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FIRST DIVISION

[G.R. NO. 156660, August 24, 2009]

ORMOC SUGARCANE PLANTERS' ASSOCIATION, INC. (OSPA),OCCIDENTAL LEYTE FARMERS MULTI-PURPOSE COOPERATIVE, INC. (OLFAMCA), UNIFARM MULTI-PURPOSE COOPERATIVE, INC. (UNIFARM) AND ORMOC NORTH DISTRICT IRRIGATION MULTI-PURPOSE COOPERATIVE, INC. (ONDIMCO), PETITIONERS, VS. THE COURT OF APPEALS (SPECIAL FORMER SIXTH DIVISION), HIDECO SUGAR MILLING CO., INC., AND ORMOC SUGAR MILLING CO., INC., RESPONDENTS.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court is a special civil action for certiorari assailing the Decision[1] dated December 7, 2001 and the Resolution dated October 30, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 56166 which set aside the Joint Orders[2] dated August 26, 1999 and October 29, 1999 issued by the Regional Trial Court (RTC) of Ormoc City, Branch 12 upholding petitioners' legal personality to demand arbitration from respondents and directing respondents to nominate two arbitrators to represent them in the Board of Arbitrators.

Petitioners are associations organized by and whose members are individual sugar planters (Planters). The membership of each association follows: 264 Planters were members of OSPA; 533 Planters belong to OLFAMCA; 617 Planters joined UNIFARM; 760 Planters enlisted with ONDIMCO; and the rest belong to BAP-MPC which did not join the lawsuit.

Respondents Hideco Sugar Milling Co., Inc. (Hideco) and Ormoc Sugar Milling Co, Inc. (OSCO) are sugar centrals engaged in grinding and milling sugarcane delivered to them by numerous individual sugar planters, who may or may not be members of an association such as petitioners.

Petitioners assert that the relationship between respondents and the individual sugar planters is governed by milling contracts. To buttress this claim, petitioners presented representative samples of the milling contracts.[3]

Notably, Article VII of the milling contracts provides that 34% of the sugar and molasses produced from milling the Planter's sugarcane shall belong to the centrals (respondents) as compensation, 65% thereof shall go to the Planter and the remaining 1% shall go the association to which the Planter concerned belongs, as aid to the said association. The 1% aid shall be used by the association for any purpose that it may deem fit for its members, laborers and their dependents. If the Planter was not a member of any association, then the said 1% shall revert to the centrals. Article XIV, paragraph B[4] states that the centrals may not, during the life

of the milling contract, sign or execute any contract or agreement that will provide better or more benefits to a Planter, without the written consent of the existing and recognized associations except to Planters whose plantations are situated in areas beyond thirty (30) kilometers from the mill. Article XX provides that all differences and controversies which may arise between the parties concerning the agreement shall be submitted for discussion to a Board of Arbitration, consisting of five (5) members--two (2) of which shall be appointed by the centrals, two (2) by the Planter and the fifth to be appointed by the four appointed by the parties.

On June 4, 1999, petitioners, without impleading any of their individual members, filed twin petitions with the RTC for *Arbitration under R.A. 876*, *Recovery of Equal Additional Benefits, Attorney's Fees and Damages,* against HIDECO and OSCO, docketed as Civil Case Nos. 3696-O and 3697-O, respectively.

Petitioners claimed that respondents violated the Milling Contract when they gave to independent planters who do not belong to any association the 1% share, instead of reverting said share to the centrals. Petitioners contended that respondents unduly accorded the independent Planters more benefits and thus prayed that an order be issued directing the parties to commence with arbitration in accordance with the terms of the milling contracts. They also demanded that respondents be penalized by increasing their member Planters' 65% share provided in the milling contract by 1%, to 66%.

Respondents filed a motion to dismiss on ground of lack of cause of action because petitioners had no milling contract with respondents. According to respondents, only some eighty (80) Planters who were members of OSPA, one of the petitioners, executed milling contracts. Respondents and these 80 Planters were the signatories of the milling contracts. Thus, it was the individual Planters, and not petitioners, who had legal standing to invoke the arbitration clause in the milling contracts. Petitioners, not being privy to the milling contracts, had no legal standing whatsoever to demand or sue for arbitration.

On August 26, 1999, the RTC issued a Joint Order[5] denying the motion to dismiss, declaring the existence of a milling contract between the parties, and directing respondents to nominate two arbitrators to the Board of Arbitrators, to wit:

> When these cases were called for hearing today, counsels for the petitioners and respondents argued their respective stand. The Court is convinced that there is an existing milling contract between the petitioners and respondents and these planters are represented by the officers of the associations. The petitioners have the right to sue in behalf of the planters.
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> This Court, acting on the petitions, directs the respondents to nominate two arbitrators to represent HIDECO/HISUMCO and OSCO in the Board of Arbitrators within fifteen (15) days from receipt of this Order. xxx
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> However, if the respondents fail to nominate their two arbitrators, upon proper motion by the petitioners, then the Court will be compelled to use its discretion to appoint the two (2) arbitrators, as embodied in the

Milling Contract and R.A. 876.

x x x

Their subsequent motion for reconsideration having been denied by the RTC in its Joint Order[6] dated October 29, 1999, respondents elevated the case to the CA through a *Petition for Certiorari with Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction*.

On December 7, 2001, the CA rendered its challenged Decision, setting aside the assailed Orders of the RTC. The CA held that petitioners neither had an existing contract with respondents nor were they privy to the milling contracts between respondents and the individual Planters. In the main, the CA concluded that petitioners had no legal personality to bring the action against respondents or to demand for arbitration.

Petitioners filed a motion for reconsideration, but it too was denied by the CA in its Resolution[7] dated October 30, 2002. Thus, the instant petition.

At the outset, it must be noted that petitioners filed the instant petition for certiorari under Rule 65 of the Rules of Court, to challenge the judgment of the CA. Section 1 of Rule 65 states:

> Section 1. Petition for Certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction and there is **no appeal, or any plain, speedy and adequate remedy in the course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental relief as law and justice require. xxx xxx xxx (emphasis ours)

The instant recourse is improper because the resolution of the CA was a final order from which the remedy of appeal was available under Rule 45 in relation to Rule 56. The existence and availability of the right of appeal proscribes resort to certiorari because one of the requirements for availment of the latter is precisely that there should be no appeal. It is elementary that for certiorari to prosper, it is not enough that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction; the requirement that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law must likewise be satisfied.[8] The proper mode of recourse for petitioners was to file a petition for review of the CA's decision under Rule 45.

Petitioners principally argue that the CA committed a grave error in setting aside the challenged Joint Orders of the RTC which allegedly unduly curtailed the right of petitioners to represent their planters-members and enforce the milling contracts with respondents. Petitioners assert the said which orders were issued in accordance

with Article XX of the Milling Contract and the applicable provisions of Republic Act (R.A.) No. 876.

Where the issue or question involved affects the wisdom or legal soundness of the decision - not the jurisdiction of the court to render said decision - the same is beyond the province of a special civil action for certiorari. Erroneous findings and conclusions do not render the appellate court vulnerable to the corrective writ of certiorari. For where the court has jurisdiction over the case, even if its findings are not correct, they would, at most constitute errors of law and not abuse of discretion correctable by certiorari.[9]

Moreover, even if this Court overlooks the procedural lapse committed by petitioners and decides this matter on the merits, the present petition will still not prosper.

Stripped to the core, the pivotal issue here is whether or not petitioners â€• sugar planters' associations â€• are clothed with legal personality to file a suit against, or demand arbitration from, respondents in their own name without impleading the individual Planters.

On this point, we agree with the findings of the CA.

Section 2 of R.A. No. 876 (the Arbitration Law)[10] pertinently provides:

> Sec. 2. Persons and matters subject to arbitration. - **Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission** and which may be the subject of an action, **or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them.** Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract. xxx (Emphasis ours)

The foregoing provision speaks of two modes of arbitration: (a) an agreement to submit to arbitration some future dispute, usually stipulated upon in a civil contract between the parties, and known as an *agreement to submit to arbitration*, and (b) an agreement submitting an existing matter of difference to arbitrators, termed the *submission agreement*. Article XX of the milling contract is an *agreement to submit to arbitration* because it was made in anticipation of a dispute that might arise between the parties after the contract's execution.

Except where a compulsory arbitration is provided by statute, the first step toward the settlement of a difference by arbitration is the entry by the parties into a valid agreement to arbitrate. An agreement to arbitrate is a contract, the relation of the parties is contractual, and the rights and liabilities of the parties are controlled by the law of contracts.[11] In an agreement for arbitration, the ordinary elements of a valid contract must appear, including an agreement to arbitrate some specific thing, and an agreement to abide by the award, either in express language or by implication.

The requirements that an arbitration agreement must be written and subscribed by the parties thereto were enunciated by the Court in *B.F. Corporation v. CA.*[12]

During the proceedings before the CA, it was established that there were more than two thousand (2,000) Planters in the district at the time the case was commenced at the RTC in 1999. The CA further found that of those 2,000 Planters, only about eighty (80) Planters, who were all members of petitioner OSPA, in fact individually executed milling contracts with respondents. No milling contracts signed by members of the other petitioners were presented before the CA.

By their own allegation, petitioners are associations duly existing and organized under Philippine law, *i.e.* they have juridical personalities separate and distinct from that of their member Planters. It is likewise undisputed that the eighty (80) milling contracts that were presented were signed only by the member Planter concerned and one of the Centrals as parties. In other words, none of the petitioners were parties or signatories to the milling contracts. This circumstance is fatal to petitioners' cause since they anchor their right to demand arbitration from the respondent sugar centrals upon the arbitration clause found in the milling contracts. There is no legal basis for petitioners' purported right to demand arbitration when they are not parties to the milling contracts, especially when the language of the arbitration clause expressly grants the right to demand arbitration only to the parties to the contract.

Simply put, petitioners do not have any agreement to arbitrate with respondents. Only eighty (80) Planters who were all members of OSPA were shown to have such an agreement to arbitrate, included as a stipulation in their individual milling contracts. The other petitioners failed to prove that any of their members had milling contracts with respondents, much less, that respondents had an agreement to arbitrate with the petitioner associations themselves.

Even assuming that all the petitioners were able to present milling contracts in favor of their members, it is undeniable that under the arbitration clause in these contracts it is the parties thereto who have the right to submit a controversy or dispute to arbitration.

Section 4 of R.A. 876 provides:

> Section 4. Form of Arbitration Agreement - A contract to arbitrate a controversy thereafter arising between the parties, as well as a submission to arbitrate an existing controversy, shall be in writing and subscribed by the party sought to be charged, or by his lawful agent.
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> The making of a contract or submission for arbitration described in section two hereof, providing for arbitration of any controversy, shall be deemed a consent of the parties to the jurisdiction of the Court of First Instance of the province or city where any of the parties resides, to enforce such contract of submission.

The formal requirements of an agreement to arbitrate are therefore the following: (a) it must be in writing and (b) it must be subscribed by the parties or their