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Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

MAGSAYSAY MARITIME CORP. / AIR-SEA HOLIDAY GMBH STABLE ORGANIZATION ITALIA/ MARLON R. ROÑO,
Petitioners,

G.R. No. 224115

Present:

CARPIO, *J.*
Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., *JJ.*

- versus -

ELMER V. ENANOR,
Respondent.

Promulgated:
20 JUN 2018

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DECISION

REYES JR., *J.*:

Section 11, Rule 13 of the Rules of Court mandates that pleadings and papers be served and filed personally; in the instances that personal service and filing are not practicable, resort to other modes could be had, but only if the party concerned attaches a written explanation as to why personal service and filing is deemed impracticable. Even then, should the party concerned fail to attach a written explanation in his/her pleadings and papers, the Court, in its discretion, may consider the same as not filed. In the exercise of this authority, and in ruling for the liberal interpretation of the mandatory rule, the Court shall consider: (1) "the practicability of personal service;" (2) "the importance of the subject matter of the case or the issues involved therein;" and (3) "the prima facie merit of the pleading sought to be expunged for violation of Section 11.

The Case

Challenged before the Court *via* the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the twin Resolutions of the Court of Appeals, dated August 20, 2015[1] and April 11, 2016,[2] in CA-G.R. SP No. 141419. The Resolutions dismissed outright the petitioners' petition for *certiorari* that assailed the Decision[3] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000132015/OFW-(M)-06-07703-14.

The Antecedent Facts

The instant petition arose from the action filed by Elmer V. Enanor (respondent) against Magsaysay Maritime Corp., Air-Sea Holiday GMBH Stable Organization Italia, and Marlon R. Roño (petitioners) for the recovery of disability benefits, medical expenses, and attorney's fees. As borne by the records of the case, the respondent was employed by the petitioners as a utility galley onboard the vessel "AIDADIVA"[4] from his embarkation on August 30, 2013 until his repatriation back to the Philippines sometime in January 2014. The records also revealed that the respondent figured in an incident that occurred in the vessel's kitchen the same month of his repatriation, and which resulted to a fracture of his right ring finger.[5]

After due hearing, the Labor Arbiter (LA) rendered a Decision dated December 15, 2014 in favor of herein petitioners. The LA found that the respondent, after continuous therapy, has already improved and, by June 23, 2014, he was "fit to work as per orthopedic standpoint as he can [close his] fist] without difficulty and his fingers are within functional range."[6]

The dispositive portion of the LA Decision reads:

> **WHEREFORE, premises considered,** judgment is hereby rendered **DISMISSING** the instant complaint for lack of merit. However, for humanitarian consideration, this Office awards financial assistance to complainant in the amount of Fifty Thousand Pesos (P50,000.00).
>
> All other claims are **DISMISSED** for lack of merit.

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1 Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino, concurring; *rollo*, pp. 41-42.

2 Id. at 44-45.

3 Id. at 129-138.

4 Id. at 129.

5 Id. at 129-130.

6 Id. at 136.

SO ORDERED.[7]

When the case was elevated to the NLRC, the LA Decision was reversed and set aside in favor of the respondent. The NLRC ruled that "[t]he injury suffered by the [respondent] incapacitate[d] him for more than one hundred twenty (120) days from the time he was medically repatriated and [there were] no report or traces that he was gainfully employed as a seafarer"[8] as of the time of the filing of the complaint before the LA. Thus, the *fallo* of the NLRC Decision reads:

> WHEREFORE, premises considered, the Decision appealed from is hereby **REVERSED AND SET ASIDE.**
>
> Consequently, Petitioners are hereby directed to pay complainant ELMER V. ENANOR permanent disability benefits in the amount of US$60,000 in its peso equivalent at the time of payment plus ten percent (10%) attorney's fees of its monetary award.
>
> SO ORDERED.[9]

This time, the petitioners disagreed with the NLRC Decision, and filed a petition for *certiorari* before the Court of Appeals. Unfortunately for the petitioners, the Court of Appeals dismissed the petition outright due to substantial defects[10] in the pleading. The appellate court pointed out that: (1) the name of the respondent in the caption of the pleading is different from the name of the respondent in the body thereof; and (2) the petitioners failed to attach an explanation as to why the service of the petition was not made personally, which was a violation of Section 11, Rule 13 of the Rules of Court. The dispositive portion of the Court of Appeals Decision reads:

> **FOR THESE REASONS,** We **DISMISS** and **EXPUNGE** the instant *Petition for Certiorari* from the dockets of active cases.
>
> **SO ORDERED.**[11]

After the appellate court's denial of the petitioners' motion for reconsideration, the petitioners now come before this Court seeking the reversal of the Court of Appeals Decision.

The Issues

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7 Id. at 138.
8 *CA rollo*, p. 45.
9 Id. at 46.
10 *Rollo*, p. 41.
11 Id. at 42.

The issues presented by the petitioners include both procedural and substantive aspects: *one,* whether or not the Court of Appeals committed serious reversible error in dismissing outright the petitioners' petition for *certiorari* based on (a) an error on the name of the respondent and (b) a violation of Section 11, Rule 13 of the Rules of Court; and *two,* whether or not the respondent's injury entitles the respondent to disability benefits and attorney's fees.

The Court's Ruling

First, on the procedural issue:

According to Section 11, Rule 13 of the Rules of Court, the rule is that service and filing of pleadings and other papers must, whenever practicable, be done personally. It states:

> Section 11. 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. (n)

In the seminal case of *Solar Team Entertainment, Inc. vs. Ricafort,*[12] the Court had occasion to state that Section 11 is mandatory and that the strictest compliance therewith is exacted from both the Bench and the Bar. In justifying this stern standard, the Court averred that preference for personal service and filing "expedite[s] action or resolution on a pleading, motion or other paper; and conversely, minimize[s], if not eliminate[s], delays likely to be incurred if service or filing is done by mail."[13] Thus, the Court explained:

> We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. **Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory.**[14] (Emphasis and underscoring supplied)

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12 355 Phil. 404 (1998).
13 Id. at 413.
14 Id. at 413-414.

Nonetheless, this same rule is not so rigid as to exclude any exception from its application. In fact, Section 11 itself provided that whenever it is not practicable to serve and file personally, resort to service through other modes is acceptable. In *Solar Team Entertainment*, the Court cited the following examples:

> Here, the proximity between the offices of opposing counsel was established; moreover, that the office of private respondents counsel was ten times farther from the post office than the distance separating the offices of opposing counsel. Of course, proximity would seem to make personal service most practicable, **but exceptions may nonetheless apply.** For instance, where the adverse party or opposing counsel to be served with a pleading seldom reports to office and no employee is regularly present to receive pleadings, or where service is done on the last day of the reglementary period and the office of the adverse party or opposing counsel to be served is closed, for whatever reason.[15] (Emphasis and underscoring supplied)

The only condition to the application of this exception is that the pleading served or filed should be accompanied by a written explanation as to why personal service was not practicable. Should a party, however, fail to so attach this written explanation, the same section authorizes the courts to exercise its discretion to consider a pleading or paper as *not* filed. Thus, the Court said:

> If only to underscore the mandatory nature of this innovation to our set of adjective rules requiring personal service whenever practicable, **Section 11 of Rule 13 then gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place.** The exercise of discretion must, necessarily, consider the practicability of personal service, for Section 11 itself begins with the clause "whenever practicable."[16] (Emphasis and underscoring supplied)

To exercise this discretion, the courts are guided by this Court's pronouncement in *Peñoso vs. Dona*,[17] which reiterated the ruling in *Spouses Ello vs. Court of Appeals*.[18] The Court, in these cases, ruled that an exception to the strict compliance to the rule—in this case, an exception to the non-submission of the written explanation—should take into account the following factors:

> x x x such discretionary power of the court must be exercised properly and reasonably, taking into account the following factors: (1)

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15 Id. at 414.
16 Id. at 413.
17 549 Phil. 39, 45 (2007).
18 499 Phil. 398 (2005).

> "the practicability of personal service;" (2) "the importance of the subject matter of the case or the issues involved therein;" and (3) "the prima *facie merit* of the pleading sought to be expunged for violation of Section 11.[19]

It is thus only upon the consideration of these factors—as determined by the courts—that they are authorized to liberally bend the mandatory character of the attachment of the written explanation required by Section 11.

In the present case, the Court of Appeals determined that the petitioners committed several infractions: first, the petitioners committed an error when they named a different person as a respondent in the body of its petition for *certiorari;* second, the petitioners failed to personally serve a copy of their petition for *certiorari* in violation of Section 11, Rule 13 of the Rules of Court; and third, they failed to attach a written explanation to the petition for resorting to a mode of service other than by personal service. Due to this, the Court of Appeals, in the exercise of its discretion, dismissed and expunged the petitioners' petition for *certiorari* from the Court of Appeals' docket of active cases.

While the Court gives due respect to the appellate court's interpretation of the foregoing rules and procedures, the Court herein determines that an outright dismissal of the petitioners' petition for *certiorari* warrants a second consideration, for this case's dismissal based on technicality would work to subvert the proper imposition of justice.

To begin with, in their motion for reconsideration, the petitioners explained that the mistaken use of the name Joselito Entrampas instead of the respondent's name, Elmer V. Enanor, resulted from a mere typographical error. The petitioners elaborated that they "inadvertently failed to change the name"[20] because of the "proximity in the drafting of this petition and another Petition for *Certiorari* involving Joselito Entrampas as private respondent."[21] In addition, the petitioners explained that the name Joselito Entrampas "was only mentioned once in the quoted portion of the petition."[22]

The Court finds this explanation sufficient to remove the same as basis for an outright dismissal of the case.

Nonetheless, the Court is taken aback by the petitioners' counsels' cavalier attitude to this mistake that they themselves committed. Rather than

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19 Id. at 409.
20 *Rollo*, p. 48.
21 Id.
22 *Rollo*, p. 47.

sounding repentant for their careless error in their petition for *certiorari*, the tenor of the petitioners' motion for reconsideration to the Court of Appeals Decision sounded arrogant to the point of being offensive. The petitioners' counsels would do well to be reminded—and sternly at that—that the Code of Professional Responsibility requires them to observe and maintain the respect due to the courts and its officers. This includes the language and tenor employed in the pleadings submitted before the courts.

Anent the petitioners' failure to append a written explanation to its petition for *certiorari*, the petitioners laid blame to one of its office secretaries who, they said, was in charge of "inserting the other formal elements in the pleadings"[23] and only worked for the petitioners' law firm of record "for a short time."[24] The petitioners explained in their motion for reconsideration of the Court of Appeals decision:

> The failure of the petitioners to include an explanation as to why service of the petition was not made personally was due to simple inadvertence. As has been the practice in the firm, the secretaries are in charge of inserting the other formal elements in the pleadings to be filed after the lawyers draft the body of the pleading. The explanation at the bottom of the pleading is normally included after the signature details of the lawyers, all of which are added to the pleading along with copy furnished details. As the secretary who finalized the petition has only been with the firm for a short time, the explanation was inadvertently not included.[25]

These explanations, however, could not *by themselves* be justifiable causes for the petitioners to fail compliance with the mandatory requirements set forth in Section 11. Certainly, the inadvertence of an office secretary to append the required papers in a pleading should have been corrected by the lawyers concerned. It is within their responsibility to review the actions of their subordinates, especially in cases where the rules are concerned; for after all, it is the lawyers and not the office secretaries who are well-versed in the Rules of Court, and the lawyers should not entrust unto others what the rules has entrusted unto them to perform. Necessarily, this includes the careful perusal of the pleadings and papers submitted to the courts, including the proper attachment of a written explanation for non-personal filing or service of pleadings and papers.

Nonetheless, while the inadvertence mentioned above could not be a justifiable cause so as to suspend the mandatory application of Section 11, the Court recognizes that "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the

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23 Id. at 48

24 Id.

25 *Rollo*, p. 48.

circumstances obtaining in each case,"[26] and that "[t]he law abhors technicalities that impede the cause of justice."[27] Thus, in *Aguam vs. Court of Appeals*,[28] the Court said:

> Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[29]

In this case, the substantial issues raised by the petitioners should have been considered by the appellate court. The petitioners raised questions of facts, which, if left unresolved, would deny the petitioners a true administration of justice.

The difference between the decisions of the LA and the NLRC are too substantial to be merely disregarded on the ground of technicality. On one hand, the LA found that the respondent is already "fit to work" and is thus not entitled to the payment of disability benefits and medical expenses. As a result of this finding, the respondent was only awarded a mere ₱50,000.00 based on humanitarian consideration. On the other hand, the NLRC determined that the respondent suffered an injury which would entitle him to full disability benefits in the sum of USD60,000.00.

Indeed, the arguments from both parties which are presented before the Court of Appeals call for a judicious resolution. Considering that the Court is not a trier of facts, and in order to avoid subverting justice, the Court should remand the case back to the Court of Appeals to rule on the merits of the case.

WHEREFORE, premises considered, the instant petition is **PARTLY GRANTED.** The assailed Resolutions of the Court of Appeals are **REVERSED and SET ASIDE.** The Court of Appeals is hereby **DIRECTED** to **REINSTATE** the petition for *certiorari*, docketed as CA-G.R. SP No. 141419, for further proceedings.

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26 *Aguam v. Court of Appeals*, 388 Phil. 587, 593 (2000).
27 Id.
28 Id.
29 Id. at 593-594.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. No. 296 The Judiciary Act of 1948, as amended)