

JUAN CASTRO, PETITIONER, VS. POTENCIANO PECSON ETC. AND ACRO TAXICAB CO., INC., RESPONDENTS.

G.R. No. L-5815. May 29, 1953

Ponente: REYES, J.

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REYES, J.:

This is a petition for a writ of mandamus to compel the respondent Judge of the Court of First Instance of Manila to issue a writ of execution upon a final judgment.

It appears that on March 31, 1941, the herein petitioner, as plaintiff in Civil Case No. 55683 of the Court of First Instance of Manila, obtained a judgment against the respondent Acro Taxicab Co., Inc. for a sum of money for medical expenses, damages, interests and costs. Modified as to amount by the Court of Appeals in May, 1944, the judgment was, as thus modified and with the elimination of interests, affirmed by the Supreme Court in 1949 and became final on February 19th of that year. After the case was returned to the court of origin, the court, at the instance of plaintiff, issued a writ of execution, but later ordered the writ lifted when defendant invoked moratorium as a war damage claimant. Plaintiff did not appeal from this last order, which was rendered on March 28, 1949. But some three years thereafter he again filed a motion for the issuance of a writ of execution, alleging that on January 30, 1952, the Supreme Court had rendered a decision in the case of Arizabal et al. vs. Abaya et al., G. R. No. L-5076, holding that the right to invoke the debt moratorium was waivable and that it was deemed waived on account of defendant's failure to raise it at any time during the pendency of the case in the Court of First Instance and in the Court of Appeals. Defendant opposed the motion on the grounds that the object of the motion had already become *res judicata*; that it had not waived its right to the debt moratorium; and that, even granting that the right had been waived, the waiver became ineffective upon the passage of Republic Act No. 342 on July 26, 1948. The motion for the issuance of the second writ of execution having been denied, plaintiff brought the present action to compel the respondent judge to issue a writ of execution.

Though defendant has filed a motion for the dismissal of the petition on the technical ground that it fails to allege the facts constituting plaintiff's cause of action, the parties have finally agreed to submit the case for decision upon the pleadings.

Section 6 of Rule 39, Rules of Court, provides that a judgment may be executed on motion within five years from the date of its entry. The last motion for execution in the present case was filed within that period of time. Even supposing that the judgment debtor has never waived the benefits of the debt moratorium, those benefits can no longer be invoked not that the law and executive orders on moratorium have already been declared null and void by this Court in the case of Royal L. Rutter vs. Placido J. Esteban, G. R. No. L-3708, promulgated on May 18, 1953.

Wherefore, the petition is granted and the respondent judge ordered to issue the writ of execution prayed for. With costs against the respondent taxicab company.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

Padilla, J., no part.

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