NATIONAL POWER CORPORATION AND NATIONAL POWER BOARD, PETITIONERS, V. HON. RALPH LEE, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 83, REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDI...

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Before Us is the "EX-ABUDANTI CAUTELA MOTION TO STRIKE OUT PETITION"[1] ("Motion to Strike Out Petition" for brevity) filed by private respondents Emma Y. Baysic and Narcisa G. Santiago, for themselves and in representation of four hundred eighty-eight (488) retirees of the National Power Corporation ("private respondents" for brevity), seeking for Us to strike out or otherwise dismiss the "AMENDED PETITION FOR CERTIORARI AND PROHIBITION"[2] ("Amended Petition" for brevity) filed by petitioners National Power Corporation and National Power Corporation Board ("petitioners" for brevity) on the following grounds:

> "38. In sum, petitioners failed to satisfy at least two (2) basic preconditions to the filing of the Amended Petition:
>
> a. First, they failed to demonstrate – in fact, they tellingly omit any allegation in the Amended Petition – that, as required under Rule 65 of the Revised Rules of Civil Procedure, that 'there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.'
>
> b. As exhaustively discussed above, however, the remedy of an ordinary appeal was not only proper, but also, and more important, available even up to the time that petitioners filed their Amended Petition.
>
> c. Second, aside from the erroneous remedy resorted to by petitioners, the Amended Petition is also procedurally infirm – premature, to be specific – since petitioners did not file a motion for reconsideration of the Decision dated 16 August 2010 prior to the filing of the Amended Petition – assuming without conceding that an ordinary appeal may be dispensed with."[3] (Italics was made in the original, emphasis supplied)

Petitioners filed their "COMMENT/OPPOSITION"[4] to private respondents' Motion to Strike Out Petition[5], alleging as follows:

> "As alleged by the petitioners in the said Petition for Certiorari and Prohibition and as amended, public respondent Judge Lee committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Orders improperly declaring the petitioners in default and in subsequently rendering a default Judgment or Decision dated August 16, 2010 xxx.
>
> xxx
>
> xxx certiorari was the proper remedy considering the patent illegality and nullity of the assailed Orders and Decision, and the grave abuse of discretion committed by public respondent Judge Lee in rendering the same xxx."[6] (Italics was made in the original)

Perusal of the records revealed that petitioners initially filed a "PETITION FOR CERTIORARI AND

PROHIBITION"[7] ("Original Petition" for brevity) to question the following Orders issued by respondent court:

> "1. Order dated January 30, 2009, which granted respondents' Motion to Strike Out Pleading dated November 12, 2008 (RE: Petitioners' Answer dated October 17, 2008);
>
> 2. Order dated September 1, 2009, which denied petitioners' Motion for Reconsideration of the Order dated January 30, 2009;
>
> 3. Order dated November 5, 2009, which stated that petitioners were declared to have been in default per the above Order dated September 1, 2009; and
>
> 4. Order dated May 18, 2010, which denied petitioners' Omnibus Motion to Lift Order of Default and Admit Answer dated April 21, 2010."[8] (citations removed)

However, on August 16, 2010, respondent court rendered a Decision[9] or a "default judgment" that was "based solely on the evidence presented by [private respondents], as a necessary consequence of [petitioners] being declared in default"[10].

Because of this event, petitioners filed their Amended Petition[11] in order to include[12] respondent court's Decision[13] dated August 16, 2010 with those Orders[14] previously issued by respondent court that were being assailed in petitioners' Original Petition[15]. In effect, petitioners' Amended Petition[16] superseded their Original Petition[17], such that petitioners' Original Petition[18] was therefore "deemed withdrawn from the records"[19].

As properly raised by private respondents in their "Motion to Strike Out Petition"[20], petitioners improperly availed of the remedy of a Petition for Certiorari under Rule 65 of the Rules of Court in assailing respondent court's Decision[21] dated August 16, 2010. Petitioners had argued in their Amended Petition[22], the following:

> "III. THE DEFAULT JUDGMENT OR DECISION DATED AUGUST 16, 2010 RENDERED BY PUBLIC RESPONDENT JUDGE IS NULL AND VOID AS IT VIOLATES THE CONSTITUTION, THE LAW AND EXISTING JURISPRUDENCE. IT CONSTITUTES GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.
>
> a.
>
> Private respondents are not entitled to receive retirement gratuity benefits under Commonwealth Act No. 186, as amended, over and above the separation pay granted by NPC under NPB Resolution No. 98-130, as it is (sic) would result to receiving double compensation which is prohibited by Section 8, Article IX-B of the 1987 Constitution and existing jurisprudence.
>
> b.
>
> The retirement gratuity benefits were validly and legally deducted from the separation pay received by private respondents under National Power Board Resolution No. 98-130; hence, private respondents are not entitled to a refund or payment of the same."[23] (Italics and emphasis were made in the original, underscoring supplied)

Given that petitioners argued that respondent court's assailed Decision[24] of August 16, 2010 was contrary to the Constitution, the law, and existing jurisprudence, and that the amount of the award to private respondents was excessive, then, petitioners should have availed of the remedy of filing an Appeal from respondent court's assailed Decision[25] of August 16, 2010 under Rule 41 of the Rules of Court. This being the proper remedy of petitioners, is in accordance with the following pronouncement of the Supreme Court in Roberto Otero vs. Roger Tan, G.R. No. 200134, August 15, 2012:

> "Indeed, a defending party declared in default retains the right to appeal from the judgment by default. However, the grounds that may be raised in such an appeal are restricted to any of the following: first, the

> failure of the plaintiff to prove the material allegations of the complaint; second, the decision is contrary to law; and third, the amount of judgment is excessive or different in kind from that prayed for. In these cases, the appellate tribunal should only consider the pieces of evidence that were presented by the plaintiff during the ex parte presentation of his evidence." (Emphasis Supplied)

Considering that the remedy of Appeal was available to petitioners when they filed their Amended Petition[26]under Rule 65 of the Rules of Court, then petitioners' Amended Petition[27], for being an improper remedy, is dismissible.[28] A Petition for Certiorari under Rule 65 of the Rules of Court may be resorted to only in the absence of an appeal in the ordinary course of law, as is pursuant to the following declaration of the Supreme Court in Spouses Dycoco, et al. vs. The Honorable Court of Appeals, et al. G.R. No. 147257, July 31, 2013:

> "A petition for certiorari under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law. xxx

xxx

> The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is the unavailability of appeal." (Emphasis Supplied)

IN VIEW OF ALL THESE, private respondents' "EX ABUDANTI CAUTELA MOTION TO STRIKE OUT PETITION"[29] is GRANTED. Accordingly, petitioners' "AMENDED PETITION FOR CERTIORARI AND PROHIBITION"[30] is DISMISSED.

SO ORDERED.

Dicdican (Chairman) and Paredes, JJ., concur.

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[1] Rollo, pp. 366-391

[2] (WITH APPLICATION FOR THE IMMEDIATE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION), Rollo, pp. 126-157

[3] Rollo, pp. 386-387

[4] (to private respondents' Ex Abundanti Cautela Motion to Strike Out Petition), Rollo, pp. 402-417

[5] Rollo, pp. 366-391

[6] Rollo, p. 406, 408

[7] (WITH APPLICATION FOR THE IMMEDIATE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION), Rollo, 3-20

[8] Rollo, p. 4

[9] Rollo, pp. 185-210

[10] Rollo, p. 190

[11] Rollo, pp. 126-157

[12] Rollo, p. 127

[13] Rollo, pp. 185-210

[14] Rollo, p. 4

[15] Rollo, 3-20

[16] Rollo, pp. 126-157

[17] Rollo, 3-20

[18] Rollo, 3-20

[19] David Lu vs. Paterno Lu Ym, Sr., et al., G.R. No. 153690, February 15, 2011

[20] Rollo, pp. 386-387

[21] Rollo, pp. 185-210

[22] Rollo, pp. 126-157

[23] Rollo, p. 141

[24] Rollo, pp. 185-210

[25] Rollo, pp. 185-210

[26] Rollo, pp. 126-157

[27] Rollo, pp. 126-157

[28] Priscilla Rigor, et al. vs. Tenth Division of the Court of Appeals, et al., G.R. No. 167400, June 30, 2006

[29] Rollo, pp. 366-391

[30] (WITH APPLICATION FOR THE IMMEDIATE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION), Rollo, pp. 126-157

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