794 Phil. 228

THIRD DIVISION

[G.R. No. 208181, August 31, 2016]

MANILA ELECTRIC COMPANY, PETITIONER, VS. N.E. MAGNO CONSTRUCTION, INC., RESPONDENT.

DECISION

PEREZ, J.:

For resolution of the Court is this Petition for Review on *Certiorari* filed by petitioner Manila Electric Company (Meralco), seeking to reverse and set aside the Decision[1] dated 23 October 2012 and the Resolution[2] dated 26 June 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 113883. The assailed decision and resolution dismissed the Petition for *Certiorari* of the petitioner for having been filed beyond the 60-day reglementary period.

The Facts

Petitioner Meralco is a domestic corporation duly authorized by the Energy Regulatory Commission (ERC) to distribute electricity to its consumers for a fee. Petitioner entered into a Service Contract with respondent N.E. Magno Construction, Inc. wherein it was agreed that petitioner will supply electricity to respondent's ice plant located in Rosario, Cavite under Service Identification No. 800100701.

Sometime in October 2002, petitioner's representatives went to respondent's ice plant operation site in Rosario, Cavite to conduct an inspection of its metering facilities and they found that the electric meters installed to record the energy usage of the respondent on the site were tampered. The suspected theft of electricity was later on confirmed by the petitioner when a comparison of the previous electric consumption of the respondent was made,. To avert further pilferages of electricity, petitioner temporarily severed the electric supply it was providing for the respondent. The disconnection was made in the presence of respondent's representative. To recover its lost income from the purported pilferages, petitioner sent a differential billing to respondent demanding for the payment of its unpaid electric consumption computed on the basis of the previous billings. Due to the failure of respondent to settle its account, its electric services were permanently removed after it was served a notice of disconnection.

Aggrieved by the turn of events, respondent initiated an action for Mandatory Injunction with Damages against petitioner before the Regional Trial Court (RTC) of Bacoor, Cavite.[3] The complaint mainly prayed that petitioner be ordered to restore its electric services on the ground that the disconnection was effected in an unlawful manner causing grave damage to respondent's business operations.[4] To elaborate, respondent averred that the disconnection was made without prior notice and in the absence of the respondent or its representatives.[5] Respondent maintained that it

was faithfully complying with its obligation under the service contract by religiously paying its monthly bill and insisted that it committed no manipulation of metering facilities within the premises of its ice manufacturing site.[6]

For its part, petitioner contended that it has a contractual right to discontinue providing electric services to the respondent after it was found that petitioner's metering installation has been tampered with; the manipulation resulted in the incorrect registration of the actual energy usage of the respondent to the damage and prejudice of the petitioner.[7] Petitioner asserted that it is not true that no notice was served prior to the disconnection neither was there truth to respondent's claim that the removal of electric services was made without the presence of its representatives.[8] As a matter of fact, petitioner claimed, that the discontinuance of electric supply was only made after respondent failed to settle its differential billing despite several demands.[9]

In an Order[10] dated 1 February 2005, the RTC granted respondent's application for preliminary injunction upon posting of the bond in the amount of P1,000,000.00. The dispositive portion reads:

> "WHEREFORE, premises considered, let a mandatory preliminary injunction be issued in favor of the [respondent] and against the [petitioner]. [Petitioner] Meralco is hereby ordered to reconnect the electrical supply of the [respondent] upon posting of an injunction bond in the amount of ONE MILLION PESOS (P1,000,000.00)."

During the date scheduled for Pre-Trial Conference on **8 April 2005**, neither petitioner nor its counsel appeared before the RTC. Their absence impelled the court to receive the evidence of the respondent *ex-parte* and issued the foregoing Order[11] of an even date:

> "This is the second call of this case and it is now 3:00 o'clock in the afternoon, despite notice to [petitioner] and counsel, this being pre-trial, let [respondent] be allowed to present evidence ex-parte before the clerk of court of this court.
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> As prayed for by [respondent] thru counsel, let the evidence introduced in the petition for injunction by the [respondent] be considered as reproduced in this case.
>
> As prayed for by [respondent] thru counsel, let [respondent] be given five (5) days from today within which to file its comment to the Motion for Reconsideration filed by defendant thru counsel. After which time, consider the same submitted for the resolution of this court."

The **8 April 2005 RTC Order** was received by the petitioner on **19 April 2005**. From the said adverse Order of the court *a quo*, a Motion for Reconsideration (*First Motion for Reconsideration*) was filed by the petitioner on **5 May 2005**, which in turn, was opposed by the respondent on the ground that it failed to comply with the three-day notice rule on motions as mandated by Section 4, Rule 15 of the Revised Rules of Court.[12]

Finding merit on the argument of the respondent, the RTC, in an Order[13] dated **28 July 2008**, denied the Motion for Reconsideration of the petitioner and likewise ordered that it be expunged on the record, *viz*:

> "For failure to [attach] the Affidavit of Mailing and the registry receipts which, as held by the honorable Supreme Court in the case of Vede Cruz v. Court of Appeals, G.R. No. 123340, constitutes [']no proof of service['].
>
> And likewise, for grossly violating the [']three (3) day rule['] which is a mandatory requirement in Section 4 of [R]ule 15 of the 1997 Rules of Civil Procedure thus rendering or comparing it as [']a worthless piece of paper.['] (Meralco v. La Campana Food Products, 247 SCRA 77)
>
> Let the instant motion for reconsideration on the Court order dated April 8, 2005 be **EXPUNGED** and **DENIED** for lack of merit.
>
> SO ORDERED." (Boldface omitted)

Petitioner received a copy of the **28 July 2008** RTC Order on **5 August 2008**. It has therefore 60 days from the receipt of the Order denying its Motion for Reconsideration to file a Petition for *Certiorari* before the CA. Instead of filing a petition for *certiorari*, however, petitioner filed a "Very Respectful Motion for Leave to File Second Motion for Reconsideration"[14] (*Second Motion for Reconsideration*) on 20 August 2008 which was again denied by the RTC in an Order[15] dated **23 February 2010**. A copy of the said Order was received by the petitioner on **8 March 2010**.

Finding no other recourse before the trial court, petitioner elevated the denial of its Second Motion for Reconsideration by filing a Petition for *Certiorari* and Prohibition (With Prayer for Temporary Restraining Order and Writ of Preliminary Injunction)[16] before the CA on **6 May 2010**. In the main, the petitioner assailed the RTC Orders dated **8 April 2005**, **28 July 2008** and **23 February 2010** for having been issued with grave abuse of discretion.

On 23 October 2012, the CA issued a Decision[17] dismissing the petition of the petitioner for having been filed beyond the 60-day reglementary period from the receipt of the order of the RTC denying its First Motion for Reconsideration. According to the CA, it was admitted by the petitioner that it received the RTC Order dated **28 July 2008** denying its initial Motion for Reconsideration on **5 August 2008**; it has, therefore, **60 days from 5 August 2008 or until before 4 October 2008** to assail the unfavorable ruling under Rule 65 of the Rules of Court. In conclusion, the appellate court held that when the petitioner impugned the unfavorable RTC Orders for grave abuse of discretion only on **6 May 2010** or seven months after the denial of its First Motion for Reconsideration, the petition was clearly filed out of time.

For lack of merit, the CA denied the Motion for Reconsideration of the petitioner in a Resolution.[18]

The Issue

Undeterred, petitioner is now before this Court *via* this instant Petition for Review on *Certiorari*[19] assailing the CA's Decision and Resolution on the following grounds:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR CERTIORARI AND PROHIBITION; AND

II.

WHETHER OR NOT THE ORDERS RENDERED BY THE RTC DATED 8 APRIL 2005, 28 JULY 2008 AND 23 FEBRUARY 2010 SHOULD BE DECLARED NULL AND VOID AND SHOULD BE SET ASIDE.[20]

The Court's Ruling

The core issue here is whether the CA erred in dismissing the appeal for petitioner's failure to file its Petition for *Certiorari* and Prohibition seasonably.

Petitioner insists that its petition was filed within the 60-day reglementary period and should therefore be allowed by the CA. In justifying its position, petitioner urged the Court to reckon the counting of the 60 days from the denial of the Second Motion for Reconsideration based on its postulate that issues raised on the First Motion for Reconsideration is totally different from the ones ventilated on the second motion.

The Court resolves to deny the petition.

Under Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, an aggrieved party has sixty (60) days from receipt of the assailed decision, order or resolution within which to file a petition for *certiorari*, *viz*:

> Sec. 4. When and where to file the petition. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. **In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.**
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> If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.
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> In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the