

SECOND DIVISION

[G.R. No. 224115, June 20, 2018]

**MAGSAYSAY MARITIME CORP. / AIR-SEA HOLIDAY GMBH
STABLE ORGANIZATION ITALIA/ MARLON R. ROÑO, VS. ELMER
V. ENANOR, RESPONDENT.**

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.

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

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)

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: