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THIRD DIVISION

[G.R. No. 191616, April 18, 2016]

FRANCIS C. CERVANTES, PETITIONER, VS. CITY SERVICE CORPORATION AND VALENTIN PRIETO, JR., RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court filed by petitioner Francis Cervantes assailing the Resolutions of the Court of Appeals (*CA*), dated October 30, 2009[1] and March 11, 2010[2] in CA-G.R. SP No. 111037, which dismissed petitioner's petition for *certiorari* for having been filed out of time and denied the petitioner's motion for reconsideration, respectively.

The instant petition stemmed from a Complaint for illegal dismissal dated December 19, 2007 filed before the National Labor Relations Commission (NLRC) by petitioner Francis C. Cervantes against respondents City Service Corporation and/or Valentin Prieto, Jr. for illegal dismissal, underpayment of salaries/wages, overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave, separation pay, ECOLA, moral and exemplary damages, and attorney's fees.

On June 30, 2008, the Labor Arbiter, in NLRC-NCR-12-14080-07, dismissed the complaint for lack of merit. It found that it was Cervantes who refused to work after he was transferred to another client of City Service. The Labor Arbiter stressed that employees of local manpower agencies, which are assigned to clients, do not become employees of the client.

Cervantes appealed the Labor Arbiter's decision, but was denied in a Resolution dated February 5, 2008. Undaunted, Cervantes moved for reconsideration, but was denied anew in a Resolution[3] dated July 22, 2009.

Thus, on October 6, 2009, Cervantes, through counsel Atty. Angelito R. Villarin, filed before the CA a Petition for *Certiorari*[4] under Rules 65 of the Rules of Court, alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in affirming the assailed Resolutions dated February 9, 2009 and July 22, 2009 which dismissed Cervantes' complaint for illegal dismissal and denied his motion for reconsideration, respectively.

In the assailed Resolution[5] dated October 30, 2009, the CA dismissed Cervantes' petition for *certiorari* for having been filed out of time. The appellate court argued that, by petitioner's admission, his mother received the assailed Resolution of the NLRC denying his motion for reconsideration on July 30, 2009. Thus, counting sixty (60) days therefrom, petitioner had only until September 28, 2009 within which to file the petition. However, the petition for *certiorari* was filed only on October 7, 2009, or nine (9) days late.

Cervantes moved for reconsideration, but was denied in Resolution[6] dated March 11, 2010. Thus, the instant petition for review on *certiorari* raising the following issues:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW FOR RECKONING THE PERIOD FOR FILING A PETITION FOR CERTIORARI UNDER RULE 65 FROM RECEIPT OF THE ASSAILED RESOLUTION OF THE NLRC DATED JULY 22, 2009
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> WHETHER OR NOT THE COURT OF APPEALS COMMITTED AN ERROR OF LAW FOR RULING THAT THE SAID PETITION SHOULD HAVE BEEN DISMISSED ANYWAY BECAUSE PETITIONER FAILED TO ATTACH COPIES OF RESPONDENT'S REPLY MEMORANDUM AND COMMENT TO THE MOTION FOR RECONSIDERATION FILED WITH THE NLRC; AND
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> WHETHER OR NOT THE COURT OF APPEALS COMMITTED AN ERROR OF LAW THAT THE NLRC DID NOT COMMIT GRAVE ABUSE OF DISCRETION FOR SUSTAINING THE DECISION OF THE LABOR ARBITER THAT PETITIONER WAS NOT ILLEGALLY DISMISSED.

Procedurally, petitioner insists that he filed the petition for *certiorari* on time, which should be reckoned from the moment his counsel was informed about the Resolution denying his motion for reconsideration, and not from the date his mother received a copy of the NLRC Resolution.

The petition is partly meritorious.

In practice, service means the delivery or communication of a pleading, notice or some other paper in a case, to the opposite party so as to charge him with receipt of it and subject him to its legal effect. The purpose of the rules on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the same so that he can take steps to protect his interests; *i.e.*, enable a party to file an appeal or apply for other appropriate reliefs before the decision becomes final.[7]

The rule is —

> where a party appears by attorney in an action or proceeding in a court of record, all notices required to be given therein must be given to the attorney of record; and service of the court's order upon any person other than the counsel of record is not legally effective and binding upon the party, nor may it start the corresponding reglementary period for the subsequent procedural steps that may be taken by the attorney. Notice should be made upon the counsel of record at his exact given address, to which notice of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address.
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> When a party is represented by counsel of record, service of orders and notices must be made upon said attorney; and notice to the client and to any other lawyer, not the counsel of record, is not notice in law.[8]

The NLRC Rules governing the issuance and service of notices and resolutions is, likewise, no different:

> SECTION 4. SERVICE OF NOTICES, RESOLUTIONS, ORDERS AND DECISIONS. - a) Notices and copies of resolutions or orders, shall be served personally upon the parties by the bailiff or duly authorized public officer within three (3) days from his/her receipt thereof or by registered mail or by private courier;
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> b) ***In case of decisions and final awards, copies thereof shall be served on both parties and their counsel or representative by registered mail or by private courier***; Provided that, in cases where a party to a case or his/her counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected as herein provided. Where parties are numerous, service shall be made on counsel and upon such number of complainants, as may be practicable and 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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> c) The bailiff or officer serving the notice, order, or resolution shall submit his/her return within two (2) days from date of service thereof, stating legibly in his/her return his/her name, the names of the persons served and the date of receipt, which return shall be immediately attached and shall form part of the records of the case. In case of service by registered mail or by private courier, the name of the addressee and the date of receipt of the notice, order or resolution shall be written in the return card or in the proof of service issued by the private courier. If no service was effected, the reason thereof shall be so stated.[9]

Also, in *Ginete v. Sunrise Manning Agency, et al.*,[10] the Court held that "the period for filing a petition for *certiorari* should be reckoned from the time the counsel of record received a copy of the Resolution denying the motion for reconsideration."[11] The Court further clarified that the period or manner of "appeal" from the NLRC to the Court of Appeals is governed by Rule 65, pursuant to the ruling of the Court in the case of *St. Martin Funeral Homes v. NLRC*[12] in light of Section 4 of Rule 65, as amended, which states that the "petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed."

The Court further expounded therein, to wit:

> Corollarily, Section 4, Rule III of the New Rules of Procedure of the NLRC expressly mandates that "(F)or the purpose(s) of computing the period of appeal, the same shall be counted from receipt of such decisions, awards or orders by the counsel of record." ***Although this rule explicitly contemplates an appeal before the Labor Arbiter and the NLRC, we do not see any cogent reason why the same rule should not apply to petitions for certiorari filed with the Court of Appeals from decisions of the NLRC. This procedure is in line with the established rule that notice to counsel is notice to party and when a party is represented by counsel, notices should be made upon***