no other;

(a) For the complaint or answer, fifteen pesos;

(b) For his own attendance, and that of his attorney, down to and including final judgment, twenty pesos;

(c) For each witness necessarily produced by him, for each day's necessary attendance of such witness at the trial, two pesos, and his lawful traveling fees;

(d) For each deposition lawfully taken by him, and produced in evidence, five pesos;

(e) For original documents, deeds, or papers of any kind produced by him, nothing;

(f) For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies;

(g) The lawful fees paid by him in entering and docketing the action or recording the proceedings, for the service of any process in action, and all lawful clerk's fees paid by him.

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Thirdly, a Bill of Costs, in the first instance, is passed upon by the Clerk of Court although either party may appeal to the Court from the Clerk's taxation. In acting on the Bill of Costs initially and approving it immediately, respondent Judge contravened Section 8, Rule 142 of the Rules of Court.[15] Moreover, PLDT claims that it has never sent the required notice.

In respect of attorney's fees as costs, Sec. 6 of the same Rule 142 likewise explicitly provides:

"SEC. 6 *Attorney's fees as costs.*— No attorney's fees shall be taxed as costs against the adverse party, except as provided by the rules of civil law. But this section shall have no relation to the fees to be charged by an attorney as against his client."

Clearly, attorney's fees are not normally taxable as costs. Those fees are not included within the expenses and costs of any trial or proceeding.[16] Nor is this case an instance where the rules of civil law allow attorney's fees as costs.

BBI likewise used 21% as the basis for the computation of interest, which rate was immediately approved by respondent Judge. This is patent error. The Decision in this case stipulated "legal rate of interest," *supra.* BBI's ratiocination that it was the rate of interest paid by it when it borrowed money from the banks with which to pay its janitors because of PLDT's refusal to make such payment is absolutely untenable. That factor is completely immaterial and irrelevant in the computation of the legal rate of interest awarded in a judgment.

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[15] SEC. 8, *Costs, how taxed.*— In inferior courts, the costs shall be taxed by the municipal or city judge and included in the judgment. In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution." (Rule 142).

[16] Damasen *vs.* Hon. Harold M. Hernando, et als., 104 SCRA 111 (1981), citing Ortiga Bros. & Co. *vs.* Enage, et al., 18 Phil. 345(1911); Osorio *vs.* Trias, 16 Phil. 511 (1910); Somes *vs.* Molina, 15 Phil. 133 (1910).

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WHEREFORE, granting the Writs prayed for, the Order, dated June 7, 1982, and the Writ of Execution, dated June 8, 1982, having been issued by respondent Judge with grave abuse of discretion, are hereby NULLIFIED; 2) granting other "just and equitable reliefs" prayed for, the Decision rendered by respondent Judge under date of April 27, 1982 is also SET ASIDE and respondent Judge is hereby directed to reopen Civil Case No. 39943 for the reception of the evidence of petitioner Philippine Long Distance Telephone Company, and thereafter to render judgment as the facts and evidence may warrant; 3) petitioner, as defendant in that case, shall present its evidence with the least possible delay, limiting requests for postponement to the minimum; and 4) the temporary Restraining Order heretofore issued is hereby made permanent.

Costs against private respondent.

SO ORDERED.

Teehankee (Chairman), Plana, Vasquez , Relova and *Gutierrez, Jr., JJ.,* concur.

Makasiar, J., is on official leave.

FIRST DIVISION

[G.R. No. L-60800. August 31, 1982]

JAIME PELEJO and BELEN C. ZABALLERO, petitioners, *vs.* THE HON. COURT OF APPEALS, PATERNO C. ZABALLERO and AURORA GONZALES, respondents.

SYNOPSIS

Petitioners filed a complaint for Annulment of Deed of Sale, Title, Reconveyance and Damages (Civil Case No. 124771), alleging that the Deed of Sale petitioners executed in favor of respondents, is merely simulated to accommodate the latter in obtaining a loan from the bank. The complaint was dismissed on the motion of private respondents pointing out that the complaint states no cause of action. No appeal was taken by petitioners and instead another complaint but with the same cause of action was filed (Civil