SUPREME COURT
THIRD DIVISION

MC ENGINEERING, INC., and HANIL DEVELOPMENT CORP., LTD.,
***Petitioners*,**

-versus-

G.R. No. 142314
June 28, 2001

NATIONAL LABOR RELATIONS COMMISSION and ARISTOTLE BALDAMECA,
***Respondents*.**
x----------x

D E C I S I O N

GONZAGA-REYES, *J.*:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the Resolution[1] of the Court of Appeals dated December 27, 1999 in CA-G.R. SP No. 56298 and its subsequent Resolution[2] dated March 3, 2000 denying petitioners' motion for reconsideration thereto. The December 27, 1999 Resolution of the Court of Appeals dismissed petitioners' Petition for Certiorari[3] dated December 17, 1999 for failure to comply with the requirements regarding the certification of non-forum shopping and explanation of service by registered mail.

The facts of the case are as follows:

Petitioner Hanil Development Co., Ltd. (hereinafter "Hanil") is the overseas employer of all contract workers deployed by petitioner MC Engineering, Inc. (hereinafter "MCEI") under a Service Contract Agreement between the two petitioners. Contract workers deployed by MCEI for Hanil for overseas work enter into an employment contract with MCEI in accordance with the terms and conditions set forth by Philippine Overseas Employment Administration (hereinafter "POEA") Regulations and the Service Contract Agreement between MCEI and Hanil.[4]

On 18 September 1992, private respondent Aristotle Baldameca entered into an Employment Agreement[5] with MCEI for deployment as a plumber in Tabuk, Saudi Arabia. He commenced working for petitioner Hanil in Saudi Arabia on September 21, 1992. The contract was for a term of twelve (12) months.

For some reason, private respondent was not able to finish the full term of his contract and he was repatriated back to Manila on January 19, 1993. On October 19, 1993, private respondent filed a complaint with the POEA against petitioners for illegal dismissal. In his complaint, private respondent prayed for the payment of his salaries for the unexpired portion of his employment agreement and the reimbursement of his airfare.[6]

In March of 1996, the case was referred to the National Labor Relations Commission (hereinafter "NLRC") Arbitration Division as by then it was this agency which had jurisdiction over private respondent's complaint by virtue of Republic Act 8042, the Migrant Workers and Overseas Filipinos Act of 1995. After the submission of position of papers, the labor arbiter assigned to the case rendered a Decision[7] dated April 27, 1998 in favor of private respondent. In this decision, the labor arbiter held petitioners MCEI and Hanil jointly and severally liable to private respondent in the amount of US$2,500.00 and 10% of the cash award as and by way of attorney's fees.

The decision of the labor arbiter was appealed to the NLRC by petitioners on June 15, 1998. However, this appeal was dismissed by

the NLRC in a Resolution[8] dated February 26, 1999. The motion for reconsideration filed by petitioners was likewise denied by the NLRC in its Order[9] dated September 28, 1999.

On December 17, 1999, petitioners filed a petition for certiorari with the Court of Appeals questioning the above Resolution and Order of the NLRC. However, the Court of Appeals dismissed the petition filed by petitioners in a Resolution[10] dated December 27, 1999. The full text of the resolution is as follows:

> "The instant Petition for Certiorari is fatally defective for two (2) reasons: (1) there is no certification against forum shopping by co-petitioner Hamil Development Co., Ltd.; and (2) there is no written explanation why the service of the pleading was not done personally (Section 3, Rule 46 and Section 11, Rule 13, 1997 Rules of Civil Procedure).
>
> WHEREFORE, the instant Petition for Certiorari, having failed to comply with the requirement of the Rules, as aforesaid, is DISMISSED outright.
>
> SO ORDERED."

Petitioners filed a Motion for Reconsideration from this December 27, 1999 Resolution but this was denied by the Court of Appeals in a Resolution[11] dated March 3, 2000.

Hence, the recourse by petitioners to this Court where they raise, among other issues, the propriety of the dismissal of their petition for certiorari by the Court of Appeals on the grounds of non-compliance with the requirements of non-forum shopping and lack of explanation of service by registered mail.

With respect to the first ground for the dismissal of the petition by the appellate court, the requirement regarding the need for a certification of non-forum shopping in original cases filed before the Court of Appeals and the corresponding sanction for non-compliance thereto is found in Section 3, Rule 46 of the 1997 Rules of Civil Procedure. Said section, in pertinent part, provides as follows:

"Rule 46, Sec. 3. Contents and filing of petition; effect of non-compliance with requirements. —

x x x x x x x x x

> The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

x x x x x x x x x

> The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition."

In the case at bar, the petition for certiorari filed by petitioners before the Court of Appeals contains a certification against forum shopping.[12] However, the said certification was signed only by the corporate secretary of petitioner MCEI. No representative of petitioner Hanil signed the said certification. As such, the issue to be resolved is whether or not a certification signed by one but not all of the parties in a petition constitutes substantial compliance with the requirements regarding the certification of non-forum shopping.

The rule quoted above requires that in all cases filed in the Court of Appeals, as with all initiatory pleadings before any tribunal, a certification of non-forum shopping signed by the petitioner must be filed together with the petition. The failure of a petitioner to comply with this requirement constitutes sufficient ground for the dismissal of his petition. Thus, the Court has previously held that a certification

not attached to the complaint or petition or one belatedly filed[13] or one signed by counsel and not the party himself[14] constitutes a violation of the requirement which can result in the dismissal of the complaint or petition.

However, with respect to the contents of the certification, the rule of substantial compliance may be availed of. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.[15] It does not thereby interdict substantial compliance with its provisions under justifiable circumstances.[16]

In the case at bar, the Court of Appeals should have taken into consideration the fact that petitioner Hanil is being sued by private respondent in its capacity as the foreign principal of petitioner MCEI. It was petitioner MCEI, as the local private employment agency, who entered into contracts with potential overseas workers on behalf of petitioner Hanil.

It must be borne in mind that local private employment agencies, before they can commence recruiting workers for their foreign principal, must submit with the POEA a formal appointment or agency contract executed by the foreign based employer empowering the local agent to sue and be sued jointly and solidarily with the principal or foreign-based employer for any of the violations of the recruitment agreement and contract of employment.[17] Considering that the local private employment agency may sue on behalf of its foreign principal on the basis of its contractual undertakings submitted to the POEA, there is no reason why the said agency cannot likewise sign or execute a certification of non-forum shopping for its own purposes and/or on behalf of its foreign principal.

It must likewise be stressed that the rationale behind the requirement that the petitioners or parties to the action themselves must execute the certification of non-forum shopping is that the said petitioners or parties are in the best position to know of the matters required by the Rules of Court in the said certification.[18] Such requirement is not circumvented and is substantially complied with when, as in this case,

the local private employment agency signs the said certification alone. It is the local private employment agency, in this case petitioner MCEI, who is in the best position to know of the matters required in a certification of non-forum shopping.

Concerning the second ground for the appellate court's decision, Section 11, Rule 13 of the 1997 Rules of Civil Procedure provides:

> "SECTION 11. Priorities in modes of service and filing. — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this rule may be cause to consider the paper as not filed."

Pursuant to this section, service and filing of pleadings and other papers must, whenever practicable, be done personally. If they are made through other modes, the party concerned must provide a written explanation as to why the service or filing was not done personally. To underscore the mandatory nature of this rule requiring personal service whenever practicable, Section 11 of Rule 13 gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place.[19]

In the instant case, it is not disputed that petitioners' Petition for Certiorari filed in the Court of Appeals did not contain an explanation why resort was made to other modes of service of the petition to the parties concerned. In the exercise of its discretion granted under Section 11 of Rule 13, the Court of Appeals considered the same as not having been filed and dismissed the petition outright.

Petitioners, in this petition for review on certiorari, do not give a reason why their petition before the Appellate Court was not accompanied by an explanation why they resorted to other modes of service as required by the rules. Instead, they argue that there has been substantial compliance with the requirements of the rule as the petition contains the required affidavit of service that shows that the

petition has indeed been served on the parties concerned. Moreover, petitioners claim that their failure to indicate an explanation was a purely technical error which does not call for an outright dismissal of the petition. Citing the oft-quoted doctrine laid down in Alonso vs. Villamor,[20] they argue that technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance, should deserve scant consideration from the courts.[21]

We are not persuaded.

In the case at bar, there was no substantial compliance made by petitioners of the requirement in Section 11, Rule 13 of the 1997 Rules of Civil Procedure. The utter disregard of the rules made by petitioners cannot justly be rationalized by harking on the policy of liberal construction and substantial compliance.[22]

The fact that an affidavit of service accompanied their petition does not amount to a substantial compliance with the requirement of an explanation why other modes of service other than personal service were resorted to. An affidavit of service, under Section 13, Rule 13 of the 1997 Rules of Civil Procedure, is required merely as proof that service has been made to the other parties in a case. Thus, it is a requirement totally different from the requirement that an explanation be made if personal service of pleadings was not resorted to. In fact, a cursory reading of the affidavit of service[23] attached by petitioners in their petition before the Court of Appeals shows that it merely states that a certain Rogelio Mindol served copies of the pleading to the counsel of private respondent, the NLRC, and the Solicitor-General by registered mail. There is not even a hint of an explanation why such mode of service was resorted to.

With respect to petitioners" reliance on the much-abused doctrine laid down in the case of Alonso vs. Villamor and other analogous cases, we adhere to our pronouncement in the case of Solar Team Entertainment, Inc. vs. Court of Appeals.[24]

> "To our mind, if motions to expunge or strike out pleadings for violation of Section 11 of Rule 13 were to be indiscriminately resolved under Section 6 of Rule 1[25] or Alonso vs. Villamor and

other analogous cases, then Section 11 would become meaningless and its sound purpose negated."

We are aware that in the cited case, the violation of Section 11, Rule 13 committed by the party therein was eventually condoned and the pleading was allowed to remain in the records. However, such action by the Court was premised on the fact that counsel therein may not have been fully aware of the requirements and ramifications of the said provision as the 1997 Rules of Civil Procedure had only been in effect for a few months. Such circumstance does not obtain in the case at bar considering that it has been years since the effectivity of the 1997 Rules of Civil Procedure. Moreover, our decision in the Solar Team Entertainment, Inc. case contained a directive that, for the guidance of the bench and the bar, strictest compliance with Section 11 of Rule 13 is mandated one month from the promulgation of the said decision. Petitioners thus have no excuse for their non-compliance with the requirements embodied therein.

WHEREFORE, premises considered, the resolutions of the Court of Appeals dated December 27, 1999 and March 03, 2000 are hereby **AFFIRMED**.

SO ORDERED.

Melo, *J.*, *(Chairman),* Vitug, Panganiban and Sandoval-Gutierrez, *JJ.*, concur.

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[1] Annex "J" of Petition; Rollo, pp. 153-154.
[2] Annex "K" of Petition; Rollo, pp. 155-156.
[3] Court of Appeals Records, pp. 7-36.
[4] Petition, p. 3; Rollo, p. 9.
[5] Annex "A" of Petition; Rollo, pp. 40-43.
[6] Petition, p. 4; Rollo, p. 10.
[7] Annex "F" of Petition; Rollo, pp. 47-51.
[8] Annex "G" of Petition; Rollo, pp. 52-58.
[9] Annex "I" of Petition; Rollo, pp. 65-67.
[10] Annex "J" of Petition; Rollo, p. 68.
[11] Annex "K" of Petition; Rollo, p. 69.
[12] Court of Appeals Records, p. 31.

[13] Melo vs. Court of Appeals, 318 SCRA 94; Tomarong vs. Lubguban, 269 SCRA 624.
[14] Ortiz vs. Court of Appeals, 299 SCRA 708; Far Eastern Shipping Co. vs. Court of Appeals, 297 SCRA 30.
[15] Dar, et al, vs. Alonzo-Legasto, G.R. No. 143016, August 30, 2000 citing Regalado, Remedial Law Compendium, Volume I, Sixth Revised Edition (1997).
[16] Gabionza vs. Court of Appeals, 234 SCRA 192; Loyola vs. Court of Appeals, 245 SCRA 477; Kavinta vs. Castillo, Jr., 249 SCRA 604.
[17] Catan vs. NLRC, 160 SCRA 691; Royal Crown Internationale vs. NLRC, 178 SCRA 569. United Placement Intentionale vs. NLRC, 221 SCRA 445.
[18] Far Eastern Shipping Company vs. Court of Appeals, supra.
[19] Solar Team Entertainment, Inc. vs. Ricafort, 293 SCRA 661.
[20] 16 Phil. 321.
[21] Petition, p. 29; Rollo, p. 35.
[22] Ortiz vs. Court of Appeals, 299 SCRA 708.
[23] Court of Appeals Records, p. 32.
[24] 293 SCRA 661.
[25] Section 6, Rule 1, 1997 Rules of Civil Procedure. Construction. — These Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding.