

## THIRD DIVISION

[ G.R. No. 158073, November 23, 2007 ]

**ALEX M. CADORNIGARA, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, THIRD DIVISION, AND/OR  
AMETHYST SHIPPING CO., INC., AND/OR ESCOBAL NAVIERA,  
CO., S.A., RESPONDENTS.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the December 5, 2002 Court of Appeals (CA) Resolution,<sup>[1]</sup> which dismissed the petition for *certiorari* docketed as CA-G.R. SP No. 74036, for lack of written explanation why it was not personally filed; and the April 4, 2003 CA Resolution,<sup>[2]</sup> denying the motion for reconsideration.

Briefly, the material facts are:

Alex M. Cadornigara (petitioner) filed with the National Labor Relations Commission (NLRC) a complaint<sup>[3]</sup> against his employer, Escobal Naviera Co., S.A., represented by Amethyst Shipping Co., Inc. (respondents), for permanent total disability compensation and damages. The Labor Arbiter (NLRC) dismissed the complaint in a Decision<sup>[4]</sup> dated August 30, 2001. Petitioner appealed,<sup>[5]</sup> but the NLRC denied the same in its Resolution<sup>[6]</sup> of June 20, 2002. Petitioner filed a motion for reconsideration<sup>[7]</sup> which the NLRC denied in its August 30, 2002 Resolution,<sup>[8]</sup> a copy of which petitioner received on July 17, 2002.<sup>[9]</sup>

After receiving a copy of the August 30, 2002 NLRC Resolution on September 19, 2002,<sup>[10]</sup> petitioner filed with the CA a petition for *certiorari*<sup>[11]</sup> under Rule 65 of the Rules of Court. The CA issued the questioned December 5, 2002 Resolution, dismissing the petition for *certiorari*, to wit:

For failing to contain a written explanation why this petition was not filed personally (but rather by registered mail), it appearing that personal filing was still very much practicable considering that ***the office of petitioner's counsel is only a walking distance from the court at the 12<sup>th</sup> Floor, Antonino Bldg., T.M. Kalaw, Ermita, Manila***, and that the petition is dated November 15, 2002 yet, this petition is ordered DISMISSED. The law required that filing of pleadings be done personally and only when personal filing is not practicable that resort to other modes of filing is allowed. If accompanied by a genuine and real reason why personal service was not practicable (***Section 11, Rule 13 Rules of Civil Procedure, and the ruling in Solar Team Entertainment, Inc. vs. Ricafort, 293 SCRA 661 [1998]***), not just any reason however

flimsy it may be.

SO ORDERED.<sup>[12]</sup>

Petitioner filed a motion for reconsideration,<sup>[13]</sup> explaining that, all along, his counsel was under “the impression or misimpression [that] the petition would be personally filed by his Law Office,” but in the end, the said law office had to resort to filing by registered mail because its office-server, Mr. Rizaldo D. Lagunilla, failed to reach the CA before closing time.<sup>[14]</sup>

In the questioned Resolution dated April 4, 2003, the CA denied petitioner’s motion for reconsideration:

The explanation is bereft of truth. Clearly shown in the Affidavit of Service attached to the petition (*p. 23, Rollo*) that petitioner had no intention to personally file and serve this petition, thereby contemptuously betraying the justification in his motion. The affidavit of service categorically states “[t]hat on November 18, 2002, I served a copy of the PETITION FOR CERTIORARI in the case entitled ALEX CADORNIGARA vs. NATIONAL LABOR RELATIONS COMMISSION, ET AL., C.A. G.R. NO. \_\_\_\_\_ dated November 15, 2002, by registered mail” to the Court of Appeals, National Labor Relations Commission, Office of the Solicitor General and Del Rosario & Del Rosario.

ACCORDINGLY, petitioner’s Motion for Reconsideration dated January 21, 2001 is DENIED.

SO ORDERED.<sup>[15]</sup>

Hence, the present petition on this sole ground:

The petitioner submits that the dismissal by the Honorable Court of Appeals of his Petition for Certiorari on purely technical ground grossly violated HIS right to due process and unduly deprived him of the opportunity to establish the merits of his petition.<sup>[16]</sup>

Petitioner is misinformed.

When we crafted Section 11, Rule 13 of the Rules of Court:

*Priorities in modes of service and filing.* – Whenever practicable, the **service** and **filing** of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this rule may be cause to consider the paper as not filed.

we did not intend it to be just some silly rule the parties can ignore when convenient, and the courts disregard when expedient.<sup>[17]</sup> We designed it to serve a very real purpose: to ensure that pleadings, motions and other papers reach the courts directly and promptly, so that they may be acted upon expeditiously; and to forestall the deplorable practice among some lawyers of serving or filing pleadings by mail to catch their opposing counsel off-guard. Thus, these lawyers leave the

opposing counsel with little or no time to respond accordingly; or, upon receiving notice from the post office of the registered parcel containing the pleading or other papers from the adverse party, the latter may unduly procrastinate before claiming said parcel -- or, worse, not claim it at all -- and thereby cause undue delay in the disposition of such pleading or other papers.<sup>[18]</sup>

Under said rule, personal service and filing of pleadings and other papers is a mandatory mode, especially when the peculiar circumstances of the case -- such as the proximity of the office of a party's counsel to the court or to the office of the opposing party's counsel -- make such mode practicable.<sup>[19]</sup> If another mode is employed, there must be attached to the pleading or paper, a written explanation of such recourse. Omission of a written explanation will give the court cause to expunge the pleading or paper not personally served or filed.<sup>[20]</sup> And ordinarily, such exercise of discretion by the court will not be overruled on appeal, except when: a) on the face of the affidavit of service, it is patent that personal service and filing is impractical, such as when the parties or their counsels live in different provinces;<sup>[21]</sup> b) there is *prima facie* merit in the pleading or paper expunged;<sup>[22]</sup> and c) the issue raised therein is of substantial importance.<sup>[23]</sup> Under these exceptional circumstances the lack of written explanation may be excused and the pleading or paper served or filed, accepted.

In the present case, the petition for *certiorari* filed with the CA clearly indicates that the office of petitioner's counsel (Linsangan Law Office) is located at the 12th Floor Antonino Bldg., T.M. Kalaw, Ermita, Manila; while that of respondents' counsel (Del Rosario and Del Rosario Law Offices) is located at 107 Herrera cor. Esteban Street, Legaspi Village, Makati City.<sup>[24]</sup> Yet, petitioner filed the petition for *certiorari* with the CA and served copies thereof on the other parties, all by registered mail. He did append a written explanation to his petition for *certiorari* but it merely states:

EXPLANATION: In compliance with Section 11, Rule 13, 1997 Rules of Civil Procedure, it is hereby explained that the foregoing pleading is being **served by registered mail upon the other parties**, personal service not being practicable due to time constraint. (Emphasis added)

It does not include an explanation as to why the filing with the CA was also done by registered mail.

The foregoing circumstances considered, we cannot fault the CA for not accepting the petition for *certiorari*. In *Tagabi v. Tangua*,<sup>[25]</sup> we upheld the CA for dismissing an appeal that lacked a written explanation of why it was filed by registered mail, even when in said case, petitioner's counsel held office in Iloilo City and found it impractical to personally file the appeal brief with the CA in Manila.

With more reason, we cannot excuse herein petitioner's lapse. It is of judicial notice that the Linsangan Law Office in Ermita, Manila is virtually a stone's throw away from the CA in Ma. Orosa, Manila. The distance between the Linsangan Law Office and the Central Post Office in Manila is approximately ten times farther than that between said law office to the CA. Thus, petitioner's filing of the petition by registered mail through the Central Post Office was actually the more circuitous and impractical course.

Worse, such error was compounded when, in his motion for reconsideration from the December 5, 2002 CA Resolution, petitioner made no effort at all to correct the deficiency and substantially comply with Section 11 of Rule 13 by attaching, even if belatedly, the omitted written explanation. Instead, petitioner foisted upon the CA an untruthful explanation: that his counsel initially intended to personally file the petition with the CA, but that his counsel's office-server failed to reach the court before closing time. As the CA astutely observed, such explanation is contradicted by the affidavit of service attached to the petition, which stated that it was being filed by registered mail.<sup>[26]</sup>

In fine, the CA acted within the bounds of its discretion under Section 11 of Rule 13 in refusing to accept the petition for *certiorari* for failure of petitioner to attach a written explanation of non-personal filing.

That said, we will nonetheless resolve the main issue involved if only to demonstrate that the petition also lacks substance.

Part of the employment contract of petitioner is Section 20-B of the POEA-Standard Employment Contract, which reads:

Section 20-B. *Compensation and Benefits for Injury and Illness.* - The liabilities of the employer when the seafarer suffers injury or illness

x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

x x x x

5. In case of permanent total or partial disability of the seafarer during the term of his employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.