

JOSE PONCE DE LEON, PETITIONER, VS. JUDGE FIDEL IBAÑEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND SANTIAGO SYJUCO, INC., RESPONDENTS.

G.R. No. L-6967. May 28, 1954

Ponente: LABRADOR, J.

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LABRADOR, J.:

On April 15, 1952, judgment was entered in this Court in G. R. No. L-3316, entitled Jose Ponce de Leon, plaintiff-appellant vs. Santiago Syjuco, Inc., defendant-appellant; Philippine National Bank, defendant-appellee (Exhibit 1), the dispositive part of which judgment reads as follows:

* * *. It is further ordered that should the amount of this judgment—principal and interests—be not paid within ninety (90) days from the date this judgment becomes final, properties mortgaged should be sold at public auction, and the proceeds applied to the payment of this judgment in accordance with law, with cost against the plaintiff.

However, this judgment shall be held in abeyance or no order for the execution thereof shall be issued, until after the moratorium orders shall have been lifted.

The moratorium law (Republic Act No. 342) and pertinent executive orders having been lifted on June 9, 1953, by virtue of this Court's decision in *Rutter vs. Esteban* (93 Phil., 63, Santiago Syjuco, Inc., filed a motion on July 7, 1953, for the execution of the above-quoted judgment. On July 22, 1953, the Court of First Instance of Manila granted said motion, and on July 24 issued a writ of execution of the said judgment. The court said in its order of execution:

The entry of judgment in this case issued by the Clerk of the Supreme Court on April 15, 1952, declared that the said judgment became final and executory on April 15, 1952, and the 90 days' period mentioned in the decision started to run on April 16, 1952, the next day following the entry of judgment declaring the same final and executory. However, the issuance of the order of execution could not be made due to the existence at that time of the moratorium suspending the enforcement of the obligation. Upon the declaration by the Supreme Court in the case of *Rutter vs. Esteban*, supra, that the Moratorium Law and Orders were null and void and unconstitutional, execution of the judgment would immediately issue inasmuch as the period of 90-days from the date of the finality of the judgment had already elapsed. During the said period of 90 days, in spite of the existence of the Moratorium Law, the debtor could pay his obligation because the said Moratorium Law did not prohibit him to do so. * * *.

A motion to reconsider the order of execution was denied, hence this petition for a writ of certiorari based upon the ground that since the decision of this Court in *Rutter vs. Esteban* considered the moratorium law and orders lifted only on June 9, 1953, the petitioner, against whom the writ of execution was issued, was deprived of the 90-day period provided by Rule 70 of the Rules of Court within which the amount of the judgment may be paid.

In answer to the petition, respondents allege as special defense that since the debt, by its terms, fell due on May 5,

1949, and it was being executed only in July, 1953, petitioner can not complain that he has not had sufficient time to pay it; that the petition has become moot because, assuming that the judgment should have started to run on June 9, 1953, the 90-day period expired on September 7, 1953, without the obligation having been paid, and the action, therefore, is purely dilatory.

In a subsequent petition filed by the respondents, it is prayed that the preliminary injunction issued by this Court be lifted. Against this petition the petitioner has filed an opposition, alleging that the validity of the execution determines the validity of the sale, and that in any case the rights of the respondent creditor is fully protected by the properties subject of the mortgage.

It must be noted that the 90-day period granted the mortgage debtor within which to pay the amount of the mortgage is in section 2 of Rule 70 of the Rules of Court, and it is to be counted "from the date of the service of the order," not from the date thereof. The order referred to in the rule is the order requiring the debtor to pay the judgment within 90 days. This 90-day period given in the rule is not a procedural requirement merely; it is a substantive right granted to the mortgage debtor as the last opportunity to pay the debt and save his mortgaged property from final disposition at the foreclosure sale. It is one of the two steps necessary to destroy what in law is known as the mortgagor's "equity of redemption," the other being the sale. It may not be omitted. As the writ of execution or the order allowing the sale of the mortgaged property was issued without granting the mortgage debtor said 90-day period, the order for the sale of the property would be a denial of a substantial right and void. It is true that the original judgment of this Court required payment within 90 days, but this same judgment was expressly held in abeyance; therefore, the 90-day period never began to run. Neither was it effective while the moratorium was in force. The order of execution that was held in abeyance did not ipso facto become effective upon the lifting of the moratorium. A new order of the court became necessary to revive the order of payment, and this new order may not suppress or deny the 90-day period originally fixed and required by the rules. The order complained of does not grant this 90-day period, and is, therefore, invalid.

In the answer of the respondents, it is alleged that the injunction issued by this Court should be lifted, and the sale of the property as ordered by the respondent court now allowed, as the 90-day period has already transpired since the order was issued. The order of the court for the sale of the property is null and void, because it denied petitioner the 90-day period provided by the rules; hence, it may not be enforced on that ground. Even if it were to be interpreted as requiring the sheriff not to proceed with the sale unless the 90-day period had expired, as the order of the sheriff for the sale of the property was made only one day after the order, it is also null and void. The claim that the action is moot can not be sustained, because it is the validity of the order of execution that is attacked, not that of an order that may now be issued. The remedy of the respondent should have been to seek another order of the court, after the expiration of the 90-day period, for the sale of the property mortgaged, instead of contesting the petition for certiorari. If any delay has been caused the respondent by the delay in the sale, the petitioner is not to blame but the respondent corporation, which did not take the more expedient step above indicated.

The petition is hereby granted, and the orders complained of are hereby declared null and void. However, in the interest of a speedy administration of justice, and as the judgment to be executed is our judgment, we hereby order the petitioner to pay the amount of the judgment within ninety (90) days, otherwise the property mortgage shall be sold to satisfy the amount of the judgment. Without costs.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, and Concepcion, JJ., concur.

RESOLUTION

June 29, 1954

LABRADOR, J.:

Upon considering the motion for reconsideration filed by respondent Santiago Syjuco, Inc., the penultimate paragraph of the decision is hereby amended to read as follows:

In the answer of the respondents, it is alleged that the injunction issued by this Court should be lifted, and the sale of the property as ordered by the respondent court now allowed, as the 90-day period has already transpired since the order was issued. The order of the court for the sale of the property is null and void, because it denied petitioner the 90-day period provided by the rules; hence, it may not be enforced on that ground. Even if it were to be interpreted as requiring the sheriff not to proceed with the sale unless the 90-day period had expired, as the order of the sheriff for the sale of the property was made only one day after the order, it is also null and void. The claim that the action is moot can not be sustained, because it is the validity of the order of execution that is attacked, not an order that may now be issued. The remedy of the respondent should have been to seek another order of the court directing the payment of the judgment within 90 days therefrom and the sale of the property mortgaged in case of failure to comply therewith, instead of contesting the petition for certiorari. If any delay has been caused the respondent by the delay in the sale, the petitioner is not to blame but the respondent corporation, which did not take the more expedient step above indicated.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes A., Jugo, Bautista Angelo, and Concepcion, JJ., concur.

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