SIXTH DIVISION[*]

[CA-G.R. SP NO. 121631, February 09, 2015]

ACE-REM MESSENGERIAL AND GENERAL SERVICES AND/OR ROLANDO DIMAANDAL, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND EXEQUIEL MERMILO, RESPONDENTS.

D E C I S I O N

PERALTA, JR., E. B., J.:

Before Us is a Petition for Certiorari[1] to impugn the May 31, 2011 Resolution of the National Labor Relations Commission (NLRC)[2] which dismissed petitioners' Petition for Relief from the Judgment of Labor Arbiter Danna M. Castillon on October 28, 2010 in *"Exequiel Mermilo vs. Ace-Rem Messengerial and General Services and/or Rolando Dimaandal",*[3] and the NLRC's subsequent Resolution on August 17, 2011, [4] which denied petitioners' Motion for Reconsideration.

On December 22, 2009, private respondent Exequiel P. Mermilo (Mermilo) filed a Complaint for Illegal Dismissal, Separation Pay, Full Backwages, Damages and Attorney's Fees against petitioners Ace-Rem Messengerial and General Services and/or Rolando Dimaandal before the Department of Labor and Employment (DOLE) Regional Office of Laguna docketed as Case No. RO400-A-LFO-0912 MC-017, which was endorsed to NCRB-RAB IV of Calamba City on April 27, 2010.[5] It was averred that since April 27, 2009, petitioners never received any summons or notice from the NCRB-RAB IV. Neither did they receive any pleading from private respondent Mermilo.[6]

On January 17, 2010, petitioners were taken aback upon receipt of private respondent's Motion for Issuance of Writ of Execution dated January 11, 2010 in NLRC Case No. RAB-IV-05-00853-10-L based on these assertions:[7]

> *"1. That a Decision has been rendered in this case on October 28, 2010 in favor of herein complainant and against respondents, the dispositive portion of which reads as follows:*
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> *"WHEREFORE, premises considered, the dismissal of the complainant is hereby declared illegal. Respondents ACE-REM MESSENGERIAL AND GENERAL SERVICES and/or ROLANDO DIMAANDAL are ordered to pay complainant the total amount of P247,129.45 representing his separation pay with full backwages. "*
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> *All other claims are ordered dismissed for lack of merit.*
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> *SO ORDERED"*

> *2. That despite receipt of the said Decision, respondents failed to file a Notice of Appeal within ten (10) days from receipt of the above-mentioned Decision. In view of the foregoing, the said Decision has now become final and executor (sic) and complainant is now respectfully asking for the execution of the same."*

On January 25, 2011, petitioners filed an Opposition to the Motion for Issuance of Writ of Execution with a corollary exception via a Motion to Quash Writ of Execution… [8]

When confronted with the move to implement, the Labor Arbiter agreed on June 1, 2011.[9]

In the meantime, since petitioners supposedly did not receive any Resolution relative to their Opposition for Issuance of Writ of Execution, they were constrained to file a Petition for Relief from Judgment with Prayer for Preliminary Injunction on March 22, 2011 before the same Labor Arbiter.[10]

On May 31, 2011, public respondent NLRC issued its Resolution to repudiate petitioners' Petition for Relief of Judgment since: (1) the Petition was not in the nick of time; (2) there was no Affidavit of Merit; and (3) no Board Resolution was attached to the Petition insofar as the authority of Rolando Dimaandal to file the Petition on petitioner-corporation's behalf.[11] Petitioners' Motion for Reconsideration[12] from the adverse ruling was equally rejected by the NLRC in its August 17, 2011 Resolution.[13]

Hence, the instant Petition was utilized through Rule 65 to ascribe the sole query of wanton exercise of the faculty conferred upon the NLRC in this wise:[14]

> … IN DISMISSING THE PETITION FOR RELIEF OF JUDGMENT AND THE SUBSEQUENT MOTION FOR RECONSIDERATION FILED BY PETITIONERS ON MERE TECHNICALITY DESPITE THE MERITORIOUS GROUNDS RAISED THEREIN, TO WIT: (A) DENIAL OF DUE PROCESS; (B) LACK OF JURISDICTION FOR FAILURE TO SERVE SUMMONS AND (C) FRAUD OR MISTAKE IN THE ISSUANCE OF DECISION.

Essentially, petitioners impugned the NLRC's dismissal of their Petition for Relief merely on technical grounds. They argued that technical rules should be relaxed in their favor amidst petitioners' meritorious arguments on the Petition and their subsequent submission of an Affidavit of Merit, inclusive of the corresponding Board Resolution. Concomitant with these disquisition, petitioners also harped on the efficacy of the service of summons made upon them.[15]

We resolve in petitioners' favor.

Certainly, when the Petition for Relief from Judgment was initiated on March 22, 2011,[16] the 2005 Revised Rules of Procedure of the NLRC were still effective. As correctly observed by the NLRC, Section 4 thereof explicitly referred to the proscription over a Petition for Relief from Judgment filed with the Labor Arbiter.[17] Nonetheless, Rule V, Section 15 of the Rule, referred to the prospect of elevating a

Petition for Relief from Judgment to the Commission for disposition.[18]

In its assailed May 31, 2012 Resolution, the NLRC dismissed the Petition for Relief from Judgment on account of preclusion of the remedy and in conjunction with formalities thereof:[19]

> *We dismiss the petition for being out of time and defective in substance.*
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> *Under Rule 38, Section 3 of the Revised Rules of Court, it is provided that:*
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> *"Sec. 3. Time for filing petition; contents and verification - A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be."*
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> *The two periods for filing a petition for relief from judgment are not extendible, never interrupted and not subject to any condition or contingency (Arcilla v. Arcilla, 138 SCRA 560 [1985]), especially if filed in the wrong court (Salvatierra v. Carlitos, L-11442, May 23, 1958). As expressly stated in Rule 38, Section 3, the 40-day period is reckoned from the time the party acquired knowledge of the judgment or order. In this case, petitioners admit that they learned of the Labor Arbiter's decision on January 20. 2011, but the petition was only received by the Commission on April 8, 2011, or after 78 days from petitioner's knowledge of the Labor Arbiter's decision. We note that the present petition was wrongly filed with the Arbitration Branch, Region IV on March 22. 2011. Under Rule III, Section 4 of the NLRC Rules of Procedure, a petition for relief from judgment is a prohibited pleading before the Labor Arbiter and shall not be allowed and acted upon nor elevated to the Commission. Even if We consider March 22, 2011 as the date of the filing of the petition with the Commission, still, the 60-day period is not complied with since March 22, 2011 is the 61st day after petitioner's (sic) learned of the Labor Arbiter's decision thereby warranting the dismissal of the petition.*
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> *Moreover, the petition lacks an affidavit of merit. The affidavit of merit serves as the jurisdictional basis for a court to entertain a petition for relief (Garcia v. Court of Appeals, October 2, 1991) Even if We consider the verified petition which contains averments of fraud or mistake as substantial compliance with the requirement of an affidavit of merit (Capriz v. Court of Appeals, June 27, 1994), still, the petition must be dismissed for failure of the petitioners to support by sworn affidavits their allegation that they were not properly served with summons and other notices of hearings by the Labor Arbiter. Further, there is also no board resolution attached to the petition authorizing Rolando Dimaandal to file*

the present petition on behalf of the petitioner corporation.

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Concededly, petitioners' recourse was not in keeping with the basic norm on the filing of a Petition for Relief, *i.e.,* the 60-day period for submission thereof.[20] However, such rule is not inflexible as underscored in *Argana, et al., v. Republic*:[21]

> *Although as a general rule, the party filing a petition for relief must strictly comply with the sixty (60)-day and six (6)-month reglementary periods under Section 3, Rule 38, it is not without exceptions. The Court relaxed the rule in several cases and held that the filing of a petition for relief beyond the sixty 60-day period is not fatal so long as it is filed within the six (6)-month period from entry of judgment.*

Similarly, in *New Pacific Timber & Supply Company, v. NLRC,*[22] the Supreme Court also permitted a Petition for Relief from Judgment beyond the reglementary period for filing an appeal if factual circumstances of a given case warrant the liberal application of procedural rules, thusly:

> *"We find no grave abuse of discretion on the part of the NLRC, when it entertained the petition for relief filed by the private respondents and treated it as an appeal, even if it was filed beyond the reglementary period for filing an appeal. Ordinarily, once a judgment has become final and executory, it can no longer be disturbed, altered or modified. However, a careful scrutiny of the facts and circumstances of the instant case warrants liberality in the application of technical rules and procedure. xxx"*

Moreover, Article 221 of the Labor Code allows relaxation of technical rules of procedure in labor cases to serve the demands of substantial justice:[23]

> *"In a long line of decisions this Court has consistently ruled that the application of technical rules of procedure in labor cases may be relaxed to serve the demands of substantial justice. As exemplified in Art. 221 of the Labor Code, "rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of the Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process." xxx*

From Our perspective, the merits of the case warranted relaxation of procedural rules relative to the filing of petitioners' Petition for Relief.

In cases filed before the labor arbiter, service of notices and resolutions, including summons, is governed by Sections 6 and 7, Rule 3 of the 2005 Revised Rules of Procedure, which were the prevailing Rules at the time of the filing of the Complaint:[24]

> *Section 6. Service of Notices and Resolutions.- a) Notices or summons and copies of orders, shall be served on the parties to the case personally by the Bailiff or duly authorized public officer within three (3) days from*

receipt thereof or by registered mail; Provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court; Provided further, that in cases of decisions and final awards, copies thereof shall be served on both parties and their counsel or representative by registered mail; Provided further that in cases where a party to a case or his counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected upon actual receipt thereof; Provided, finally, that where parties are so numerous, service shall be made on counsel and upon such number of complainants, as may be practicable, which shall be considered substantial compliance with Article 224 (a) of the Labor Code, as amended.

For purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record.

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Section 7. Proof and Completeness of Service- The return is prima facie proof of the facts indicated therein. Service by registered mail is complete upon receipt by the addressee or his agent; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time.

Following a peek at the record, it appeared that summons and other notices from the NLRC were not properly served on petitioners.

Per the Certificate of Registration issued by the DOLE, the principal address of petitioner-corporation was at 8361 Dr. A Santos Avenue, Sucat Paranaque City.[25] While the address indicated on the envelopes containing notices from the NLRC, i.e. San Pedro Commercial Arcade Mabini Street, San Pedro, 4023 Laguna,[26] was supposedly petitioners' branch office, the given address was incomplete. Neither did the record disclose any return or other supporting proof towards petitioners' receipt of summons either personally or by registered mail. Moreover, photocopies of envelopes of notices from the NLRC, addressed to petitioners, contained the inscriptions: "RTS Unknown."[27] Withal, what can fortify petitioners' disavowal of notice of the summons and notices from the NLRC were Certifications from the Office of the Postmaster to the effect that registered mails from the NLRC of Calamba, Laguna, which were sent to petitioners at San Pedro Commercial Arcade Mabini Street, San Pedro Laguna, were returned to sender/unknown. [28]

Furthermore, under Section 7, Rule 3 of the 2005 NLRC Rules of Procedure, service by registered mail is complete upon receipt by the addressee or his agent; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time. However, apart from the lacuna on petitioners' receipt of summons and other notices from the NLRC, there was likewise absence of proof concerning the postmaster's notice to petitioners. Owing to the lack of summons and notices