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Third Division
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MARIA VICTORIA TOLENTINO-PRIETO, Petitioner, -versus- **ROBERT S. ELVAS,** Respondent.	**G.R. No. 192369**
ROBERT S. ELVAS, Petitioner, -versus- **INNSBRUCK INTERNATIONAL TRADING and/or MARIVIC TOLENTINO (a.k.a. MARIA VICTORIA TOLENTINO-PRIETO),** Respondents.	**G.R. No. 193685** Present: VELASCO, JR., *J., Chairperson,*[*] PERALTA, *Acting Chairperson,*[**] PEREZ, REYES, and JARDELEZA, *JJ.* Promulgated: November 9, 2016

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DECISION

JARDELEZA, *J.:*

These are consolidated petitions for review[1] assailing the July 21, 2009 Decision[2] and May 17, 2010 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 107070, which reversed the June 30, 2008 Decision[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000089-08. The CA found that Robert S. Elvas (Elvas) was illegally

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* On leave.

** Designated as Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

1 *Rollo* (G.R. No. 192369), pp. 10-27; *Rollo* (G.R. No. 193685), pp. 10-36.

2 *Rollo* (G.R. No. 192369), pp. 29-42, penned by Associate Justice Mariano C. Del Castillo (now a Member of this Court) with Associate Justices Monina Arevalo-Zenarosa and Priscilla J. Baltazar-Padilla, concurring.

3 *Id.* at 44-45.

4 *Id.* at 117-127, penned by Commissioner Nieves E. Vivar-De Castro.

dismissed from service, reinstating the November 13, 2007 Decision[5] of the Labor Arbiter (LA) in NLRC NCR Case No. 00-09-07571-06.

Facts

Innsbruck International Trading (Innsbruck), owned by Maria Victoria Toletino-Prieto (Tolentino) [collectively, respondents], is engaged in the sanitation and fumigation of garbage dump trucks.[6] The Municipal Government of Rodriguez, Rizal, awarded it with the operation of the Wash Bay Station, a government project that involves the fumigation or decongestion of garbage dump trucks coming from all over Metro Manila, for the purpose of reducing or eliminating the odor caused by the dumping of garbage at the Rodriguez, Rizal landfill.[7] Elvas was employed as a checker at the Wash Bay Station. He records the number of dump trucks sanitized by Innsbruck and collects ₱30.00 from each of the truck fumigated.[8] For a 12-hour day's work, he receives a salary of ₱250.00.[9] Sometimes, he also discharges the function of a cashier with a duty to collect payments from other checkers and surrender them to the money collector.[10]

Sometime in February 2006, Tolentino allegedly discovered, based on the station logbook report and the report made by the Wash Bay Station Municipal Supervisor, that there were discrepancies between the number of dump trucks recorded and the amount of payment remitted by Elvas and the other employees.[11] Tolentino then sent a Letter-Memorandum dated May 25, 2006 to Elvas giving him 24 hours from receipt to explain why his employment should not be terminated because of his involvement in the non-remittance of collections.[12] Elvas responded in a Letter dated May 29, 2006, asserting that he cannot answer the allegation against him given the limited period of time, and the fact that he was not furnished with the station logbook and other related documents.[13] He warned Tolentino that her accusation is a form of coercion and an act constituting constructive dismissal. He asked her to desist from pursuing acts which cause him anxiety and sleepless nights.[14] Thereafter, on September 11, 2006, he filed a Complaint for illegal dismissal, underpayment of salaries, 13th month pay, Emergency Cost of Living Allowance (ECOLA) and separation pay in lieu of reinstatement against respondents before the NLRC.[15]

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5 *Id.* at 90-103, penned by Labor Arbiter Dolores Peralta-Beley.
6 *Id.* at 30.
7 *Id.*
8 *Id.*
9 *Rollo* (G.R. No. 192369), p. 13.
10 *Id.* at 30, 94.
11 *Id.* at 95.
12 *Id.* at 92.
13 *Id.* at 122-123.
14 *Id.* at 123.
15 *Id.* at 31.

In his position paper, Elvas argued that the Letter-Memorandum was Tolentino's way of forcing him to resign from work.[16] Tolentino's accusation was baseless since she never came up with specifics. She simply dismissed him from work on May 30, 2006; then, instituted an unfounded criminal case against him, which Tolentino later abandoned by not appearing in the preliminary investigation.[17] Elvas also alleged that Tolentino did not follow the two-notice requirement when she terminated his employment. He denied that he took flight and no longer reported for work after he was handed the Letter-Memorandum. On the contrary, he was told not to report for work and he saw for himself the employees who replaced him.[18]

Respondents countered that Elvas kept on evading the investigation conducted by the former by absenting himself during the scheduled investigation. During the confrontation with the other checkers, namely, Edilberto Rabe (Rabe) and Leonardo Constantino (Constantino), they admitted that they misappropriated the collection with Elvas.[19] The admission prompted Tolentino to file criminal complaints of *estafa* against them. Despite the pendency of the criminal action, Tolentino averred that she still gave Elvas an opportunity to explain his side of the case through the Letter-Memorandum. Hence, there was no violation of due process. More importantly, Tolentino contended that Elvas was not illegally dismissed from service as he himself abandoned his work.[20]

Labor Arbiter's Ruling

The LA ruled in favor of Elvas and declared that he was illegally terminated from his employment. The LA noted that the admissions of Rabe and Constantino cannot be used against Elvas because nowhere in their affidavit did they state that the latter was an accomplice in their misappropriation. Other than the daily remittance and summary of purchases, Tolentino failed to adduce any evidence to support Elvas' participation in the misappropriation. There was likewise no abandonment of work on the part of Elvas because he had duly established that he continued working for Tolentino despite the low pay and the dire state and condition of the Rizal landfill.[21] Rather, the LA found that the charge of abandonment does not square with the recorded fact that Elvas was being accused of misappropriation and was actually charged in court with *estafa* thereby indicating his undesirability within the work premises and the pressure for him to leave. It is more indicative of constructive dismissal rather than abandonment of work.[22] The LA then awarded Elvas with

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16 *Id.* at 92.
17 *Id.* at 93.
18 *Id.* at 94.
19 *Id.* at 95.
20 *Id.* at 96-97.
21 *Id.* at 98.
22 *Id.* at 99.

separation pay, backwages, salary differential and 13th month pay totaling to ₱162,242.099.[23]

NLRC's Ruling

Respondents appealed to the NLRC. Elvas filed a Motion to Dismiss Appeal and Issuance of Writ of Execution[24] on the ground that the appeal bond posted by respondents was fake. He attached to the motion, a certification from Far Eastern Surety and Insurance Co., Inc. stating that the bond issued in favor of the NLRC relative to Case No. 00-09-07571-06 is non-existent in the bonds registry of the corporation.[25] Elvas contended that since no valid appeal bond was posted, the appeal was not perfected rendering the LA's Decision final and executory. He, therefore, asked for the issuance of a writ of execution. Upon discovering that the appeal bond was spurious, respondents terminated the services of their counsel and posted a new bond from Philippine Phoenix and Insurance, Inc.[26]

The NLRC decided to relax the rule on bond requirement, ruling that with the posting of a second bond, the issue about the first bond should be put to rest in the best interest of justice.[27] It found that respondents were without knowledge of the falsity of the bond, as in fact, they immediately dismissed their counsel upon learning of the fraud.[28]

Meanwhile, disposing of the merits of the case, the NLRC reversed the ruling of the LA and opined that it was Elvas who failed to establish his case for illegal dismissal. No written notice of dismissal was presented to prove the fact of termination of his employment.[29] Elvas also neither alleged nor proved how his employment was terminated or who dismissed him from the service.[30]

Elvas sought reconsideration but it was denied.[31] He elevated the case to the CA with the sole issue of whether the NLRC committed grave abuse of discretion amounting to excess of/lack of jurisdiction in giving due course to respondents' appeal despite the overwhelming evidence that no appeal was perfected in the absence of an appeal bond.[32]

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23 *Id.* at 103.
24 *Rollo* (G.R. No. 193685), pp. 80-83.
25 Records, p. 165.
26 *Rollo* (G.R. No. 192369), p. 33.
27 *Id.* at 120.
28 *Id.* at 119-120.
29 *Id.* at 126.
30 *Id.* at 123.
31 *Id.* at 128-129.
32 *Id.* at 147.

CA's Ruling

In its Decision, the CA sustained the NLRC in allowing respondents' appeal but as to the merits of the case, it reversed the latter and reinstated the LA's Decision that Elvas was illegally dismissed.

On the procedural aspect, the CA explained that respondents substantially complied with the bond requirement for perfecting an appeal when they immediately submitted a genuine bond after learning that the first bond was spurious. There was no showing that respondents purposely posted a false surety bond.[33] Therefore, to dismiss respondents' appeal would negate the interest of justice and deviate from the Labor Code of the Philippines'[34] (Labor Code) mandate to liberally construe rules of procedure.

On the substantive aspect, although Elvas did not question the NLRC's ruling on the issue of illegal dismissal, the CA deemed it appropriate to resolve the merits of the case to afford complete relief to the parties and to arrive at a just resolution of the case.[35] The CA held that Elvas was unceremoniously dismissed from work when he was directed by respondents not to report for work anymore. It gave credence to Elvas' claim that he kept coming back to the work premises to continue his employment but there were already workers who replaced him. This was neither denied nor refuted by respondents who merely insisted that Elvas was guilty of misappropriation.[36] The CA agreed with the LA that respondents failed to present witnesses or credible evidence to prove the charge against Elvas.

Both parties moved for reconsideration which were denied.[37] Thereafter, Elvas and Tolentino filed separate petitions for review before us which we consolidated in our Resolution[38] dated July 21, 2010.

G.R. No. 192369

In her petition, Tolentino primarily faults the CA for reviewing the merits of the case considering that the issue of illegal dismissal was not assigned as an error in Elvas' petition before it. She alleges that she was denied due process of law because she was not given the opportunity to rebut the claim of termination of employment.[39] Furthermore, she submits that the issue of illegal dismissal is not closely related to or dependent on the error assigned by Elvas and it was also not argued in Elvas' petition.[40] Subsequently, even assuming that the CA can properly rule on the merits of the case, Tolentino asserts that she did not commit any act that can be

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33 *Id.* at 36-37.
34 Presidential Decree No. 442 (1974).
35 *Rollo* (G.R. No. 192369), p. 37.
36 *Id.* at 38-39.
37 *Supra* note 3.
38 *Rollo* (G.R. No. 192369), pp. 166-167.
39 *Id.* at 20-21.
40 *Id.* at 21.

construed as dismissal, actual or constructive, because Elvas has yet to show positive proof that he was dismissed.[41] The truth being that Elvas abandoned his work.[42]

In his Comment, Elvas advances that Tolentino's petition was filed out of time because the last day of filing was June 11, 2010 yet she filed it only on July 12, 2010.[43] Nonetheless, he agreed with Tolentino that he only raised one issue with the CA, that is, whether the NLRC committed grave abuse of discretion in giving due course to Tolentino's appeal in the absence of a valid appeal bond. Other than that, he avers that he would simply adopt the arguments raised in his own petition for review as Comment to Tolentino's petition.[44]

In her Reply, Tolentino refutes that her petition was filed out of time. She cites our Resolution dated July 2, 2010, where we granted her an extension of until July 12, 2010 within which to file her petition.[45]

G.R. No. 193685

Elvas took issue on the CA's ruling allowing Tolentino's appeal before the NLRC. He reiterates that no appeal was perfected in the absence of an appeal bond, rendering the LA's Decision final and executory. Considering respondents' appeal to the NLRC which should not have been given due course, Elvas was allegedly deprived of the amounts awarded to him by the LA; hence, he prays that we order Tolentino to pay him damages for loss of opportunity to make use of the money judgment in an amount computed using the ordinary commercial bank's high yield interest rate.[46]

Tolentino filed a Comment, praying that Elvas' petition be dismissed outright for being filed one day late. She maintains that Elvas failed to cite a justifiable reason for the delay as he merely stated in a Manifestation that the belated filing was due to circumstances beyond his control.[47] She alleges that she did not file a spurious surety bond on purpose and that she relied in good faith on the representation of her former counsel that the bond was genuine and valid.[48] Lastly, she argues that she should not be held liable for damages because Elvas' alleged loss of opportunities to invest the LA's judgment award in a bank is highly speculative.[49]

Elvas filed a Reply, explaining the circumstances that led to the late filing of his petition.[50]

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41 *Id.* at 23.
42 *Id.* at 22.
43 *Id.* at 10, 172.
44 *Id.* at 172-173.
45 *Id.* at 179.
46 *Rollo* (G.R. No. 193685), p. 31.
47 *Id.* at 257.
48 *Id.* at 258-259
49 *Id.* at 260-261.
50 *Id.* at 276-282.

Issues

1. Whether the petitions separately filed by the parties are seasonably filed;

2. Whether the CA erred in allowing respondents' appeal in the NLRC; and

3. Whether the CA erred in ruling on the question of Elvas' illegal dismissal considering that it was not raised as an issue in Elvas' petition before it.

Our Ruling

We deny the consolidated petitions.

Elvas' appeal was filed out of time.

At the outset, we address the question of timeliness for both appeals. As borne by the records, Tolentino received a copy of the Decision and Resolution of the CA on July 31, 2009 and May 28, 2010, respectively.[51] Under Rule 45 of the Revised Rules of Court (the Rules), Tolentino had 15 days from receipt of the resolution denying her motion for reconsideration or until June 12, 2010 within which to file a petition for review. Tolentino, however, asked for additional period of 30 days or until July 12, 2010 to file her petition. We granted her request in our Resolution dated July 2, 2010.[52] On July 12, 2010, Tolentino filed her appeal. Clearly, her petition was filed on time.

Elvas received a copy of the Resolution of the CA denying his partial motion for reconsideration on May 21, 2010. He had until June 5, 2010 to file a petition for review. He sought an additional period of 30 days to file the same, which we granted in our Resolution[53] dated July 21, 2010. However, on the 30th day, or on July 5, 2010, Elvas failed to file his petition. Instead, he filed it on July 6, 2010. Evidently, Elvas' petition was filed out of time.

The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[54] Elvas calls for our compassion to overlook the one day delay in the filing of his petition; however, we have ruled time and again that our kind consideration is not for

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51 *Rollo* (G.R. No. 192369), p. 9.
52 *Id.* at 8.
53 *Id.* at 166-167.
54 *Boardwalk Business Ventures, Inc. v. Villareal, Jr.*, G.R. No. 181182, April 10, 2013, 695 SCRA 468, 470, citing *Fenequito v. Vergara, Jr.*, G.R. No. 172829, July 18, 2012, 677 SCRA 113, 117.

the undeserving. While it is within our power to relax the rule on timeliness of appeals, the circumstances obtaining in this case do not warrant our liberality.

Elvas attempted to justify the delay but we are not persuaded. In his Reply in G.R. No. 193685, he claimed that he was able to obtain funds for printing and photocopying of the petition and its attachments only on the last day of filing the petition, or on July 5, 2010. By then, he mused that it was too late to complete the photocopying and the collation of documents for submission on the same day; as in fact, he was able to personally deliver the completed petition before us only on the following day.[55] Interestingly, however, Elvas in his Manifestation dated July 6, 2010 noted that he furnished Tolentino and the CA, copies of his petition for review on July 5, 2010.[56] We find this detail inconsistent with the alibi that Elvas narrated in his Reply. Elvas claims that copies of the petition became available only on July 6, 2010, yet he was able to furnish Tolentino and the CA with copies of the same on July 5, 2010. The actuation of Elvas is suspect. It seems to us that he intended to give his petition a semblance of being filed on time when in fact it was not. It is calculated to prevent Tolentino from questioning the timeliness of Elvas' petition, an utter sign of bad faith which we cannot countenance and does not deserve our compassion.

In addition, the fact that the delay in the filing of the petition was only one day is not a legal justification for non-compliance with the rule requiring that it be filed within the reglementary period.[57] Thus, in the recent case of *Visayan Electric Company Employees Union-ALU-TUCP v. Visayan Electric Company, Inc.*,[58] we affirmed the CA's denial of a petition for *certiorari* filed 61 days instead of 60 days from notice of the judgment or resolution, *viz*:

> [W]hen the law fixes thirty days x x x, we cannot take it to mean also thirty-one days. If that deadline could be stretched to thirty-one days in one case, what would prevent its being further stretched to thirty-two days in another case, and so on, step by step, until the original line is forgotten or buried in the growing confusion resulting from the alterations? That is intolerable. We cannot fix a period with the solemnity of a statute and disregard it like a joke. If law is founded on reason, whim and fancy should play no part in its application.[59]

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55 *Rollo* (G.R. No. 193685), pp. 278, 280-281.

56 *Id.* at 7.

57 See *Visayan Electric Company Employees Union-ALU-TUCP v. Visayan Electric Company, Inc.*, G.R. No. 205575, July 22, 2015, 763 SCRA 566, 578.

58 *Supra.*

59 *Id.* at 578, citing *Trans International v. Court of Appeals*, G.R. No. 128421, October 12, 1998, 297 SCRA 718, 724-725, also citing *Velasco v. Ortiz*, G.R. No. 51973, April 16, 1990, 184 SCRA 303, 310, further citing *Reyes v. Court of Appeals*, 74 Phil. 235, 238 (1943).

Consequently, we deny Elvas' petition for being filed beyond the reglementary period. In any case, his petition is also unmeritorious as we shall discuss shortly.

The NLRC and CA did not err in allowing respondents' appeal.

Article 229 of the Labor Code mandates that appeals from the judgment of the LA which involve a monetary award may be perfected only upon posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC in the amount equivalent to the monetary award in the judgment appealed from. Consequently, Sections 1, 4, 5 and 6, Rule VI of the 2011 NLRC Rules of Procedure state:

> Sec. 1. *Periods of Appeal.* – Decisions, awards, or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions or resolutions of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.
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> Sec. 4. *Requisites for Perfection of Appeal.* – (a) The appeal shall be:
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> (1) filed within the reglementary period provided in Section 1 of this Rule;
> (2) verified by the appellant himself/herself in accordance with Section 4, Rule 7 of the Rules of Court, as amended;
> (3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, award or order;
> (4) in three (3) legibly typewritten or printed copies; and
> (5) accompanied by:
> i) proof of payment of the required appeal fee and legal research fee;
> ii) posting of a cash or surety bond as provided in Section 6 of this Rule; and
> iii) proof of service upon the other parties.
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> x x x

> (b) A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.
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> Sec. 5. *Appeal Fee.* – The appellant shall pay the prevailing appeal fee and legal research fee to the Regional Arbitration Branch or Regional Office of origin, and the official receipt of such payment shall form part of the records of the case.
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> Sec. 6. *Bond.* – In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.
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> The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.
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> Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.
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These statutory and regulatory provisions explicitly provide that an appeal from the LA to the NLRC must be perfected within 10 calendar days from receipt of such decisions, awards or orders of the LA. In a judgment involving a monetary award, the appeal shall be perfected only upon (1) proof of payment of the required appeal fee; (2) posting of a cash or surety bond issued by a reputable bonding company; and (3) filing of a memorandum of appeal.[60]

The second requisite is the crux of the present controversy. Respondents seasonably filed a memorandum of appeal and posted a surety bond in an amount equivalent to the monetary award of the LA, but the bond turned out to be spurious upon verification of Elvas. Respondents

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[60] *Balite v. SS Ventures International, Inc.*, G.R. No. 195109, February 4, 2015, 749 SCRA 608, 618, citing *Colby Construction and Management Corporation v. National Labor Relations Commission*, G.R. No. 170099, November 28, 2007, 539 SCRA 159, 169-170.

immediately put up a new and genuine bond to replace the old one. The NLRC and the CA allowed the appeal.

We find no cogent reason to disturb the ruling of the courts *a quo*. While posting of an appeal bond is mandatory and jurisdictional,[61] we sanction the relaxation of the rule in certain meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.[62] The first and second instances are present in this case.

As correctly found by the CA, respondents substantially complied with the rules as shown by their lack of intention to evade the requirement of appeal bond.[63] Upon being informed of the spuriousness of the bond, they dismissed their counsel of record who was allegedly responsible for its submission and hired another lawyer who submitted a genuine bond.[64] Both the NLRC and the CA found good faith on the part of respondents, stating that the filing of the alleged fake bond was without their knowledge and that they did not purposely post a spurious bond. We adhere to a strict application of Article 229 of the Labor Code when appellants do not post an appeal bond at all;[65] but here an appeal bond was actually filed. Strict application of the rules is therefore uncalled for.

Further, Article 227 of the same Code authorizes the NLRC to "use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure." In the case before us, the NLRC opined that it is in the best interest of justice that the appeal be allowed so that the case could be resolved on its merits. In this regard, we cite *Rada v. NLRC*,[66] where we ruled that the NLRC did not commit grave abuse of discretion when it entertained the employer's appeal despite the posting of the surety bond beyond the reglementary period. We explained that "[w]hile it is true that the payment of the supersedeas bond is an essential requirement in the perfection of an appeal, however, where the fee had been paid although payment was delayed, the broader interests of justice and the desired objective of resolving controversies on the merits demands that the appeal be given due course."[67]

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61 *Accessories Specialist, Inc. v. Alabanza*, G.R. No. 168985, July 23, 2008, 559 SCRA 550, 561-562.
62 *Nicol v. Footjoy Industrial Corp.*, G.R. No. 159372, July 27, 2007, 528 SCRA 300, 318.
63 *Rollo* (G.R. No. 192369), pp. 36-37.
64 *Id.* at 36.
65 *Sara Lee Philippines, Inc. v. Macatlang*, G.R. No. 180147, June 4, 2014, 724 SCRA 552, 578.
66 G.R. No. 96078, January 9, 1992, 205 SCRA 69.
67 *Rada v. NLRC, supra*, at 76.

In *Manaban v. Sarphil Corporation/Apokon Fruits, Inc.*,[68] we affirmed the NLRC's decision to give due course to the appeal of the landowner-employer, notwithstanding that the appeal was perfected beyond the 10-day reglementary period and the posting of the appeal bond was four months delayed on the basis of fundamental consideration of substantial justice. *Manaban* involves the implementation of the Comprehensive Agrarian Reform Program (CARP) which the NLRC acknowledged to be more favorable to the landless farmers or in this case to the laborers/workers of the land subject of the CARP. In light of the government's policy to equally protect and respect not only the laborers' interest but also that of the employer, the NLRC allowed the landowner-employer's appeal.

All told, the NLRC and the CA did not err when they admitted respondents' appeal.

The CA may rule upon an unassigned error to arrive at a complete and just resolution of the case.

Tolentino laments that she was denied due process when the CA reviewed an unassigned error – the issue of Elvas' illegal dismissal. She maintains that it is not closely related to, or dependent on, the issue of perfection of appeal. To support her argument, she harps on the applicability of Section 8, Rule 51 of the Rules, which reads:

> Sec. 8. *Questions that may be decided.* – No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

Rightfully so, as borne by the record and as admitted by Elvas, the only error raised in the CA is whether the NLRC committed grave abuse of discretion in giving due course to respondents' appeal. Elvas did not ask the CA to review the finding of the NLRC that he was not illegally dismissed. Yet, the CA reversed that finding and declared that Elvas was illegally terminated from service. Conscious of the fact that it was not raised as an issue, the CA explained that ruling on the merits is necessary for a complete and just resolution of the case.

We concur with the CA. Our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned.[69] The CA has ample authority to review errors not raised in the following instances:

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[68] G.R. No. 150915, April 11, 2005, 455 SCRA 240.

[69] *Martires v. Chua*, G.R. No. 174240, March 20, 2013, 694 SCRA 38, 54, citing *Mendoza v. Bautista*, G.R. No. 143666, March 18, 2005, 453 SCRA 691, 702-703.

> (*a*) When the question affects jurisdiction over the subject matter;
> (*b*) Matters that are evidently plain or clerical errors within contemplation of law;
> (*c*) Matters whose consideration is necessary in arriving at a just decision and complete resolution of the case or in serving the interests of justice or avoiding dispensing piecemeal justice;
> (*d*) Matters raised in the trial court and are of record having some bearing on the issue submitted that the parties failed to raise or that the lower court ignored;
> (*e*) Matters closely related to an error assigned; and
> (*f*) Matters upon which the determination of a question properly assigned is dependent.[70]

Evidently, the exceptions obtain in this case. The CA effectively avoided dispensing piecemeal justice when it did not confine itself to the resolution only of the procedural aspect of the case but ruled on the merits – that is, the issue of illegal dismissal. Since the LA and the NLRC had varying views of the merits, it would best serve the interest of justice that the CA lays the issue to a definitive rest. Additionally, it cannot be gainsaid that an appeal throws the entire case open for review.[71]

Finally, we reject Tolentino's contention that she was deprived of due process by the CA because she was not able to address the issue of illegal dismissal in her submissions. Suffice it to state that no new issue of fact arose, and no new evidence was presented before the CA in connection with the question of illegal dismissal. Thus, it cannot be argued that Tolentino was not given a chance to address them. The CA decided the merits of the case based on the pleadings and evidence on record. Tolentino cannot deny her active participation in the proceedings before the courts *a quo*. Thus, her cry of violation of due process is misplaced.

In fine, the CA did not err in allowing respondents' appeal and in ruling on the merits of the case.

WHEREFORE, the consolidated petitions are **DENIED** for lack of merit. The July 21, 2009 Decision and May 17, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 107070 are hereby **AFFIRMED**.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

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[70] *Macaslang v. Zamora*, G.R. No. 156375, May 30, 2011, 649 SCRA 92, 102-103, citing *Comilang v. Burcena*, G.R. No. 146853, February 13, 2006, 482 SCRA 342, 349; *Sumipat v. Banga*, G.R. No. 155810, August 13, 2004, 436 SCRA 521, 532-533; *Catholic Bishop of Balanga v. Court of Appeals*, G.R. No. 112519, November 14, 1996, 264 SCRA 181, 191-192.

[71] *Barcelona v. Lim*, G.R. No. 189171, June 3, 2014, 724 SCRA 433, 461.

WE CONCUR:

(On Leave)
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Acting Chairperson
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
NOV 29 2016