SUPREME COURT
THIRD DIVISION

J.D. LEGASPI CONSTRUCTION and/or JESUSITO D. LEGASPI,
***Petitioners*,**

-versus-

G.R. No. 143161
October 2, 2002

NATIONAL LABOR RELATIONS COMMISSION, HERNAN G. PAGURAYAN, and RAMIL PINSAN,
***Respondents*.**
x----------x

D E C I S I O N

CORONA, *J.*:

Petitioners assail the Decision of the Court of Appeals dismissing their petition, thus upholding the validity of the writ of execution issued by the labor arbiter in an illegal dismissal case decided in favor of private respondents.

The present controversy stemmed from an action for illegal dismissal, underpayment of wages and non-payment of benefits filed by private respondent against herein petitioners.

In their complaint before the National Labor Relations Commission (NLRC), private respondents alleged that they worked for petitioner J.D. Legaspi Construction as electricians from August 1988 until they were illegally dismissed on April 1, 1995.

The labor arbiter scheduled numerous conciliatory conferences but all were ignored by petitioners despite due notice. Hence, the case was set for hearing. But petitioners not only failed to submit their position paper, they also failed to appear on the scheduled date for presentation of evidence, Thus private respondents were allowed to present their evidence ex parte.

On January 2, 1997, the labor arbiter[1] rendered his decision, the dispositive portion of which read:

> WHEREFORE, premises considered, respondents are hereby declared guilty of illegal dismissal, and directed to reinstate complainants immediately to their former position with full backwages which is hereby fixed to (sic) P99,190.77 as of December 1996 plus the following monetary awards:
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> | | |
> |---|---|
> | For underpayment | P5,085.00 |
> | For premium compensation | 522.00 |
> | For holiday pay | 362.00 |
> | For unpay (sic) overtime compensation | 2,038.50 |
> | For service incentive leave pay | 2,175.00 |
> | For 13th month pay | 11,382.49 |
>
> in the total sum of ONE HUNDRED TWENTY THOUSAND SEVEN HUNDRED FIFTY-FIVE PESOS and 76/100 (P120,755.76) for each and moral damages of P20,000.00 and P10,000.00 exemplary damages for each.
>
> Ten (10%) percent of all sum owing to the complainants is awarded as attorney's fees.
>
> SO ORDERED.[2]

On February 21, 1997, petitioner filed a "Motion for Reconsideration and/or questioning the Monetary Claim on the Judgment Amount

and/or Notice and Memorandum," claiming that they were denied their day in court as notices of hearing were not served and that, in view thereof, the Decision should be reconsidered and set aside, the case set anew for trial and remanded to the labor arbiter for further proceedings. The motion was treated as an appeal by the NLRC which dismissed the same in a resolution dated April 2, 1997:

x x x

> Records disclose that the aforementioned Appeal was not accompanied by a cash or surety bond contrary to what is mandated by law, as provided for under Article 223 of the Labor Code and under Section 6, Rule VI of the NLRC New Rules of Procedure. The "Urgent Ex-Parte Motion for Extension of Time to Post Surety Bond" filed favorably, as it is clear from Section 7 of the aforementioned Rule that no motion for extension of the period within which to perfect an appeal shall be allowed.
>
> WHEREFORE, in view of the foregoing, the instant Appeal is hereby DISMISSED for failure to post the required cash or surety bond.

On August 1, 1997, petitioner filed a petition for certiorari under Rule 65 of the Rules of Court before this Court, which sought to annul and set aside the above-mentioned April 2, 1997 resolution. On September 3, 1997, the petition was dismissed by this Court for failure to remit the amount of P500 as deposit for costs. Entry of judgment followed in due course.

On June 19, 1998, upon motion of private respondents, the labor arbiter issued a writ of execution against petitioners. Sheriff Ramon Nonato Dayao issued the Notice of Levy to the Register of Deeds of Parañaque requesting the proper annotation on the title of petitioner for the satisfaction of the writ of execution issued by the labor arbiter.

On December 9, 1998, a new counsel for petitioner entered his appearance and moved to quash the writ of execution dated June 19, 1998. He raised before the labor arbiter the following issues: (1) the writ was improvidently issued as petitioners were not properly notified of the pendency of a motion for issuance of a writ of

execution; (2) the writ was improperly implemented because petitioners were never personally served a copy of the writ of execution issued by the labor arbiter and (3) petitioners were deprived of their right to due process of law because of the gross negligence of their former counsel.

The labor arbiter denied said motion to quash.

On January 8, 1999, petitioners elevated the matter to the NLRC by filing their appeal memorandum. However, on June 21, 1999, a decision was rendered by the latter affirming the assailed December 9, 1998 Order of the labor arbiter. A motion for reconsideration was filed on July 26, 1999 seeking to reverse and set aside the decision dated June 21, 1999 and praying that judgment be rendered quashing the writ of execution and canceling the annotation on the title. On August 18, 1999, the NLRC denied the motion for reconsideration.

Unfazed, petitioner went up for the second time to the Court of Appeals via a petition for certiorari under Rule 65 of the Rules of Court, harping on the alleged denial of due process brought about by the incompetence of their previous counsel.

The Court of Appeals dismissed the petition:

> Note that from the inception of the case the address of petitioners as appearing on record of the NLRC and where the sheriff had served the notice is at "98 Amity Ext. Annex 16-18 Better Living Subdivision, Parañaque, Metro Manila. The sudden change of address was never brought to the attention of the NLRC and petitioners faulted their former counsel for his inaction. It may be true that there was apparent negligence on the part of petitioners' counsel in not informing the NLRC on the change of address, however, petitioners themselves are not entirely blameless for they should have taken the initiative to inform the office of the labor arbiter of the change of address, for what is at stake here is their interest in the case. Moreover, they cannot be credited with good faith in changing their address, in fact, their act of transferring to another place would draw a suspicion that they were trying to evade or escape obligations. Hence, for failure to notify the office of the labor

arbiter, petitioners bear the loss, as ratiocinated in the cases of Greenhills Air-conditioning and Services, Inc. vs. National Labor Relations Commission, 245 SCRA 384 and Five Star Bus Co., Inc. vs. Court of Appeals, 259 SCRA 120, to wit:

> A client is bound by the negligence of his counsel.
>
> WHEREFORE, foregoing considered, the petition for certiorari is hereby ordered DISMISSED for lack of merit.

Petitioners then filed the instant petition before this Court.

Petitioners raise the following issues:

> WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND ACTED CONTRARY TO LAW AND JURISPRUDENCE IN RENDERING THE ASSAILED DECISION AND RESOLUTION CONSIDERING THAT:
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> A. THE LABOR ARBITER'S DECISION IN NLRC-NCR CASE NO. 00-04-02473-95 WAS RENDERED IN GROSS VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS, HENCE, THE SAME IS VOID AND, THEREFORE, CANNOT ATTAIN FINALITY AND BE THE SUBJECT OF EXECUTION OR IMPLEMENTATION.
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> B. THE HONORABLE COURT OF APPEALS SKIRTED THE ISSUE OF PETITIONERS BEING DEPRIVED OF THEIR RIGHT TO DUE PROCESS, WHICH ISSUE WAS RAISED SQUARELY BY PETITIONERS IN CA-G.R. SP NO. 55496.
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> C. THE HONORABLE COURT OF APPEALS SHOULD HAVE REMANDED THE CASE BACK TO THE LABOR ARBITER TO AFFORD PETITIONERS THEIR DAY IN COURT.[3]

At the outset, the Court takes notice of the fact that petitioners already exhausted all remedies available to them way back September 3, 1997 when this Court dismissed their petition for certiorari questioning the legality of the NLRC's decision against them. It has been five years since then and petitioners are still brazenly attempting to delay this case further. They claim to have been denied due process of law.

We are not convinced.

Denial of due process means the total lack of opportunity to be heard or to have one's day in court. There is no denial of due process where a party has been given an opportunity to be heard and to present his case.[4]

In the case at bar, petitioners were represented by counsel during the hearings conducted by the labor arbiter on April 24, 1995, May 16, 1995 and June 25, 1995; they were served with summons; they received the notices for the hearings conducted on July 19, 1995, August 2, 1995 and August 16, 1995, and they received a copy of the labor arbiter's decision dated January 2, 1997.

Moreover, petitioners filed a series of pleadings and motions, an appeal and a motion for reconsideration with the NLRC and a petition for certiorari with the Supreme Court. After all these remedies proved futile, petitioners filed a motion to quash the writ of execution which dragged the case even more and effectively derailed the execution of an already final and executory judgment. The issue of lack of due process was raised in all of the above-mentioned pleadings and was exhaustively passed upon. Clearly, petitioners were not denied due process.

The Labor Arbiter's decision has long become final and executory and it can no longer be reversed or modified.

The Court has on occasion ruled that:

> Now, nothing is more settled in law than when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any

> respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of law or fact, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. The only recognized exception are the correction of clerical errors or the making of so called nune pro tunc entries which cause no injury to any party, and, of course, where the judgment is void. (Manning International Corp. vs. NLRC, 195 SCRA 155 [1991]).
>
> We now delve into the propriety of the implementation of the writ of execution. Petitioners claim they were never personally served a copy of the writ of execution; and that their real property was levied upon without their first having been given a chance to satisfy the judgment and without any prior effort to levy upon their personal properties.

Pertinently, Paragraph 2, Section 2 of the NLRC Manual on Execution of Judgment provides:

> (a) If the execution be for the payment of a sum of money by the losing party, the writ shall be served by the sheriff upon the losing party or upon any person required by law to obey the same before proceeding to satisfy the judgment out of the personal property of such party and if no sufficient personal property can be found, then out of his real property.

As the records show, the NLRC sheriff[5] followed the procedure provided in the above-quoted provision of the NLRC Manual on Execution of Judgment but was unable to serve a copy of the writ of execution and/or levy upon their personal properties due to the contumacy of the respondents therein (petitioners before us). In his letter dated July 17, 1998 addressed to petitioners' counsel, the NLRC sheriff stated that, in view of the refusal of Mr. Jesus D. Legaspi to comply with the mandate of the writ of execution, Transfer Certificate of Title No. 77731 would be levied upon and attached to satisfy the judgment. In his progress report dated August 19, 1998, he stated that: "On July 2, 1998, enforcement of the writ of execution was done upon the respondents, however, entry inside the premises had been impossible, passage thereon has been closed and padlocked and no people/person around which (can be) served with the Writ."

Considering these circumstances, it cannot therefore be said that the writ of execution was improperly implemented.

It is obvious to the Court that petitioners and/or counsel are just playing a dilatory game, perhaps to break down the will of the respondents or to maneuver for a possibly better bargaining position with respect to respondents' claims or for whatever other reason known only to them. There was no purpose to be served by changing one's counsel and blaming the previous one for an adverse decision which was doubtlessly correct to begin with.

WHEREFORE, the petition is hereby **DENIED**. Treble costs against petitioner.

SO ORDERED.

Puno, Panganiban and Morales, *JJ.*, concur.
Sandoval-Gutierrez, *J.*, on leave.

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[1] Atty. Ariel Cardiente Santos.
[2] Rollo, pp. 85-86.
[3] Rollo, p. 29.
[4] Development Bank of the Philippines vs. National Labor Relations Commission, Ong Peng, et al., 218 SCRA 183 (1993).
[5] Ramon Nonato Dayao.
