

DANILO R. FRANCO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, HON. LABOR ARBITER SALIMATHAR NAMBI, JOHNNY'S MEAT SUPPLY CO., INC., AND/ OR JOHNSON A. CO, BF GENERAL INS...

Ponente: CRUZ, J.

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CRUZ, J.:

Before the National Labor Relations Commission (or “NLRC”), National Capital Region Arbitration Branch, was a complaint for illegal dismissal and undernon-payment of wages, premium pay for holiday and rest day, service incentive leave pay and 13[th] month pay filed by Danilo R. Franco (or “petitioner”) against Johnny’s Meat Supply Co., Inc. and/or Johnson A. Co (or “respondent employer”).

After proper proceedings, the labor arbiter rendered a decision dated June 30, 1997, the decretal portion of which reads:

“WHEREFORE, premises considered, the complainant is found to have been illegally dismissed by way of constructive dismissal and the respondents are directed to pay backwages from October 22, 1992 up to October 22,

1995 or a period of three (3) years and to pay separation pay in lieu of reinstatement computed from November 1989 to present. The complainant’s monetary claims are dismissed for lack of merit.

SO ORDERED.”

Respondent employer appealed to the NLRC, submitting on August 14, 1997 a surety bond in the sum of P93,810.00 posted by BF General Insurance Company, Inc. (or “bonding company”) which, in part, reads:

“The liability of the SURETY under this bond will expire on August 13, 1998 and the SURETY does not assume any responsibility for any liability incurred or created after said date; notice of claims against the SURETY must be given the bonding Company not later than fifteen (15) days from said expiration date and any action against the SURETY under this Bond must be filed within one (1) year from the date the cause of action accrues and failure to do so shall release the SURETY from all liabilities under this bond and shall be a bar to any action against it.”

On October 27, 1997, the NLRC issued a resolution dismissing respondent employer’s appeal for having been filed out of time. Respondent employer filed a motion for reconsideration of said resolution but it was denied per resolution dated October 9, 1998.

On January 29, 1999, petitioner filed a motion for issuance of a writ of execution before the labor arbiter. Because of respondent employer's petition for certiorari before this Court (Eighth Division), docketed as CA-GR SP No. 51568 and entitled “Johnny’s Meat Supply Co., Inc. and Johnson A. Co. vs. National Labor Relations Commission, et al”, the execution proceedings was held in abeyance pending resolution of the petition.

On April 17, 2000, this Court promulgated a decision affirming the NLRC resolution dated October 27, 1997 with modification on the computation of backwages awarded to petitioner. Respondent employer filed a motion for reconsideration but it was denied on July 19, 2000.

Undaunted, respondent employer elevated the case to the Supreme Court via a petition for certiorari (G.R. No. 144146) but it was denied in a resolution dated August 28, 2000. Respondent employer's motion for reconsideration was likewise denied on November 13, 2000. The Supreme Court's August 28, 2000 resolution became final and executory on January 3, 2001.

On May 10, 2001, petitioner filed another motion with the labor arbiter for issuance of a writ of execution to enforce the latter's decision, as modified by this Court.

On November 29, 2001, the labor arbiter issued a writ of execution against respondent employer for the satisfaction of the judgment in the amount of P480,876.27 and against the bonding company for partial satisfaction of said judgment up to the sum of P93,810.00.

However, the writ of execution was returned unserved. Respondent employer was no longer operating at its given address and could not be found. While a notice of garnishment was served on Metropolitan Bank and Trust Company (Libertad, Pasay Branch), respondent employer had no account with said bank.

A notice of garnishment was also served on the bonding company. However, it refused to pay on the ground that its surety bond had already expired.

On June 21, 2002, petitioner filed a "Motion for Issuance of Alias Writ of Execution" and a "Motion to Direct BF General Insurance to Release the Proceeds of the Surety Bond".

On June 28, 2002, the bonding company filed a "Motion to Quash Writ of Execution (dated 29 November 2001) and Notice of Garnishment (dated 29 January 2002)", essentially arguing that it is not liable on its surety bond because of its expiration on August 13, 1998.

On July 16, 2002, petitioner filed an opposition/comment to the bonding company's motion to quash, arguing that under the NLRC Rules of Procedure, the surety bond is effective until final disposition of the case and that non-renewal of the bond and non-payment of the premiums therefor should not prejudice him.

On October 25, 2004, the labor arbiter issued an order (or "assailed order") which pertinently reads:

"We have perused and examine[d] the Surety Bond No. B-0315/97 and we are satisfied that the same has expired on August 13, 1998 and no proof of renewal was submitted. Hence, we find the contention of the bonding company meritorious.

As pointed out by the bonding company at the time the surety bond was issued, the 'Joint Declaration under Oath' was required to be executed only by the employer and its counsel and that the amendment to Section 6, Rule VI of the NLRC Rules of Procedure to the effect that the surety company shall be a part of the undertaking was made effective only on December 18, 1999.

Since the surety company was not a party to the 'Joint Declaration under Oath' which is an undertaking to make the bond subsisting until the final disposition of the case, it cannot be compelled to extend its liability beyond its expiration period. Besides, when the surety bond was submitted as a requirement for the appeal, upon the receipt of the copy of the posted surety bond, the appellee has the responsibility to verify its irregularity (Section 6, Rule VI of the Revised Rules of Procedure of the NLRC). Since the appellee (complainant) did not question the expiry date of the surety bond, it was deemed to have been accepted on that score.

Lastly, the bonding company complied with its obligation to notify the principal/respondents of the imperative need to renew/extend the bond as shown by the expiration notices.

In view of the foregoing, the motion for issuance of Alias Writ of Execution dated June 21, 2002 as far as against the bonding company is hereby DENIED and an Alias Writ be issued against respondents.”

Contesting the assailed order on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, petitioner came to this Court via the instant petition for certiorari. He asserts (i) that the surety bond in question is binding and subsisting until final disposition of the case; (ii) that the stipulation in the bond limiting its effectivity until August 13, 1998 is null and void for being contrary to law; (iii) that non-payment of premium on the bond did not extinguish the bonding company’s liability thereon; (iv) that the amendment to Sec. 6, Rule VI of the NLRC Rules of Procedure (requiring a joint declaration by the bonding company, the employer and his counsel that the bond is genuine and subsisting until final disposition of the case) should be given retroactive effect; and (v) that there is no showing that the bonding company notified respondent employer of the need to renew or extend the surety bond.

The petition was submitted for decision sans the comment required of respondents.

We now resolve.

First, the appropriate remedy from the assailed order is appeal to the NLRC. Thus, Sec. 1, Rule VI of the New Rules of Procedure of the NLRC pertinently provides:

“Section 1. PERIODS OF APPEAL. Decisions, awards or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders of the Labor Arbiter x x x.”

While petitioner did not avail of the appropriate remedy, in apparent violation of the doctrine of exhaustion of administrative remedies, said doctrine is not a hard and fast rule and does not apply where the issue is purely a legal one as in the instant case. Besides, in the interest of substantial justice, especially in cases involving the rights of workers, procedural lapses may be disregarded to enable the Court to examine and resolve the conflicting rights and responsibilities of the parties (*Salinas vs. NLRC*, 319 SCRA 54).

Corollarily, it is a settled rule that certiorari cannot be resorted to as a substitute for the lost remedy of appeal (*Cano-Gutierrez vs. Gutierrez*, 341 SCRA 670). Nevertheless, in exceptional cases where the rigid application of such rule will result in a manifest failure or miscarriage of justice, the provisions of the Rules of Court which are technical rules may be relaxed (*Mercado-Fehr vs. Fehr*, 414 SCRA 288).

Certiorari has been deemed to be justified, for instance, in order to prevent irreparable damage and injury to a party where the trial judge has capriciously and whimsically exercised his judgment, or where there may be danger of clear failure of justice, or where an ordinary appeal would simply be inadequate to relieve a party from the injurious effects of the judgment complained of (*Mercado-Fehr vs. Fehr*, *supra*).

Considering the merits of the petition, blind adherence to the general rule will result in a miscarriage of justice in the case at bench.

Petitioner’s complaint for illegal dismissal and money claims was filed way back in 1992. He obtained a favorable judgment from the labor tribunal at the first instance, but respondent employer brought the case all the way up to the Supreme Court. By the time the judgment became final and executory (in 2001), respondent employer was already nowhere to be found. Hence, the claim against the surety bond, which the labor arbiter denied.

We cannot allow petitioner's long quest for justice to come to naught on a mere technicality. Rules of procedure are mere tools designed to facilitate the attainment of justice. If their strict or rigid application would tend to frustrate, rather than promote, substantial justice, procedural rules may be relaxed (*Ace Navigation Co., Inc. vs. Court of Appeals*, 338 SCRA 70).

After a careful review of the assailed order as well as the arguments raised in the petition, We hold that the bonding company's liability under the surety bond subsists and may be executed upon to satisfy the judgment obtained by petitioner against respondent employer to the extent of the amount of said bond.

We cannot sustain the labor arbiter's ruling that the surety bond expired on August 13, 1998. To do so would defeat the purpose of the appeal bond requirement, that is, to assure the worker that if he finally prevails in the labor case, the monetary award will be given to him upon dismissal of the employer's appeal (*Coral Point Development Corporation vs. NLRC*, 326 SCRA 554). This requirement was embodied in the law to discourage employers from using the appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims (*MERS Shoes Manufacturing, Inc. vs. NLRC*, 286 SCRA 647).

Although the NLRC Rules of Procedure obtaining at the time of posting of the surety bond did not require the bonding company to execute a "Joint Declaration Under Oath", which is an undertaking to make the bond subsisting until the final disposition of the case, it does not mean that the effectivity of the bond can be shortened by agreement of the employer and the bonding company. Thus, it has been held that "the one-year period mentioned (in the surety bond) refers not to the duration or lifetime (thereof), but merely to the payment of the premiums, and, consequently, does not affect at all the effectivity or efficacy of such bond" (*Olib vs. Pastoral*, 188 SCRA 692, citing *Manila Surety and Fidelity Co., Inc. vs. Villarama*, 107 Phil. 891).

Even prior to the amendment of Sec. 6, Rule VI of

the NLRC Rules of Procedure by way of requiring the "Joint Declaration Under Oath" by the employer and the bonding company, said section unequivocally provided that the bond shall subsist until the finality of the case disposition, viz:

"Section 6. BOND. In case the decision of [a] Labor Arbiter, the Regional Director or his duly authorized Hearing Officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond, which shall be in effect until final disposition of the case, issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of damages and attorney's fees." (Emphasis and underscoring supplied)

Since the law clearly provides for the life span or effectivity of the surety bond posted in appealed labor cases, employers and bonding companies cannot, by the expedient of shortening the period of the surety's liability, circumvent the express requirement of the law. Although parties to a contract are free to stipulate terms and conditions which they deem convenient, the same should not be contrary to law, morals, good customs, public order or public policy (*Pascual vs. Ramos*, 384 SCRA 105). This is consistent with the principle that while a contract is the law between the parties, the provisions of positive law which regulate contracts are deemed written therein and shall limit or govern the relations between the parties (*Heirs of Severina San Miguel vs. Court of Appeals*, 364 SCRA 523).

More in point is the Supreme Court's pronouncement in *Metro Construction, Inc. vs. Chatham Properties, Inc.* (365 SCRA 697) that "[r]ules of procedure are matters of public order and interest and unless the rules themselves so allow, they cannot be altered, changed or regulated by agreements between or stipulations of the parties for their singular convenience."

Since the provision in the surety bond limiting the bonding company's liability until August 13, 1998 violates the express requirement of the NLRC Rules of Procedure, said limitation is null and void ab initio and should not be considered as part of the bond agreement.

Non-payment of premiums for the surety bond after its supposed expiry date is likewise of no moment. The rule is that the bond is not deemed extinguished by reason alone of non-payment of the premium thereon (*Olib vs. Pastoral*, supra). Considering that the posting of the appeal bond in labor cases is not an ordinary suretyship but one intended to protect the paramount rights of workers, non-payment of the premiums cannot and should not prejudice the worker who was not even privy to the surety agreement between his employer and the surety. To hold otherwise would open the floodgates to fraud and encourage employers and sureties to conspire against hapless workers who will be left with nothing but a Pyrrhic victory.

WHEREFORE, the instant petition is GRANTED and the order of the labor arbiter dated October 25, 2004 is ANNULLED and SET ASIDE. The labor arbiter is ordered to issue an alias writ of execution against respondent BF General Insurance Company, Inc. for the satisfaction of his decision dated June 30, 1997, as modified by this Court (CA-G.R. SP No. 51568), to the amount of P93,810.00.

SO ORDERED.

Reyes, Jr., and Lanzanas, JJ., concur.

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