

RAFAEL S. DIZON, IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF THE DECEASED JOSE P. FERNANDEZ, REDENTOR MELO, ELIODORO C. CRUZ, PIER 8 ARRASTRE & STEVEDORING SERVICES, INC....

G.R. No. 96296. June 18, 1992

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

In the original action which has given rise to the proceedings at bar[1] -- instituted in 1975 by the plaintiff Jose Balde (private respondent herein) principally for the recovery of damages resulting from the allegedly illegal termination of his employment from the so-called "Fernandez Companies"[2] effected by herein petitioners -- one of the defendants, Jose P. Fernandez, denominated the "principal" one, died before final judgment of the Trial Court. The legal consequences of that party's death are what are now chiefly in issue.

The complaint filed in the Court a quo [3] named as defendants the six (6) petitioner corporations herein, as well as (1) Jose P. Fernandez "in his own personal capacity and/or as Chairman of the Board, President, or Director" of said firms; (2) Redentor R. Melo, "in his own personal capacity and/or as Chief Legal Counsel of Pier 8 Arrastre & Stevedoring Services, Inc.;" and (3) Eliodoro C. Cruz, "in his own personal capacity and/or as a legal assistant" in the same company. It alleged that Balde was "summarily ousted and dismissed" from his job as "Chief Accountant and Credit & Collection Manager of Pier 8 Arrastre and Stevedoring Services ** (since) 1973 and Chief Accountant of Western Pacific Corporation ** (since) 1974."

The defendants filed a motion to dismiss on the ground that the Court had no jurisdiction over the nature of the action, which was essentially a "'money claim' arising from an employer-employee relationship" exclusively cognizable by the National Labor Relations Commission, and that no official decision had yet been reached regarding termination of Balde's employment.[4] The defendants also filed a supplemental motion urging dismissal of the action because venue had been improperly laid.[5] After oppositions were filed to both motions, the Court issued an Order holding "in abeyance the resolution ** (thereof) until pre-trial is conducted and evidence is presented ** without prejudice to dismissing the case when the ground for dismissal becomes apparent." [6]

The defendants thereafter presented their "Answer with Compulsory Counterclaim," which contained specific denials and qualified admissions of the averments of the complaint; alleged as affirmative defenses the same grounds alleged in their motions to dismiss, and the fact that they had acted entirely in accordance with law and in all good faith in discharging Balde from employment, he having "done acts prejudicial and inimical to their interests and (which) have caused damage;" and seeking recovery of moral, actual and exemplary damages resulting from Balde's "completely unfounded and baseless action." [7] Pre-trial and trial ensued after Balde filed his answer to the counterclaim and a reply to the answer.

Balde's presentation of his evidence-in-chief was concluded upon the admission by the Court of his exhibits over

the defendants' objections, by Order dated October 21, 1987.

Some two weeks afterwards, or more precisely on November 7, 1987, defendant Jose P. Fernandez died. Notice thereof was given to the Court by his counsel, through a manifestation dated November 16, 1987.

As intimated in the opening paragraph of this Decision, the death of Fernandez brought up the question of the legal consequences of that demise, and the action that the Trial Court should properly take in view thereof. For the sake of clarity, and the better to gauge the propriety of the action actually taken by Trial Court, the narration of the material facts is interrupted at this point, so that a brief exposition of the applicable law may be made.

The effects of the death of a defendant in a civil suit are dependent upon the nature of the action: whether (a) the action is a personal one for "recovery of money, debt or interest thereon,"[8] or (b) is not for said purpose,[9] i.e., it is a real action,[10] or one for recovery of personal property "or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal." [11] The effects of the defendant's death are dependent, as well, on the time of his demise.

The law says that "(w)hen the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance (now Regional Trial Court), it shall be dismissed to be prosecuted in the manner especially provided in these rules." [12]

The "especial" manner of the prosecution of said money claims against the decedent is set forth in Rule 86 of the Rules of Court,[13] in connection with the judicial proceedings for the settlement of the estate of a deceased person. "The reason for the dismissal of the ordinary action," as a noted commentator stresses, "is that upon the death of the defendant a testate or intestate proceeding shall be instituted in the proper court wherein all his creditors must appear and file their claims which shall be paid proportionately out of the property left by the deceased. It is, therefore, to avoid useless duplicity of procedure that the ordinary action must be wiped out from the ordinary courts." [14]

If the defendant dies after final judgment of the Regional Trial Court, the action (for money, debt or interest thereon) is not dismissed, and an appeal may be taken by or against the administrator; [15] but if that judgment against the deceased becomes final and executory, it shall be enforced, not by execution under Rule 39, but in accordance with Section 5 of Rule 86, [16] i.e., by presenting the same as a claim against the estate.

If, on the other hand, the claim against the defendant is other than for "money, debt or interest thereon" -- i.e., it is a real action, [17] or one for recovery of personal property "or to enforce a lien thereon, and, actions to recover damages for an injury to person or property, real or personal," supra [18] -- and the defendant dies, the claim against him is not thereby extinguished, and the action will not be dismissed but continue against the decedent's legal representative. Section 17, Rule 3 specifies the procedure to be followed, viz.

" * *. After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs."

The record discloses that the Court did not dismiss the action as against the deceased defendant, Fernandez, conformably with Section 21, Rule 3. What it did was: (a) to require the defendants' new counsel, former Supreme

Court Justice Arsenio P. Dizon, by Order dated November 21, 1987, "to effect the substitution of said deceased defendant within thirty (30) days **,"[19] (a requirement it reiterated in another Order dated October 4, 1988); and (b) on later learning that said Justice Dizon was the Administrator of the Fernandez Estate, to require the latter, by Order dated January 2, 1989, to appear before it on February 4, 1989 (later reset to March 6, 1989) "to be substituted as party defendant for and in behalf of the deceased Jose P. Fernandez". The Trial Judge was obviously proceeding in accordance with Section 17, Rule 3; and it was doing so quite erroneously, since the action against the deceased and his co-defendants was clearly one for the "recovery of money, debt or interest thereon" which, by direction of Section 21 of the same Rule, should "be dismissed to be prosecuted in the manner especially provided in these rules," at least in so far as concerned the deceased defendant.

Justice Dizon was unable to appear at the hearing of March 6, 1989, on account of the poor state of his health at the time. This he alleged in a telegram to the Court, and in a subsequent formal motion, seeking on that account a resetting of the hearing to "either April 17, 18 and 28/89 or May 1, 2 and 3/89." [20] Unfortunately, neither the telegram nor the motion was received by the Trial Court in time. Hence, by Order dated March 6, 1989, the Court directed plaintiff Jose Balde to formally move in writing to have the case submitted for decision by reason of the defendants' failure to appear despite notice.

When the defendants received notice of the Order of March 6, 1989, they promptly moved for reconsideration through Atty. Rafael Dizon, under date of March 18, 1989.[21] By Order dated March 31, 1989, the Trial Court, without referring to its earlier Order of March 6, 1989, re-scheduled the hearing on April 24, 1989, but required that "if and when Atty. Arsenio Dizon shall still be indisposed during the next hearing, one of the associates of the law firm shall appear for the defendants in order to avoid further delay in the disposition of this case ** (considering that) this case was filed since 1975 and this case could not be disposed of because of continuous postponement by the parties." [22]

However, notice of the Order of March 31, 1989 -- resetting the hearing on April 24, 1989 -- sent from Ligao, Albay, was not received by the defendants in Metro Manila until the very day of the hearing, April 24, 1989. Atty. Rafael Dizon immediately dispatched a telegram to the Court that same day, reading as follows: "RECEIVED COPY MARCH 31, 1989 ORDER SETTING HEARING OF CIVIL CASE, 528 APRIL 24 ONLY TODAY APRIL 24, 1989. REQUEST RESET TO MAY 2,14, 25, 31, JUNE 1, 2, 1989. FORMAL MOTION TO FOLLOW." The telegram evidently came too late. What the Court had before it when the case was called at the appointed hour on April 24, 1989 was Atty. Dizon's motion dated March 18, 1989 for reconsideration of the Order of March 6, 1989, which had already been granted (the Court having on March 31, 1989, reset the hearing on April 24, 1989). The Court then proceeded to declare said motion of April 18, 1989 "moot and academic" and, in view of the defendants' absence at the hearing of April 24, 1989, to consider the case submitted for decision. These dispositions it made in the following Order, to wit:

"When this case was called for hearing this morning, the court received the Motion seeking for reconsideration of the order dated March 6, 1989 considering this case submitted for decision, for failure of counsel for the defendants to appear on the said setting. The record shows that the order sought to be reconsidered by defendants has already been reconsidered by this court, when the court ordered on March 31, 1989 to set this case for today.

The Motion for Reconsideration filed by Atty. Rafael S. Dizon, now appearing as counsel for the defendants, is hereby considered moot and academic.

In view, however, of the fact that the defendants and counsel failed to appear today without justifiable cause, on motion of plaintiff, this case is hereby ordered submitted for decision based on the evidence so far presented."

According to the petitioners, notices of the Orders of April 24, 1989 and March 31, 1989 were never served on them or their counsel.[23] This is why, under date of October 19, 1989, they filed a "Motion to Resolve Motion for Reconsideration dated March 18, 1989 and to Set Case for Hearing." [24] This last motion was resolved by the Trial Court -- now presided over by Hon. Protacio C. Sto. Tomas -- in an Order dated October 17, 1989. In said Order the Court quoted verbatim the Order of April 24, 1989 of "Hon. Salvador D. Silerio, then Presiding Judge of this Court;" pointed out that said order of April 24, 1989 "has not been reconsidered and set aside;" and directed the immediate transmittal, "pursuant to an existing Administrative Order issued by the Supreme Court, ** (of) the records ** ** to Judge Salvador D. Silerio, Presiding Judge of RTC, Branch 8, Legazpi City for him to render the corresponding decision." [25]

The petitioners received copy of the Order of October 17, 1989 on November 7, 1989. On the same day, they also received a copy of another Order of the same Court dated October 25, 1989, [26] dealing with their motion of October 19, 1989 and reading as follows:

"The records disclosed that the Motion to Resolve Motion for Reconsideration dated March 18, 1989 and to Set Case for Hearing filed by Atty. Rafael S. Dizon dated October 19, 1989 has already been resolved and acted upon, in the sense, that this case was already submitted for decision as of April 24, 1989 signed by Hon. Salvador D. Silerio, presiding Judge, copy of which was furnished Atty. Rafael Dizon. Atty. Dizon appears not to have a fixed address as the order of the court sent to him addressed at 5th Floor, Strata Building, Emerald Avenue, Ortigas Commercial Complex, Pasig, Metro Manila has not been claimed by said counsel.

Examining the instant motion, we find that it does not conform with the mandatory requirements of Sections 4, 5 and 6 of Rule 15 of the Rules of Court.

Wherefore, the motion is denied."

On November 21, 1989, the petitioners once again filed a motion for reconsideration, this time directed against the Orders of April 24, October 17, and October 25, 1989. In that motion, denominated "Motion for Reconsideration with Motion to Dismiss," [27] the petitioners -

1) averred that they had failed to appear at the hearing on April 24, 1989 at 8:30 a.m., as directed in the Order of March 31, 1989, because they received notice thereof "ONLY ON THE VERY SAME DAY AND PAST THE TIME OF THE SCHEDULED HEARING," as stated in their telegram of April 24, 1989; and

2) argued that, "due to defendant Jose P. Fernandez death on November 7, 1987" and in light of "Rule 3, Sec. 21," the case "must necessarily be dismissed and prosecuted pursuant to Sec. 1, Rule 87 of the Rules of Court."

The petitioners set the motion for hearing on December 6, 1989 at 8:30 A.M., furnishing copy thereof on adverse counsel by registered mail. In anticipation of his attendance at the hearing of his motion, Atty. Rafael Dizon booked passage on the PAL flight from Manila to Legazpi City on December 5, 1989 and from Legazpi to Manila on December 6, 1989. [28]

Events however made it impossible for Atty. Dizon to appear at the sala of Judge Sto. Tomas on December 6, 1989. These events, specified by Dizon, were those resulting from the aborted coup d'etat on December 1, 1989, i.e., "the closure of the Manila Domestic Airport, the indefinite cancellation of all domestic airline flights and the unavailability of public transportation going out of Metro Manila." Alleging these as basis, Atty. Dizon sought a resetting of the hearing on his motion to December 20, 1989, through a telegram, [29] and an "Urgent Motion to Reset dated December 4, 1989. [30]

The Court denied the telegraphic request for postponement, in an Order dated December 6, 1989, viz.:

"When the Motion for Reconsideration with Motion to Dismiss dated November 21, 1989 was called for

hearing, the movant Rafael S. Dizon failed to appear notwithstanding that this is the date set forth by him. However, a telegram has been received wherein said movant prays for a postponement of the hearing of said motion alleging that a formal motion will follow.

Examining the records, we find that the first motion for reconsideration dated March 18, 1989 was already resolved and denied by this Court in its order of October 25, 1989. This being the case, and considering that the rules does not allow a second motion for reconsideration without first securing leave of court, the instant motion for reconsideration dated November 21, 1989 is DENIED."

In view of the foregoing development, the petitioners felt constrained to institute, as they did institute in the Court of Appeals a special civil action of certiorari to annul and set aside the Trial Court's five (5) Orders just mentioned, of April 24, May 29, October 17, October 25, and December 6, 1989.[31] Their action failed. The Appellate Tribunal declared that upon the facts, it was "not prepared to rule that respondent Court's issuance of the assailed orders is tainted with grave abuse of discretion calling for the application of the extra-ordinary writ of certiorari," and accordingly dismissed their petition. More particularly, it ruled that -

- 1) "the alleged error committed by respondent Court in not dismissing the complaint against the deceased defendant Jose Fernandez, if at all, is merely an error of judgment and not of jurisdiction," and hence, not correctible by the special civil action of certiorari under Rule 65;
- 2) "even if the claim against the deceased ** Fernandez may be dismissed, it does not necessarily follow that the complaint in Civil Case No. 528-LV should be dismissed in toto, considering that there are other defendants in the case, and considering further that some of the defendants, the principals at that, are corporate entities with separate juridical personalities;" and
- 3) "if petitioners did not receive copies of the orders issued by respondent Court, it was for the reason that they have been continuously changing their address."

Their motion for reconsideration having been denied, by Resolution of the Court of Appeals dated November 21, 1990, the petitioners have appealed to this Court. Here they contend that:

- 1) "The Rules of Court mandate the dismissal of the case and not substitution of the deceased defendant;" and
- 2) They "had a valid/justifiable cause for failing to appear in the scheduled hearing."

The private respondent's two-page comment dated February 16, 1991 submitted in response to the Court's requirement therefor, does nothing except to assert, basically, that "there is no showing at all that the Hon. Court of Appeals acted with grave abuse of discretion," contrary to the petitioners' claim of "patent excess of jurisdiction and/or grave abuse of discretion" on the part of the Appellate Court."[32]

By this Court's Resolution of April 15, 1991, the petition was given due course and memoranda required of the parties, which have since been submitted.[33]

The first point raised by petitioners is well taken. As already stated,[34] the law is quite explicit and leaves the Trial Court with no choice: "When the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance (now Regional Trial Court), it shall be dismissed to be prosecuted in the manner especially provided in these rules." [35] It was therefore error for the Trial Court to decline to dismiss the suit as against the deceased Fernandez and to insist on continuing with the action as to Fernandez by ordering his substitution by his administrator.[36]

It was error, too, for the Trial Court to deny Atty. Dizon's motion dated November 21, 1989 for reconsideration of the Orders of April 24, October 17, and October 25, 1989, on the ground that it was in effect a second motion for

reconsideration and "the rules does (sic) not allow a second motion for reconsideration without first securing leave of court ** ." There is no such rule as regards interlocutory orders like those sought to be reconsidered. The Trial Judge might possibly have had in mind Section 4, Rule 37, of the Rules of Court, governing a "second motion for new trial, based on a ground not existing nor available when the first motion was made," but the section clearly applies only to final judgments, not to interlocutory orders. The Trial Judge might have had in mind Section 1, Rule 52 pertinently providing that "(n)o more than one motion for re-hearing or reconsideration shall be filed without express leave of court," but again, it is clear that the proviso applies only to final judgments of the Court of Appeals, not to interlocutory orders or resolutions. The Trial Judge might have had in view Section 11 of Batas Pambansa Bilang 129 (Judiciary Reorganization Act of 1980) which inter alia decrees that "no second motion for reconsideration shall be entertained," or paragraph 4 of the Interim or Transitional Rules relative to the implementation of said B.P. Blg. 129, promulgated by this Court, declaring that "(n)o party shall be allowed a second motion for reconsideration of a final order or judgment;" but again these provisions obviously have reference not to interlocutory orders but to final judgments or orders. A second motion attacking an interlocutory order might possibly be denied on the ground that it is a "rehash" or mere reiteration of grounds and arguments already passed upon and resolved by the Court; it cannot be rejected on the ground that a second motion for reconsideration of an interlocutory order is forbidden by law.

The question that now arises is whether these errors amount to grave abuse of discretion on the part of the Trial Judge. The first does. In adamantly refusing to dismiss the action against the deceased Fernandez so that the claim against him might be filed in the special proceedings for the settlement of his estate, it is clear that His Honor was refusing to apply an explicit mandate of the Rules of Court although well aware of it, and of the fact that no reason existed in the record for excepting the case at bar from the operation of the rule. Such a refusal, in other words, may not be deemed to constitute "merely an error of judgment and not of jurisdiction," as the Court of Appeals characterizes it, but as an outright defiance of the plain provisions of the Rules of Court which had been insistently brought to his attention; an act therefore, executed without any justification in law, whimsically, capriciously, and oppressively; an act, in short, done with grave abuse of discretion.[37]

What has just been stated makes inconsequential the failure of Atty. Dizon to appear before the Court on December 6, 1989, the date set by him for the hearing of his motion for reconsideration of November 21, 1989 -- in which he asked that said hearing be reset because fortuitous events precluded his appearance, and reiterated the prayer that the action be dismissed as against defendant Fernandez because of the latter's demise. For even assuming that Atty. Dizon's failure to receive notices of, and consequent omission to appear at, the hearings of February 4, 1989, March 6, 1989 and April 24, 1989 were inexcusable, because the failure to receive said notices was due to his "continuously changing his address," as the Court of Appeals points out, that circumstance did not make unmeritorious the motion for dismissal of the suit as against deceased Fernandez. It must be mentioned, however, in fairness to Atty. Dizon, that he had as a matter of fact made preparations for presenting himself before the Trial Court at the hearing of December 6, 1989, booking passage on Philippine Airlines on December 5, 1989, and that the closure of airports and cancellation of domestic flights on account of the aborted coup d'etat of December 1, 1989 -- of which the Court takes judicial notice -- had indeed made impossible his intended appearance before the Trial Court on the appointed day, December 6, 1989.

Not to be overlooked in this case is the nature of the complaint instituted by Jose Balde in the Trial Court,[38] which upon sufficient reflection is disclosed as pertaining to the exclusive jurisdiction of the Labor Arbiters of the Department of Labor and Employment and not the regular courts of justice. That complaint alleged that Balde was "summarily ousted and dismissed" from his job as "Chief Accountant and Credit & Collection Manager of Pier 8 Arrastre and Stevedoring Services ** (a job he had held since) 1973 and Chief Accountant of Western Pacific corporation ** (held since) 1974." It averred that despite his having worked efficiently and caused an increase in

the profitability of the companies, and allegedly on evidence known by defendant Cruz to be sham -- that he (Balde) was implicated in some anomaly in the procurement of supplies and spare parts -- said defendant Cruz unceremoniously relieved him of his duties and sealed and searched his personal belongings; that on his (Balde's) insistence, an investigation was eventually conducted by defendant Melo, the Chief Legal Counsel, ostensibly to ascertain the truth but which was actually nothing but an "inquisition" characterized by "malice, bias, prejudice and partiality," at which he was not accorded full opportunity to defend himself; and that Fernandez, the highest corporate official in the corporations, turned a deaf ear to Balde's pleas for a "speedy and impartial investigation." Upon these factual assertions, the complaint prayed for the payment by the defendants to Balde of actual, moral, and exemplary damages in the aggregate amount of P1,100,000.00, attorney's fees in the sum of P100,000.00, and "such other reliefs equitable in the premises." It did not include reinstatement as a specific relief.

The complaint, in other words, set forth claims for money arising from employer-employee relations. Now, at the time that the complaint was filed, in 1975, exclusive jurisdiction over such "money claims arising from employer-employee relations"[39] as well "all other cases or matters arising from employer-employee relations,"[40] was vested by the law in the Labor Arbiters of the National Labor Relations Commission.[41] That jurisdiction remained substantially unaffected by subsequent amendments of the Labor Code up to 1989,[42] when Republic Act No. 6715 became effective, except that for a time, about three (3) years, Labor Arbiters were divested of competence to "entertain claims for moral or other forms of damages." [43]

Under Republic Act No. 6715,[44] embodying the latest amendments to the Labor Code of the Philippines, the following cases inter alia fall within the "original and exclusive jurisdiction" of Labor Arbiters, to wit:

“* * *

(2) Termination disputes;

(3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

(4) Claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations;

* * *

(6) Except claims for employees compensation, social security, medicare and maternity benefits, all other claims arising from employer-employee relations, including those persons in domestic or household services, involving an amount not exceeding five thousand pesos (P5,000.00) whether or not accompanied with a claim for reinstatement."

The claims in question do not involve "wages, rates of pay, hours of work and other terms and conditions of employment." They do constitute, however, a "termination dispute," and are actually "claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations," unaccompanied by a prayer for reinstatement. As such they are, as the law clearly says, within the "original and exclusive jurisdiction" of Labor Arbiters. In other words, whether under the law at present in force, or that at the time of the filing of the complaint, Jose Balde's cause falls within the exclusive original jurisdiction of the Labor Arbiters and not of the Regional Trial Court (formerly, Court of First Instance).

To be sure, this jurisdictional defect in the proceedings has not been explicitly put at issue in the appeal at bar, although references appear in the pleadings to the various motions filed by Fernandez and his co-defendants with the Regional Trial Court to dismiss the action for want of jurisdiction over the nature of the suit instituted by Jose Balde. This omission is of no moment. Excepted from the general rule that in appellate proceedings in the Court

of Appeals or this Court, "no error ** will be considered unless stated in the assignment of errors and properly argued in the brief" (or otherwise raised as an issue), are (1) errors which "affect the jurisdiction over the subject matter," (2) "plain errors," and (3) "clerical errors." [45]

WHEREFORE, the Decision of the Court of Appeals promulgated on July 20, 1990 and its Resolution dated November 21, 1990, in CA-G.R. SP No. 19602, as well as the Orders of the Regional Trial Court (Branch 14) at Ligao, Albay in Civil Case No. 528-LV dated May 9, 1989, October 17, 1989, October 25, 1989 and December 6, 1989 are REVERSED and SET ASIDE, and said Civil Case No. 528-LV is ORDERED DISMISSED for lack of jurisdiction of the subject matter and, as regards' the deceased Jose P. Fernandez, on the additional ground set forth in Section 17, Rule 3 of the Rules of Court, without pronouncement as to costs.

SO ORDERED.

Paras, Padilla, and Regalado, JJ., concur.

Nocon, J., on leave.

[1] Civil Case No. 528-LV of Branch 14 of the Court of First Instance (now Regional Trial Court) at Ligao, Albay, commenced on November 14, 1975

[2] According to the Court of Appeals, "Jose P. Fernandez was chairman of the board and president, while the other petitioners Redentor Melo and Eliodoro Cruz were responsible officials of said firms." Rollo, p. 31

[3] Original record, pp. 1-7

[4] Id., pp. 23-25

[5] Id., pp. 40-43

[6] Id., p. 55

[7] Id., pp. 64-69. N.B. The record discloses that petitioners reiterated their motion to dismiss on the ground of lack of jurisdiction on several subsequent occasions in the course of the proceedings in the Regional Trial Court; but all said motions were turned down.

[8] Sec. 21, Rule 3, Rules of Court

[9] Sec. 17, Rule 3

[10] Sec. 2 (a), Rule 7

[11] Sec. 1, Rule 87

[12] Sec. 21, Rule 3, *supra*; *Italics supplied*; SEE footnotes 34 and 36, *infra*

[13] Sec. 1 whereof provides: "Immediately after granting letters testamentary or of administration, the court shall issue a notice requiring all persons having money claims against the decedent to file them in the office of the clerk of said court" (*italics supplied*). Section 5 of the same Rule decrees that all claims for money against the decedent must be filed within the time limited in the Probate Court's notice above mentioned, otherwise they are barred forever. Other provisions prescribe the manner of giving notice of said claims, the contents of the claim, the executor's or administrator's answer thereto, trial of the claims, judgment thereon and appeal from said judgments.

[14] Moran, *Comments on the Rules*, 1979 ed., Vol. 1, p. 219

[15] SEE Section 17, Rule 3, *infra*

[16] Feria, Civil Procedure, 1969, ed., pp. 163-164

[17] Sec. 2 (a), Rule 7

[18] See footnote 5 and related text, *supra*

[19] Original record, p. 449

[20] Annexes H and H-1: Rollo, pp. 45-46

[21] SEE footnote 24 and related text, *infra*

[22] Rollo, p. 47

[23] An order was issued by Judge Silerio on May 9, 1989 designating "the executor of the estate of ** Jose P. Fernandez, Atty. Arsenio Dizon ** as substitute for Jose P. Fernandez as party defendant."

[24] SEE footnote 21 and related text, *supra*

[25] *Id.*, pp. 41-42. It is unclear (though inconsequential) if Judge Silerio was acting temporarily in Branch 14.

[26] Rollo, p. 43

[27] *Id.*, pp. 49-52

[28] *Id.*, p. 53

[29] *Id.*, p. 54

[30] *Id.*, pp. 55-56

[31] Docketed as CA-G.R. SP No. 19602

[32] Rollo, pp. 58-59

[33] The private respondent's memorandum was filed on May 29, 1991; the petitioners', on June 17, 1991.

[34] SEE page 3 (last paragraph), *supra*

[35] Sec. 21, Rule 3, *supra*; *Italics supplied*

[36] *Regala v. C.A.*, 183 SCRA 595, citing *Malolos v. Asia Pacific Finance Corp.*, 147 SCRA 61, in turn citing *Villegas and Santos v. Zapanta and Zorilla*, 104 Phil. 973, *Dy v. Enage*, 70 SCRA 117, *Pabico v. Jaranilla*, 60 Phil. 247, 251

[37] *Malolos v. Asia Pacific Finance Corp.*, 147 SCRA 61, *supra*; *Aquino v. Sison*, 179 SCRA 648; *Marcelo v. de Guzman*, 114 SCRA 648

[38] Original record, pp. 1-7

[39] Including "claims involving, non-payment or under-payment of wages, overtime compensation, separation pay, maternity leave," but excluding "claims for workmen's compensation, social security and medicare benefits**".

[40] " ** unless expressly excluded ** "

[41] ART. 217 of PD 442, the Labor Code of the Philippines.

[42] PD 570-A, promulgated on Nov. 1, 1974; PD 850, promulgated on Dec. 16, 1975; PD 1367, eff. May 1, 1978; PD 1691, eff. May 1, 1980; BP 130, promulgated on Aug. 21, 1981; BP 227, approved on June 1, 1982

[43] PD 1367, eff., May 1, 1978 until May 1, 1980 when PD 1691 eliminated the interdiction relative to "claims for moral or other forms of damages"

[44] Eff., March 2, 1989.

[45] Sec. 7, Rule 51 reads as follows: "Questions that may be decided.-- No error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief, save as the court, at its option, may notice plain errors not specified, and also clerical errors."

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