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is suspended from office for a period of one (1) month, without pay, effective from the date this resolution becomes final.

EN BANC

[G.R. No. L-39861. March 17, 1986.]

RICARDO C. SILVERIO, *petitioner, vs.* **HON. COURT OF APPEALS and CIRIACO B. MENDOZA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; EXECUTION PENDING APPEAL; RULE WHERE JUDGMENT EXECUTED IS REVERSED TOTALLY OR PARTIALLY ON APPEAL.**— The Court rules that the appellate court's previous dismissal of the special civil action of *certiorari* instituted by respondent-appellant to assail an order of the court of First Instance directing the execution pending appeal of a specific portion of its judgment does not preclude the said party-appellant from appealing the entirety of the judgment nor the same appellate court from passing upon the merits of the entire appealed judgment. The Rules of Court precisely provide in such cases of execution pending appeal that "where the judgment executed is reversed totally or partially on appeal, the trial court, on motion, after the case is remanded to it, may issue such orders of restitution as equity and justice may warrant under the circumstances."

2. **ID.; SPECIAL CIVIL ACTION; *CERTIORARI*; PURPOSE OF THE PETITION.**— The provisions of the Rules of Court permit an aggrieved party, in the general types of cases, to

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take a cause and apply for relief to the appellate courts by way of either of two distinctly different and dissimilar modes - through the broad process of appeal or the limited special civil action of certiorari. An appeal brings up for review errors of judgment committed by a court with jurisdiction over the subject of the suit and the persons of the parties or any such error committed by the court in the exercise of its jurisdiction amounting to nothing more than an error of judgment. On the other hand, the writ of certiorari issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of certiorari "cannot legally be used for any other purpose." In terms of its function, the writ of certiorari serves "to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction" or to relieve parties from arbitrary acts of courts ù acts which courts have no power or authority in law to perform.

3. **ID.; ID.; ID.; DOES NOT INCLUDE CORRECTION OF ERROR OF PROCEDURE OR MISTAKE OF JUDGE'S FINDINGS OR CONCLUSIONS.** — As succinctly put by the Court of Appeals itself in its decision dated April 1, 1974, its "main concern [was] to inquire into the actuation of respondent judge in declaring the motion for reconsideration that the petitioners had filed in the court below as pro forma and in denying the same, with a view of ascertaining whether or not he thereby incurred grave abuse of discretion." Its powers circumscribed by the limited nature and function of the mode by which Mendoza took his cause to it, the appellate court perforce, after finding that "if at all respondent had committed an error in his aforesaid order, it was only an error of judgment which is correctible by appeal" and reasoning that "the function of a writ of certiorari is to keep an inferior court within its jurisdiction and not to correct errors of procedure or mistakes in the judge's findings or conclusions," dismissed the certiorari petition.

4. **ID.; ID.; ID.; DISTINGUISHED FROM APPEAL.**— It is almost trite to point out that the distinction between errors of jurisdiction proceeding from the absolute want or excesses of jurisdiction or grave abuse of discretion, on the one hand, and errors of judgment arising from the erroneous appreciation of the facts or of the law, or the erroneous application of procedure, on the

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other hand, underlies the separate and independent rules providing for the special civil action of *certiorari* and the remedy of appeal. This same distinction serves to mark the difference between the approach to a controversy submitting for correction, by certiorari, errors of jurisdiction and that to a case posing for review, by appeal, errors of judgment. Thus, in certiorari proceedings, the approach focuses on the actions of a court by which could be determined whether or not the said court exceeded the confines of its jurisdiction or proceeded without jurisdiction or with grave abuse of discretion; while in appellate processes, the approach centers on misconception or errors of law, misapprehension of facts, or misuse of procedural rules. Plainly, then, there is neither duplication of effort nor direction if the same controversy should be passed upon, on disparate issues, by a court in separate certiorari and appellate proceedings, as happens oftentimes when orders for provisional remedies such as receivership or injunction orders or for execution pending appeal.

5. **ID.; ID.; ID.; CORRECTIVE AND SUPERVISORY JURISDICTION OF APPELLATE COURT IN *CERTIORARI* PROCEEDING COULD NOT UNDULY BROADENED SO AS TO INCLUDE THE RECEIVER OF THE QUESTIONED ORDER AND WRIT OF EXECUTION.**— Silverio invokes the principle of res judicata and claims that the dismissal of Mendoza's certiorari petition bars proceedings which would raise anew the question as to the "invalidity or nullity" of the execution order of July 17, 1973 and the writ of execution issued pursuant thereto. Silverio's contention proceeds from the fallacious assumption that the appellate court, by its previous dismissal of Mendoza's certiorari petition, sustained the intrinsic validity on the merits of the questioned order and writ of execution. In the certiorari proceedings, it devolved upon the appellate court to pass upon only the regularity and authority of the act of the court *a quo* in issuing the questioned order and writ of execution. But the invoked corrective and supervisory jurisdiction of the appellate court in the certiorari proceedings could not be unduly broadened so as to include a review of the questioned order as to its intrinsic correctness or as to the merits of the controversy between Silverio and Mendoza as adjudged in the trial court's decision which is the proper subject of the pending appeal. The appellate court's

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dismissal dated April 1, 1974 of Mendoza's petition constituted exclusively a judgment on the only point in litigation in the certiorari proceedings ù the regularity of the trial court's execution order and writ of July 17 and 19, 1973 in terms that the same were issued with jurisdiction and without grave abuse of discretion ù and certainly not a judgment on the merits of the case which could work, together with the other requisites 13 of the principle of res judicata, to bar the pending appeal which as stressed by the Court of Appeals itself was the proper form for reviewing any errors of judgment in fact and in law.

6. **ID.; ID.; ID.; IN CASE OF EXECUTION PENDING APPEAL, THE MERIT OF THE CASE SHOULD NOT BE DETERMINED IN ADVANCE OF THE APPEAL.**— The clear distinction between a special civil action of *certiorari* questioning the issuance of execution pending appeal and the giving of due course as a matter of right to an appeal timely perfected for a fullscale review of the appealed judgment (regardless of the issuance of execution pending appeal and of the outcome of the certiorari petition questioning the same) has always been recognized by this Court. In *City of Manila vs. Court of Appeals*, the Court through the late Chief Justice Castro, dismissed similar contentions as Silverio's, expressly ruling that in special civil actions questioning execution orders pending appeal "the merits of a case, which should not be determined in advance of the appeal are of no moment", given the existence of good reasons for the issuance of the order, citing *Mapua vs. David*, wherein we held, in ruling that there was no grave abuse of discretion or the opposite case of granting a stay of execution pending appeal, that: "The reason by petitioner to maintain that the stay granted by the respondent court is a grave abuse of discretion is the merits of their own case. They allege that defendant has absolutely no right to possession and has, therefore, no defense whatsoever. But the merits of the case should not be determined at this state of the proceedings in advance of the appeal taken by both parties from the judgment rendered by respondent court in the principal case."

7. **ID.; ID.; APPEAL; NOTICE OF APPEAL; SHALL DESIGNATE THE JUDGMENT OR ORDER , OR PART THEREOF, APPEAL FROM.**— The provisions of section 4 Rule 41 of the Rules of Court, require, *inter alia,* that the notice

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of appeal "shall designate the judgment or order, or part thereof, appealed from." On these provisions, rests the right of the aggrieved party to appeal either the whole judgment or order or only a part thereof. These provisions concede to the aggrieved party control of the extent of his appeal, for, in the natural order of things, the aggrieved party alone can make an assessment, as far as his interest is concerned, of whether or not he stands to suffer loss or injury from the entirety of an adjudication or only a specific portion thereof. Thus, as fittingly observed by Justice de la Fuente in his concurring opinion: "A trial court has no say on the 'structure' of an appeal from its judgment. It cannot limit or restrict the appeal, especially for the purpose of making it conform to its opinion that part of its judgment is already 'final and executory' and only the remainder is appealable. Otherwise, the trial court would be able to forestall a review of certain portions of its decision or order, regardless of appellant's desire that the entire decision or order be reviewed on appeal."

8. ID.; ID.; ID.; ID.; PURPOSE.— This notice of appeal, Justice de la Fuente noted with significance, "shows on its face that [Mendoza] was appealing from both the decision of March 5 and the order of July 17. His appeal was unqualified as to both." Mendoza's appeal, being directed to the whole adjudication determined in the decision and order involved herein, as can be gleaned from his notice of appeal, falls within the quoted terms of section 4. The clear import of his notice of appeal calls for the full consideration of the controversy, in its entirety, as resolved in the decision dated March 5, 1973 and the order denying reconsideration dated July 17, 1973 of the trial court. To uphold Silverio's proposition that Mendoza's appeal brings up for review by the Court of Appeals only those matters excluded by the trial court in its execution order dated July 17, 1973 would unduly prejudice the right of Mendoza to appeal the totality of the judgment as granted by the cited Rule.

APPEARANCES OF COUNSEL

Salva Carballo & Associates for petitioner.
Agustin M. Tolentino for private respondent.

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DECISION

TEEHANKEE, *Acting C.J.*:

The Court dismisses the petition at bar which seeks the setting aside of the Court of Appeals' resolutions denying herein petitioner's (as plaintiff-appellee) motion to dismiss the appeal of herein private respondent (as defendant-appellant) and/or to strike out his appellant's brief in the appealed case pending in respondent appellate court. The Court rules that the appellate court's previous dismissal of the special civil action of certiorari instituted by respondent-appellant to assail an order of the court of first instance directing the execution pending appeal of a specific portion of its judgment does not preclude the said party-appellant from appealing the entirety of the judgment nor the same appellate court from passing upon the merits of the entire appealed judgment. The Rules of Court precisely provide in such cases of execution pending appeal that "where the judgment executed is reversed totally or partially on appeal, the trial court, on motion, after the case is remanded to it, may issue such orders of restitution as equity and justice may warrant under the circumstances."[1]

Thus, in dismissing petitioner's present special civil action of certiorari and upholding the continuation of the pending appeal proceedings in the Court of Appeals, this Court does not at all touch the *merits* of the appeal nor foreclose the losing party there to seek a review on appeal by *certiorari* from such adverse judgment as may eventually be rendered on the merits but rules only that the Court of Appeals did not act with grave abuse of discretion or lack or excess of jurisdiction in issuing its herein questioned interlocutory resolutions denying petitioner-appellee's motion to dismiss or limit the appeal therein pending.

A complaint filed by petitioner Ricardo C. Silverio on February 1, 1972 with the Court of First Instance of Rizal (Pasig, Branch VI), presided by the Honorable Guardson R. Lood,

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[1] Rule 39, section 5.

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against respondent Ciriaco B. Mendoza for the recovery of the amount of P200,000.00 and the interest thereon, P50,000.00 actual damages, P50,000.00 exemplary damages, P50,000.00 attorney's fees and the cost of litigation spawned all the procedural twists and turns in the controversy at bar. In his complaint, Silverio alleged that he entrusted to Mendoza the amount of P200,000.00, in connection with a proposed purchase transaction of a Forbes Park realty claimed to be owned by James Liu in which transaction he lost interest after he found out the said realty was subject to "liens and legal cases casting serious doubts and confusion as to the identity of the lawful owner thereof." Silverio further alleged that he repeatedly demanded to no avail of Mendoza the return of the amount. Mendoza duly answered, incorporating therein a counterclaim. Subsequently, Silverio filed a supplementary complaint wherein he claimed that Mendoza made "not only false and incorrect but also malicious or libelous allegations" in his answer and consequently sought the recovery of, aside from the damages prayed for in his original complaint, additional moral and exemplary damages in the amount of not less than P100,000.00.

After trial, the court *a quo* rendered its decision dated March 5, 1973, the dispositive portion of which reads, to wit:

"WHEREFORE, judgment is hereby rendered by ordering the defendant:

a) To return or pay the plaintiff the sum of P200,000.00 plus legal interest from July 1970, the time of first demand until fully paid;

b) To pay the plaintiff P100,000.00 as moral damages plus P50,000.00 as exemplary damages; to pay attorney's fees in the sum of P30,000.00 and to pay the costs;

c) Defendant's counterclaim is hereby dismissed."

On April 27, 1973, Mendoza applied for reconsideration of the decision *a quo* which application Silverio countered with his opposition.

Pending resolution of Mendoza's motion for reconsideration, Silverio moved for execution of the decision *a quo*. This was opposed by Mendoza.

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Subsequently, the court *a quo*, resolving Mendoza's motion for reconsideration, rendered its order dated July 17, 1973, the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING, the Court declares the Motion for Reconsideration as being *pro forma*, and for lack of merit, the same is hereby DENIED. Consequent thereto, the Motion for Execution being in order, the same is hereby. GRANTED, except that the Writ of Execution shall cover the principal demand of the plaintiff legal interest from July 1970 until the same is fully paid and the sum of P30,000.00 as attorney's fees."

and ordered the issuance of the corresponding writ of partial execution pending appeal.

Aggrieved, Mendoza initiated certiorari proceedings in the Court of Appeals seeking 1) the annulment of the order for execution dated July 17, 1973 and the writ of execution dated July 19, 1973 issued pursuant thereto for having been issued with grave abuse of discretion or in excess of its jurisdiction; and 2) the issuance of a writ of preliminary injunction restraining Silverio, Judge Lood, and the Provincial and Deputy Sheriffs of Rizal from enforcing the order and execution writ. The appellate court ordered the issuance of the writ of preliminary injunction upon Mendoza's filing of the requisite bond.

Ad interim, Mendoza appealed the decision dated March 5, 1973 and the order for execution dated July 17, 1973 to the Court of Appeals by filing with the court *a quo* on August 1, 1973 the notice of appeal, appeal bond and record on appeal. On August 9, 1973, Silverio sought, by motion, the dismissal of Mendoza's appeal.

On August 20, 1973, Silverio filed his answer to Mendoza's certiorari petition with the Court of Appeals.

The court *a quo* on the other hand issued an order dated August 22, 1973 wherein it denied Silverio's motion to dismiss Mendoza's appeal and ordered the said Mendoza to effect the inclusion of the parties' memoranda dated January 18, 1973 and February 11, 1973, the correction of clerical or typographical errors, and the completion of omissions in the Record on Appeal.

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Thereafter, Silverio applied for a deferment of court action on the Record on Appeal, invoking the pending certiorari petition before the Court of Appeals. As a result, the court *a quo* issued its order dated September 8, 1973 holding in abeyance consideration of the Record on Appeal until after receipt of the appellate court's resolution on the certiorari petition. Mendoza moved for reconsideration of the order and encountered no opposition from Silverio. The court *a quo* then issued its order dated October 2, 1973 granting Mendoza's motion for reconsideration and rescheduling consideration of his Record on Appeal. Approval of Mendoza's Record on Appeal by the court a quo followed in an order dated October 27, 1973. The pending appeal is accordingly docketed in the Court of Appeals as C-G.R. No. 54049-R, entitled "*Ricardo S. Silverio, plaintiff-appellee vs. Ciriaco B. Mendoza, defendant-appellant.*"

On April 1, 1974, the Court of Appeals rendered its decision dismissing Mendoza's certiorari petition questioning the issuance of the order for partial execution pending appeal and lifting the writ of preliminary injunction previously issued.[2] The Court of Appeals likewise denied Mendoza's subsequent motion for reconsideration and the latter petitioned this Court to review the said appellate court's decision dated April 1, 1974. This Court[3] denied Mendoza's petition for review for lack of merit.[4] Mendoza's motion for reconsideration proved futile, for this Court denied the same in a resolution dated July 17, 1974.

Mendoza then submitted to the Curt of Appeals a motion dated July 31, 1974 wherein he asked for leave to file a petition which petition, attached to the said motion, sought the issuance

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[2] The Second Division composed of Associate Justices Hermogenes Concepcion Jr. [now Associate Justice of this Court] (ponente), Sixto A. Domondon and Buenaventura S. de la Fuente. The certiorari action was docketed as CA-G.R. No. SP-02228-R entitled "Ciriaco Mendoza, petitioner vs. Ricardo Silverio, et al., respondents."

[3] The First Division composed of Chief Justice Querube C. Makalintal, chairman, and Associate Justices Fred Ruiz Castro, Claudio Teehankee, Felix V. Makasiar, Salvador V. Esguerra and Cecilia Muñoz Palma, members.

[4] Resolution of the First Division dated May 15, 1974 in L-38620.

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of a restraining order prohibiting Silverio from enforcing the order *a quo* dated July 17, 1973. In a manifestation dated August 8, 1974, Silverio asked the appellate court to deny Mendoza's petition or, if the said court should grant the same, to give him the opportunity to proffer his answer.

On August 16, 1974, Silverio applied, by motion, to the court *a quo* for the issuance of an alias writ of execution to enforce its decision dated March 5, 1973 on the ground that the same had been "ruled" as final and executory in the order *a quo* dated July 17, 1973. The court *a quo*, in an order dated August 19, 1974, granted the motion and ordered the issuance of the alias writ of execution. The alias writ of execution having been issued on August 20, 1974, notwithstanding Mendoza's motion in opposition to the issuance thereof filed on the same day, Mendoza sought the recall of the alias writ issued in an *ex-parte* motion filed on August 21, 1974.

Meanwhile, the Court of Appeals, on the same day, August 21, 1974, issued a resolution setting for hearing on September 12, 1974 Mendoza's motion and petition seeking to restrain Silverio from enforcing the order *a quo* dated July 17, 1973.

On August 22, 1974, the court *a quo*, by order, recalled the alias writ of execution issued two (2) days earlier and scheduled for hearing on August 30, 1974 Silverio's motion for the issuance of the said alias writ.

On August 31, 1974, Silverio filed with the Court of Appeals his opposition to Mendoza's petition seeking to restrain him from enforcing the order *a quo* dated July 17, 1973. On September 3, 1974, Silverio filed with the court *a quo* his opposition to Mendoza's motion for the recall of the alias writ of execution.

Thereafter, the court *a quo*, in an order dated September 6, 1974, finding Mendoza's opposition to the issuance of the alias writ of execution "without merit", decreed the issuance of another alias writ of execution "insofar as the decision ordered the defendant to pay the plaintiff the principal demand of P200,000.00 plus legal interest and the amount of P30,000.00

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as attorney's fees." Mendoza moved for reconsideration of the order on September 18, 1974.

On September 23, 1974, Mendoza submitted to the Court of Appeals a manifestation wherein he asked the appellate court to extend him "immediate relief/assistance" with the end in view of preventing Silverio from enforcing the order *a quo* dated September 6, 1974 for the issuance of an alias writ of execution.

On September 27, 1974, Silverio, by motion, asked the Court of Appeals to dismiss Mendoza's appeal, claiming the said appeal rendered moot and academic or barred by the dismissal of the said Mendoza's certiorari petition by the appellate court and the review of which dismissal this Court later on denied, or, in the alternative, to strike out Mendoza's appellant's brief, alleging the same as "improper" for raising errors covering matters ùother than the award of moral and exemplary damages ù already allegedly adjudged in the decision *a quo* dated March 5, 1973 and which matters had already allegedly become final and executory. Mendoza countered with his answer dated October 1, 1974 wherein he sought 1) the denial of Silverio's aforestated motion dated September 27, 1974, asserting that the appellate court's dismissal of his certiorari petition questioning the order of execution pending appeal constituted no bar to his appeal, for the decision decreeing the said dismissal resolved not the merits of the controversy subject of the order *a quo* dated July 17, 1973 but the issue as to the jurisdiction or grave abuse of discretion of the said court *a quo* in rendering the said order; 2) the issuance of a restraining order enjoining Silverio from enforcing the order *a quo* dated July 17, 1973; and 3) the expunging from the records of Silverio's motion in question.

In a motion dated October 3, 1974, Silverio asked the Court of Appeals that the running of the period within which he should file his appellee's brief be suspended, pending resolution of his motion dated September 27, 1974 seeking the dismissal of Mendoza's appeal or that he be granted an extension of time within which to file the said brief.

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On October 8, 1974, Silverio filed with the Court of Appeals a memorandum wherein he reiterated his opposition to Mendoza's petition dated July 31, 1974 seeking to restrain him from enforcing the order *a quo* dated July 17, 1973. Mendoza countered with a reply dated October 14, 1974.

The court *a quo*, in an order dated October 31, 1974, denied Mendoza's reconsideration because of its order dated September 6, 1974 directing the issuance of an alias writ of execution.

On November 13, 1974, the Court of Appeals[5] resolving 1) Mendoza's manifestation dated September 23, 1974 urging the appellate court to grant him "immediate relief/assistance" in restraining Silverio from enforcing the order *a quo* dated September 6, 1974; 2) Silverio's motion dated September 27, 1974 asking the appellate court to dismiss Mendoza's appeal or, in the alternative, to strike out Mendoza's appellant's brief; and 3) Silverio's motion dated October 3, 1974 requesting the appellate court to suspend the running of or to extend the period within which to file his brief, rendered its resolution wherein it 1) ordered the issuance of a restraining order enjoining Judge Lood from enforcing his orders dated July 17, 1973 and September 6, 1974; 2) denied Silverio's motion to dismiss Mendoza's appeal and Silverio's prayer to limit Mendoza's appeal only to issues regarding the award of moral and exemplary damages; and 3) granted Silverio forty-five (45) days from receipt of the resolution within which to file his brief.

His motion for reconsideration having been denied by the Court of Appeals in a resolution dated December 5, 1974, Silverio filed with this Court the certiorari petition at bar. Silverio seeks the nullification of 1) the resolutions dated November 13, 1974 and December 5, 1974 of the Court of Appeals; and 2) the

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[5] The Ninth Division composed of Associate Justices Mateo Canonoy (ponente), Conrado M. Vasquez and Buenaventura S. de la Fuente. Justice de la Fuente filed a separate opinion wherein he explained his vote of concurrence, considering that, in the certiorari proceedings filed by Mendoza with the appellate court seeking the annulment of the order *a quo* dated July 17, 1973 and the writ of execution dated July 19, 1973, he voted for the dismissal of the said Mendoza's petition.

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restraining order dated November 15, 1974 issued pursuant to the appellate court resolution dated November 13, 1974, alleging that the resolutions had been rendered and the restraining order had been ordered issued by the appellate court without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.

Stripped of the non-essentials, the petition at bar specifically raises the issue of whether or not the dismissal by the Court of Appeals of Mendoza's petition for certiorari which sought to impugn the order for execution dated July 17, 1973 of the court *a quo* and the writ of execution dated July 19, 1973 issued pursuant thereto as having been rendered by the said court *a quo* with grave abuse of discretion or in excess of its jurisdiction (both of which order and writ relate to the partial execution of only that portion of the original judgment dated March 5, 1973 of the same court *a quo* directing the payment of the principal monetary demand as well as attorney's fees), precludes any appeal from the entirety of the original judgment.

The Court finds the petition without merit and rules that the previous dismissal of Mendoza's certiorari petition by the Court of Appeals questioning the order of execution pending appeal has no restricting effect whatsoever on the scope of matters for resolution in his appeal pending with the same appellate court.

1. The provisions of the Rules of Court permit an aggrieved party, in the general types of cases, to take a cause and apply for relief to the appellate courts by way of either of two distinctly different and dissimilar modes — through the broad process of appeal or the limited special civil action of *certiorari.* An appeal brings up for review errors of judgment[6] committed by

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[6] *Aguilar v. Tan*, L-23600, January 30, 1970, 31 SCRA 205; *Fernando v. Vasquez*, L-26417, January 30, 1970, 31 SCRA 288; *Lamagan v. de la Cruz*, L-27950, July 29, 1971; 40 SCRA 101; *De Leon v. Cruz*, L-34518, January 24, 1974, 55 SCRA 283; *Arcaya v. Teleron*, L-37446, May 31, 1974, 57 SCRA 367; *Confederation of Citizens Labor Unions v. National Labor Relations Commission*, L-38955-56, October 31, 1974, 60 SCRA 450.

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a court with jurisdiction over the subject of the suit and the persons of the parties or any such error committed by the court in the exercise of its jurisdiction amounting to nothing more than an error of judgment.[7] On the other hand, the writ of *certiorari* issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction.[8] The writ of *certiorari* "cannot legally be used for any other purpose."[9] In terms of its function, the writ of certiorari serves "to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction"[10] or to relieve parties from arbitrary acts of courts ù acts which courts have no power or authority in law to perform.[11]

In the case at bar, Mendoza availed himself of the special civil action of *certiorari* in assailing the (1) order for partial execution dated July 17, 1973 which order declared Mendoza's motion for reconsideration of the decision dated March 15, 1973 *pro forma,* denied the same and granted Silverio's motion for execution although insofar only as it related to the principal demand in the amount of P200,000.00 and the legal interest thereon, and attorney's fees in the amount of P30,000.00, excluding the award of P100,000.00 and P50,000.00 for moral and exemplary damages; and (2) the writ of execution dated July 19, 1973. In his petition, Mendoza asserted that the court *a quo* gravely abused its discretion or exceeded the limits of

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[7] *Abig, et al. v. Constantino, et al.*, L-12460, May 31, 1961, 2 SCRA 299.

[8] *Herrera v. Barreto*, 25 Phil. 245; *Albert v. Court of First Instance of Manila*, L-26364, May 29, 1968, 23 SCRA 948; *De Castro v. Delta Motor Sales Corp.*, L-34971, May 31, 1974, 57 SCRA 344; *Aguilar v. Tan, ibid., Ilacad v. Court of Appeals and Prudential Bank & Trust Co.*, L-24435, August 26, 1977, 78 SCRA 301.

[9] Vide footnote 7.

[10] *Estrada v. Sto. Domingo*, L-30570, July 29, 1969, 28 SCRA 890; *Aguilar v. Tan, ibid, Lamagan v. de la Cruz, supra; De Castro v. Delta Motor Sales Corp. ibid.*

[11] *Carandang v. Cabatuando*, L-25384, October 20, 1973, 53 SCRA 383, *Arcaya v. Teleron, supra.*

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its jurisdiction in issuing the said order and in ordering the issuance of the said writ of execution.

Mendoza's *certiorari* petition squarely put in issue the authority of the court *a quo* to grant and order the partial execution of a judgment that had not yet acquired finality or, stated differently, the said certiorari petition put to test the regularity of the issuance of the order for execution dated July 17, 1973 and the writ of execution dated July 19, 1973. To resolve the issue, it behooved the appellate court to probe into the actions of the trial court vis-a-vis the incidents engendered by the main controversy, as reflected in "(1) the memorandum that the parties filed in the court below in support of their respective claims x x x (2) the motion for reconsideration x x x and (3) the opposition thereto," to determine whether, in so issuing the aforementioned execution order and writ, the trial court gravely abused its discretion or transcended the limits of its jurisdiction.

As succinctly put by the Court of Appeals itself in its decision dated April 1, 1974, its "main concern [was] to inquire into the actuation of respondent judge in declaring the motion for reconsideration that the petitioners had filed in the court below as *pro forma* and in denying the same, with a view of ascertaining whether or not he thereby incurred grave abuse of discretion." Its powers circumscribed by the limited nature and function of the mode by which Mendoza took his cause to it, the appellate court perforce, after finding that "if at all respondent had committed an error in his aforesaid order, it was only an error of judgment which is correctible by appeal" and reasoning that "the function of a writ of certiorari is to keep an inferior court within its jurisdiction and not to correct errors of procedure or mistakes in the judge's findings or conclusions," dismissed the certiorari petition.

The dismissal of Mendoza's *certiorari* petition, as per the Court of Appeals' decision dated April 1, 1974 finding no grave abuse of discretion, cannot be unduly extended to expand the main thrust of the said decision beyond its true import. This dismissal cannot be construed as a categorical expression of

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approbation by the appellate court of the statements made by the trial court in the questioned order in its discussion of Mendoza's motion for reconsideration, with particular reference to the said motion's characterization as *pro forma,* which the trial court itself later rectified by its approval of Mendoza's Record on Appeal from the judgment in its entirety, per its order of October 27, 1973. No conclusion can be attached to the circumstance that the appellate court, in examining the actuations of the trial court, cited the disquisition of the said court declaring Mendoza's motion for reconsideration as pro forma other than that the Court of Appeals included that citation to substantiate its holding that "if at all respondent had committed an error in his aforesaid order, it was only an error of judgment which is correctible by appeal." Any interpretation tacked to or conclusion derived from this dismissal that would impute to the Court of Appeals the rendering of judgment on the merits of the trial court's judgment for P200,000.00 and P30,000.00 ù attorney's fees as ordered executed in its order of July 17, 1973 ù a matter not within the reach of the invoked jurisdiction of the appellate court and expressly repudiated by it ù would certainly rest on a gross misconception of the nature, scope and attributes of the special civil action of *certiorari.* "Certiorari is a remedy narrow in its scope and inflexible in its character. It is not a general utility tool in the legal workshop."[12]

It is almost trite to point out that the distinction between errors of jurisdiction proceeding from the absolute want or excesses of jurisdiction or grave abuse of discretion, on the one hand, and errors of judgment arising from the erroneous appreciation of the facts or of the law, or the erroneous application of procedure, on the other hand, underlies the separate and independent rules providing for the special civil action of certiorari and the remedy of appeal. This same distinction serves to mark the difference between the approach to a controversy submitting for correction, by certiorari, errors of jurisdiction and that to a case posing for review, by appeal, errors of judgment. Thus, in *certiorari* proceedings, the approach focuses

[12] *State v. Dawson,* 325 S.W. 97, 99.

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on the actions of a court by which could be determined whether or not the said court exceeded the confines of its jurisdiction or proceeded without jurisdiction or with grave abuse of discretion; while in appellate processes, the approach centers on misconception or errors of law, misapprehension of facts, or misuse of procedural rules. Plainly, then, there is neither duplication of effort nor direction if the same controversy should be passed upon, on disparate issues, by a court in separate *certiorari* and appellate proceedings, as happens oftentimes when orders for provisional remedies such as receivership or injunction orders or for execution pending appeal.

Silverio invokes the principle of res judicata and claims that the dismissal of Mendoza's *certiorari* petition bars proceedings which would raise anew the question as to the "invalidity or nullity" of the execution order of July 17, 1973 and the writ of execution issued pursuant thereto. Silverio's contention proceeds from the fallacious assumption that the appellate court, by its previous dismissal of Mendoza's certiorari petition, sustained the intrinsic validity on the merits of the questioned order and writ of execution. In the certiorari proceedings, it devolved upon the appellate court to pass upon only the regularity and authority of the act of the court *a quo* in issuing the questioned order and writ of execution. But the invoked corrective and supervisory jurisdiction of the appellate court in the certiorari proceedings could not be unduly broadened so as to include a review of the questioned order as to its intrinsic correctness or as to the merits of the controversy between Silverio and Mendoza as adjudged in the trial court's decision which is the proper subject of the pending appeal. The appellate court's dismissal dated April 1, 1974 of Mendoza's petition constituted exclusively a judgment on the only point in litigation in the *certiorari* proceedings ù the regularity of the trial court's execution order and writ of July 17 and 19, 1973 in terms that the same were issued with jurisdiction and without grave abuse of discretion ù and certainly not a judgment on the merits of the case which could work, together with the other requisites[13] of the principle of res judicata, to bar the pending appeal which as stressed by the Court of Appeals itself was the proper form for reviewing any errors of judgment in fact and in law.

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Then Appellate Justice Buenaventura S. de la Fuente (now a member of this Court), in his separate concurrence with the Court of Appeals' questioned resolutions at bar of November 13, 1974 and December 5, 1974, expressly made the following pertinent observations in this regard:

"I see nothing whatsoever in that opinion [the decision dated April 1, 1974 of the Court of Appeals dismissing Mendoza's certiorari petition] to support a sweeping and expansive interpretation that we shared or concurred in the reasoning of the respondent judge, much less 'affirmed' the said order and immediate execution of the so-called 'final and executory' portion of the judgment *a quo* (re the principal claim and attorney's fees). We said nothing to give substance to the proposition or idea, being peddled by plaintiff, that said judgment was no longer appealable except as to the moral and exemplary damages awarded therein, it having been so 'clarified and/or construed' by the respondent judge in his order of July 17. We did not commit ourselves, one way or the other, consistently with the suggestion that errors of judgment, if any, committed by the respondent judge should be reviewed and corrected by ordinary appeal." [14]

2. The provisions of section 4[15] Rule 41 of the Rules of Court, require, inter alia, that the notice of appeal "shall designate the judgment or order, or part thereof, appealed from." On these provisions, rests the right of the aggrieved party to appeal either the whole judgment or order or only a part thereof. These provisions concede to the aggrieved party control of the extent

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[13] The following other requisites must be present: 1) the former or prior judgment must be final; 2) the said judgment must have been rendered by a court with jurisdiction over the subject matter and the parties; and 3) there must be between the first and second actions, identity of parties, of subject matter, and of cause of action. (*Santos v. Gabriel, et al.*, L-22996, May 31, 1972, 45 SCRA 288, 294-295; *Viray v. Mariñas*, L-33168, January 11, 1973, 49 SCRA 44, 50; *Benin, et al. v. Tuason, et al.*, L-26127, June 28, 1974, 57 SCRA 531, 586).

[14] *Rollo*, Volume 1, pp. 41-42.

[15] The entire text of Section 4 reads.

"Notice of Appeal. — The notice of appeal shall specify the parties to the appeal; shall designate the judgment or order, or part thereof, appealed from; and shall specify the court to which the appeal is taken."

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of his appeal, for, in the natural order of things, the aggrieved party alone can make an assessment, as far as his interest is concerned, of whether or not he stands to suffer loss or injury from the entirety of an adjudication or only a specific portion thereof. Thus, as fittingly observed by Justice de la Fuente in his concurring opinion: "A trial court has no say on the 'structure' of an appeal from its judgment. It cannot limit or restrict the appeal, especially for the purpose of making it conform to its opinion that part of its judgment is already 'final and executory' and only the remainder is appealable. Otherwise, the trial court would be able to forestall a review of certain portions of its decision or order, regardless of appellant's desire that the entire decision or order be reviewed on appeal."[16]

In the case at bar, the notice of appeal filed by Mendoza, in part, reads:

"NOTICE is hereby given that the defendant Ciriaco B. Mendoza in the above entitled case hereby appeals to the Court of Appeals from the judgment entered therein by the Honorable Court, dated March 5, 1973, and received by said defendant on April 10, 1973 and the Order dated July 17, 1973 denying the Motion for Reconsideration, which was received by the defendant on July 25, 1973."[17]

This notice of appeal, Justice de la Fuente noted with significance, "shows on its face that [Mendoza] was appealing from both the decision of March 5 and the order of July 17. His appeal was unqualified as to both."[18] Mendoza's appeal, being directed to the whole adjudication determined in the decision and order involved herein, as can be gleaned from his notice of appeal, falls within the quoted terms of section 4. The clear import of his notice of appeal calls for the full consideration of the controversy, in its entirety, as resolved in the decision dated March 5, 1973 and the order denying reconsideration dated July 17, 1973 of the trial court. To uphold

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[16] *Rollo*, Volume 1, pp. 43-44.

[17] *Ibid*, p. 202.

[18] *Ibid*, p. 42.

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Silverio's proposition that Mendoza's appeal brings up for review by the Court of Appeals only those matters excluded by the trial court in its execution order dated July 17, 1973 would unduly prejudice the right of Mendoza to appeal the totality of the judgment as granted by the cited Rule.

Of importance, to permit only a restrictive appeal would be to deny the Court of Appeals the performance of the very function for which it exists, to wit, to review and adjudicate assigned errors of fact and of law. Roscoe Pound states that "[a]ccording to Ulpian in Justinian's Digest, appeals are necessary to correct the unfairness or unskillfulness of those who judge."[19] Pound comments that "the purpose of review is prevention quite as much as correction of mistakes. The possibility of review by another tribunal, especially a bench of judges, as distinguished from a single administrative official, is an important check upon tribunals of first instance. It is a preventive of unfairness. It is also a stimulus to care and thoroughness so as not to make mistakes."[20] Pound adds that "[r]eview involves matters of concern both to the parties to the case and to the public. x x x. It is of public concern that full justice be done to very one."[21] This judicial function would best be fulfilled and the interest of full justice would best be served if it should be maintained that Mendoza's appeal brings before the reviewing court the totality of the controversy resolved in the questioned judgment and order apart from the fact that such fullscale review by appeal is expressly granted as a matter of right and therefore of due process by the Rules of Court.

The clear distinction between a special civil action of *certiorari* questioning the issuance of execution pending appeal and the giving of due course as a matter of right to an appeal timely perfected for a fullscale review of the appealed judgment (regardless of the issuance of execution pending appeal and of the outcome of the *certiorari* petition questioning the same)

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[19] Section on "Review-Appeal", Chapter 34, Part 8, Volume V, Jurisprudence, p. 606.

[20] *Ibid*, p. 607.

[21] *Ibid*, pp. 607-608.

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has always been recognized by this Court. In *City of Manila vs. Court of Appeals*, [22] the Court through the late Chief Justice Castro, dismissed similar contentions as Silverio's, expressly ruling that in special civil actions questioning execution orders pending appeal "the merits of a case, which should not be determined in advance of the appeal are of no moment", given the existence of good reasons for the issuance of the order, citing *Mapua vs. David*,[23] wherein we held, in ruling that there was no grave abuse of discretion or the opposite case of granting a stay of execution pending appeal, that:

"The reason by petitioner to maintain that the stay granted by the respondent court is a grave abuse of discretion is the merits of their own case. They allege that defendant has absolutely no right to possession and has, therefore, no defense whatsoever. But the merits of the case should not be determined at this state of the proceedings in advance of the appeal taken by both parties from the judgment rendered by respondent court in the principal case."

And the execution pending appeal, as already indicated above, does not bar the continuance of the appeal on the merits, for the Rules of Court precisely provide for restitution according to equity and justice in case the executed judgment is reversed on appeal.

Thus, the Court said in *Naredo vs. Yatco*[24] that "it may soothe petitioners' apprehension to state at this juncture that, where the executed judgment is reversed on appeal, the trial court shall issue such orders of restitution as equity and justice may warrant (Section 5, Rule 39); the appellees being bound to restore the status quo ante or respond in damages for their failure to do so."

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[22] 72 SCRA 98, per Castro, *C.J.*

[23] 77 Phil. 131.

[24] 80 Phil. 221. See also *Salas v. Quinga*, 13 SCRA 143, per Reyes, J.B.L. (retired) where the Court held that where judgment had been executed pending its appeal, there is no need of specifying in a judgment of reversal that there should be restitution of the land involved therein and of its products, because such restoration is expressly provided for in Rule 39, section 5, of the Rules of Court.

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In sum, Silverio's petition fails, totally unconvincing in its insistence that the Court of Appeals issued the resolutions dated November 13, 1974 and December 5, 1974 denying his motion to dismiss Mendoza's pending appeal, without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. The writ of certiorari must, therefore, be denied.

ACCORDINGLY, the petition for *certiorari* is hereby dismissed with costs against petitioner.

Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., Cuevas, Alampay, and *Patajo, JJ.,* concur.

Concepcion, Jr. and *Abad Santos, JJ.,* took no part.

FIRST DIVISION

[G.R. No. 68421. March 20, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CLEMENTE RADOMES Y SABIDO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THERE IS NO STANDARD FORM OF BEHAVIOR WHEN ONE IS CONFRONTED BY A SHOCKING INCIDENT.— It is to be noted, that prior to the incident, at past midnight of the same day, Edita already saw Radomes holding a bolo and heard him shouting "Whoever shall pass by, I will kill him." She testified that Radomes even went under her house. Hence, her explanation that she did not shout for help for fear that Radomes "might go upstairs" is