

**JESUS VALENZUELA, SOCORRO Z. VALENZUELA, CRUZ Z.
VALENZUELA, NATIVIDAD Z, VALENZUELA, QUERUBIN Z.
VALENZUELA, SERAFIN Z. VALENZUELA, ANGELA Z. VALENZUELA,
PETITIONERS, VS. THE C...**

G.R. No. L-4808. March 18, 1952

Ponente: BENGZON, J.

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BENGZON, J.:

This is a petition to compel the court of first instance of La Union to issue execution of its judgment for money in favor of petitioners against the other respondent Irene Zafra de Aguilar.

It appears that in Civil Case No. 52 of that court, "Florentina Zafra Vda. de Valenzuela v. Irene Zafra de Aguilar" a decision was rendered on February 13, 1950, requiring the defendant, among other things, to pay plaintiff .the amount of eight hundred ten pesos (P810) with interest at six percent. Copy of this decision was received on February 15, 1950 by defendant's attorney, who filed a motion for reconsideration on March 2, 1950. On June 9, 1950, defendant's attorney was notified of the order denying his motion for reconsideration. Two other motions to reconsider were filed, but on August 21, 1950 the court found they had been submitted out of the reglamentary period, and that the original decision had become final and unappealable.

Thereafter, acting upon plaintiff's petition for execution and defendant's plea for the benefits of the Moratorium law, the court on February 12, 1951, denied the petition for execution.

Hence this special civil action. It is founded mainly upon two propositions, namely: (1) The court of first instance had previously ruled -and that ruling was not appealed- that the defendant was not entitled to moratorium, inasmuch as there "as no evidence that she was a war-damage claimant; and (2) The defendant has waived such defense thru her failure to invoke it before the rendition of final judgment.

After considering the matter, we find that the petitioners, the successors in interest of Florentina Zafra de Valenzuela, deceased, are undoubtedly in the right. The case had been pending since June 1948 at least, in the La Union Court. Up to February 15, 1950, when the decision was rendered, the defendant never mentioned the Moratorium Law. Under the circumstances that defense must be deemed waived.

In *Arizabal et al v. Judge Abaya* G.R. L-5076 we said:

"The respondents, including the respondent judge, take the position that inasmuch as the defendants (petitioners herein) never invoked the moratorium during the time the original case was pending in this Supreme Court, it is too late for them to invoke that defense now, because they are deemed to have waived it.

It appears that in February 1947, the herein petitioners filed their brief before this Court in the principal case

(for recovery of money). The appeal was decided here in August 1950. During that period of time -over two years- the Moratorium order was never pleaded, although it could have been invoked. There was waiver.

In *Nava v. San Jose* G.R. No. L-3905 the petitioner attempted to enjoin execution of the judgment rendered against him in the Manila court of first instance, confirmed by the Court of Appeals and approved by this Court in G.R. No. L-1270. He invoked the moratorium. Thru Chief Justice Paras we said it was too late:

"While Nava's obligation is covered by the Moratorium Law, we are, however, of the opinion that he had waived his right to invoke the benefit of moratorium because of his failure to set up said defense before March 9, 1949, when this Court dismissed Nava's petition for certiorari in G.R. No. L-1270, or in his petition for reconsideration filed on March 29, 1949, or even at any time before the resolution of dismissal promulgated by this Court had become final. It must be remembered that Republic Act No. 342 was enacted on July 26, 1948, or long before G.R. No. L-1270 was finally terminated."

Having found for petitioners on their second ground of action we deem it unnecessary to pass upon the first.

We notice that, no individual judge of La Union being made party defendant, the court itself is impleaded. Although the point has not been raised by respondents, we could have required the plaintiffs to make the proper allegation or substitution. The subject however may be overlooked in the interest of speedy adjudication, and the directive for issuance of execution may be, as it should be, addressed to any judge presiding the court of La Union, in charge of the Civil Case No. 52.

Wherefore, the petition will be granted, with costs against Jesus Z. Valenzuela, et al., v. The Court of First Instance of La Union, respondent Zafra de Aguilar. So ordered.

Paras, C.J., Feria, Pablo, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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