

FIRST DIVISION

[G.R. No. 178593, February 15, 2012]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
PRIVATIZATION AND MANAGEMENT OFFICE (PMO),
PETITIONER, VS. PANTRANCO NORTH EXPRESS, INC. (PNEI),
PANTRANCO EMPLOYEES ASSOCIATION (PEA-PTGWO), EUSEBIO
RAMOSO, CIRIACO M. MAGSINO, A. CACHUELA, A. CAMUS, M.
CALAHI, R. CANO, B.T. LANTANO, L. BERSAMINA, A. ALFARO AND
495 OTHERS, RESPONDENTS.**

R E S O L U T I O N

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the January 8, 2007^[1] and June 26, 2007^[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 97348. The CA dismissed the petition for certiorari filed by petitioner Privatization and Management Office (PMO) to set aside the September 27, 2006 Resolution^[3] of the National Labor Relations Commission (NLRC). The CA ruled that the petition was premature since petitioner did not seek reconsideration of the assailed NLRC resolution.

The facts of the case follow:

On May 27, 1993, the Labor Arbiter rendered a Decision^[4] in the consolidated complaints^[5] for illegal retrenchment filed by Pantranco Employees Association, et al., against respondent Pantranco North Express, Inc. (PNEI). The Labor Arbiter ordered PNEI to pay each of the 345 illegally retrenched employees four months back wages in the total amount of P11,134,954 plus attorney's fees equivalent to 10% of the monetary award. The NLRC affirmed the decision, and the decision became executory on November 3, 1993.^[6]

The judgment was partially satisfied in the amount of P895,000, leaving a balance of P10,239,954 plus P1,113,495 as attorney's fees or a total of P11,353,449.^[7] Several alias writs of execution were issued but were returned unsatisfied. On September 6, 2001, a 5th Alias Writ of Execution was issued.^[8]

On the strength of a 5th Alias Writ of Execution, a Notice of Levy/Sale on Execution of Personal Property^[9] was issued. Certain properties consisting of machinery, equipment tools, spare parts, dilapidated buses and unserviceable motor vehicles formerly belonging to PNEI and located at Pantranco Compound, Himlayan Road, Barangay Pasong Tamo, Tandang Sora, Quezon City, were levied upon and scheduled for auction sale on September 18, 2001 at 11:00 a.m.

On September 17, 2001, petitioner filed a Notice of Third-Party Claim^[10] over the

levied properties and attached to said notice an Affidavit of Third-Party Claim.^[11] Petitioner asserted that the properties are mortgaged to the National Government through its trustee, the Asset Privatization Trust (now Privatization and Management Office or PMO). Petitioner argued that the National Government has a superior lien over the properties and that the claims/receivables of the National Government must be satisfied first before the judgment in favor of the retrenched employees.

In their Opposition to the Third-Party Claim with Motion to Dismiss, respondent employees argued that PMO has no legal right to appropriate the PNEI's assets and that PMO's takeover of PNEI's assets is only for the purpose of privatization and disposition to pay the claims of PNEI's creditor-employees.^[12]

In reply, petitioner changed its stance and no longer asserted that the National Government has a mortgage lien over the subject properties but instead owned them. Petitioner averred that its ownership over the subject properties arose because PNEI obtained various loan accommodations and other credit facilities from the National Investment and Development Corporation (NIDC), a subsidiary arm of PNB, and executed mortgages over its real and personal properties, including the properties subject of this case. Upon the dissolution of NIDC, all of NIDC's accounts were transferred to PNB which continued to extend financial and credit accommodations to PNEI. On July 28, 1983, PNEI restructured its loan obligations to PNB and executed in favor of PNB a *Dacion en Pago* conveying certain properties. In 1993, PNEI closed shop. Then, on March 28, 1994, pursuant to Proclamation No. 50,^[13] as amended by Proclamation No. 50-A^[14] and Administrative Order No. 14^[15] dated February 3, 1987, PNB assigned, transferred and conveyed to the Asset Privatization Trust (now PMO) in trust for the National Government, all of its rights, title and interest on its non-performing assets, including the credit and mortgage account of PNEI. Later, PNEI's assets, including the subject properties, were foreclosed and transferred to APT in trust for the Republic of the Philippines.^[16]

Hence, as PNEI no longer owned the subject properties, petitioner argued that said properties cannot be made to satisfy the 1993 judgment in favor of respondent PNEI employees.

In an Order^[17] dated October 22, 2001, the Labor Arbiter denied petitioner's third-party claim for want of merit and directed the sheriff to proceed with the execution process. The Labor Arbiter noted that the Notice of Third-Party Claim filed by the Asset Privatization Trust had been denied in an Order dated July 6, 1994 and no appeal was timely filed. Moreover, the Labor Arbiter noted that petitioner PMO failed to introduce documents which would show that said junk buses, scrap equipment, other motor pool scrap and spare parts were indeed mortgaged.

On September 27, 2006, the NLRC issued a Resolution^[18] affirming the October 22, 2001 Order of the Labor Arbiter. The NLRC also ordered that the records of the case be remanded to the Arbitration Branch for immediate appropriate proceedings.

Without filing a motion for reconsideration, petitioner filed a petition for certiorari before the CA.

On January 8, 2007, the CA issued a Resolution^[19] which denied due course and

dismissed the petition for being premature. The CA held that petitioner's failure to file a motion for reconsideration of the NLRC resolution was a fatal procedural defect.

On June 26, 2007, the CA also denied petitioner's motion for reconsideration. Hence, this petition.

Petitioner alleges that

I

THE COURT OF APPEALS ERRED WHEN IT DISMISSED PETITIONER'S PETITION ON THE GROUND THAT NO PRIOR MOTION FOR RECONSIDERATION WAS FILED BEFORE THE NATIONAL LABOR RELATIONS COMMISSION.

II

THE COURT OF APPEALS ERRED WHEN IT FAILED TO GIVE DUE COURSE TO PETITIONER'S MOTION FOR RECONSIDERATION OF THE RESOLUTION DATED JANUARY 8, 2007.^[20]

Essentially, the issue for our resolution is, did the CA err in dismissing petitioner's Rule 65 petition?

Petitioner argues that its petition should have been given due course notwithstanding its failure to file a motion for reconsideration of the September 27, 2006 NLRC Resolution. Petitioner cites the following grounds: (a) the filing of such motion for reconsideration would have been useless; (b) the matter is one of extreme urgency; (c) the question raised is purely of law; (d) public interest is involved; (e) the application of the rule would cause great and irreparable damage to petitioner; and (f) judicial intervention is urgently necessary.

Petitioner claims that the filing of a motion for reconsideration would be inadequate and entirely useless because the NLRC is bent on immediately proceeding with execution. Petitioner adds that the matter is one of extreme urgency which calls for direct, urgent and immediate judicial intervention. It involves public interest since the subject properties already belong to the State; hence, beyond the long arm of the labor agency to award in favor of the retrenched employees.

The petition is bereft of merit.

The well-established rule is that a motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended.^[21] A motion for reconsideration of the order, resolution or decision of the NLRC should be seasonably filed as a precondition for pursuing any further or subsequent recourse; otherwise, the order, resolution or decision would become final and executory after ten calendar days from receipt thereof.^[22] The rationale for the rule is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may

have committed before resort to courts of justice can be had.^[23]

Of course, the rule is not absolute and jurisprudence has laid down exceptions when the filing of a petition for certiorari is proper notwithstanding the failure to file a motion for reconsideration. Thus, resort to the courts under Rule 65 is allowed even without a motion for reconsideration first having been filed:

- (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the petition is perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) where the proceedings in the lower court are a nullity for lack of due process;
- (h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and,
- (i) where the issue raised is one purely of law or public interest is involved.^[24]

However, petitioner failed to show that this case falls under any of the exceptions. Here, except for its bare allegation, petitioner failed to present any plausible justification for dispensing with the requirement of a prior motion for reconsideration. Notably, the petition filed before the CA did not state any reason for its failure to file a motion for reconsideration from the NLRC resolution. It was only in its motion for reconsideration of the CA resolution dismissing the petition and in the present petition that petitioner justified its non-filing of a motion for reconsideration. According to petitioner, a motion for reconsideration would be inadequate and useless since the labor agency is bent on immediately proceeding with the execution, levy and sale on execution of the subject properties. But it is not for petitioner to determine whether the filing of a motion for reconsideration should be dispensed with. As enunciated in the case of *Sim v. National Labor Relations Commission*^[25]:

It must be emphasized that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is