

ACTRON INDUSTRIES, INC., PETITIONER, VS. REGIONAL TRIAL COURT, MAKATI CITY, BRANCH 137, AND QUEST INTERNATIONAL NEDERLAND B.V. (FORMERLY KNOWN AS NAARDEN INTERNATIONAL HOLLAND B...

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Addressed here is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Order[2] dated April 8, 2009 of the Regional Trial Court (“respondent court” for brevity) of Makati City, Branch 137 in SP. PROC. No. M-6656 for “Recognition and Enforcement of Foreign Arbitral Award.”[3]

The antecedent facts are as follows:

Private respondent Quest International Nederland B.V. (“private respondent Quest” for brevity) filed a Petition[4] for “Recognition and Enforcement of Foreign Arbitral Award” dated July 16, 2008.

The other salient facts are those as stated in respondent court's Order[5] dated April 8, 2009, as follows:

“xxx Petitioner Quest (private respondent Quest here) alleged therein that, in a Request for Arbitration filed by herein respondent Industries, Incorporated (petitioner Actron here) before the Secretariat of the International Court of Arbitration, a Final Award was rendered finding therein respondent Quest xxx entitled to reasonable costs and expenses incurred in connection with the preparation and conduct of the arbitration proceedings. In particular, petitioner Quest was awarded legal costs amounting to US\$175,000.00 and EURO\$4,610.92, plus costs of arbitration amounting to US\$72,270.00, which is to be borne by herein respondent Actron. Accordingly, in the Petition for Recognition and Enforcement of Foreign Arbitral Award filed by petitioner Quest before this Court, it is prayed therein that judgment be rendered ‘RECOGNIZING/CONFIRMING the Final Award as a valid foreign arbitral award and ENFORCING the same as against Actron in the same manner as final and executory decisions of courts of law of the Philippines.’

On 1 August 2008, or three (3) days after the instant Petition was assigned by raffle to this Court, petitioner Quest filed a Motion to Grant Recognition and Enforcement of Foreign Arbitral Award, citing Section 48 of Republic Act 9285 in relation to Section 23 of Republic Act 876, as well as Article III of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Petitioner Quest opined that its Petition for Recognition and Enforcement of Foreign Arbitral Award ‘should be heard in a manner and akin to an ordinary motion and, after parties have been given sufficient opportunity to plead their positions and to prove any disputed fact, the Honorable Court should recognize and enforce the Final Award.’

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At the hearing of petitioner Quest's Motion to Grant Recognition and Enforcement of Foreign Arbitral Award held on 12 September 2008, the Court granted respondent Actron twenty (20) days within which to file responsive pleadings to both the Petition and Motion to Grant Recognition and Enforcement of Foreign Arbitral Award, while petitioner Quest was given ten (10) days from receipt thereto within which to file its Reply.”[6] (Emphasis supplied; Italics was made in the original)

On October 8, 2008, petitioner Actron Industries, Inc. ("petitioner Actron" for brevity) filed before respondent court, a Manifestation[7] averring that a copy of its "Answer with Counterclaim"[8] had already been filed by registered mail, and had already been sent by registered mail to private respondent Quest on October 2, 2008.

The other facts were continued in respondent court's assailed Order[9] dated April 8, 2009, to wit:

"In its Answer with Counterclaim, respondent Actron prayed that the Petition for Recognition and Enforcement of Foreign Arbitral Award be dismissed because: (a) the Final Award cannot be recognized or enforced for being contrary to Philippine law and public policy; (b) the said Petition was filed out of time; and (c) petitioner Quest has no capacity to sue because it is doing business in the Philippines without a license.

By way of permissive counterclaims, respondent Actron prayed that petitioner Quest be ordered to pay the following sums:

- (1) US\$1,048,807.00 in unpaid commissions and service fees;
- (2) US\$1,000,000.00 in actual damages arising from the unlawful takeover by petitioner of respondent's distribution business;
- (3) All costs and expenses incurred by respondent Actron in connection with the filing and prosecution of ICC Arbitration No. 12635/TE/MW/AVH entitled 'Actron Industries, Inc. versus Quest International Nederland B.V.' including the fees and/or expenses of legal counsel, experts, consultants, witnesses and the cost of arbitration with the International Chamber of Commerce;
- (4) Appropriate rate of compounded interest on all sums awarded; and
- (5) P3,000,000.00 as attorney's fees and expenses of litigation.

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In its Reply and Motion, petitioner Quest moved that respondent Actron's Answer with Counterclaim be disregarded by the Court upon the following grounds:

- (1) The Answer with Counterclaim failed to provide an explanation why service of the said pleading was not done personally, in violation of Section 11, Rule 13 of the 1997 Rules of Civil Procedure;
- (2) An Answer with Counterclaim is not proper in a Petition for Recognition and Enforcement of Foreign Arbitral Award; and
- (3) In the event that an Answer may be filed, respondent Actron's permissive counterclaims should not be allowed considering that the adjudication thereof required the presence of third parties over whom the Court cannot acquire jurisdiction and that respondent Actron failed to pay the required corresponding docket fees."[10] (Emphasis supplied)

On April 8, 2009, respondent court issued its assailed Order[11] expunging petitioner Actron's "Answer with Counterclaim." [12] The dispositive portion of respondent court's Order decreed:

"WHEREFORE, in view of all the foregoing, respondent Actron's Answer with Counterclaim is ordered expunged from the case records. In the interest of substantial justice, respondent Actron is given ten (10) days from receipt of this Order to file its Comment or Opposition to the Petition which shall be based only upon grounds enumerated in Article 36 of the UNCITRAL Model Law as incorporated in Section 45 of RA 9285. Petitioner Quest is given five (5) days from receipt of said Comment or Opposition to file its Reply, while respondent Actron is given five (5) days from receipt of the said Reply to file its Rejoinder.

SO ORDERED." [13]

Petitioner Actron then filed the Petition for Certiorari[14] at bench, praying that:

“WHEREFORE, petitioner respectfully prays that this Honorable Court:

(a) Upon the filing of this Petition, immediately issue ex parte an order temporarily enjoining respondent court from enforcing its Order dated April 8, 2009 and from hearing respondent's Petition for Recognition and [E]nforcement of Foreign Arbitral Award dated July 16, 2008 for 60 days or until further orders from this Honorable Court, pending the determination of the merits of this Petition;

(b) After notice and hearing, issue a writ of preliminary prohibitory injunction enjoining respondent court from enforcing its Order dated April 8, 2009 and from hearing respondent's Petition for Recognition and [E]nforcement of Foreign Arbitral Award dated July 16, 2008 pending the determination of the merits of this Petition;

(c) Issue an order [1] finding respondent court to have abused its discretion, amounting to lack or excess of jurisdiction and [2] directing respondent court to (i) set aside its Order dated April 8, 2009 and (ii) admit petitioner's Answer with Counterclaim dated October 2, 2008.

Other just or equitable relief are also prayed for.”[15]

Petitioner Actron raised this sole issue:

"Petitioner respectfully submits that in issuing the Order, which expunged petitioner's permissive counterclaims, respondent court acted with grave abuse of discretion amounting to lack or excess of its jurisdiction, when it ruled that:

WHILE RESPONDENT COURT RULED THAT PETITIONER CAN FILE ITS ANSWER OR ANY OTHER RESPONSIVE PLEADING TO COUNTER QUEST'S APPLICATION FOR RECOGNITION AND ENFORCEMENT, PETITIONER CANNOT INTERPOSE ITS PERMISSIVE COUNTERCLAIMS.”[16]

At the outset, petitioner Actron's Petition[17] is defective, due to petitioner Actron's failure to have filed a Motion for Reconsideration earlier of respondent court's Order[18] dated April 8, 2009, to which petitioner Actron alleged that it did not file a Motion for Reconsideration because its Petition for Certiorari[19] raises a pure question of law. But it is for having raised a pure question of law which renders the Petition[20] dismissible.

Specifically, petitioner Actron only raised the issue of whether permissive counterclaims, such as those interposed by petitioner Actron in its “Answer with Counterclaim”[21] which it filed before respondent court, should be allowed in a Petition for Recognition and Enforcement of Foreign Arbitral Award. This was revealed in petitioner Actron's arguments, in its sole assigned ground, to wit:

“51. With all due respect, respondent court erred in stating that it can only 'either: (1) grant the Petition by recognizing the Final Award and thereby order its enforcement; or (2) deny the Petition and refuse recognition and enforcement of the Final Award on any of the abovementioned grounds.' It further went on to state that 'if it should happen that the Court's judgment would deny the Petition for recognition and enforcement of the Final Award, it cannot go on to grant any of respondent Actron's permissive counterclaims. Otherwise, the Court would then be vacating the Final Award without respondent Actron having to file a separate application for setting it aside as an exclusive recourse.' Other than this, respondent court did not elaborate on the reasons why petitioner's Answer with Counterclaim should be expunged.

52. In so stating, respondent court failed to consider that (a) it already ruled on the permissibility of filing an answer as a responsive pleading in the petition for the recognition and enforcement of an arbitral award; (b) there is no law proscribing it from either granting or denying the counterclaims in the event it denies the petition for the recognition and enforcement of the Final Award; and (c) the filing of the Answer with Counterclaim avoids multiplicity of suits wherein the same facts and issues fall within the jurisdiction of the

same court.

53. More, the value and the nature of the permissive counterclaim are within the jurisdiction of the respondent court. A permissive counterclaim may be filed together with the answer. It partakes the nature of a complaint and/or a cause of action against the plaintiff in a case. It is a complaint by defendant against the plaintiff in the nature of a cross complaint. The action in which it is asserted is a mutual action because both parties sue each other mutually in the same action, each of them assuming the role of plaintiff and defendant, before the trial court, and the two suits are brought under a single proceeding where both actions are tried at the same time and finally determined in one and the same judgment.

54. To be true, Rule 16, Section 6 of the 1997 Rules of Civil Procedure, applied suppletorily, xxx

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56. More, if the permissive counterclaims were not allowed and, by necessary implication, petitioner was forced to file an independent action, grave injustice would result in that Quest would try to evade or contest the service of summons issued by a Philippine court, while being given the opportunity to enforce the arbitral award in another Philippine court. Should the trial court favorably grant the petition to enforce and Actron file an independent action but without any success in enforcing service of summons, Philippine courts would be unreasonably be favoring a foreign corporation to the detriment of a Philippine corporation. Justice and equity dictate that this inequitable situation should not be countenanced, after all this Honorable Court is a court of equity.”[22] (Emphasis supplied)

A perusal of the arguments raised by petitioner Actron reveals that the resolution of its sole assigned issue does not require the review of the evidence[23], or an examination of the probative value or truthfulness of evidence presented in order to establish whether or not respondent court committed grave abuse of discretion. Rather, it calls for a resolution of the correct and applicable law to the given set of facts, particularly as to whether permissive counterclaims are allowed in a Petition for Recognition and Enforcement of Arbitral Award.

That a case involves a pure question of law when the doubt in the case only concerns the application of law and jurisprudence, and not when the doubt refers to the truth of the facts alleged by the parties, is pursuant to the following declaration of the Supreme Court in *The Heirs of Nicolas S. Cabigas vs. Melba Limbaco*, G.R. No. 175291, July 27, 2011:

“There is a question of law when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted, and the doubt concerns the correct application of law and jurisprudence on the matter. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts.” (Emphasis supplied)

Petitioner Actron, in justifying that it was exempted from filing a Motion for Reconsideration before it could file the Petition[24] at bench, even admitted in its Petition[25] that it was raising an issue which was purely legal in nature and of first impression. Petitioner Actron had stated that:

“Petitioner opted not to move for reconsideration of the Order considering that the issues being raised in this petition are purely legal in nature and are of first impression. These issues have not been passed upon by this Honorable Court. The resolution of these issues would not only help the parties to the case below; but would also provide a precedent to similar cases that may arise in the future.”[26] (Emphasis supplied)

Given that petitioner Actron's Petition[27] raised a pure question of law, then, the Court of Appeals has no jurisdiction over such Petition. This is because cases, even those which assail the resolutions or orders of the Regional Trial Court[28], which involve pure questions of law should be raised before the Supreme Court in a Petition for Review on Certiorari under Rule 45 of the Rules of Court[29], and not in a Petition for Certiorari

under Rule 65 of the Rules of Court. That this is to be so is pursuant to the pronouncement of the Supreme Court in *Emerlinda Talento v. Hon. Remigio Escalada, Jr.*, G.R. No. 180884, June 27, 2008, to wit:

“From the said Order of the trial court, petitioner went directly to this Court via the instant petition for certiorari under Rule 65 of the Rules of Court.

The question posed in this petition, i.e., whether the collection of taxes may be suspended by reason of the filing of an appeal and posting of a surety bond, is undoubtedly a pure question of law. Section 2(c) of Rule 41 of the Rules of Court provides:

SEC. 2. Modes of Appeal. –

(c) Appeal by certiorari. – In all cases when only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari under Rule 45.

Thus, petitioner resorted to the erroneous remedy when she filed a petition for certiorari under Rule 65, when the proper mode should have been a petition for review on certiorari under Rule 45. Moreover, under Section 2, Rule 45 of the same Rules, the period to file a petition for review is 15 days from notice of the order appealed from. In the instant case, petitioner received the questioned order of the trial court on November 6, 2007, hence, she had only up to November 21, 2007 to file the petition. However, the same was filed only on January 4, 2008, or 43 days late. Consequently, petitioner’s failure to file an appeal within the reglementary period rendered the order of the trial court final and executory.

The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and beyond the power of the Court’s review. Jurisprudence mandates that when a decision becomes final and executory, it becomes valid and binding upon the parties and their successors in interest. Such decision or order can no longer be disturbed or reopened no matter how erroneous it may have been.

Petitioner’s resort to a petition under Rule 65 is obviously a play to make up for the loss of the right to file an appeal via a petition under Rule 45. However, a special civil action under Rule 65 can not cure petitioner’s failure to timely file a petition for review on certiorari under Rule 45 of the Rules of Court. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45, especially if such loss or lapse was occasioned by one’s own neglect or error in the choice of remedies.” (Emphasis supplied)

In any event, the Petition[30] is also dismissible because of petitioner Actron's failure to state the grounds relied upon by petitioner Actron in its Petition for Certiorari[31]. The absence of such Statement of Grounds is fatal to the Petition[32] at bench, considering that such absence is one of the bases for the dismissal of a Petition for Certiorari, provided for under to Sections 1, 2, and 3 of Rule 46, in relation to Section 1 of Rule 65, of the Rules of Court. They state:

“Section 1. Title of cases. In all cases originally filed in the Court of Appeals, the party instituting the action shall be called the petitioner and the opposing party the respondent.

Sec. 2. To what actions applicable. This Rule shall apply to original actions for certiorari, prohibition, mandamus and quo warranto.

Except as otherwise provided, the actions for annulment of judgment shall be governed by Rule 47, for certiorari, prohibition and mandamus by Rule 65, and for quo warranto by Rule 66.

Sec. 3. Contents and filing of petition; effect of non-compliance with requirements. The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

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The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.” (Emphasis supplied)

That petitioner Actron's failure to state the grounds relied upon in its Petition[33] warrants the dismissal of such Petition[34] was as similarly declared by the Supreme Court in Cezar Odango in his behalf and in behalf of 32 complainants vs. National Labor Relations Commission and Antique Electric Cooperative, Inc., G.R. No. 147420, June 10, 2004, to wit:

“These four paragraphs comprise the petitioners entire argument. In these four paragraphs petitioners ask that a writ of certiorari be issued in their favor. We find that the Court of Appeals did not err in dismissing the petition outright. Section 3, Rule 46 of the Rules of Court requires that a petition for certiorari must state the grounds relied on for the relief sought. A simple perusal of the petition readily shows that petitioners failed to meet this requirement.

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Petitions that fail to comply with procedural requisites, or are unintelligible or clearly without legal basis, deserve scant consideration. Section 6, Rule 65 of the Rules of Court requires that every petition be sufficient in form and substance before a court may take further action. Lacking such sufficiency, the court may dismiss the petition outright.” (Emphasis supplied)

IN VIEW OF ALL THESE, the Petition is DISMISSED.

SO ORDERED.

Didican, and Paredes, JJ., concur.

[1] Rollo, pp. 3-35.

[2] Rollo, pp. 41-61.

[3] Rollo, pp. 286-290.

[4] Rollo, pp. 286-290.

[5] Rollo, pp. 41-61.

[6] Rollo, pp. 41-42.

[7] Rollo, p. 42.

[8] Rollo, pp. 361-390.

[9] Rollo, pp. 41-61.

[10] Rollo, pp. 43-44.

[11] Rollo, pp. 41-61.

[12] Rollo, pp. 361-390.

[13] Rollo, p. 61.

[14] Rollo, pp. 3-35.

- [15] Rollo, pp. 33-34.
- [16] Rollo, p. 26.
- [17] Rollo, pp. 3-35.
- [18] Rollo, pp. 41-61.
- [19] Rollo, pp. 3-35.
- [20] Rollo, pp. 3-35.
- [21] Rollo, pp. 361-390.
- [22] Rollo, pp. 27-29.
- [23] Republic of the Philippines vs. Vega, et al., G.R. No. 177790, January 17, 2011.
- [24] Rollo, pp. 3-35.
- [25] Rollo, pp. 3-35.
- [26] Rollo, pp. 4-5.
- [27] Rollo, pp. 3-35.
- [28] Mendoza, et al. v. Villas, et al., G.R. No. 187256, February 23, 2011.
- [29] Mendoza, et al. v. Villas, et al., G.R. No. 187256, February 23, 2011.
- [30] Rollo, pp. 3-35.
- [31] Rollo, pp. 3-35.
- [32] Rollo, pp. 3-35.
- [33] Rollo, pp. 3-35.
- [34] Rollo, pp. 3-35.

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