

## SECOND DIVISION

[ G.R. No. 170977, April 16, 2009 ]

**JOSE C. DEL VALLE, JR. AND ADOLFO C. ALEMANIA,  
PETITIONERS, VS. FRANCIS B. DY, RESPONDENT.**

### DECISION

**QUISUMBING, J.:**

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> dated June 17, 2005 and the Resolution<sup>[2]</sup> dated January 3, 2006 of the Court of Appeals in CA-G.R. SP No. 81536. The appellate court had set aside the Orders dated September 17, 2003,<sup>[3]</sup> October 2, 2003<sup>[4]</sup> and November 13, 2003<sup>[5]</sup> of the Regional Trial Court (RTC), Branch 55 of Lucena City dismissing the complaint for injunction and damages filed by L.C. Big Mak Burger, Inc. and respondent Francis Dy against petitioners Labor Arbiter Jose C. Del Valle, Jr. and National Labor Relations Commission (NLRC) Sheriff Adolfo C. Alemania.

The instant petition stemmed from a complaint<sup>[6]</sup> for illegal dismissal and monetary benefits filed by Clea Deocariza in May 2001 against L.C. Big Mak Burger, Inc.<sup>[7]</sup> and its Human Resources Officer for Bicol, Teresa Israel.<sup>[8]</sup>

In said labor case, it appears that despite many opportunities given to L.C. Big Mak and Israel, the two did not file their position papers. Labor Arbiter Jose C. Del Valle, Jr. even had the notices and orders sent to L.C. Big Mak's head office in Lucena City, addressed to its owner, respondent Francis Dy,<sup>[9]</sup> when those sent to the Naga branch were returned. Still, they failed to comply.

On November 12, 2001, Labor Arbiter Del Valle rendered a Decision<sup>[10]</sup> in favor of Deocariza. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered against respondent, ordering the latter to reinstate complainant to her former position without loss of seniority right[s] and to pay complainant the total amount of FORTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY-SIX PESOS and 72/100 (P48,756.72), representing the latter's backwages, salary differential pay, unpaid salary, overtime pay, night shift differential and cash bond, as computed above.

SO ORDERED.<sup>[11]</sup>

A copy of the decision was sent by registered mail to Dy and Israel at L.C. Big Mak's Lucena City office. Based on the registry return receipt, it was received on November 22, 2001.<sup>[12]</sup>

Since no appeal was made, the decision became final and executory. Consequently, a Writ of Execution<sup>[13]</sup> was issued on December 17, 2001.

On February 18, 2002, L.C. Big Mak and Israel filed a Motion to Quash Writ of Execution.<sup>[14]</sup> They claimed that they were completely unaware of the decision and the writ of execution. They contended that the notices and orders requiring them to file a position paper were not made known to their officers in Lucena City. They further stated that had their legal department in Lucena City been informed of said orders, the requisite position paper would have been filed.

On April 4, 2002, Labor Arbiter Del Valle issued an Order<sup>[15]</sup> denying the Motion to Quash Writ of Execution. He ruled that L.C. Big Mak and Israel waived their opportunity to submit their position paper by their continued inaction on the lawful orders and notices sent to them. He further ruled that the judgment can now be executed as a matter of right, it being final and executory.

On April 24, 2003, acting on a motion for issuance of a writ of execution by Deocariza, Labor Arbiter Del Valle issued an Order<sup>[16]</sup> directing all parties to appear on May 12, 2003 for a pre-execution conference. However, only Deocariza attended the conference.

On May 13, 2003, Labor Arbiter Del Valle issued a Writ of Execution<sup>[17]</sup> directed to NLRC Sheriff Adolfo C. Alemania, the pertinent portion of which reads:

NOW THEREFORE, you are hereby ordered to go to the premises of respondent BIG MA[K] BURGER, Incorporated/Tess [I]srael at Lucena City together with the complainant and let her be reinstated to her former position without loss of seniority right[s] and collect from said respondent the amount of P48,756.72, representing complainant's backwages, salary differential, unpaid salary, overtime pay, night shift and cash bond and to turn over the said amount to this Branch for further disposition.

In case you fail to collect the said amount in CASH from the respondent, you are hereby directed to cause the satisfaction of the same to be made out of movable goods or chattels in the possession of the respondent or any other person or entity holding in behalf of the respondent or in the absence thereof, from immovable property not exempt from execution.

<sup>[18]</sup>

x x x x

On June 16, 2003, Sheriff Alemania went to L.C. Big Mak's head office in Lucena City and levied upon 33 sacks of flour and three sacks of refined sugar.<sup>[19]</sup>

On July 11, 2003, L.C. Big Mak and Dy filed a complaint<sup>[20]</sup> for injunction and damages with the RTC of Lucena City. They claimed that the labor arbiter's decision is void on the grounds of lack of jurisdiction, grave abuse of discretion, violation of due process and denial of substantial justice. They questioned the order for Dy to reinstate Deocariza despite the fact that she is not his employee and despite her resignation and the release or quitclaim she executed. They alleged that Israel is a

franchisee of L.C. Big Mak and Deocariza was one of her employees in the L.C. Big Mak Naga branch which negates the existence of an employer-employee relationship between Dy and Deocariza. They prayed that the properties levied upon be released.

On September 17, 2003, the trial court dismissed the complaint on the ground of lack of jurisdiction as it questions the propriety of actions taken by the labor tribunal.<sup>[21]</sup> Dy and L.C. Big Mak filed a motion for reconsideration,<sup>[22]</sup> but the same was treated as not filed for failure to include the requisite notice of hearing and explanation why service was not done personally, and for failure of their counsel to indicate his Roll Number on the motion.<sup>[23]</sup> Dy and L.C. Big Mak filed their motion for reconsideration after effecting the necessary corrections but said motion was denied for lack of merit.<sup>[24]</sup>

Dy, without including L.C. Big Mak as petitioner, then filed a petition for certiorari with the Court of Appeals asking that the orders of the RTC be set aside and the complaint be tried on the merits. He imputed grave abuse of discretion on the part of the RTC when it did not only dismiss the provisional remedy sought but also dismissed the main action for damages without a valid ground. The Court of Appeals granted the petition and disposed as follows:

**WHEREFORE**, the petition for certiorari is **GRANTED**. The assailed orders of the trial court, dated 17 September 2003, 2 October 2003, and 13 November 2003, respectively, are hereby **SET ASIDE**. This case is remanded to the trial court for further proceedings.

**SO ORDERED.**<sup>[25]</sup>

The appellate court found Dy a stranger to the labor case. It ruled that contrary to the trial court's stand, deciding Dy's complaint on the merits does not encroach upon the jurisdiction of the labor tribunal. It held that the power of the NLRC to execute its judgment extends only to properties unquestionably belonging to the judgment debtor. Thus, if the sheriff levies upon the assets of a third person in which the judgment debtor has no interest, then the sheriff is acting beyond the limits of his authority and is amenable to control and correction by a court of competent jurisdiction in a separate and independent action.

Labor Arbiter Del Valle and Sheriff Alemania filed a motion for reconsideration<sup>[26]</sup> which the Court of Appeals denied. Thus, they come before us raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, TENTH DIVISION, CORRECTLY APPLIED SECTION 4, RULE 65 OF THE RULES OF COURT IN GRANTING RESPONDENT'S BELATED PETITION FOR CERTIORARI.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, TENTH DIVISION, ERRED IN GRANTING THE PETITION FOR CERTIORARI AND NULLIFYING THE ORDERS OF THE REGIONAL TRIAL COURT DATED

SEPTEMBER 17, OCTOBER 2 AND NOVEMBER 13, 2003 WHICH WERE ISSUED IN ACCORDANCE WITH EXISTING LAW AND APPLICABLE JURISPRUDENCE AND MERITS OF THE CASE THEREON.

### III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, TENTH DIVISION EXCEEDED ITS JURISDICTION AND ERRED [WHEN IT DISREGARDED THE LAW,] DOCTRINES AND PRINCIPLES IN LAW PARTICULARLY ON: 1. APPEAL; 2. JURISDICTION OVER LABOR DISPUTES; 3. DETERMINATION OF JURISDICTION OVER THE SUBJECT MATTER AND NATURE OF THE ACTION; 4. THIRD PARTY CLAIM[;] AND 5. APPLICATION OF JURISPRUDENCE ON A PARTICULAR CASE WHEN IT ISSUED THE ASSAILED DECISION AND RESOLUTION.<sup>[27]</sup>

Stated simply, the issues to be resolved are: (1) whether the Court of Appeals erred in giving due course to Dy's petition despite its procedural infirmities and (2) whether the trial court had jurisdiction over Dy's complaint for injunction and damages.

Petitioners contend that the appellate court should not have given due course to Dy's petition since the proper remedy was appeal and not certiorari. And even if certiorari were the proper remedy, petitioners aver that the petition was still dismissible as it was filed beyond the 60-day period. They also contend that the trial court was correct in dismissing the complaint for lack of jurisdiction. They argue that "the complaint was actually in the nature of a Motion to Quash Writ of Execution and with respect to the acts of the labor tribunal, a case growing out of a labor dispute, as the acts complained of were incidents of the execution."<sup>[28]</sup>

Respondent Dy counters that the appellate court's decision "correctly addressed the evasion of the positive duty incumbent upon the trial court to decide [the complaint] according to its merits as the complaint for nullification of wrongful levy with damages was properly within its jurisdiction to resolve."<sup>[29]</sup>

We resolve to grant the instant petition.

It was erroneous for the Court of Appeals to have granted the petition and ordered the remand of the case to the trial court for further proceedings.

It is established that the Court of Appeals has jurisdiction to entertain *original* actions for certiorari under Rule 65 of the Rules of Court, including those in which the jurisdiction of any lower court is in issue.<sup>[30]</sup> It bears emphasis, however, as provided in the Rule itself, that one requisite to a petition for certiorari is that "there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law"<sup>[31]</sup> from the acts of the respondent tribunal. In the instant case, the remedy of appeal from the order of the RTC dismissing the complaint for injunction and damages was available to respondent Dy and it was a plain, speedy and adequate remedy. Hence, following the general rule, the questioned petition for certiorari filed by respondent Dy before the Court of Appeals, was not proper. As an exception, the remedy of certiorari may be successfully invoked, both in cases wherein an appeal does not lie and in those wherein the right to appeal having been lost with or