

G.R. No. 182718

**Republic of the Philippines
Supreme Court
Manila**

THIRD DIVISION

JULIO B. PURCON, JR., G.R. No. 182718

Petitioner,

Present:

YNARES-SANTIAGO, *J.*,

Chairperson,

- *versus* - AUSTRIA-MARTINEZ,
CHICO-NAZARIO,

NACHURA, and
REYES, *JJ.*

**MRM PHILIPPINES, INC. and
MIGUEL L. RIVERA/MARITIME Promulgated:
RESOURCES MANAGEMENT,**

Respondents. September 26, 2008

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R E S O L U T I O N

REYES, R.T., *J.*:

A PETITION for relief from judgment under Rule 38 of the 1997 Rules of Civil Procedure is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy. It may be availed of

only after a judgment, final order, or other proceeding was taken against petitioner in any court through fraud, accident, mistake, or excusable negligence.^[1]

Before Us is a petition for relief from judgment^[2] filed by Julio B. Purcon, seeking to set aside Our July 16, 2007 Resolution,^[3] which denied his petition for review, as well as the October 9, 2007 Entry of Judgment.^[4] He pleads for the Courts leniency on account of the negligence and inefficiency of his counsel, which resulted in the late filing of the petition and in filing defective pleadings within this Court.

The Antecedents

The case stemmed from a complaint filed by petitioner for reimbursement of medical expenses, sickness allowance and permanent disability benefits with prayer for compensatory, moral and exemplary damages and attorneys fees before the Arbitration Branch of the National Labor Relations Commission (NLRC).

In his verified position paper, petitioner alleged that on January 28, 2002, respondent MRM Philippines, Inc. hired him as a seaman on board the vessel M/T SARABELLE 2. He signed a contract for three (3) months with a monthly salary of \$584.00. According to petitioner, his work involved a day-to-day activity that required exertion of strenuous effort, and that he often worked overtime due to the pressure of his work. His contract was extended for another three (3) months. On the second week of June 2002, he felt an excruciating pain in his left testicle. After being examined by a doctor at the port of France, he was diagnosed with hernia. On June 26, 2002, he was repatriated due to his ailment.

Upon petitioners return to the Philippines, he was examined by Dr. Alegre, the company physician, who prescribed certain medication. On July 24, 2002, Dr. Alegre declared that he was fit to resume work. When he reported to MRM Philippines, Inc. hoping to be re-hired for another contract, he was told that there was no vacancy for him.

On September 17, 2003, he consulted Dr. Efren R. Vicaldo, an internist-cardiologist of Philippine Heart Center. On March 3, 2004, after a thorough medical examination and evaluation, he was diagnosed with EPIDIDYMITIS, LEFT; UPPER RESPIRATORY TRACT INFECTION WITH IMPEDIMENT GRADE XIV.

Respondents, on the other hand, countered that since petitioner's ailment, hernia, is not work-related, he is not entitled to disability benefit and related claims. In fact, he was declared fit to resume work on July 23, 2002 by the company-designated physician. Respondents likewise argued that his ailment is not to be considered a permanent disability as this is easily correctable by simple surgery. More importantly, petitioner signed a Quitclaim and Release which was notarized.

On March 31, 2005, Labor Arbiter Donato G. Quinto, Jr. rendered its decision^[5] dismissing the complaint for utter lack of merit. The Labor Arbiter explained that petitioner was fit to resume work as a seafarer as of July 23, 2002 as his hernia was already cured or non-existent. In fact, petitioner was ready to resume work. Unfortunately, he was not accommodated due to lack of vacancy. The fact that he was not re-hired by respondent did not mean that he was suffering from disability.

On May 5, 2005, complainant-appellant (petitioner) filed a memorandum of appeal with the NLRC Third Division.

On September 30, 2005, the NLRC Third Division issued a resolution^[6] as follows:

WHEREFORE, the appeal is DISMISSED for lack of merit and the assailed decision dated March 31, 2005 is hereby AFFIRMED.

SO ORDERED.^[7]

On December 20, 2005, the motion for reconsideration was dismissed for lack of merit. On January 27, 2006, the NLRC resolution became final and executory and was recorded in the Book of Entries of Judgments.

On March 2, 2006, petitioner filed a petition for *certiorari* under Rule 65 of the Revised Rules of Court with the Court of Appeals (CA). However, on June 7, 2006, the CA dismissed the case due to formal infirmities. Petitioners motion for reconsideration was denied. On September 29, 2006, the CA resolution became final and executory.

On May 9, 2007, petitioner filed with this Court a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the June 7, 2006 and September 5, 2006 Resolutions of the CA, which dismissed his petition for *certiorari*.

In Our Resolution^[8] dated July 16, 2007, We denied the petition for the following reasons: (1) the petition was filed beyond the reglementary period of fifteen (15) days fixed in Section 2, Rule 45 in relation to Section 5(a), Rule 56, 1997 Rules of Civil Procedure, as amended; (2) failure to pay on time docket and other fees and deposit for costs in violation of Section 3, Rule 45, in relation to Section 5(c) of Rule 56; and (3) insufficient or defective verification under Section 4, Rule 7.

We likewise held that petitioner failed to sufficiently show that the CA committed any reversible error in the challenged resolutions as to

warrant the exercise of this Courts discretionary appellate jurisdiction. He was not able to convince this Court why the actions of the Labor Arbiter, the NLRC and the CA, which have passed upon the same issue, should be reversed. Consequently, on October 9, 2007, an Entry of Judgment was issued.

On May 6, 2008, petitioner filed the instant petition for relief from judgment interposing the following grounds:

- I. The Honorable Labor Arbiter committed a GROSS MISTAKE when he based his decision on the fit to work certification issued by the company-designated physician and on the Quitclaim and Release executed by the complainant;
- II. The Honorable Labor Arbiter further committed a GROSS MISTAKE when he adopted the irrelevant jurisprudence cited by the respondents and by adopting it in his decision;
- III. The Honorable NLRC Third Division also committed a GROSS MISTAKE when it affirms the ERRONEOUS decision of the Honorable Labor Arbiter;
- IV. The factual findings of the Honorable Labor Arbiter, and the Honorable NLRC Third Division, are not based on substantial evidence and that their decisions are contrary to the applicable law and jurisprudence; and
- V. The collaborating counsel of the petitioner committed a GROSS MISTAKE in filing defective pleadings to the prejudice of the herein petitioner.^[9]

The threshold issue before Us is Can petitioner avail of a petition for relief from judgment under Rule 38 of the 1997 Rules of Civil Procedure from Our resolution denying his petition for review?

We answer in the negative. **A petition for relief from judgment is not an available remedy in the Supreme Court.**

First, although Section 1 of Rule 38 states that when a judgment or final order is entered through fraud, accident, mistake, or excusable negligence, a party in any court may file a petition for relief from judgment, this rule must be interpreted in harmony with Rule 56, which enumerates the original cases cognizable by the Supreme Court, thus:

Section 1. *Original cases cognizable.* Only petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus*, disciplinary proceedings against members of the judiciary and attorneys, and cases

affecting ambassadors, other public ministers and consuls may be filed originally in the Supreme Court.

A petition for relief from judgment is **not** included in the list of Rule 56 cases originally cognizable by this Court.

In *Dela Cruz v. Andres*,^[10] We reiterated Our pronouncement in *Mesina v. Meer*,^[11] that a petition for relief from judgment is not an available remedy in the Court of Appeals and the Supreme Court. The Court explained that under the 1997 Revised Rules of Civil Procedure, the petition for relief must be filed within sixty (60) days after petitioner learns of the judgment, final order or other proceeding to be set aside and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting petitioners good and substantial cause of action or defense, as the case may be. Most importantly, it should be filed with the same court which rendered the decision, viz.:

Section 1. *Petition for relief from judgment, order, or other proceedings.* When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.^[12] (Underscoring supplied)

Second, while Rule 38 uses the phrase any court, **it refers only to Municipal/Metropolitan and Regional Trial Courts.**

As revised, Rule 38 radically departs from the previous rule as it now allows the Metropolitan or Municipal Trial Court which decided the case or issued the order to hear the petition for relief. Under the old rule, a petition for relief from the judgment or final order of Municipal Trial Courts should be filed with the Regional Trial Court, viz.:

Section 1. *Petition to Court of First Instance for relief from judgment of inferior court.* When a judgment is rendered by an inferior court on a case, and a party thereto by fraud, accident, mistake, or excusable negligence, has been unjustly deprived of a hearing therein, or has been prevented from taking an appeal, he may file a petition in the Court of First Instance of the province in which the original judgment was rendered, praying that such judgment be set aside and the case tried upon its merits.

Section 2. *Petition to Court of First Instance for relief from the judgment or other proceeding thereof.* When a judgment order is entered, or any other proceeding is taken against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

The procedural change in Rule 38 is in line with Rule 5, prescribing uniform procedure for Municipal and Regional Trial Courts^[13] and designation of Municipal/Metropolitan Trial Courts as courts of record.^[14]

Third, the procedure in the CA and the Supreme Court are governed by separate provisions of the Rules of Court.^[15] It may, from time to time, be supplemented by additional rules promulgated by the Supreme Court through resolutions or circulars. As it stands, neither the Rules of Court nor the Revised Internal Rules of the CA^[16] allows the remedy of petition for relief in the CA.

There is no provision in the Rules of Court making the petition for relief applicable in the CA or this Court. The procedure in the CA from Rules 44 to 55, with the exception of Rule 45 which pertains to the Supreme Court, identifies the remedies available before said Court such as annulment of judgments or final orders or resolutions (Rule 47), motion for reconsideration (Rule 52), and new trial (Rule 53). Nowhere is a petition for relief under Rule 38 mentioned.

If a petition for relief from judgment is not among the remedies available in the CA, **with more reason** that this remedy cannot be availed of in the Supreme Court. This Court entertains only questions of law. A petition for relief raises questions of facts on fraud, accident, mistake, or excusable negligence, which are beyond the concerns of this Court.

Nevertheless, even if We delve into the merits of the petition, the same must still be dismissed. The late filing of the petition for review does not amount to excusable negligence. Petitioners lack of devotion in discharging his duty, without demonstrating fraud, accident, mistake or excusable negligence, cannot be a basis for judicial relief. For a claim of counsels gross negligence to prosper, nothing short of clear abandonment of the clients cause must be shown.

The relief afforded by Rule 38 will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy of law was due to his own negligence, or mistaken mode of procedure for that matter; otherwise the petition for relief will be tantamount to reviving the right of appeal which has already been lost, either because of inexcusable negligence or due to a mistake of procedure by counsel.

In exceptional cases, when the mistake of counsel is so palpable that it amounts to gross negligence, this Court affords a party a second opportunity to vindicate his right. But this opportunity is unavailing in the instant case, especially since petitioner has squandered the various opportunities available to him at the different stages of this case. Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice.

Finally, it is a settled rule that relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy at law was due to his own negligence, or a mistaken mode of procedure; otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to mistaken mode of procedure by counsel.^[17]

ACCORDINGLY, the petition is **DISMISSED**.

SO ORDERED.

RUBEN T. REYES

Associate Justice

WE CONCUR:

CONSUELO YNARES-SANTIAGO

Associate Justice

Chairperson

MA. ALICIA AUSTRIA-MARTINEZ MINITA V. CHICO-NAZARIO

Associate Justice Associate Justice

ANTONIO EDUARDO B. NACHURA

Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

CONSUELO YNARES-SANTIAGO

Associate Justice

Chairperson

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairpersons Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

REYNATO S. PUNO

Chief Justice

^[1] *Dela Cruz v. Andres*, G.R. No. 161864, April 27, 2007, 522 SCRA 585.

^[2] *Rollo*, pp. 3-37.

^[3] *Id.* at 41-42.

^[4] *Id.* at 39-40.

^[5] *Id.* at 45-51.

^[6] *Id.* at 54-64.

^[7] *Id.* at 63.

^[8] *Id.* at 41-42.

^[9] *Id.* at 4-5.

^[10] *Supra* note 1.

^[11] G.R. No. 146845, July 2, 2002, 383 SCRA 625.

^[12] RULES OF COURT, Rule 38, Sec. 1.

^[13] Section 1. *Uniform procedure*. The procedure in the Municipal Trial Courts shall be the same as in the Regional Trial Court, except (a) where a particular provision expressly or impliedly applies only to either of said courts, or (b) in civil cases governed by the Rule on Summary Procedure.

^[14] See Republic Act No. 7691 (1994); Regalado, F.D., Remedial Law Compendium (2002), Vol. 1, p. 400.

^[15] See Rules 44-56.

^[16] As amended by Supreme Court Resolutions dated October 20, 1988, November 3, 1988, February 27, 1991, April 1, 1992, November 24, 1992, and June 14, 1993.

^[17] *Espinosa v. Yatco*, G.R. No. L-16435, January 31, 1963, 7 SCRA 78.