758 Phil. 268

FIRST DIVISION

[G.R. No. 182800, April 20, 2015]

MANILA MINING CORPORATION, PETITIONER, VS. LOWITO AMOR, ET. AL., RESPONDENTS.

D E C I S I O N

PEREZ, J.:

Compliance with the requirements for the perfection of an appeal from the decision of a Labor Arbiter is at issue in this Rule 45 Petition for Review on *Certiorari* which primarily seeks the nullification of the 29 November 2007 Decision[1] rendered by the then Twenty-Second Division of the Court of Appeals (CA) in CA-G.R. SP No. 00609,[2] the decretal portion of which states:

> WHEREFORE, the petition is hereby GRANTED. The Resolutions of the NLRC dated 25 April 2005 and 30 June 2007, respectively, are ANNULLED and SET ASIDE. The 25 October 2004 Resolution of the Labor Arbiter is REINSTATED.
>
> SO ORDERED.[3]

The facts are not in dispute.

Respondents Lowito Amor, Rollybie Ceredon, Julius Cesar, Ronito Martinez and Fermin Tabili, Jr. were regular employees of ***petitioner*** Manila Mining Corporation, a domestic corporation which operated a mining claim in Placer, Surigao del Norte, in pursuit of its business of large-scale open-pit mining for gold and copper ore. In compliance with existing environmental laws, petitioner maintained Tailing Pond No. 7 (TP No. 7), a tailings containment facility required for the storage of waste materials generated by its mining operations. When the mine tailings being pumped into TP No. 7 reached the maximum level in December 2000, petitioner temporarily shut down its mining operations pending approval of its application to increase said facilty's capacity by the Department of Environment and Natural Resources-Environment Management Bureau (DENR-EMB), Butuan City. Although the DENR-EMB issued a temporary authority on 25 January 2001 for it to be able to continue operating TP No. 7 for another six (6) months and to increase its capacity, petitioner failed to secure an extension permit when said temporary authority eventually lapsed.[4]

On 27 July 2001, petitioner served a notice, informing its employees and the Department of Labor and Employment Regional Office No. XII (DOLE) of the temporary suspension of its operations for six months and the temporary lay-off of two-thirds of its employees.[5] After the lapse of said period, petitioner notified the DOLE on 11 December 2001 that it was extending the temporary shutdown of its operations for another six months.[6]

Adversely affected by petitioner's continued failure to resume its operations, respondents filed the complaint for constructive dismissal and monetary claims which was docketed as NLRC Case No. RAB-13-10-00226-2003 before the Regional Arbitration Branch No. XIII of the National Labor Relations Commission (NLRC). On 25 October 2004, Executive Labor Arbiter Benjamin E. Pelaez rendered a Decision holding petitioner liable for constructive dismissal in view of the suspension of its operations beyond the six-month period allowed under Article 286[7] of the *Labor Code of the Philippines*. Finding that the cause of suspension of petitioner's business was not beyond its control,[8] the Labor Arbiter applied Article 283[9] of the same Code and disposed of the case in the following wise:

> WHEREFORE, premises considered, judgment is hereby entered:
>
> 1) Declaring [respondents] to have been constructively dismissed from their employment; and
> 2) Ordering [petitioner] to pay xxx [respondents] their separation pay equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher, a fraction of at least six (6) months shall be considered as one whole year, moral damages and exemplary damages in the amount of Ten Thousand Pesos (P10,000.00) and Five Thousand Pesos (P5,000.00), respectively, for each of the [respondents] and attorney's fees equivalent to ten (10%) percent in the total amount of TWO MILLION ONE HUNDRED THIRTY EIGHT THOUSAND ONE HUNDRED NINETY & 02/100 PESOS (P2,138,190.02) ONLY x x x x
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> All other claims are dismissed for lack of merit.
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> SO ORDERED.[10]

Aggrieved, petitioner filed its memorandum of appeal before the NLRC[11] and moved for the reduction of the appeal bond to P100,000.00, on the ground that its financial losses in the preceding years had rendered it unable to put up one in cash and/or surety equivalent to the monetary award.[12] In opposition, respondents moved for the dismissal of the appeal in view of the fact that, despite receipt of the appealed decision on 24 November 2004, petitioner mailed their copy of the memorandum of appeal only on 7 February 2005. Respondents also argued that the appeal bond tendered by petitioner was so grossly disproportionate to monetary award for the same to be considered substantial compliance with the requirements for the perfection of an appeal from a Labor Arbiter's decision.[13] Without addressing the procedural issues raised by respondents, however, the NLRC Fifth Division went on to render a Resolution dated 25 April 2005 in NLRC CA No. M-008433-2005, reversing the appealed decision and dismissing the complaint for lack of merit. Finding that the continued suspension of petitioner's operations was due to circumstances beyond its control, the NLRC ruled that, under Article 283 of the *Labor Code*, respondents were not even entitled to separation pay considering the eventual closure of their employer's business due to serious business losses or financial reverses.[14]

Unfazed by the denial of their motion for reconsideration in the NLRC's 30 June 2005

Resolution,[15] respondents filed the Rule 65 petition for *certiorari* which was docketed as CA-G.R. SP No. 00609 before the Mindanao Station of the CA. Insisting that petitioner's memorandum of appeal was filed 65 days after the lapse of reglementary period for appeal, respondents called attention to the fact that, as grossly inadequate as it already was *vis-à-vis* the P2,138,190.02[16] monetary award adjudicated in their favor, the check in the sum of P100,000.00 deposited by petitioner by way of appeal bond was dishonored upon presentment for payment. Aside from the fact that the Labor Arbiter's 25 October 2004 Decision had already attained finality, respondents faulted the NLRC for applying Article 283 of the *Labor Code* absent allegation and proof of compliance with the requirements for the closure of an employer's business due to serious business losses.[17] In its comment, on the other hand, petitioner claimed that, having caused the same to be immediately funded, the check it issued for the appeal bond had since been deposited by the NLRC. Insisting that the cessation of its operations was due to causes beyond its control, petitioner argued that the subsequent closure of its business due to business losses exempted it from paying separation pay.[18]

On 29 November 2007, the CA's then Twenty-Second Division rendered the herein assailed decision, granting respondents' petition and nullifying the NLRC's 25 April 2005 Resolution. In reinstating the Labor Arbiter's 25 October 2004 Decision, the CA ruled that petitioner failed to perfect its appeal therefrom considering that the copy of its 3 December

2004 Memorandum of Appeal intended for respondents was served the latter by registered mail only on 7 February 2005. Aside from posting an unusually smaller sum as appeal bond, petitioner was likewise faulted for replenishing the check it issued only on 1 April 2005 or 24 days before the rendition of the assailed NLRC Decision. Applying the principle that the right to appeal is merely a statutory remedy and that the party who seeks to avail of the same must strictly follow the requirements therefor, the CA decreed that the Labor Arbiter's Decision had already attained finality and, for said reason, had been placed beyond the NLRC's power of review.[19]

Petitioner's motion for reconsideration of the foregoing decision was denied for lack of merit in the CA's 2 May 2008 Resolution,[20] hence, this Rule 45 petition for review on *certiorari*.[21]

Petitioner seeks the reversal of the CA's 29 November 2007 Decision and 2 May 2008 Resolution on the following grounds:

> **THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONER'S APPEAL FILED WITH THE NATIONAL LABOR RELATIONS COMMISSION WAS FATALLY DEFECTIVE [SINCE IT] HAD FULLY COMPLIED WITH THE REQUIREMENTS OF THE LABOR CODE FOR PERFECTING AN APPEAL.**
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> **THE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION IN IMMEDIATELY SETTING ASIDE THE DECISION OF THE NLRC WITHOUT REVIEWING THE MERITS OF THE CASE.**
>
> **AT THE TIME OF THE PROMULGATION OF THE ASSAILED**

DECISION BY THE COURT OF APPEALS, THE HONORABLE SUPREME COURT HAD ALREADY AFFIRMED THE FINDING THAT PETITIONER WAS ALREADY PERMANENTLY CLOSED DUE TO MASSIVE FINANCIAL LOSSES.[22]

Time and again, it has been held that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[23] A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost.[24] Insofar as appeals from decisions of the Labor Arbiter are concerned, Article 223 of the *Labor Code of the Philippines*[25] provides that, "(d)ecisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the [NLRC] by any or both parties within ten (10) calendar days from the receipt of such decisions, awards or orders." In case of a judgment involving a monetary award, the same provision mandates that, "an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the [NLRC] in the amount equivalent to the monetary award in the judgment appealed from." Alongside the requirement that "the appellant shall furnish a copy of the memorandum of appeal to the other party," the foregoing requisites for the perfection of an appeal are reiterated under Sections 1, 4 and 6, Rule VI of the *NLRC Rules of Procedure* in force at the time petitioner appealed the Labor Arbiter's 25 October 2004 Decision, *viz*.:

> SECTION 1. PERIODS OF APPEAL. - Decisions, resolutions or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, resolutions or orders of the Labor Arbiter x x x x. If the 10th x x x x day x x x x falls on a Saturday, Sunday or a holiday, the last day to perfect the appeal shall be the next working day.
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> SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. - (a) The Appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping *with proof of service on the other party of such appeal*. A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal. (Italics supplied)
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> x x x x
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> SECTION 6. BOND. - In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to

the monetary award, exclusive of damages and attorney's fees.

x x x x

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal.

Having received the Labor Arbiter's Decision on 24 November 2004,[26] petitioner had ten (10) calendar days or until 4 December 2004 within which to perfect an appeal. Considering that the latter date fell on a Saturday, petitioner had until the next working day, 6 December 2004, within which to comply with the requirements for the perfection of its appeal. Our perusal of the record shows that, despite bearing the date 3 December 2004, petitioner's memorandum of appeal was subscribed before Notary Public Ronald Rex Recidoro only on 6 December 2004.[27] Without proof as to the actual date of filing of said pleading being presented by both parties, the CA discounted the timeliness of its filing in light of the established fact that the copy thereof intended for respondents was only served by registered mail on 7 February 2005.[28] Since proof of service of the memorandum on appeal is required for the perfection of an appeal from the decision of the Labor Arbiter, the CA ruled that "respondents filed its appeal not earlier than 07 February 200[5], which is way beyond the ten-day reglementary period to appeal."[29]

As allegation is not evidence, however, the rule is settled that the burden of evidence lies with the party who asserts the affirmative of an issue.[30] As the parties claiming the non-perfection of petitioner's appeal, it was, therefore, respondents who had the burden of proving that said memorandum of appeal was, indeed, filed out of time. By and of itself, the fact that the copy of memorandum of appeal intended for respondents was served upon them by registered mail only on 7 February 2005 does not necessarily mean that petitioner's appeal from the Labor Arbiter's decision was filed out of time. On the principle that justice should not be sacrificed for technicality,[31] it has been ruled that the failure of a party to serve a copy of the memorandum to the opposing party is not a jurisdictional defect and does not bar the NLRC from entertaining the appeal.[32] Considering that such an omission is merely regarded as a formal lapse or an excusable neglect,[33] the CA reversibly erred in ruling that, under the circumstances, petitioner could not have filed its appeal earlier than 7 February 2005.

The question regarding the appeal bond rises from the record which shows that, in addition to its memorandum of appeal, petitioner filed a 6 December 2004 motion for the reduction of the appeal bond on the ground that the cash equivalent of the monetary award and/or cost of the surety bond have proven to be prohibitive in view of the tremendous business losses it allegedly sustained. As supposed measure of its good faith in complying with the Rules, petitioner attached to its motion Philam Bank Check No. 0000627153, dated 6 December 2004, in the amount of P100,000.00 only. As pointed out by respondents, however, said check was