

**COMMISSIONER OF CUSTOMS AND COLLECTOR OF CUSTOMS FOR
MANILA AND CONRADO SOLEDAD, EDMUNDO POSTRERO,
MAXIMINO ABRUGENA, GERONIMO DERILO, SANTOS GUINTO, AND
EUSTAQUIO MARANAN, AS E...**

G.R. No. L-21036. June 30, 1977

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari and prohibition to annul and set aside several orders of respondent court all of which together in effect: (1) permitted ex-parte private respondents Jose and Susana Cochingyan to file a third-party complaint for mandamus against petitioners in a special civil action for declaratory relief in which said Cochingyans were defendants and which was already tried and almost ready for decision; on the same day, (2) admitted said third-party complaint and (3) further issued immediately a writ of preliminary mandatory injunction likewise ex-parte; and which (4) were intended to enforce said writ of injunction.

There was pending before respondent court as Civil Case No. 52318, entitled Macario M. Ofilada vs. Reparations Com-mission, Jose Cochingyan and Susana Cochingyan, a special civil action for declaratory relief, wherein Ofilada, as the Second Receiver of the World War II Veterans Enterprises, Inc. (Warvets) in Civil Case No. 34998, likewise pending in another Branch of the Court of First Instance of Manila, sought a judicial declaration as to whether, under the allocation granted to said Warvets to purchase reparations goods, the conversion into pesos of the dollar prices of said goods should be at the rate of two pesos to one dollar or at the prevailing market rate at the time for payment, which would be much higher. Civil Case No. 34998 was a minority suit filed by certain stockholders of Warvets alleging irregularities in the management and disposition of the goods being purchased by the corporation by virtue of the aforementioned allocation, hence the need for receivers, of which there were two, the first being one Ramon E. Saura and the second, Ofilada. In the same Civil Case No. 34998, an order had been issued on October 9, 1962 ordering Ofilada to deliver to the Cochingyans the second shipment of goods under Warvets' allocation. (The Cochingyans had a contract with Warvets regarding said goods.) It appears, however, that a motion for the reconsideration of the just mentioned order of October 9, 1962 had been filed and was still unresolved when on February 9, 1963, the Honorable Judge Francisco Arca (now deceased) issued the following order:

"Considering all the foregoing, the Court is of the opinion that the petition of Atty. Magno to defer action on the motion for contempt against the intervenors should be granted until after it can be definitely known whether or not the parties can settle this case amicably. Resolutions on all pending incidents, such as the motion for reconsideration of the order authorizing the release of the second shipment, and the motions for the release of the third, fourth and fifth shipments, are also held in abeyance until such time that the Court knows the result of the pending settlement being negotiated among the parties."

"In view of all the above, the Court hereby orders that all incidents pending resolution be held in abeyance until after the parties have definitely decided whether they are going to settle this case or not. " (Underscoring

supplied.)

It was shortly after the issuance of this order which in effect froze the order of release of October 9, 1962, that the incidents subject of the instant petition took place. On February 13, 1963, the Cochingyans filed in Civil Case No. 52318 then already tried although not yet decided by Judge Gaudencio Cloribel (now also deceased) - who on February 9, 1963 had written the Secretary of Justice asking for permission to go on leave for a week starting February 12, 1973 but who later changed the starting date to February 13, 1973 - an ex-parte motion asking permission to file a third-party complaint, which was forthwith granted. On the same day, another motion was filed asking for immediate admission of the third-party complaint, which likewise, was forth-with granted. The third-party complaint included in the prayer, among other reliefs, the following:

"1 Immediately upon the filing of the herein third-party complaint this Honorable Court issue a writ of preliminary mandatory injunction ex-parte, without notice to the other parties, ordering the third-party defendants Commissioner of Customs and Collector of Customs and Reparations Commission to release immediately to the third-party plaintiffs the balance of the 202 packages of rayon clothing forming part of the shipment of consumer goods originally consigned to the Reparations Commission which arrived in Manila aboard the SS GUILLERMO on September 10, 1962, and which to the present are still under the custody and possession of the Collector of Customs and Commissioner of Customs, upon the filing of a bond by the third-party plaintiffs in such amount as may be fixed by this Honorable Court to pay for any damages that the third-party defendants may suffer should this Honorable Court find that issuance of the preliminary mandatory injunction is not proper." (Page 87, Record.)

Without loss of time and without hearing the third-party defendants, the following order, was issued on the same day, February 12, 1963:

"In a verified third-party complaint for mandamus against the Commissioner of Customs, the Collector of Customs and others, third-party plaintiffs Jose and Susana Cochingyan, doing business under the name and style "The Catholic Church Mart", alleged that a shipment of 402 packages of rayon cloth which was procured by the Reparations Commission to cover an allocation granted by the Commission to the World War II Veterans Enterprises (WARVETS) for reparation consumer goods from Japan arrived in Manila on September 10, 1962, consigned to the Reparations Commission; that this Court in Civil Case No. 34998 entitled 'Pilar Normandy et al., vs. Calixto Duque, et al.' authorized in its order of October 9, 1962, the Second Receiver of WARVETS, Mr. Macario M. Ofilada, to release said goods to Jose and Susana Cochingyan; that pursuant to said order of October 9, 1962, Mr. Ofilada, in his capacity as second receiver of WARVETS, signed a contract of absolute sale with the Reparations Commission covering the described reparation consumer goods and paid in full the purchase price of said goods; that after receiving full payment of the purchase price of said goods the Commission instead of releasing the goods from customs and delivering them requested the Collector of Customs to verify and make an appraisal of the value of the goods and complying with said request, the Collector of Customs opened and inspected each and all of the bales and packages comprising said shipment; that after completing said inspection and verification the Collector of Customs advised the third-party plaintiffs herein that the shipment cannot be released unless the advance sales tax due on the goods be first paid; that said Collector of Customs also advised the Reparations Commission that the goods, being reparations goods and as such owned by the Philippine Government, cannot be subject to seizure or forfeiture proceedings; that of the 402 packages the Commissioner and Collector of Customs have released to the said third-party plain-tiffs only 200 packages but have retained 202 packages supposedly to secure the payment of advance sales tax assessed on the shipment as recomputed on the basis of an opinion of the Collector of Internal Revenue; that notwithstanding the fact that there are no unpaid liens, fines, surcharges, taxes (except the advance sales tax the payment of which was tendered by third-party plaintiffs and refused and the amount deposited with the Clerk of this Court) customs duties, and consular fees (of which the goods are exempt under Section 14 of the Reparations Law) and notwithstanding the fact that there are no pending proceedings for the seizure and forfeiture of the goods for the same have been imported by the Reparations Commission which

made the proper declaration of entry therefor, third-party defendants Commissioner of Customs and Collector of Customs have refused without any legal reason or justification whatsoever to release and deliver the balance of the shipment to the third-party plaintiffs; that the duty of the Collector of Customs and Commissioner of Customs to deliver or release said goods to third-party plaintiffs is clear as under the circumstances above recited said officials have no discretion to decide whether or not to release said goods.

"Third-party plaintiffs further alleged that the delay in the release of the goods to them has caused and will cause them grave and irreparable damage and injury; and unless a writ of preliminary injunction were to be issued ex-parte they will suffer greater and grave damages.

"WHEREFORE, finding the petition for the issuance of a writ of preliminary injunction to be meritorious, the same is hereby granted, and upon the filing by the third-party plaintiffs of a bond in the sum of P5,000.00 to answer for all damages that the third-party defendants may sustain by reason of this injunction if it be finally decided that the third-party plaintiffs are not entitled thereto, let a writ of preliminary mandatory injunction be issued ordering the third-party defendants Commissioner of Customs, Collector of Customs, and the Reparations Commission, their representatives, agents, subordinates and other persons acting in their behalf to release and deliver immediately to the third-party plaintiffs Jose and Susana Cochingyan, doing business under the name and style 'The Catholic Church Mart', the 202 packages of rayon cloth presently in their possession, custody and/or control, which goods are part of the shipment of reparation consumer goods which arrived in Manila aboard the SS Guillermo from Japan consigned to the Reparations Commission.

"SO ORDERED."

The writ issued pursuant to this order was served on the Law Division of the Bureau of Customs at 4:55 o'clock in the afternoon of the same day, February 12, 1963. But compliance therewith did not materialize. A motion to lift the writ was filed, and in the meanwhile, the Chairman of the Committee on Reparations of the House of Representatives, which was then investigating the implementation of the Warvets allocation, asserted jurisdiction over the goods by ordering the Collector of Customs to deliver the same to the Sergeant-at-Arms of the House. Respondent court denied the motion to lift and threatened the agents of the Committee on Reparations, herein co-petitioners, with contempt. Still, there was no release. The goods were, therefore, still unreleased to the Cochingyans when the petition now at bar was filed.

We deem it unnecessary to dwell on the many interesting issues extensively and brilliantly discussed by distinguished counsel of both petitioners and respondents. In Our view of this case, the only question We have to resolve in order to dispose of it is whether or not respondent court gravely abused its discretion in allowing the filing of and in admitting the third-party complaint of the Cochingyans. In the affirmative, it should follow that the writ of preliminary mandatory injunction in question would have no legal basis, as also all subsequent orders of respondent court tending to enforce the same. And it is Our considered opinion and so We hold that it was highly irregular and totally unwarranted for respondent court to have allowed said third-party complaint. The circumstances surrounding the allowance and admission thereof indicate that respondent court's action was hasty, baseless and arbitrary.

As already stated, Civil Case No. 52318 was a special civil action for declaratory relief under Rule 66 of the Rules of 1940 which were in force when it was filed. The only purpose thereof was to secure from the court the proper interpretation or construction of the reparations contract between the Reparations Commission and Warvets in regard to the rate of conversion of the dollar to the peso of the purchase price Warvets had to pay. No positive affirmative, much less any material relief, was being therein. Indeed, it is in the very nature of a declaratory special civil action that "the Relief is confined to a case of actual controversy within the Court's jurisdiction, without the need of injunction, execution, or other relief beyond the adjudication of the legal rights which are the subject of controversy between the parties." (3 Moran, Comments on the Rules of Court, p. 146, 1970 ed.) In

other words, the plaintiff Ofilada in said case did not, as he could not pray for anything to be awarded or granted to him.

Now, as regards the nature and purpose of a third-party complaint, Section 1 of Rule 12 of the Rules of 1940 provided:

"SECTION 1. Claim against one not a party to an action. - When a defendant claims to be entitled against a person not a party to the action, hereinafter called the third-party defendant, to contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim, he may file, with leave of court, against such person a pleading which shall state the nature of his claim and shall be called the third-party complaint."

It is obvious from this definition that a third-party complaint is inconceivable when the main case is one for nothing more than a declaratory relief. In a third-party complaint, the defendant or third-party plaintiff is supposed to seek contribution, indemnity, subrogation or any other relief from the third-party defendant in respect to the claim of the plaintiff against him. In the case at bar, what possible relief could the Cochingyans, as defendants in Civil Case No. 52318, for declaratory relief, have asked for by way of contribution, indemnity, subrogation or any other relief from those they have named third-party defendants, the Collector of Customs, Commissioner of Customs, Reparations Commission, their co-defendant, and Macario Ofilada, the very plaintiff, in respect to the construction or interpretation that Ofilada was asking the court to make? At the risk of quoting again part thereof, the complete prayer in the third-party complaint in question reads thus:

"1. Immediately upon the filing of the herein third-party complaint this Honorable Court issue a writ of preliminary mandatory injunction ex-parte, without notice to the other parties, ordering the third-party defendants Commissioner of Customs and Collector of Customs and Reparations Commission to release immediately to the third-party plaintiffs the balance of the 202 packages of rayon clothing forming part of the shipment of consumer goods originally consigned to the Reparations Commission which arrived in Manila aboard the SS GUILLERMO on September 10, 1962, and which to the present are still under the custody and possession of the Collector of Customs and Commissioner of Customs, upon the filing of a bond by the third-party plaintiffs in such amount as may be fixed by this Honorable Court to pay for any damages that the third-party defendants may suffer should this Honorable Court find that issuance of the preliminary mandatory injunction is not proper.

"2. That after hearing on the merits this Honorable Court confirm and make final its order of mandatory preliminary injunction.

"The third-party plaintiffs further pray for such other relief as may be just and equitable -under the premises." (Pp. 87-88, Record.)

According to Moran:

"Tests of propriety. - The tests to determine whether the claim for indemnity in a third-party complaint in respect to plaintiff's claim is proper, are (a) whether it arises out of the same transaction on which plaintiff's claim is based; or whether the third-party's claim, although arising out of another or different contract or transaction, is connected with plaintiff's claim; (U. S. Commercial Co. v. Guevara, et al., 48 O.G. 612.) (b) whether the third-party defendant would be liable to the plaintiff or to the defendant for all or part of the plaintiff's claim against the original defendant, although the third-party defendant's liability arises out of another transaction; or (c) whether the third-party defendant may assert any defense which the third-party plaintiff has, or may have, against plaintiff's claim. (Capayas v. Court of First Instance, 77 Phil. 181.) Failing these tests, the complaint is improper. x x x" (1 Moran, Comments on the Rules of Court, p. 281, 1970 ed.)

It is thus too evident to call for more elaborate discussion that respondent court's action in allowing the filing of Cochingyans' third-party complaint completely disregarded, due presumably to ignorance thereof, the basic

concepts of the remedies of declaratory relief and third-party complaint.

Moreover, respondent court also paid no heed to the requirement of Section 2 of Rule 12 of the 1940 Rules to the effect that: "Before the service of his answer a defendant may move ex parte or, after the service of his answer, on notice to the plaintiff, for leave as third-party plaintiff to file a complaint against a third-party defendant." In the present case, it is a fact that the motions of the Cochingyans for leave to file their third-party complaint and for the admission thereof were granted ex--parte notwithstanding that the trial of the case had already been terminated.

IN CONSEQUENCE OF THE FOREGOING, We have no other alternative than to declare as We do declare null and void all the orders herein complained of.[1] They are all hereby set aside and respondent court is enjoined to desist from carrying any of them into effect. Costs against respondents Jose and Susana Cochingyan.

Antonio, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

Fernando and Aquino, JJ., did not take part.

[1] The orders dated February 12, 1963 allowing the filing of a third-party complaint, admitting said third-party complaint and issuing the preliminary injunction sought by the Cochingyans as well as the subsequent ones dated February 25, 26, 27 and 28 and March 1, 1963 denying the motion to lift the injunction and otherwise tending to enforce the same.

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