

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**SOLAR TEAM ENTERTAINMENT, INC.,
*Petitioner,***

-versus-

**G.R. No. 132007
August 5, 1998**

**HON. HELEN BAUTISTA RICAFORT, in
her capacity as Presiding Judge of the
Regional Trial Court of Parañaque,
Metro Manila (Branch 260), TEAM
IMAGE ENTERTAINMENT, INC.,
FELIX S. CO, JEFFREY C. CAL, and
KING CUISIA,**

Respondent.

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DECISION

DAVIDE, JR., J.:

BELLOSILLO, J., dissenting:

At issue is whether respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's motion to expunge private respondents' answer with counterclaims on the ground that said pleading was not served personally; moreover, there was no written explanation as to why personal service was not accomplished, as required by Section 11 of Rule 13 of the 1997 Rules of Civil Procedure.

The antecedents are not disputed.

On 10 July 1997, petitioner, as plaintiff, filed before the Regional Trial Court (RTC) in Parañaque, Metro Manila, a complaint for recovery of possession and damages with prayer for a Writ of Replevin^[1] against herein private respondents. The case was docketed as Civil Case No. 97-0304 and was assigned to Branch 260 of said court, presided over by public respondent Judge Helen Bautista-Ricafort.

Summonses and copies of the complaint were forthwith served on private respondents. On 25 July 1997, their counsel filed a notice of appearance with urgent ex-parte motion for extension of time to plead,^[2] which the court granted in its order of 4 August 1997.^[3]

On 8 August 1997, private respondents, as defendants, filed their "Answer (with Counterclaims)."^[4] A copy thereof was furnished counsel for petitioner by registered mail; however, the pleading did not contain any written explanation as to why service was not made personally upon petitioner-plaintiff, as required by Section 11 of Rule 13 of the 1997 Rules of Civil Procedure.

On 11 August 1997, petitioner filed a motion to expunge the "Answer (with Counterclaims)" and to declare herein private respondents in default,^[5] alleging therein that the latter did not observe the mandate of the aforementioned Section 11, and that there was:

[A]bsolutely no valid reason why defendant[s] should not have personally served plaintiff's counsel with [a] copy of their answer [as] (t)he office of defendant's (sic) counsel, Atty. Froilan Cabaltera, is just a stone [sic] throw away from the office of [petitioner's] counsel, with an estimate (sic) distance of about 200 meters more or less.

Petitioner further alleged that the post office was “about ten (10) times farther from the office of Atty. Cabalera.”

On 15 August 1997, private respondents filed their Opposition^[6] to the abovementioned motion, alleging that petitioner’s “rigid and inflexible reliance on the provisions of Section 11, Rule 13 is an adventitious resort to technicality and is contrary to Section 6 of Rule 3 which admonishes that said Rules ‘shall be liberally construed in order to promote their objective in securing a just, speedy and inexpensive disposition of [e]very action and proceeding;” and that Section 11, Rule 13 notwithstanding, private respondents “religiously complied with [Section 5 of Rule 13] by personally present[ing] to the clerk of court their said Answer furnishing a copy thereof to the counsel for [petitioner] by way of registered mail.”

On 8 September 1997, public respondent Judge Bautista-Ricafort issued an Order^[7] stating that under Section 11 of Rule 13 “it is within the discretion of the [trial court] whether to consider the pleading as filed or not,” and denying, for lack of merit, petitioner’s motion to expunge the “Answer (with Counterclaims)” and to declare private respondents in default.

Petitioner immediately Moved for Reconsideration^[8] of the order, but public respondent Judge Bautista-Ricafort denied this motion in her Order^[9] of 17 November 1997. The order justified the denial in this wise:

Section 6 [of] Rule 1 of the 1997 Rules of Civil Procedure ordains that the Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

Liberal construction of the rules and the pleading is the controlling principle to effect substantial justice.

As pointed out by the Supreme Court in *Alonso vs. Villamor*, 16 Phil. 315, “the error in this case is purely technical. To take advantage of it for other purposes than to cure it, does not appeal to a fair sense of

justice. Its presentation as fatal to plaintiff a [sic] case smacks of skill rather than right. A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is rather, a contest in which each contending party fully and fairly lays before the Court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections or form of technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust."

While it is desirable that the above Rules be faithfully and even meticulously observed, courts should not be strict about procedural lapses that do not really impair the proper administration of justice. Furthermore, it is well settled that litigations should, as much as possible be decided on their merits and not on technicalities.

Petitioner thus filed the instant special civil action of certiorari, contending that public respondent Judge Bautista-Ricafort committed grave abuse of discretion amounting to lack or excess of jurisdiction when she admitted private respondents' "Answer (with Counterclaims)" notwithstanding private respondents' clear, admitted and inexcusable violation of Section 11, Rule 13 of the 1997 Rules of Civil Procedure, in that: (a) the "Answer (with Counterclaims)" was not served personally upon petitioner's counsel despite the undisputed fact that the offices of private respondents' counsel and that of petitioner's counsel are only about 200 meters away from each other; and (b) the Answer did not contain any explanation as to why the answer was not served personally.

In their Comment, filed in compliance with the resolution of 2 February 1998, and to which petitioner filed a Reply, private respondents aver that public respondent Judge Bautista-Ricafort correctly admitted private respondents' "Answer (with Counterclaims)" in light of Section 6, Rule 1 of the 1997 Rules of Civil Procedure; that Section 11 of Rule 13 begins with the phrase "whenever practicable," thereby suggesting that service by mail may still be effected depending on the relative priority of the pleading sought to be filed; and when service is not done personally, it is more prudent and judicious for the courts to require a written explanation

rather than to expunge the pleading outright or consider the same as not been filed.

In view of the importance of the issue raised, which is, undoubtedly, one of the first impression, the Court resolved to give due course to the petition and consider it submitted for decision on the basis of the pleadings filed by the parties.

Section 5, Rule 13 of the 1997 Rules of Civil Procedure prescribes two modes of service of pleadings, motions, notices, orders, judgments and other papers, namely: (1) personal service; and (2) service by mail. The first is governed by Section 6, while the second, by Section 7 of said Rule. If service cannot be done either personally or by mail, substituted service may be resorted to under Section 8 thereof.

Pursuant, however, to Section 11 of Rule 13, service and filing of pleadings and other papers must, whenever practicable, be done personally; and if made through other modes, the party concerned must provide a written explanation as to why the service or filing was not done personally. The section reads:

SEC. 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.(n)

Note that Section 11 refers to both service of pleadings and other papers on the adverse party or his counsel as provided for in Sections 6, 7 and 8; and to the filing of pleadings and other papers in court.

Personal service and filing are preferred for obvious reasons. Plainly, such should expedite action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service or filing is done by mail, considering the inefficiency of the postal service. Likewise, personal service will do away with the practice of some lawyers who, wanting to appear clever, resort to the following less than ethical practices: (1) serving or filing

pleadings by mail to catch opposing counsel off-guard, thus leaving the latter with little or no time to prepare, for instance, responsive pleadings or an opposition; or (2) upon receiving notice from the post office that the registered parcel containing the pleading of or other paper from the adverse party may be claimed, unduly procrastinating before claiming the parcel, or, worse, not claiming it at all, thereby causing undue delay in the disposition of such pleading or other papers.

If only to underscore the mandatory nature of this innovation to our set of adjective rules requiring personal service whenever practicable, Section 11 of Rule 13 then 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. The exercise of discretion must, necessarily, consider the practicability of personal service, for Section 11 itself begins with the clause “whenever practicable.”

We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the prima facie merit of the pleading sought to be expunged for violation of Section 11. This Court cannot rule otherwise, lest we allow circumvention of the innovation introduced by the 1997 Rules in order to obviate delay in the administration of justice.

Here, the proximity between the offices of opposing counsel was established; moreover, that the office of private respondents’ counsel was “ten times farther” from the post office than the distance separating the offices of opposing counsel. Of course, proximity

would seem to make personal service most practicable, but exceptions may nonetheless apply. For instance, where the adverse party or opposing counsel to be served with a pleading seldom reports to office and no employee is regularly present to receive pleadings, or where service is done on the last day of the reglementary period and the office of the adverse party or opposing counsel to be served is closed, for whatever reason.

Returning, however, to the merits of this case, in view of the proximity between the offices of opposing counsel and the absence of any attendant explanation as to why personal service of the answer was not effected, indubitably, private respondents' counsel violated Section 11 of Rule 13 and the motion to expunge was prima facie meritorious. However, the grant or denial of said motion nevertheless remained within the sound exercise of the trial court's discretion. Thus, as guided by Section 6, Rule I of the 1997 Rules of Civil Procedure, which ordains that the Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action or proceeding, as well as by the dictum laid down in *Alonso vs. Villamor*, 16 Phil. 315 [1910], the trial court opted to exercise its discretion in favor of admitting the "Answer (with Counterclaims)," instead of expunging it from the record.

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 or *Alonzo vs. Villamor* and other analogous cases, then Section 11 would become meaningless and its sound purpose negated. Nevertheless, we sustain the challenged ruling of the trial court, but for reasons other than those provided for in the challenged order.

The 1997 Rules of Civil Procedure took effect only on 1 July 1997, while the questioned "Answer (with Counterclaims)" was filed only on 8 August 1997, or on the 39th day following the effectivity of the 1997 Rules. Hence, private respondents' counsel may not have been fully aware of the requirements and ramifications of Section 11, Rule 13. In fact, as pointed out by petitioner's counsel, in another case where private respondents' counsel was likewise opposing counsel, the latter similarly failed to comply with Section 11.

It has been several months since the 1997 Rules of Civil Procedure took effect. In the interim, this Court has generally accommodated parties and counsel who failed to comply with the requirement of a written explanation whenever personal service or filing was not practicable, guided, in the exercise of our discretion, by the primary objective of Section 11, the importance of the subject matter of the case, the issues involved and the prima facie merit of the challenged pleading. However, as we have in the past, for the guidance of the Bench and Bar, strictest compliance with Section 11 of Rule 13 is mandated one month from promulgation of this Decision.

WHEREFORE, the instant petition is **DISMISSED** considering that while the justification for the denial of the motion to expunge the “Answer (with Counterclaims)” may not necessarily be correct, yet, for the reasons above stated, the violation of Section 11 of Rule 13 may be condoned.

No pronouncement as to costs.

SO ORDERED.

Vitug, Panganiban and Quisumbing, JJ., concur.

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- [1] Rollo, 21-27.
 - [2] Id., 36-37.
 - [3] Id., 38.
 - [4] Id., 39-48.
 - [5] Id., 50-52.
 - [6] Rollo, 53-55.
 - [7] Id., 17-18.
 - [8] Id., 56-59.
 - [9] Id., 19-20.

SEPARATE OPINIONS

BELLOSILLO, J., dissenting:

This case involves the proper application of Sec. 11, Rule 13, of the 1997 Rules of Civil Procedure, which took effect 1 July 1997.

Restating the facts, on 10 July 1997 petitioner herein filed against private respondents a Complaint (For: Recovery of Possession and Damages with Prayer for Writ of Replevin) in the Regional Trial Court of Parañaque against private respondents. On 8 August 1997, after seeking an extension of ten (10) days from the expiration of its reglementary period to respond, private respondents filed their Answer (with Counterclaims) furnishing counsel for petitioner copy thereof by registered mail.

Alleging violation of Sec. 11, Rule 13, of the 1997 Rules of Civil Procedure, petitioner filed a Motion to Expunge Answer with Counterclaim and Declare Defendants in Default for the reason that the Answer was not served personally on its counsel but only by registered mail.

On 8 September 1997 respondent Judge Helen Bautista Ricafort of RTC-Br. 260, Parañaque City, denied the motion to expunge as well as to reconsider her denial “for lack of merit,” holding that under Sec. 11 of Rule 13 “it is within the discretion of the Court whether to consider a pleading as filed or not.”

Indeed, the trial court took too lightly Sec. 11, Rule 13, of the 1997 Rules of Civil Procedure which provides —

Sec. 11. Priorities in modes of service and filings. — 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.

I find it difficult to agree with respondent Judge that under the above provision it is solely within the discretion of the trial court whether to consider the pleading as filed or not. Section 11 requires that service and filing of pleadings and other papers shall be done personally, whenever practicable. In other words, when personal service is not done, the party who fails to comply with the requirement must explain why. This makes personal service and filing of pleadings mandatory, especially as the rule specifically uses the word “shall,” unless personal service and filing are shown to be impractical. At this stage, the exercise of discretion by the judge does not yet come into play.

In case personal service and filing are neither practical nor feasible then — and only then — can the parties avail of other modes of service and filing, e.g., by registered mail. But resort to other modes must be accompanied by a written explanation why service and filing are not done personally. From that explanation the judge will then determine whether personal service and filing are indeed impractical so that resort to other modes may be made. It is only at this stage when the judge may properly exercise his discretion — and only upon the explanation given.

In the case before us, private respondents gave no explanation why they resorted to service by registered mail and not by personal service. Absent any explanation, respondent judge was without any hypothesis on which to anchor her finding and conclusion that personal service was not practicable. In such a situation, respondent judge could not exercise any discretion and, consequently, could not deny petitioner’s motion to expunge the answer “ for lack of merit.” Respondent judge did not even cite a single reason why personal service was not availed of by private respondents. Consequently, the conclusion that the motion to strike out private respondents’ answer filed by petitioner should be denied “ for lack of merit,” was without any basis, thus amounting to grave abuse of discretion on the part of respondent judge.

To emphasize, the courts discretion can only be exercised soundly if there exists some factual basis for it. The explanation required of the parties serves as the authority for the judge's exercise of discretion. Without any explanation, the judge cannot wield any discretion, much less dismiss the motion to expunge by simply saying that it lacks merit.

Thus, speaking of discretionary power of a trial judge, I said as early as 2 October 1987 in *Rayat Export Industries, Inc. vs. Lorenzana*^[1] that —

Where no explanation whatsoever was given justifying the absence of a party whose presence was required hence there was no factual milieu upon which discretion may be exercised the discretionary power of the court to declare him non-suited or as in default becomes mandatory.

Stated differently, where no explanation is offered to justify resort to service of pleading by mail or other modes of service (and filing for that matter), in lieu of the preferred personal service, hence, no factual milieu is provided upon which judicial discretion may be brought into play, the discretionary power of the court to expunge the pleading becomes mandatory and a disregard thereof constitutes grave abuse of discretion.

Section 11 of Rule 13 provides for priorities in the modes of service and filing of pleadings. By priority we mean an order of preference in the service thereof, such that the first alternative must be availed of, and only upon its non-availability may the second and succeeding options be resorted to. Admittedly, the offices of petitioner's counsel and that of private respondents are located just about two hundred (200) meters from each other — the office of petitioner's counsel at 235 Salcedo St., Legaspi Village, Makati City, and that of private respondents counsel at 132 Amorsolo St., Legaspi Village, Makati City. For lack of any explanation from private respondents we cannot determine the reason why they served and filed their pleading by registered mail instead of personally serving and filing them.

Personal service and filing are obviously preferred so as to fast-track the decongestion of court dockets. No less than our present Constitution mandates the promulgation of rules that shall provide a simplified and inexpensive procedure for the speedy disposition of cases.^[2] In fact, the 1997 Rules of Civil Procedure is required to be construed to promote its objective of securing a just, expeditious and inexpensive disposition of every action and proceeding; hence, strict compliance with the rules is strongly favored. Taking judicial notice of the inadequacy of our postal service, it is to the advantage of both parties if they avail of personal service and filing of pleadings in order to resolve their case soonest.

Prescinding from the foregoing, I cannot agree with the ponencia that “the grant or denial of said motion (to expunge) nevertheless remains within the sound exercise of the trial court’s discretion. *Alonso vs. Villasor*^[3] upon which the ponencia is premised cannot be invoked. The issue in *Alonso* involved merely a defect in form, a defect which did not prejudice the substantial rights of the opposing party. In the instant case, the deviation is not merely formal. It involves non-compliance with the mandatory requirement of Sec. 11 of Rule 13.

I ask: Would it not have been more appropriate and proper for respondent judge to start by requiring compliance with Sec. 11, Rule 13, and grant the motion of petitioner to expunge the answer for obvious non-compliance therewith which requires personal service, and on a motion for reconsideration by private respondents explaining the non-observance of the rule, if such motion is filed, grant reconsideration in the exercise of the court’s discretion? At least the message would have been clear that the rule should first and foremost be obeyed before the same may be relaxed upon exercise of discretion based on a reasonable explanation.

While I am constrained to yield for the moment to the majority pro hac vice in view of the recency of the rule concerned, I am afraid we might be sending the wrong signals to our trial judges that a rule of procedure, particularly Sec. 11, Rule 13, may be taken lightly, if not ignored completely, despite its mandatory character and its publication in a newspaper of general circulation that it was to take effect 1 July 1997 or a year ago. Observance of the 1997 Rules of Civil Procedure, I submit, was never meant to be a useless exercise,

otherwise, the dedicated efforts of its architects would be fruitless. Such lackadaisical attitude in the proper observance of the rules of procedure, regrettably, is one of the culprits in docket congestion and delay.

BELLOSILLO, J., dissenting:

[1] C.A - G.R. No. 04316, 2 October 1987.

[2] Sec. 5, Art. VIII, The 1987 Constitution.

[3] 16 Phil. 315 (1910).

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