

FIRST DIVISION

[G.R. No. 206167, March 19, 2018]

NATIONAL POWER CORPORATION, PETITIONER, V. THE COURT OF APPEALS, HON. JOSE D. AZARRAGA, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 37, REGIONAL TRIAL COURT, ILOILO CITY, AND ATTY. REX C. MUZONES, RESPONDENTS.

DECISION

TIJAM, J.:

Before Us is a Petition for *Certiorari*^[1] under Rule 65 of the Rules of Court assailing the Decision^[2] dated April 14, 2011 and Resolution^[3] dated January 8, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 03908 dismissing the petition filed by the National Power Corporation (NPC) for being filed out of time.

The Antecedent Facts

The case stemmed from Civil Case No. 05-28553 filed by Spouses Romulo and Elena Javellana (Spouses Javellana) to fix lease rental and just compensation; collection of sum of money and damages against NPC and National Transmission Corporation (Transco).^[4]

On July 26, 2007, the RTC rendered a Decision^[5] in favor of the Spouses Javellana. NPC and Transco filed their respective appeal.^[6] On the other hand, Spouses Javellana filed a Motion for Execution Pending Appeal.^[7] On January 4, 2008, the RTC, in its Order^[8] granted the motion for execution pending appeal.

In the meantime, Transco negotiated with Spouses Javellana for the extra-judicial settlement of the case. As a result, Transco agreed to buy the property of the Spouses Javellana affected by the transmission lines. Subsequently, Spouses Javellana received the amount of P80,380,822.00 from Transco.^[9]

Thereafter, Atty. Rex C. Muzones (Atty. Muzones), the counsel of the Spouses Javellana filed a Notice of Attorney's lien.^[10]

Transco then filed a Motion to Dismiss^[11] the case in view of the extra-judicial settlement of the case. On his part, Atty. Muzones filed a Motion for Partial Satisfaction of Judgment and Opposition to the Motion to Dismiss.^[12]

On June 27, 2008, the respondent judge issued an Order^[13] ordering NPC and Transco to pay Atty. Muzones the amount of P52,469,660.00 as his attorney's lien, to wit:

WHEREFORE, premises considered, an Entry for the satisfaction of the Judgment claims of [Spouses Javellana], in the amount of

P80,380,822.00 be made in the records and the same DISMISSED against [NPC and Transco].

[NPC and Transco] are hereby directed to pay [Spouses Javellana's] counsel, [Atty. MUZONES], his Lawyer's Lien in the amount of P52,469,660.00, within a period of TEN (10) days from receipt of this Order.

Pending compliance the Motion to Dismiss is held in abeyance.

SO ORDERED.^[14]

On June 30, 2008, the respondent judge issued a Clarificatory Order^[15] stating that the attorney's fees of P52,469,660.00 is separate and distinct from the amount to be paid to the Spouses Javellana, the dispositive portion of which reads:

WHEREFORE, premises considered, an Entry for the satisfaction of the judgment claims of [Spouses Javellana], in the amount of P80,380,822.00 be made in the records and the same DISMISSED against [NPC and Transco].

[NPC and Transco] are hereby directed to pay [Spouses Javellana's] counsel, [Atty. MUZONES], his Lawyer's lien in the amount of P52,469,660.00, within a period of TEN (10) days from receipt of this Order, which payment is aside from, separate and different from the amount of P80380.822.00 paid by [NPC and Transco] to [Spouses Javellana].

Pending compliance the Motion to Dismiss is held in abeyance.

SO ORDERED.^[16] (Underscoring in the original)

Transco filed a Motion for Reconsideration of the orders, while NPC filed its comment to the Clarificatory Order.^[17]

On August 6, 2008, the respondent judge denied^[18] the motion for reconsideration and the comment of NPC, thus:

WHEREFORE, premises considered, the reliefs prayed for in the Motion for Reconsideration filed by [NPC], dated July 15, 2008 and the Comment filed by [NPC] dated July 21, 2008 are hereby DENIED.

The Order dated June 27, 2008 and Clarificatory Order dated June 30, 2008, stands.

SO ORDERED.^[19]

NPC then filed a motion for reconsideration^[20] of the Order dated August 6, 2008. The respondent judge however denied the same in his Order^[21] dated September 22, 2008.

Aggrieved, NPC filed a Petition for *Certiorari*^[22] with the CA assailing the Orders dated June 27, 2008, June 30, 2008, August 6, 2008 and September 22, 2008.

In its Decision^[23] dated April 14, 2011, the CA dismissed NPC's petition for being filed beyond the 60-day reglementary period.

Thus, NPC comes before Us assailing the CA's dismissal of its petition.

The petition is *GRANTED*.

Petition for *Certiorari* is the wrong remedy.

At the outset, NPC filed a Petition for *Certiorari* under Rule 65 of the Rules of Court which is a wrong remedy.

"A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law."^[24] In the instant case, NPC has a plain, speedy and adequate remedy to appeal the CA decision, which is to file a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

Section 1 of Rule 45 states that "*A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.*"

Here, the Decision dated April 14, 2011 of the CA dismissed the NPC's petition for being filed out of time, thus it was a final judgment rendered by the CA. There is nothing left to be done by the CA in respect to the said case. Thus, NPC should have filed an appeal by petition for review on *certiorari* under Rule 45 before this Court, not a petition for *certiorari* under Rule 65.

In the case of *Malayang Manggagawa ng Stay fast Phils., Inc. v. NLRC, et al.*,^[25] it is stated that the existence of an appeal prohibits the parties' resort to a petition for *certiorari*, thus:

The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is that there should be no appeal.^[26] (Citation omitted and emphasis ours)

The Comment filed by NPC is in the nature of a Motion for Reconsideration.

We agree with the CA that the Comment filed by NPC is in the nature of a motion for reconsideration. The allegations of NPC and even the prayer^[27] of NPC in its comment sought the reconsideration of the June 30, 2008 Clarificatory Order. Thus, upon the RTC's denial of the "Comment", NPC should have already filed for a Petition for *Certiorari* before the CA, not a second motion for reconsideration before the RTC.

Thus, upon NPC's filing of its Petition for *Certiorari* on December 2, 2008, the 60-day reglementary period of filing the same has already lapsed.

Technical rules of procedure should give way to serve substantial justice.

Notwithstanding the procedural lapses in this case, We opt not to deny the case based on merely technical grounds. We must be reminded that deciding a case is not a mere play of technical rules. If We are to abide by Our mandate to provide justice for all, We should be ready to set aside technical rules of procedure when the same hampers justice rather than to serve the same.

The Contract of Legal Services^[28] executed between Spouses Javellana and Atty. Muzones, fixed the contingency fee at 12.5% of whatever amount realized, to wit:

That the CLIENT engages the legal services of the herein LAWYER under the following terms and conditions, to wit:

Preparation and filing of a Complaint to Fix Lease Rental and Just Compensation; Collection of a Sum of Money and Damages against NPC and NTC before the RTC, Iloilo City and appearance at every stage of the proceedings until terminated - a Contingent Fee at the rate of 12.5% of whatever award or monetary consideration realized.^[29]

A contingent fee arrangement is permitted in this jurisdiction because they redound to the benefit of the poor client.^[30] In the case of *Rayos v. Atty. Hernandez*,^[31] We stated that:

A contingent fee arrangement is valid in this jurisdiction and is generally recognized as valid and binding but must be laid down in an express contract. The amount of contingent fee agreed upon by the parties is subject to the stipulation that counsel will be paid for his legal services only if the suit or litigation prospers. A much higher compensation is allowed as contingent fee in consideration of the risk that the lawyer may get nothing if the suit fails. Contracts of this nature are permitted because they redound to the benefit of the poor client and the lawyer "especially in cases where the client has meritorious cause of action, but no means with which to pay for legal services unless he can, with the sanction of law, make a contract for a contingent fee to be paid out of the proceeds of the litigation. Oftentimes, the contingent fee arrangement is the only means by which the poor and helpless can seek redress for injuries sustained and have their rights vindicated.

Contingent fee contracts are subject to the supervision and close scrutiny of the court in order that clients may be protected from unjust charges. Section 13 of the Canons of Professional Ethics states that "a contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness. x x x[.]^[32] (Citations and emphasis omitted)