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FIRST DIVISION

[G.R. No. 156259, September 18, 2003]

GROGUN, INCORPORATED, PETITIONER, VS. NATIONAL POWER CORPORATION, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

On August 13, 1992, the National Power Corporation (NAPOCOR) awarded the project of rehabilitating the Caliraya Glory Hole Service Spillway (CGHSS) at Caliraya Reservoir, Lumban, Laguna to GROGUN INC. (GROGUN). Among several contractors, GROGUN offered the most workable and viable design at the lowest price.

The primary purpose of the Caliraya Reservoir was to keep the lake's water level within the specified limit not only for the protection of the dam but also to prevent the flooding of the towns surrounding the dam. Ever since the Caliraya Reservoir and the CGHSS were built in 1930, the CGHSS was regularly used to flush down excess water from the lake whenever the lake's water level reached critical level. Numerous leaks, however occurred in the vertical shaft of CGHSS.

It appears that prior to 1992, NAPOCOR engaged ALA Industries Corporation to repair the CGHSS. The design and method, however adopted by ALA Industries Corporation were not workable. Leaks recurred in the vertical shaft of the CGHSS immediately after the project was accepted by NAPOCOR.

NAPOCOR failed to pay for the costs of the rehabilitation despite the completion of the project. Thus, on March 22, 1994, GROGUN filed a request for adjudication before the Construction Industry Arbitration Commission (CIAC), docketed as CIAC Case No. 06-94,[1] pursuant to the arbitration clause[2] in their Contract.[3] However, finding no stipulation in the contract of the parties providing for arbitration as a mode of settling disputes, CIAC dismissed the case.[4]

On September 10, 1996, GROGUN filed an action for collection of sum of money and damages before the Regional Trial Court of Quezon City, Branch 216, which was docketed as Civil Case No. Q-96-28731.[5] NAPOCOR filed its Answer with Counterclaim[6] asserting that the poor quality of GROGUN'S workmanship led to numerous defects in the project.

After the pre-trial conference, the parties filed a Joint Manifestation and Motion[7] submitting their dispute to arbitration under Republic Act No. 876[8] taking into consideration the highly technical nature of their contract. The Arbitration Tribunal was composed of Atty. Alfredo F. Tadiar as Chairman, Engineer Carlito T. Kingkay and Atty. Alejandro A. Padaen as members.

On May 14, 1998, the Arbitration Tribunal rendered a decision, the decretal portion of which reads:

> WHEREFORE, judgment is hereby rendered and AWARD is made as follows:
>
> FOR THE PLAINTIFF-CONTRACTOR:
>
> Defendant is directed to pay the Plaintiff the following amounts on its various claims:
>
> P1,440,000.00 as bonus for early completion of works under Article IV, Clause 6 of their contract.
>
> P 670,369.61 as cost of standby or downtime overhead cost of skeleton force during the forced work suspension in November, 1992.
>
> P1,447,670.00 as the value of the accomplished works of the Plaintiff that were destroyed by the waters released by the opening of the spillway gates.
>
> P3,558,039.61 Total claims awarded to the Plaintiff-Contractor.
>
> FOR THE DEFENDANT-OWNER
>
> Plaintiff is directed to pay the Defendant its counterclaim:
>
> P1,047,850.00 as the cost of rectification of the defective works performed by Plaintiff
>
> OFFSETTING the two amounts mutually due to each other; Defendant-Owner, National Power Corporation shall pay the net amount remaining of P2,510,189.61 to the Plaintiff-Contractor, GROGUN, INC. [9]

GROGUN submitted a copy of the above decision to the trial court.

On May 20, 1998, GROGUN filed before the trial court a Manifestation and Motion to Modify the Arbitral Decision, alleging that the Arbitration Tribunal did not include in its Decision a provision on who should bear the costs of arbitration pursuant to the parties' Agreement on Arbitration Expenses.[10]

In its Comment, NAPOCOR argued that the foregoing Motion is premature because the Arbitration Tribunal had not submitted its recommendation to the trial court and the same had not been approved or adopted by the trial court.[11]

In the meantime, GROGUN filed another Manifestation[12] asking the trial court to grant its Manifestation and Motion to Modify the Arbitral Award since NAPOCOR did not file a motion to vacate, modify or correct the same within one month from the time it was rendered, pursuant to Section 23 of the Arbitration Law.

> *Confirmation of Award.*—Any time *within one month* after the award is made, any party to the controversy which was arbitrated may apply to

> the court having jurisdiction, as provided in section twenty-eight, for an order confirming the award, and thereupon the court must grant such order unless the award is vacated, modified or corrected, as prescribed herein. Notice of such motion must be served upon the adverse party or his attorney as prescribed by law for the service of such notice upon an attorney in action in the same court. (Italics supplied)

On September 15, 1998, the trial court issued an Order, *viz*:

> WHEREFORE, the Arbitral Decision dated May 14, 1998 is hereby ordered modified as follows:
>
> a) the Arbitrators' Fees of P420,836.28 shall be shared by defendant NAPOCOR and plaintiff GROGUN in proportion to their respective claims, i.e., 69.94 % and 30.06%, respectively;
> b) the defendant NAPOCOR is hereby ordered to reimburse the plaintiff GROGUN the following amounts: (1) P294,332.89 representing the Arbitrators' Fees; and (2) P25,000.00 representing the agreed 50% share of NAPOCOR in the Administrative Costs; and
> c) the rest of the Arbitral Decision is hereby confirmed and maintained.[13]

NAPOCOR's Motion for Reconsideration of the said Order[14] was denied.[15]

Thus, NAPOCOR appealed to the Court of Appeals raising the following errors:

I.

> THE REGIONAL TRIAL COURT ERRED IN AFFIRMING THE DECISION OF THE ARBITRAL TRIBUNAL DESPITE THE FACT THAT A COPY OF THE ARBITRAL DECISION DATED MAY 14, 1998 SUBMITTED BY GROGUN WAS NOT VERIFIED.

II.

> THE REGIONAL TRIAL COURT ERRED IN ADOPTING THE DECISION OF THE ARBITRAL TRIBUNAL ALTHOUGH THE FINDINGS OF THE ARBITRAL TRIBUNAL WERE NOT SUBSTANTIATED BY LAW AND EVIDENCE.[16]

Instead of filing an Appellee's Brief, GROGUN filed a Motion to Dismiss[17] the appeal based on the following grounds: (a) NAPOCOR failed to file the record on appeal required in an arbitration proceeding under R.A. No. 876; (b) NAPOCOR failed to contest the award before the Arbitration Tribunal or the trial court; (c) NAPOCOR's two assigned errors were not raised in the trial court and (d) the appeal raised only questions of law.

On March 30, 2001, the Court of Appeals rendered a decision,[18] reversing the Orders of the Regional Trial Court in Quezon City, Branch 216 in Civil Case No. Q-96-28731, dated September 15, 1998 and January 8, 1999 and remanded the case to the trial court for further proceedings.[19]

GROGUN filed a Motion for Reconsideration[20] of the said decision which was denied by the Court of Appeals in its Resolution dated November 21, 2002.[21]

Hence, this petition for review on the following assignment of errors:

I

THE COURT OF APPEALS PATENTLY ERRED IN NOT DISMISSING THE APPEAL, DESPITE:

1. THE DEFECT OF NOT HAVING FILED A RECORD ON APPEAL WHICH IS REQUIRED IN SPECIAL PROCEEDINGS SUCH AS ARBITRATION UNDER REPUBLIC ACT NO. 876;
2. THE FILING OF THE BRIEF HAVING BEEN DELAYED FOR MORE THAN ONE (1) YEAR FROM THE NOTICE OF APPEAL;
3. IT HAVING FAILED TO REPUDIATE THE ARBITRAL AWARD WITHIN THE REGLEMENTARY PERIOD OF 30 DAYS UNDER REPUBLIC ACT NO. 876;
4. THE ARBITRAL DECISION BY VIRTUE OF A JOINT SUBMISSION BY THE PARTIES WAS EFFECTIVELY ONE OF A "JUDGMENT BY CONSENT", AS SUCH IT SHOULD HAVE BEEN FIRST REPUDIATED BEFORE THE ARBITRAL TRIBUNAL. FAILING TO REPUDIATE THE SAME BEFORE THE ARBITRAL TRIBUNAL, ITS CONFIRMATION BY THE REGIONAL TRIAL COURT BECAME MINISTERIAL. THUS THE REGIONAL TRIAL COURT'S CONFIRMATION THEREOF IS NOT APPEALABLE;
5. THE ONLY TWO ASSIGNMENT OF ERRORS ARE NOT APPEALABLE AS THEY HAVE NOT BEEN RAISED IN THE REGIONAL TRIAL COURT;
6. THE APPEAL, WHICH ULTIMATELY RAISES ONLY QUESTIONS OF LAW, WAS IMPROPERLY FILED UNDER RULE 41 OF THE RULES OF COURT; AND
7. IT APPEARS THAT THERE HAVE ALREADY BEEN A DISMISSAL OF THE APPEAL FOR FAILURE TO FILE APPELLANT'S BRIEF, AND THE SAME DOES NOT APPEAR TO HAVE BEEN RECONSIDERED YET.

II

THE COURT OF APPEALS PATENTLY ERRED IN CAVALIERLY GRANTING THE RELIEF APPEALED FOR ON THE MERITS WITHOUT YET GIVING APPELLEE THE OPPORTUNITY TO FILE ITS BRIEF AND/OR WITHOUT YET THE COURT OF APPEALS HAVING RESOLVED THE PENDING INCIDENT WHICH IS THE MOTION TO DISMISS FILED UNDER RULE 50 OF THE RULES OF COURT.

III

THE COURT OF APPEALS PATENTLY ERRED IN SETTING ASIDE THE ORDER OF THE REGIONAL TRIAL COURT DATED 15 SEPTEMBER 1998 WHICH MODIFIED IN PART AND CONFIRMED THE REST OF THE ARBITRAL DECISION AND THE ORDER DATED 8 JANUARY 1999 WHICH DENIED RESPONDENT'S MOTION FOR RECONSIDERATION, SUPPOSEDLY

BECAUSE THE ARBITRAL DECISION WAS NOT VERIFIED, WHEN SUCH A LACK OF VERIFICATION:

1. UNLIKE FOR AD HOC ARBITRATIONS WHICH ARE CONDUCTED OUTSIDE THE AUSPICES OF THE COURTS, MAY NOT REQUIRE A VERIFICATION FOR AUTHENTICATING THE ARBITRAL AWARD;
2. IS MERELY A FORMAL DEFECT THAT IS NEITHER JURISDICTIONAL NOR FATAL;
3. CAN BE DISPENSED WITH OR EXCUSED;
4. DOES NOT OPERATE TO MAKE THE COURT TO NECESSARILY COMMIT REVERSIBLE ERROR;
5. DOES NOT AFFECT THE COURT OF ITS JURISDICTION;
6. SIMPLY AN ASSURANCE AGAINST PRODUCTS OF IMAGINATION;
7. CANNOT BE RAISED AS AN OBJECTION FOR THE FIRST TIME ON APPEAL; HAS BEEN COMPLIED WITH BY PETITIONER'S MOTION TO CONFIRM/ MODIFY THE SAME;
8. NOT NECESSARY WHERE AN OPPOSITION IS NOT BASED ON FRAUD, ACCIDENT, MISTAKE OR EXCUSABLE NEGLIGENCE;
9. HAS BEEN CURED/ OFFSET BY LACK OF OBJECTION THERETO AT FIRST INSTANCE IN THE COURT BELOW; AND
10. DOES NOT BY ITS TECHNICALITY SACRIFICE SUBSTANTIAL JUSTICE.[22]

The petition lacks merit.

Supreme Court Circular No. 2-90, which is based in a Resolution of the Court En Banc in UDK-9748 (Anacleto Murillo v. Rodolfo Consul), March 1, 1990, provides in §4(c) thereof:

> c) xxx If an appeal under Rule 41 is taken from the regional trial court to the Court of Appeals and therein the appellant raises only *questions of law*, the appeal shall be dismissed, issues purely of law not being reviewable by said Court. xxx (Italics supplied)[23]

This was reproduced in Rule 50, Section 2 of the 1997 Rules of Civil Procedure.

> An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. (Italics supplied)

Corollary thereto, in *Roman Catholic Archbishop of Manila v. Court of Appeals, et al*., [24] it was held that there is a question of law when the issue does not call for an examination of the probative value of evidence presented, the truth or falsehood of facts being admitted and the doubt concerns the correct application of law and jurisprudence on the matter.

The issues raised by NAPOCOR in its appeal to the Court of Appeals are not purely questions of law. Specifically, NAPOCOR's arguments assailing the award by the trial court to GROGUN of the amount of (a) P1,447,670.00 representing the value of its accomplished works which were destroyed by the flood waters; and (b) P670,369.61 representing the compensation for idle time of manpower and equipment caused by the opening of the CGHSS, raised factual issues. Furthermore, the determination of the amount of damages NAPOCOR was entitled to under its counterclaim depends