

NATIONAL POWER CORPORATION AND NATIONAL POWER BOARD, PETITIONERS, VS. EMMA Y. BAYSIC AND NARCISA G. SANTIAGO, RESPONDENTS.

G.R. No. 213893. September 25, 2019

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

Antecedents

Proceedings Before the Trial Court

On July 12, 2007, private respondents Emma Y. Baysic and Narcisa G. Santiago, for themselves and in representation of four hundred eighty-eight (488) retirees of petitioner National Power Corporation (NPC) filed with the Regional Trial Court, Quezon City – Branch 83 a Petition for Mandamus with Prayer for Accounting and Motion for Evidentiary Hearing pertaining to their alleged gratuity pay and financial assistance as retired employees of the NPC which had accrued to them before the enactment of Republic Act No. 9136 (RA 9136) or the Electric Power Industry Reform Act (EPIRA).[1]

In their Answer dated October 17, 2008, petitioners averred, among others, that their obligation to provide financial assistance and other benefits only applied to NPC personnel who were employed with government service as of the enactment of the EPIRA law.[2]

On November 12, 2008, private respondents moved to strike out petitioners' Answer for having been improperly verified. There was allegedly no proof that Atty. Melchor P. Ridulme, NPC Vice-President and General Counsel, was authorized to cause the preparation and filing of the Answer and that the verification was not done in accordance with Section 4, Rule 7 of the Rules of Court.[3]

By Order dated January 30, 2009, the trial court directed petitioners' Answer to be expunged from the records for being a mere scrap of paper.[4]

Under Order dated November 5, 2009, the trial court declared petitioners in default.[5]

Petitioners subsequently moved to lift the Order of Default and to Admit Attached Answer which the trial court denied by its Order dated May 18, 2010.[6]

Proceedings Before the Court of Appeals

Aggrieved, petitioners went to the Court of Appeals via a Petition for Certiorari and Prohibition.[7]

Meantime, the trial court rendered a default judgment against petitioners.[8]

Thereupon, petitioners amended their petition, this time, including as one of the assailed trial court's dispositions the Default Judgment.[9]

On the other hand, private respondents filed an Ex Abundanti Cautela Motion to Strike Out Petition claiming that the Amended Petition for Certiorari was improper since the remedy of appeal from the decision of the trial court was actually available to petitioners, thus precluding them from availing of the remedy of certiorari.[10]

By Resolution dated March 4, 2014, the Court of Appeals granted the Ex Abundanti Cautela Motion to Strike Out Petition and accordingly dismissed the Amended Petition.[11]

The Court of Appeals ruled that petitioners improperly availed of the petition for certiorari as a remedy considering that a party declared in default retained the right to appeal from the trial court's default judgment. Since the remedy of appeal was in fact available, petitioners' Amended Petition for Certiorari should be dismissed.[12]

By Resolution dated August 11, 2014, petitioners' motion for reconsideration was denied.[13]

The Present Petition

Petitioners now seek affirmative relief from the Court and pray that the assailed dispositions of the Court of Appeals be reversed and a new one rendered declaring petitioners' Amended Petition for Certiorari and Prohibition to be a proper remedy against the trial court's Default Judgment.

Ruling

Petitioners argue that contrary to the Court of Appeals' ruling, a petition for certiorari is the proper remedy where a party imputes grave abuse of discretion on the trial judge who improvidently declared them in default and consequently rendered a default judgment against them.[14]

They further assert that the trial court erred in considering their Answer as an unsigned pleading in view of its alleged lack of proper verification.[15]

We grant the petition.

True, in cases of default judgments, the remedy of the party declared in default is appeal. But when that party charges the trial court with grave abuse of discretion amounting to excess of jurisdiction in declaring this party in default and eventually rendering judgment against it, the extraordinary remedy of certiorari under Rule 65 of the Rules of Court may be availed of.

In *David v. Judge Gutierrez-Fruelda, et al.*, [16] the Court enumerated the remedies of a party declared in default, viz:

x x x One declared in default has the following remedies:

- a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);
- b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;
- c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 [now Section 1] of Rule 38; and
- d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41).

Moreover, a petition for certiorari to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration.

Also, in *Martinez v. Republic of the Philippines* citing *Matute v. Court of Appeals*,^[17] the Court pronounced that a party who was improvidently declared in default has the option to either perfect an appeal or interpose a petition for certiorari seeking to nullify the order of default even before the promulgation of a default judgment, or in the event that the latter has been rendered, to have both court decrees – the order of default and the default judgment – declared void.

In fine, the Court of Appeals erred when it ruled that petitioners availed of the wrong remedy. Under Rule 65, while the remedy of appeal is indeed available to petitioners, the same is clearly not a plain, speedy, and adequate remedy in light of petitioners' vigorous assertion that the trial court committed grave abuse of discretion when it declared petitioners in default and rendered an adverse judgment against them. Petitioners' availment of a Petition for Certiorari therefore, is proper and should have been taken cognizance by the Court of Appeals.

Notably, petitioners are interposing a *prima facie* meritorious defense involving the issue of disbursement of public funds. It is, thus, in the higher interest of substantial justice that petitioners should be given their day in court.

So must it be.

ACCORDINGLY, the petition for review is GRANTED. The Resolutions dated March 4, 2014 and August 11, 2014 of the Court of Appeals in CA-G.R. SP No. 115773 are REVERSED and SET ASIDE. The Court of Appeals is DIRECTED to resolve the Amended Petition for Certiorari and Prohibition on the merits, with utmost dispatch.

SO ORDERED.

Carpio (Chairperson), Caguioa, J. Reyes, Jr., and Zalameda, JJ., concur.

[1] Rollo, p. 23.

[2] *Id.* at p. 26.

[3] *Id.*

Section 4. Verification. — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

A pleading required to be verified which contains a verification based on "information and belief, or upon "knowledge, information and belief, or lacks a proper verification, shall be treated as an unsigned pleading.

[4] *Id.* at p. 27.

[5] *Id.*

[6] *Id.* at p. 28.

[7] *Id.* at p. 29.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id. at pp. 57-63.

[13] Id. at pp. 65-66.

[14] Id. at pp. 21-50.

[15] Id.

[16] 597 Phil. 354, 361 (2009).

[17] 536 Phil. 868, 876-877 (2006).

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