



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

AIR TRANSPORTATION OFFICE
(ATO),
 Petitioner,

G.R. No. 173616

Present:

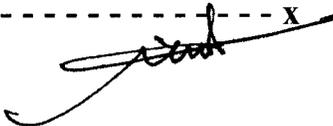
SERENO, *CJ.*,
 Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 VILLARAMA, JR., and
 REYES, *JJ.*

– versus –

HON. COURT OF APPEALS
(NINETEENTH DIVISION) and
BERNIE G. MIAQUE,
 Respondents.

Promulgated:

JUN 25 2014

X ----- X


D E C I S I O N

LEONARDO-DE CASTRO, J.:

This petition for *certiorari* and prohibition of the Air Transportation Office (ATO) seeks the nullification of the Court of Appeals' Resolution¹ dated March 29, 2006 and Resolution² dated May 30, 2006 in CA-G.R. CEB-SP No. 01603. The Resolution dated March 29, 2006 granted the application for temporary restraining order (TRO) of Bernie G. MIAQUE, while the Resolution dated May 30, 2006 issued a writ of preliminary injunction enjoining the implementation of the writ of execution issued by the Regional Trial Court (RTC) of Iloilo despite MIAQUE's alleged continued failure and refusal to make current the supersedeas bond and to pay to the ATO the rental and concession privilege fees.

¹ *Rollo*, pp. 45-46; penned by Associate Justice Isaias P. Dicdican with Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr., concurring.
² *Id.* at 47-49; penned by Associate Justice Isaias P. Dicdican with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring.



The proceedings on the main case of ejectment

MTCC of Iloilo City: Civil Case No. 01 (38)

In May 2001, the ATO filed a complaint for unlawful detainer against Miaque in the Municipal Trial Court in Cities (MTCC) of Iloilo City, Branch 3. It was docketed as Civil Case No. 01 (38). The ATO sought the following, among others:

- (1) That Miaque be ordered to permanently vacate and peacefully return to the ATO possession of:
 - (a) the 800-square meter Refreshment Parlor fronting the New Terminal Building-Iloilo Airport;
 - (b) the 310-square meter Restaurant/Gift Shop inside the Iloilo Airport Terminal; and
 - (c) all areas occupied or otherwise utilized by Miaque incident to his operation of the Porterage Service within the Iloilo Airport; and
- (2) That Miaque be ordered to immediately pay the ATO the amount of not less than ₱1,296,103.10, representing unpaid space rental and concessionaire privilege fees as of October 15, 2000 plus interest and additional rental and fees which may be proven during the trial.³

The MTCC subsequently rendered a Decision⁴ dated May 27, 2002 the dispositive part of which reads:

WHEREFORE, judgment is rendered finding [Miaque] to be unlawfully detaining the following premises and orders [him], his men and privies to:

- a. vacate the 800[-]square meter Refreshment Parlor fronting the New Terminal Building-Iloilo Airport. [Miaque] is further ordered to pay [the ATO] the rental and concessionaire privilege fee[s] accruing from November 1986 to October 2000, totaling ₱460,060.70, plus differential billings from January 1990 to July 1993 for ₱4,652.60 and interest charges from January 2000 to October 2000 for ₱2,678.38 or a total amount of ₱467,397.68 as of October 2000, less the payments made by [Miaque] under Official Receipt No. 4317842 dated December 1998, and the monthly current lease/concession privilege fee from November 2000 until [Miaque] shall have vacated the premises;

³ Id. at 50-62.

⁴ Id. at 63-78.

(b) vacate the 310[-]square meter Restaurant/Gift Shop inside the Iloilo Terminal Building which was reduced to a total of 183 square meters in 1998 (51.56 square meters inside the pre-departure area and 126.72 square meters outside the pre-departure area). [Miaque] is also ordered to pay [the ATO] rentals/concessionaire's privilege fee[s] from January 16, 1992 to October 15, 2000 in the total amount of ₱719,708.43 and from October 16, 2000, to pay the current monthly lease/concessionaire privilege fees until [Miaque] shall have vacated the premises; and

(c) vacate the area occupied or used by [Miaque] incident to his operation of the Porterage Service within the Iloilo Airport. [Miaque] is further ordered to pay Tender Offer Fee due from March 1992 to October 2000 in the total amount of ₱108,997.07. [Miaque] is further ordered to pay the current monthly concession privilege fee from October 2000 until such time that [Miaque] shall have vacated the premises.

Costs against [Miaque].⁵

RTC of Iloilo City: Civil Case No. 02-27292

Miaque appealed the MTCC Decision to the RTC of Iloilo City, Branch 24. It was docketed as Civil Case No. 02-27292. The RTC, in its Decision⁶ dated June 7, 2003, affirmed the MTCC Decision in its entirety. Miaque's motion for reconsideration was denied.⁷

Court of Appeals: CA-G.R. SP No. 79439

Miaque questioned the RTC Decision in the Court of Appeals by filing a petition for review, docketed as CA-G.R. SP No. 79439, on September 25, 2003. In a Decision⁸ dated April 29, 2005, the Court of Appeals dismissed the petition and affirmed the RTC Decision. Miaque moved for reconsideration but it was denied in a Resolution dated January 5, 2006.⁹

Supreme Court: G.R. No. 171099

Miaque brought the case to this Court in a petition for review, docketed as G.R. No. 171099. In a Resolution¹⁰ dated February 22, 2006, the petition was denied as no reversible error in the Court of Appeals Decision was sufficiently shown. The motion for reconsideration of Miaque was denied with finality.¹¹

⁵ Id. at 77-78.

⁶ Id. at 79-89.

⁷ Id. at 100-103.

⁸ Id. at 125-133.

⁹ Id. at 135-136.

¹⁰ Id. at 159.

¹¹ Id. at 160. Upon finality, entry of judgment was made on July 10, 2006.

The proceedings on execution

As an incident of CA-G.R. SP No. 79439, the Court of Appeals issued on February 27, 2004 a temporary restraining order (TRO) effective for a period of 60 days and required Miaque to post a bond in the amount of ₱100,000.00.¹² After the lapse of the TRO, the ATO filed an urgent motion for the execution of the RTC Decision pursuant to Section 21, Rule 70 of the Rules of Court. This was opposed by Miaque.¹³

In an Order¹⁴ dated August 2, 2004, the RTC granted the ATO's motion:

Wherefore, in view of the above consideration, the court finds merit [i]n the reasons given in the motion of [the ATO] and hereby Grants the issuance of a Writ of Execution.

Pursuant to Section 21, Rule 70 of the 1997 Rules of Civil Procedure, which mandates that the judgment of this Court being immediately executory in cases of this nature, let a writ of execution shall issue, ordering the sheriff of this Court to effect its Decision dated June 7, 2003, affirming the Decision of the MTCC, Branch 3, Iloilo City.

Furnish copies of this order to the Asst. Solicitor Almira Tomampos of the Office of the Solicitor General and Atty. Rex Rico, counsel for [Miaque].¹⁵

Miaque sought reconsideration of the above Order but the RTC denied the motion in an Order¹⁶ dated August 13, 2004. Thereafter, the RTC issued a Writ of Execution dated August 16, 2004.¹⁷

However, the Court of Appeals issued a Resolution¹⁸ dated August 18, 2004 ordering the issuance of a writ of preliminary injunction and enjoining the ATO and all persons acting in its behalf from enforcing the respective Decisions of the MTCC and the RTC while CA-G.R. SP No. 79439 is pending. Thus, after the dismissal of Miaque's petition for review in CA-G.R. SP No. 79439, the ATO filed another urgent motion for execution of the RTC Decision. In its motion, the ATO pointed out that the supersedeas bond filed by Miaque had lapsed and was not renewed and that the rental and concessionaire privilege fees have not been paid at all in violation of Section 8, Rule 70 of the Rules of Court.¹⁹ Miaque again opposed the ATO's urgent motion for execution,²⁰ while the ATO filed a supplemental urgent motion for execution stating that Miaque's appeal in the Court of

¹² Id. at 161-162.
¹³ Id. at 163-171.
¹⁴ Id. at 172-174.
¹⁵ Id. at 174.
¹⁶ Id. at 175-176.
¹⁷ Id. at 177-180.
¹⁸ Id. at 181-184.
¹⁹ Id. at 186-194.
²⁰ Id. at 195-200.

Appeals had been dismissed.²¹

In an Order²² dated June 1, 2005, the RTC granted the ATO's urgent motion for execution and issued a Writ of Execution²³ dated June 2, 2005. On the basis of the said writ, a notice to vacate was given to Miaque.²⁴ On June 3, 2005, Miaque filed a motion for reconsideration of the Order dated June 1, 2005, with prayer to set aside the writ of execution and notice to vacate.²⁵ At the same time, he filed a motion in CA-G.R. SP No. 79439 praying that the Court of Appeals order the RTC judge and the concerned sheriffs to desist from implementing the writ of execution.²⁶ Thereafter, the Court of Appeals issued a Resolution²⁷ dated June 14, 2005 ordering the sheriffs to desist from executing the Decisions of the MTCC and the RTC while CA-G.R. SP No. 79439 is still pending. However, on June 15, 2005, before the concerned sheriffs received a copy of the Resolution dated June 14, 2005, the said sheriffs implemented the writ of execution and delivered the possession of the following premises to the ATO:

- (a) the Restaurant/Gift Shop inside the Iloilo Terminal Building in the reduced area of 183 square meters; and
- (b) the area which Miaque occupied or used incident to his operation of the Portage Service within the Iloilo Airport.

The sheriffs who implemented the writ then filed a return of service²⁸ and issued reports of partial delivery of possession.²⁹ However, Miaque subsequently regained possession of the said premises on the strength of the Court of Appeals' Resolution dated June 14, 2005.³⁰

On February 9, 2006, after the Court of Appeals issued its Resolution dated January 5, 2006 denying Miaque's motion for reconsideration of the Decision dated April 29, 2005 in CA-G.R. SP No. 79439, the ATO filed with the RTC a motion for the revival of the writs of execution dated August 16, 2004 and June 2, 2005.³¹ This was opposed by Miaque.³² After the RTC heard the parties, it issued an Order³³ dated March 20, 2006 granting the ATO's motion and revived the writs of execution dated August 16, 2004 and June 2, 2005. Miaque filed a motion for reconsideration but the RTC denied it.³⁴

²¹ Id. at 201-207.

²² Id. at 210-212.

²³ Id. at 213-216.

²⁴ Id. at 208-209.

²⁵ Id. at 249-256.

²⁶ Id. at 257-262.

²⁷ Id. at 263-264.

²⁸ Id. at 217-219.

²⁹ Id. at 243-244.

³⁰ Id. at 272-273.

³¹ Id. at 265-277.

³² Id. at 278-285.

³³ Id. at 302-305.

³⁴ Id. at 306-327.

A new case in the Court of Appeals: CA-G.R. CEB-SP No. 01603

On March 28, 2006, Miaque filed a petition³⁵ for *certiorari* (with prayer for issuance of TRO and/or writ of preliminary injunction) in the Court of Appeals, docketed as CA-G.R. CEB-SP No. 01603, where he assailed the RTC's Order dated March 20, 2006. He prayed, among others, that the implementation of the writs of execution be enjoined. It is here where the Court of Appeals issued the Resolutions being challenged in this case, namely, the Resolution dated March 29, 2006 issuing a TRO effective for 60 days, and Resolution dated May 30, 2006 issuing a writ of preliminary injunction enjoining the implementation of the writs of execution dated August 16, 2004 and June 2, 2005. In particular, the Resolution dated May 30, 2006 reads:

Before us for resolution is [Miaque]'s application for the issuance of a writ of preliminary injunction that would restrain the respondent judge, Sheriffs Marcial B. Lambuso, Winston T. Eguia, Camilo I. Divinagracia, Jr. and Eric George S. Luntao and all other persons acting for and in their behalves, from enforcing the orders issued by the respondent judge on March 20, 2006 and March 24, 2006, including the writ[s] of execution issued pursuant thereto, while the petition in the case at bench is still pending with us.

After examining judiciously the record in this case, together with the submissions and contentions of the parties, we have come up with a finding and so hold that there is a sufficient showing by [Miaque] that the grounds for the issuance of a writ of preliminary injunction enumerated in Section 3 of Rule 58 of the 1997 Revised Rules of Court exist. We find that [Miaque] has a right *in esse* to be protected and the acts against which the injunction is sought to be directed are violative of said right. To our mind, [Miaque] appears to have a clear legal right to hold on to the premises leased by him from ATO at least until such time when he shall have been duly ejected therefrom by a writ of execution of judgment caused to be issued by the MTCC in Iloilo City, which is the court of origin of the decision promulgated by this Court in CA-G.R. SP No. 79439 on April 29, 2005. Under the attendant circumstances, it appears that the respondent judge or the RTC in Iloilo City has no jurisdiction to order the issuance of such writ of execution because we gave due course to the petition for review filed with us in CA-G.R. SP No. 79439 and, in fact, rendered a decision on the merit in said case, thereby divesting the RTC in Iloilo City of jurisdiction over the case as provided for in the third paragraph of Section 8(a) of Rule 42 of the 1997 Revised Rules of Court. In *City of Manila vs. Court of Appeals*, 204 SCRA 362, as cited in *Mocles vs. Maravilla*, 239 SCRA 188, the Supreme Court held as follows:

“The rule is that, if the judgment of the metropolitan trial court is appealed to the RTC and the decision of the latter itself is elevated to the CA whose decision thereafter became final, the

³⁵ Id. at 329-365.

case should be remanded through the RTC to the metropolitan trial court for execution.”

WHEREFORE, in view of the foregoing premises, a **WRIT OF PRELIMINARY INJUNCTION** is hereby ordered or caused to be issued by us enjoining the respondent judge, Sheriffs Marcial B. Lambuso, Winston T. Eguia, Camilo I. Divinagracia, Jr. and Eric George S. Luntao and all other persons acting for and in their behalves, from enforcing the orders issued by the respondent judge on March 20, 2006 and March 24, 2006, including the writ[s] of execution issued pursuant thereto, while the petition in the case at bench is still pending with us.

This is subject to the petitioner’s putting up of a bond in the sum of **ONE HUNDRED THOUSAND PESOS (P100,000.00)** to the effect that he will pay to the respondent ATO all damages which said office may sustain by reason of the injunctive writ if we should finally decide that [Miaque] is not entitled thereto.³⁶

The present petition

The ATO claims that the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the TRO and the subsequent writ of preliminary injunction through the Order dated March 29, 2006 and the Resolution dated May 30, 2006, respectively. According to the ATO, the Court of Appeals ignored the government’s right under the law, Rules of Court, jurisprudence and equity to the possession as well as to the payment of rental and concession privilege fees which, at the time of the filing of this petition, already amounted to P2 Million. Such right had already been decided with finality by this Court, which affirmed the Decision dated April 29, 2005 of the Court of Appeals in CA-G.R. SP No. 79439, but the Court of Appeals has repeatedly thwarted it. The RTC acted properly and pursuant to Section 21, Rule 70 of the Rules of Court when it issued the writs of execution.³⁷ Moreover, the ATO asserts that a TRO cannot restrain an accomplished fact, as the RTC’s writ of execution dated June 1, 2005 had already been partially implemented.³⁸

The ATO also argues that, by his admission that the issues in CA-G.R. SP No. 79439 and CA-G.R. CEB-SP No. 01603 are exactly the same, Miaque has committed forum shopping. In this connection, the ATO points out that, in his opposition to the ATO’s motion for additional period of time to file its comment on Miaque’s petition in CA-G.R. CEB-SP No. 01603, Miaque pointed out the similarity of the core issues in CA-G.R. SP No. 79439 and CA-G.R. CEB-SP No. 01603, to wit:

b) The legal issues raised by the petition [in CA-G.R. CEB-SP No. 01603] are very simple and not complicated. In fact, the threshold issue, i.e., whether or not respondent court (RTC) has jurisdiction to issue

³⁶ Id. at 47-49.

³⁷ Id. at 21-25.

³⁸ Id. at 28-29.

the writ of execution after the appeal over its decision had been perfected and the petition for review [in CA-G.R. SP No. 79439] given due course, is exactly the same one earlier raised by [the ATO itself in its] “Motion for Reconsideration” of the Resolution dated June 14, 2005, in CA G.R. No. 79439, entitled “Bernie G. Miaque vs. Hon. Danilo P. Galvez and Air Transportation Office (ATO)”, (same parties in this proceeding), then pending before the 20th Division, Court of Appeals, Cebu City.

Hence, all that [the ATO has] to do is simply to reiterate [its] said arguments, the law and jurisprudence [it has] earlier invoked and, if [it wishes], add some more arguments, laws or jurisprudence thereto. Such an exercise would definitely not require a sixty (60) day period. A ten (10) day period is more than sufficient.³⁹

The ATO further contends that the subject premises form part of a public utility infrastructure and, pursuant to Presidential Decree No. 1818, the issuance of a TRO against a public utility infrastructure is prohibited.⁴⁰

The ATO adds that Miaque’s petition for *certiorari* in CA-G.R. CEB-SP No. 01603 introduces a new matter which is the alleged novation of the MTCC Decision when he deposited the amount of ₱319,900.00 to the Land Bank of the Philippines account of the ATO in February 2006. At any rate, the ATO asserts that its tenacity in pursuing the execution of the judgment against Miaque belies its consent to the alleged novation.⁴¹

For his part, Miaque argues that this Court has no jurisdiction to dismiss a petition still pending with the Court of Appeals. Thus, the ATO cannot properly pray that this Court dismiss CA-G.R. CEB-SP No. 01603. According to Miaque, the jurisdiction of this Court is limited only to the determination of whether or not the Court of Appeals gravely abused its discretion in issuing a TRO and, subsequently, a preliminary injunction in CA-G.R. CEB-SP No. 01603. In this connection, Miaque insists that the Court of Appeals acted well within its jurisdiction in the issuance of both the Order dated March 29, 2006 granting a TRO and the Resolution dated May 30, 2006 issuing a writ of preliminary injunction in CA-G.R. CEB-SP No. 01603. As this Court has effectively affirmed the MTCC Decision, then it is the MTCC and not the RTC which should have directed the execution of the MTCC Decision. Moreover, the RTC had no jurisdiction to issue the writs of execution dated August 16, 2004 and June 1, 2005 because the said court already lost its jurisdiction when Miaque filed an appeal to the Court of Appeals on September 25, 2003, which appeal was given due course.⁴²

Miaque also asserts that the ATO’s claim that the RTC’s writ of execution had been partially implemented is not true and that he is in possession of the entire subject premises when the Court of Appeals issued the TRO and writ of preliminary injunction being challenged in this case.

³⁹ Id. at 26. Underscoring supplied in the ATO’s petition.

⁴⁰ Id. at 28-29.

⁴¹ Id. at 34-36.

⁴² Id. at 682-687.

Finally, Miaque alleges that no writ may be issued to enforce the MTCC Decision as the said decision had already been novated by his deposit of ₱319,000.00 to the ATO's account with the Land Bank of the Philippines in February 2006.⁴³

This Court, in a Resolution⁴⁴ dated August 14, 2006, issued a TRO enjoining the Court of Appeals, Miaque, and his agents and representatives from implementing the Resolution dated March 29, 2006 and the Resolution dated May 30, 2006 in CA-G.R. CEB-SP No. 01603.

The Court's ruling

The petition is meritorious.

Preliminarily, the Court notes that the challenge to the Order dated March 29, 2006 granting a TRO, effective for 60 days, is moot as its effectivity had already lapsed.

Cutting through the tangled web of issues presented by the contending parties, the basic question in this petition is whether or not the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolution dated May 30, 2006 which granted petitioner's application for the issuance of a writ of preliminary injunction in CA-G.R. CEB-SP No. 01603.

Section 21, Rule 70 of the Rules of Court provides the key to that question:

Sec. 21. Immediate execution on appeal to Court of Appeals or Supreme Court. – The judgment of the Regional Trial Court against the defendant shall be **immediately executory**, without prejudice to a further appeal that may be taken therefrom. (Emphasis supplied.)

This reflects Section 21 of the Revised Rule on Summary Procedure:

Sec. 21. Appeal. - The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same in accordance with Section 22 of Batas Pambansa Blg. 129. **The decision of the Regional Trial Court in civil cases governed by this Rule, including forcible entry and unlawful detainer, shall be immediately executory**, without prejudice to a further appeal that may be taken therefrom. Section 10 of Rule 70 shall be deemed repealed. (Emphasis and underscoring supplied.)

The above provisions are supplemented and reinforced by Section 4, Rule 39 and Section 8(b), Rule 42 of the Rules of Court which respectively provide:

⁴³ Id. at 691-695.

⁴⁴ Id. at 420-421.

Sec. 4. *Judgments not stayed by appeal.* – Judgments in actions for injunction, receivership, accounting and support, and **such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom**, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party.

x x x x

Sec. 8. *Perfection of appeal; effect thereof.* –

(a) Upon the timely filing of a petition for review and the payment of the corresponding docket and other lawful fees, the appeal is deemed perfected as to the petitioner.

The Regional Trial Court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

However, before the Court of Appeals gives due course to the petition, the Regional Trial Court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.

(b) **Except in civil cases decided under the Rules on Summary Procedure**, the appeal shall stay the judgment or final order unless the Court of Appeals, the law, or these Rules shall provide otherwise. (Emphases supplied.)

The totality of all the provisions above shows the following significant characteristics of the RTC judgment in an ejectment case appealed to it:

- (1) The judgment of the RTC against the defendant-appellant is immediately executory, without prejudice to a further appeal that may be taken therefrom; and
- (2) Such judgment of the RTC is not stayed by an appeal taken therefrom, unless otherwise ordered by the RTC or, in the appellate court's discretion, suspended or modified.

The first characteristic -- the judgment of the RTC is immediately executory -- is emphasized by the fact that no resolutive condition has been

imposed that will prevent or stay the execution of the RTC's judgment.⁴⁵ The significance of this may be better appreciated by comparing Section 21 of Rule 70 with its precursor, Section 10, Rule 70 of the 1964 Rules of Court which provided:

Sec. 10. *Stay of execution on appeal to Court of Appeals or Supreme Court.* – Where defendant appeals from a judgment of the Court of First Instance, execution of said judgment, with respect to the restoration of possession, shall not be stayed unless the appellant deposits the same amounts and within the periods referred to in section 8 of this rule to be disposed of in the same manner as therein provided.

Under the old provision, the procedure on appeal from the RTC's judgment to the Court of Appeals was, with the exception of the need for a supersedeas bond which was not applicable, virtually the same as the procedure on appeal of the MTC's judgment to the RTC. Thus, in the contemplated recourse to the Court of Appeals, the defendant, after perfecting his appeal, could also prevent the immediate execution of the judgment by making the periodic deposit of rentals during the pendency of the appeal and thereby correspondingly prevent restitution of the premises to the plaintiff who had already twice vindicated his claim to the property in the two lower courts. On the other hand, under the amendatory procedure introduced by the present Section 21 of Rule 70, **the judgment of the RTC shall be immediately executory and can accordingly be enforced forthwith.** It shall not be stayed by the mere continuing deposit of monthly rentals by the dispossessor during the pendency of the case in the Court of Appeals or this Court, although such execution of the judgment shall be without prejudice to that appeal taking its due course. This reiterates Section 21 of the Revised Rule on Summary Procedure which replaced the appellate procedure in, and repealed, the former Section 10, Rule 70 of the 1964 Rules of Court.⁴⁶ *Teresa T. Gonzales La'O & Co., Inc. v. Sheriff Hatab*⁴⁷ states:

Unlike Rule 70 of the 1964 Revised Rules of Court where the defendant, after perfecting his appeal, could prevent the immediate execution of the judgment by taking an appeal and making a periodic deposit of monthly rentals during the pendency of the appeal thereby preventing the plaintiff from taking possession of the premises in the meantime, **the present wording of Section 21, Rule 70 explicitly provides that the judgment of the regional trial court in ejectment cases appealed to it shall be immediately executory and can be enforced despite the perfection of an appeal to a higher court.**⁴⁸ (Emphasis supplied.)

⁴⁵ This is unlike the case of the execution of the judgment of the MTCC under Section 19, Rule 70 of the Rules of Court. (*See City of Naga v. Hon. Asuncion*, 579 Phil. 781, 797 [2008]. There, this Court said that "Section 21, Rule 70 of the Rules does not provide for a procedure to avert immediate execution of an RTC decision.")

⁴⁶ Regalado, Florenz, *Remedial Law Compendium* (10th edition), Vol. I, p. 906.

⁴⁷ 386 Phil. 88 (2000).

⁴⁸ *Id.* at 92.

The RTC's duty to issue a writ of execution under Section 21 of Rule 70 is ministerial and may be compelled by *mandamus*.⁴⁹ Section 21 of Rule 70 presupposes that the defendant in a forcible entry or unlawful detainer case is unsatisfied with the RTC's judgment and appeals to a higher court. It authorizes the RTC to immediately issue a writ of execution without prejudice to the appeal taking its due course.⁵⁰ The rationale of immediate execution of judgment in an ejectment case is to avoid injustice to a lawful possessor.⁵¹ Nevertheless, it should be stressed that the appellate court may stay the writ of execution should circumstances so require.⁵²

The second characteristic -- the judgment of the RTC is not stayed by an appeal taken therefrom -- reinforces the first. The judgment of the RTC in an ejectment case is enforceable upon its rendition and, upon motion, immediately executory notwithstanding an appeal taken therefrom.

The execution of the RTC's judgment is **not discretionary execution** under Section 2, Rule 39 of the Rules of Court which provides:

Section 2. *Discretionary execution.* –

(a) *Execution of a judgment or a final order pending appeal.* – On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

(b) *Execution of several, separate or partial judgments.* – A several, separate or partial judgment may be executed under the same terms and conditions as execution of a judgment or final order pending appeal.

Discretionary execution is authorized while the trial court, which rendered the judgment sought to be executed, still has jurisdiction over the case as the period to appeal has not yet lapsed and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of the motion for execution. It is part of the trial court's residual powers, or those powers which it retains after losing jurisdiction over the case as a result of the perfection of the appeal.⁵³ As a rule, the judgment of

⁴⁹ See *Uy v. Hon. Santiago*, 391 Phil. 575, 578 (2000).

⁵⁰ *City of Naga v. Hon. Asuncion*, supra note 45 at 796-797.

⁵¹ *Bugarin v. Palisoc*, 513 Phil. 59, 65 (2005).

⁵² *City of Naga v. Hon. Asuncion*, supra note 45 at 797.

⁵³ See Section 9, Rule 41 and Section 8, Rule 42 of the Rules of Court.

the RTC, rendered in the exercise of its appellate jurisdiction, being sought to be executed in a discretionary execution is stayed by the appeal to the Court of Appeals pursuant to Section 8(b), Rule 42 of the Rules of Court. On the other hand, execution of the RTC's judgment under Section 21, Rule 70 is not discretionary execution but a ministerial duty of the RTC.⁵⁴ It is not governed by Section 2, Rule 39 of the Rules of Court but by Section 4, Rule 39 of the Rules of Court on judgments not stayed by appeal. In this connection, it is not covered by the general rule, that the judgment of the RTC is stayed by appeal to the Court of Appeals under Section 8(b), Rule 42 of the Rules of Court, but constitutes an exception to the said rule. In connection with the second characteristic of the RTC judgment in an ejectment case appealed to it, the consequence of the above distinctions between discretionary execution and the execution of the RTC's judgment in an ejectment case on appeal to the Court of Appeals is that **the former may be availed of in the RTC only before the Court of Appeals gives due course to the appeal while the latter may be availed of in the RTC at any stage of the appeal to the Court of Appeals.** But then again, in the latter case, the Court of Appeals may stay the writ of execution issued by the RTC should circumstances so require.⁵⁵ *City of Naga v. Hon. Asuncion*⁵⁶ explains:

This is not to say that the losing defendant in an ejectment case is without recourse to avoid immediate execution of the RTC decision. The defendant may x x x appeal said judgment to the Court of Appeals and therein apply for a writ of preliminary injunction. Thus, as held in *Benedicto v. Court of Appeals*, even if RTC judgments in unlawful detainer cases are immediately executory, preliminary injunction may still be granted. (Citation omitted.)

To reiterate, despite the immediately executory nature of the judgment of the RTC in ejectment cases, which judgment is not stayed by an appeal taken therefrom, the Court of Appeals may issue a writ of preliminary injunction that will restrain or enjoin the execution of the RTC's judgment. In the exercise of such authority, the Court of Appeals should constantly be aware that the grant of a preliminary injunction in a case rests on the sound discretion of the court with the caveat that **it should be made with great caution.**⁵⁷

A writ of preliminary injunction is an extraordinary event which must be **granted only in the face of actual and existing substantial rights.** The duty of the court taking cognizance of a prayer for a writ of preliminary injunction is to determine whether the requisites necessary for the grant of an injunction are present in the case before it. In the absence of the same, and where facts are shown to be wanting in bringing the matter within the

⁵⁴ See *Uy v. Santiago*, supra note 49.

⁵⁵ *City of Naga v. Hon. Asuncion*, supra note 45 at 798-797.

⁵⁶ Id. at 798.

⁵⁷ *Bangko Sentral ng Pilipinas Monetary Board v. Antonio-Valenzuela*, G.R. No. 184778, October 2, 2009, 602 SCRA 698, 722.

conditions for its issuance, the ancillary writ must be struck down for having been rendered in grave abuse of discretion.⁵⁸

In this case, the decisions of the MTCC in Civil Case No. 01 (38), of the RTC in Civil Case No. 02-27292, and of the Court of Appeals in CA-G.R. SP No. 79439 unanimously recognized the right of the ATO to possession of the property and the corresponding **obligation of Miaque to immediately vacate the subject premises**. This means that the MTCC, the RTC, and the Court of Appeals all ruled that **Miaque does not have any right to continue in possession of the said premises**. It is therefore puzzling how the Court of Appeals justified its issuance of the writ of preliminary injunction with the sweeping statement that Miaque “appears to have a clear legal right to hold on to the premises leased by him from ATO at least until such time when he shall have been duly ejected therefrom by a writ of execution of judgment caused to be issued by the MTCC in Iloilo City, which is the court of origin of the decision promulgated by this Court in CA-G.R. SP No. 79439.” Unfortunately, in its Resolution dated May 30, 2006 granting a writ of preliminary injunction in Miaque’s favor, the Court of Appeals did not state the source or basis of Miaque’s “clear legal right to hold on to the [said] premises.” This is fatal.

In *Nisce v. Equitable PCI Bank, Inc.*,⁵⁹ this Court stated that, in granting or dismissing an application for a writ of preliminary injunction, **the court must state in its order the findings and conclusions based on the evidence and the law**. This is to enable the appellate court to determine whether the trial court committed grave abuse of its discretion amounting to excess or lack of jurisdiction in resolving, one way or the other, the plea for injunctive relief. **In the absence of proof of a legal right** and the injury sustained by one who seeks an injunctive writ, **an order for the issuance of a writ of preliminary injunction will be nullified**. Thus, where the right of one who seeks an injunctive writ is doubtful or disputed, a preliminary injunction is not proper. The possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction.

The sole basis of the Court of Appeals in issuing its Resolution dated May 30, 2006 is its view that the RTC “has no jurisdiction to order the issuance of [the] writ of execution” because, when it gave due course to the petition for review in CA-G.R. SP No. 79439, the RTC was already divested of jurisdiction over the case pursuant to the third paragraph of Section 8(a), Rule 42 of the Rules of Court. The Court of Appeals is mistaken. It disregards both (1) the immediately executory nature of the judgment of the RTC in ejectment cases, and (2) the rule that such judgment of the RTC is not stayed by an appeal taken therefrom. It ignores the nature of the RTC’s function to issue a writ of execution of its judgment in an ejectment case as ministerial and not discretionary.

⁵⁸ *Palm Tree Estates, Inc. v. Philippine National Bank*, G.R. No. 159370, October 3, 2012, 682 SCRA 194, 213.

⁵⁹ 545 Phil. 138, 160-161 (2007).

The RTC was validly exercising its jurisdiction pursuant to Section 21, Rule 70 of the Rules of Court when it issued the writs of execution dated August 16, 2004 and June 2, 2005. While the Court of Appeals in CA-G.R. SP No. 79439 enjoined the execution of the RTC's judgment during the pendency of CA-G.R. SP No. 79439, the RTC revived the writs of execution dated August 16, 2004 and June 1, 2005 in its Order dated March 20, 2006, after the Court of Appeals denied Miaque's motion for reconsideration of the dismissal of the petition in CA-G.R. SP No. 79439. Indeed, the said writs of execution need not even be revived because they continue in effect during the period within which the judgment may be enforced by motion, that is within five years from entry of judgment, pursuant to Section 14,⁶⁰ Rule 39 of the Rules of Court in relation to Section 6⁶¹ of the same Rule.

There is grave abuse of discretion when an act is (1) done contrary to the Constitution, the law or jurisprudence, or (2) executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.⁶² In this case, the Court of Appeals issued the Resolution dated May 30, 2006 granting Miaque's prayer for a writ of preliminary injunction contrary to Section 21, Rule 70 and other relevant provisions of the Rules of Court, as well as this Court's pronouncements in *Teresa T. Gonzales La'O & Co., Inc.*⁶³ and *Nisce*.⁶⁴ Thus, the Court of Appeals committed grave abuse of discretion when it issued the Resolution dated May 30, 2006 in CA-G.R. CEB-SP No. 01603.

This Court notes that the controversy between the parties in this case has been unduly protracted, considering that the decisions of the MTCC, the RTC, the Court of Appeals, and this Court in favor of the ATO and against Miaque on the ejectment case are already final and executory. The Court of Appeals should therefore proceed expeditiously in resolving CA-G.R. CEB-SP No. 01603.

⁶⁰ Section 14, Rule 39 of the Rules of Court provides:

Sec. 14. *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. **Such writ shall continue in effect during the period within which the judgment may be enforced by motion.** The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

⁶¹ Section 6, Rule 39 of the Rules of Court provides:

Sec. 6. *Execution by motion or by independent action.* – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

⁶² *Information Technology Foundation of the Philippines v. Commission on Elections*, 464 Phil. 173, 190 (2004).

⁶³ *Teresa T. Gonzales La'O & Co., Inc. v. Sheriff Hatab*, supra note 47.

⁶⁴ *Nisce v. Equitable PCI Bank, Inc.*, supra note 59.

WHEREFORE, the petition is hereby **GRANTED**. The Resolution dated May 30, 2006 of the Court of Appeals in CA-G.R. CEB-SP No. 01603 is **ANNULLED** for having been rendered with grave abuse of discretion. The Court of Appeals is directed to conduct its proceedings in CA-G.R. CEB-SP No. 01603 expeditiously and without delay.

SO ORDERED

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Martin S. Villarama, Jr.
MARTIN S. VILLARAMA, JR.
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice