

Around the Ma-ao's Case

By Judge JUAN T. SANTOS *

In the case of Ma-ao Sugar Central Co., Inc. against Hon. Conrado Barrios, et al. G. R. No. 1539, the Supreme Court of the Philippines set down two important rules. Under the first, the highest Tribunal definitely laid down the meaning of the Moratorium Law (Ex. Ord. Nos. 25 and 32) to be that it not only prevents the execution of a money judgment, but that it also suspends the maturity of a cause of action otherwise ripe for a judicial controversy. The second rule, which is the subject-matter of this comment, touches a strictly procedural question, namely, that the lower court's order erroneously overruling a motion to dismiss a complaint which sets forth a claim protected by the Moratorium Law cannot be attacked by certiorari, but by appeal after trial on the merits. In vain we have made efforts to convince ourselves of the correctness of the last ruling, and yet we have hesitated to pen the present remarks as all the four distinguished Justices of the Division who participated in the deliberation have unanimously subscribed to the doctrine. It is only our thirst for truth which impelled us to proceed with the disagreeable task.

We agree with the Supreme Court that certiorari lies only when the tribunal or officer concerned acted "without or in excess of its jurisdiction or with grave abuse of discretion." We also agree that in overruling said motion, the lower court had jurisdiction over the main case. Where we differ from the highest Tribunal is on the point that the lower court did not exceed its jurisdiction or commit grave abuse of discretion. The erroneous interpretation of the Moratorium Law by the lower court constitutes, in our opinion, such an irregularity of the proceedings as would justify the allowance of the writ. The scope of said law, as shown by the above ruling of the highest Tribunal, deprived the complaint filed in the main case of the statement of a valid cause of action. It will so remain throughout. And only upon the repeal of said law that the right to bring action in court will commence, to the same extent as if only at such time did the term for the payment of the debt become due. This feature of the complaint in the main case is important because our conclusion is principally premised thereon. This is not the case of a complaint which ambiguously states

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a cause of action, or sets forth one which is defective (*Banzon vs. Sellner*, 58 Phil. 453) or fails to allege some essential facts in its averments, a defect curable by proof at a later stage of the proceedings, namely, at the trial on the merits, if the adverse party does not object (Rule 9, Sec. 10; Rule 17, Sec. 4; *U. S. vs. Estrada*, 16 Phil. 520); in such cases, it is obvious that the complaint cannot be treated as entirely valueless, because of the possibility of its being cured by evidence. But the complaint in the main case states no cause of action; it squarely falls within the teeth of Executive Orders Nos. 25 and 32 and nothing in this world can give it life while they stand as law. As the highest Tribunal correctly said:

"It is plain and we are of the opinion that the complaint filed by the plaintiffs respondents in the court below does not state facts sufficient to constitute a cause of action. A cause of action is an act or omission of one party in violation of the legal right or rights of the other; and its essential elements are legal right of the plaintiff, correlative obligation of the defendant, and act or omission of the defendant in violation of said legal right. In the present case the complaint alleges the legal right of the plaintiffs to be paid the amount due them from the defendant as well as the correlative obligation of the defendant to pay said debt to the plaintiffs when it becomes due and payable; but not the omission on the part of the defendant to pay in violation of the legal rights of the plaintiffs to be paid, because according to the above quoted provision of Executive Or-

der No. 32, said debts are not yet payable or their payment cannot be enforced until the legal cessation of the moratorium which is still in force. As the defendant herein petitioner is not yet in default, plaintiffs have no cause of action against him."

Said pleading, therefore, is without legal validity and incapable of curative amendment (*Limpangco vs. Mercado*, 10 Phil. 508). To entertain it any further is to squander the valuable time of the courts. The sooner it is dismissed, the better, and the best way to dispose of it quickly is to allow the writ and not to dismiss the case on the appeal against the judgment on the merits. To overrule the motion to dismiss, as the lower court did, is, we believe, to commit a manifest error of law amounting to a "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction" (2 *Moran*, 2nd Ed. 124).

The highest Tribunal did not adduce any reason why the lower court did not exceed its jurisdiction or commit grave abuse of discretion. It meagerly said: "It requires no argument to show that the respondent judge had jurisdiction and did not exceed it or act with grave abuse of discretion in denying the petitioner's motion to dismiss." It is believed that, because the denial of the writ has been made to rest on absence of excess of jurisdiction or grave abuse of discretion, prudence required that the reasons therefor should have been stated, at least for the benefit of the parties and the bar.

In the case of *Leung v. O'Brien*, 38 Phil. 182, it was held that certiorari may be granted against a judge who improperly issues an order of attachment when the affidavit of the party in support of his petition is fatally defective. In the case of *Gamay vs. Gutierrez*, 48 Phil. 768, certiorari was allowed because the respondent judge granted *ex parte* a motion of the plaintiff for advanced execution of the judgment rendered in his favor. And in the case of *Alo vs. Roland, et al*, 42 O. G. 3174, certiorari was allowed because the respondent judge, *inter alia*, appointed a receiver for properties not involved in the case. Let us ask: Why may certiorari lie when the order of attachment is issued on a cause of action not arising upon contract express or implied although the defendant is about to depart from the Philippines to defraud his creditors? Because in issuing the writ, the judge disregards a directive of the Code of Civil Procedure (Act 190, sec. 426). Why in the *Gamay* case? Because the lower court violated the Rules of the Courts of First Instance, now known as Secs. 4 and 6 of Rule 26, when it allowed the motion of the prevailing party without giving the defeated party at least three days time to be heard thereon; hence, it exceeded its jurisdiction. And why in the *Alo* case? Because Rule 61 Sec. 1 of the Rules of Court ordains that only properties litigated may be the subject of receivership, hence, when the respondent judge appointed a receiver to take charge over properties not dealt with in the ac-

tion, he exceeded jurisdiction. If our reasons for the concessions of the remedy are correct, should not the *Ma-ao's* case be accorded the same consideration by applying thereto the same procedural doctrine, for the reason that the court below has entirely disregarded the mandates of Executive Order 32? Must there be a distinction, to allow the writ when the provision violated is that of the Rules of Court and to deny it when the act complained of infringes an Executive Order issued in pursuance of law? It is no argument to say that the court a quo could not have possibly anticipated the decision of the highest Tribunal as to the scope of the Moratorium Law, which was rendered after its denial of the motion to dismiss. All persons and, with more reason, all judges must be conclusively presumed to know the law (Rule 123 sec. 68-e). It is our stand that the court below was charged with notice that the Moratorium Law suspends not only the actual collection but also the effectivity of an otherwise matured debt, and a creditor who in violation of its provisions files a complaint thereon in court, assumes the risk that his pleading may be dismissed upon objection of the defendant. Wherefore, in adversely ruling on the motion to dismiss, the court a quo committed a patent irregularity in the proceedings, a clear mistake of law which caused substantial injury upon the defendant, properly correctible by certiorari and not by appeal (10 Am. Jur. 524 and 531).

Furthermore, the remedy of appeal is not adequate. Suppose that the judge taking cognizance of the main case feels that his views of the Moratorium Law are correct, namely, that it only suspends the actual collection of the debt and no more, and after trial on the merits, renders judgment in favor of the plaintiff and defendant appeals. Let us take a look at the consequences: To start with, there has been trial on the merits where testimony of witnesses and other evidence were taken; later on the judge prepared and rendered judgment; most likely a motion for new trial has been interposed without success; after which the defendant-appellant filed notice of appeal, appeal bond and record on appeal; and once the case is elevated to the appellate court, he will pay the dock-

eting fee and, after the printing of the record on appeal, both the appellant and appellee will in due course prepare, print and file with the court their respective briefs. These various steps are, indeed, not worth the paper on which they are written, because once the case is removed on appeal to the highest Tribunal, the latter will have no other course than to dismiss it. Why not avoid all this waste of time, energy and money (which may be dedicated to a worthier cause) by granting the writ of certiorari sought by the petitioner? The portion of the decision under consideration is too technical. It subordinates substance to form and fails to recognize the primordial principle that remedial laws must help, not obstruct, the effectiveness of substantive rights.