Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

INTER-ISLAND INFORMATION SYSTEMS, INC., represented by JESSIE TAN TING, *Petitioner,*	**G.R. No. 187323**
	Present:
	LEONEN, *J.,*[*] HERNANDO, *Acting Chairperson,* INTING, DELOS SANTOS, and LOPEZ, J. Y., *JJ.*
- *versus* -	
COURT OF APPEALS, ELEVENTH DIVISION (FORMER TENTH DIVISION) and CHAM Q. IBAY *Respondent.*	Promulgated: **June 23, 2021**

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DECISION

HERNANDO, *J.*:

Challenged in this petition[1] are the September 12, 2008[2] and February 6, 2009[3] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 103148 which dismissed petitioner Inter-Island Information Systems, Inc. (Inter-Island) petition for *certiorari* for failing to comply with the CA's June 27, 2008 Resolution[4] directing it to furnish the appellate court the present and complete address of both respondent Cham Q. Ibay (Ibay) and his counsel for the purpose of sending court notices and processes.

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* On Wellness Leave.

1 *Rollo*, pp. 3-19.

2 CA *rollo*, at 124-125; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario (now a Member of this Court).

3 Id. at 134.

4 Id. at 122.

The Antecedents

Inter-Island is an internet service provider which hired Ibay on January 20, 2003 as a technical support in its Network Operations Center (NOC). Into seven (7) months of his employment, Ibay received Memorandum No. 03-08-08 dated August 20, 2003[5] issued by a certain Scott Lam (Lam) informing him of his inclusion in the Q Linux Schedule of Training. However, in a revised Memorandum No. 03-09-01 dated September 2, 2003[6] signed by Lam, Ibay was delisted as one of the trainees. When Ibay discussed his exclusion with Marianne Rosellon (Rosellon), NOC's Technical Head, Rosellon explained that he was delisted from the said training due to the expiration of his contract as would be further explained to him by the Human Resource Department.[7]

Two days later, Lam talked to Ibay over the phone urging the latter to submit his resignation letter so that Jesse Tan Ting (Ting), the Human Resource Manager, would not get angry at him. Lam further said that in exchange for his submission of resignation letter, Inter-Island would issue a Certificate of Employment which he could use as reference for his application in other companies. Lam also threatened to block his applications with other companies should he refuse to resign.[8]

On October 3, 2003, Ting allegedly summoned respondent to his office and told him to submit his resignation letter. However, when respondent refused, Ting told him "*Kung ayaw na namin sa inyo ay wala kayong magagawa.*"[9]

On October 31, 2003, respondent was allegedly prevented from entering Inter-Island's premises. Hence, respondent filed a complaint for illegal dismissal.[10]

On the other hand, Inter-Island alleged that during respondent's tenure in the company, he incurred several infractions. He was reprimanded for excessive use of company telephone as per Memorandum dated March 18, 2003.[11] On March 29, 2003, respondent tendered his resignation which was not accepted by the company. Petitioner further averred that respondent's work continued to deteriorate until he abandoned his work. Respondent was not terminated and was, in fact, ordered to return to work.[12]

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[5] Id. at 48.
[6] Id. at 49.
[7] Id. at 29.
[8] Id.
[9] Id.
[10] Id. at 26.
[11] Id. at 76.
[12] Id. at 73.

Ruling of the Labor Arbiter (LA):

On July 29, 2005, the LA rendered a Decision[13] reinstating Ibay to his former position with full payment of his backwages which as of July 31, 2005 already amounted to ₱159,640.00. The dispositive portion of the LA judgment reads:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondents to reinstate the complainant to his former position and to pay his full backwages which as of July 31, 2005 already amount to P159,640.00.
>
> SO ORDERED.[14]

The LA found respondent's assertion of facts to be more credible than petitioner's. The fact that there was a scheduled training in 2003 which included respondent was fully substantiated. However, petitioner failed to justify why respondent was delisted from joining the training. Moreover, although petitioner claimed that it ordered respondent to return to work, the company had not seen fit to notify respondent of its return-to-work order. Hence, the LA ruled in favor of respondent and ordered his reinstatement with full backwages.[15]

Ruling of the National Labor Relations Commission (NLRC):

On October 31, 2007, the NLRC dismissed the company's appeal for lack of merit and affirmed the LA's July 29, 2005 Decision,[16] to wit:

> WHEREFORE, premises considered, the appeal is DISMISSED for lack of merit, and the Decision of Labor Arbiter Jose G. De Vera dated July 29, 2005 is hereby AFFIRMED.
>
> SO ORDERED.[17]

The NLRC ruled that respondent was illegally dismissed. His filing of the complaint barely seven days after he was allegedly dismissed showed his intention not to sever the employer-employee relationship. His failure to report to work was justified as he was prevented from entering Inter-Island's premises. His subsequent filing of a complaint for illegal dismissal belied any suggestion that he was abandoning his work.[18]

Moreover, respondent's refusal to return to work after the filing of the complaint was justified. The offer to return to work was belatedly made by

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[13] *Rollo*, pp. 25-28.
[14] Id. at 28.
[15] Id. at 27-28.
[16] CA *rollo*, pp. 15-21.
[17] Id. at 21.
[18] Id. at 18-19.

petitioner's counsel in the company's position paper and verbally during the mandatory conference without any written document signed by any company representative. Also, the offer was premised on the respondent's alleged abandonment.[19]

The NLRC further ruled that the lack of a notice of termination does not *per se* prove that there was no actual dismissal. In this case, respondent was repeatedly asked to submit a letter of resignation which implied that no notice of termination was ever issued. Petitioner failed to comply with the substantive and procedural requirements of due process to further refute respondent's claim for illegal dismissal.[20]

Petitioner Inter-Island's motion for reconsideration was denied by the NLRC in its January 30, 2008 Resolution.[21]

Ruling of the Court of Appeals:

Hence, petitioner filed a petition for *certiorari* before the CA. On April 30, 2008, the appellate court issued a Resolution[22] directing Ibay to file a comment within ten (10) days from receipt. However, the Resolution sent to Ibay's counsel was returned unserved.[23]

On June 27, 2008, the CA issued a Resolution[24] directing petitioner to furnish the court within ten (10) days from notice the present and complete address of both respondent Ibay and his counsel. However, petitioner Inter-Island failed to comply.[25]

Thus, on September 12, 2008, the CA rendered its assailed Resolution[26] dismissing the petition for failure of petitioner to comply with its June 27, 2008 Resolution pursuant to Section 3, Rule 17 of the Rules of Court.

A motion for reconsideration was filed by petitioner which was denied by the CA in its February 6, 2009 Resolution.[27]

Hence, this petition for *certiorari* under Rule 65.

Issue

The sole issue raised for resolution of this Court is:

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[19] Id. at 19.
[20] Id. at 19-20.
[21] Id. at 22-23.
[22] Id. at 119.
[23] Id. at 125.
[24] Supra note 4.
[25] CA *rollo*, p. 125.
[26] Supra note 2.
[27] Supra note 3.

> Whether or not the appellate court committed grave abuse of discretion amounting to lack or in excess of jurisdiction in dismissing the petition for certiorari due to petitioner's failure to comply with the CA's June 27, 2008 Resolution directing petitioner to furnish the appellate court with the complete address of both respondent Ibay and his counsel as per Section 3, Rule 17 of the Rules of Court.[28]

Petitioner argues that lawyers are obliged to adopt a system whereby they can receive judicial notices and to notify the court in case of changes in their address. Petitioners maintain that Ibay and his counsel failed to notify the NLRC or the LA of their new address. Petitioner's counsel exerted effort to comply with the directive of the appellate court but to no avail. Petitioner argues that the failure of respondent and his counsel to notify the court of their new address should not be taken against them for it is the duty of the opposing counsel to inform the court of any change in his or her address.[29]

Petitioner maintains that respondent Ibay abandoned his work and was not illegally dismissed. His exclusion from the training schedule in 2003 was not an indication that he was being dismissed. Ibay seriously violated the rules and regulations of the company due to his unexplained absences on several occasions which constituted abandonment. He intentionally abandoned his work and left to work abroad during the conciliation conference and prior to the filing of his position paper before the LA.[30]

Petitioner insists that it had no intention to terminate the services of respondent Ibay. During the mandatory conference on January 12, 2004, the company ordered Ibay to report back to work. This offer was reiterated in petitioner's position paper dated February 5, 2004 and in its Rejoinder dated May 12, 2004. However, respondent did not comply with the said orders[31].

Petitioner claims that respondent did not report back despite several directives because he was about to leave for Macau, China in January 2004 which had been processed since November 2003. He had all the intention to abandon his work as manifested by his overt acts.[32]

On the other hand, respondent Ibay failed to file a comment on the petition. In a December 1, 2010 Resolution,[33] the Court required Ibay to show cause why he should not be held in contempt for such failure and to comply with the directive to file comment. On June 1, 2011, respondent Ibay was fined ₱1,000 for failure to comply with the show cause Resolution dated December 1, 2010.[34]

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[28] *Rollo*, p. 11.
[29] Id. at 11-13.
[30] Id. at 13-15.
[31] Id. at 14.
[32] Id. at 14-15.
[33] Id. at 192.
[34] Id. at 193.

In a March 12, 2012 Resolution,[35] the Court declared respondent guilty of contempt of court and ordered his arrest. However, he was not found in his stated address. On November 12, 2012, the Court resolved[36] to require the Integrated Bar of the Philippines (IBP) to submit the current and complete address of Atty. David D. Erro (Atty. Erro), respondent Ibay's counsel of record. On January 11, 2013, the IBP informed the Court of Atty. Erro's complete and current address.[37] However, despite resending the notices and resolutions to Atty. Erro's address, the latter failed to comply.

On October 16, 2018, Atty. Jobert I. Pahilga (Atty. Pahilga) of Erro Pahilga Law Offices filed before this Court a *Compliance with Notice of New Address and Motion*.[38] He reasoned that Atty. Erro formed the Erro Pahilga Law Offices together with him as partner. Atty. Erro is presently the undersecretary of the Department of Agrarian Reform (DAR) and that his position forced him to go on leave from the law offices.

On March 6, 2020, respondent Ibay, through his counsel Atty. Pahilga, filed a *Manifestation and Comment/Opposition to the Petition with Notice of New Address*.[39] He argues that petitioner availed of the wrong remedy when it filed a petition for *certiorari* under Rule 65. He alleges that a petition for *certiorari* under Rule 65 is available only when the court or quasi-judicial body acted with grave abuse of discretion and that there is no plain, speedy, and adequate remedy in the ordinary course of law. In this case, respondent maintains that the appellate court did not commit grave abuse of discretion and that petitioner had plain, speedy and adequate remedy which is a petition for review on *certiorari* under Rule 45.[40]

Respondent claims that petitioner filed the instant petition under Rule 65 because the period to file the petition for review under Rule 45, which is 15 days from receipt of the challenged decision or resolution, had already lapsed. Respondent notes that petitioner received the February 6, 2009 Resolution of the CA on February 16, 2009. However, it filed its petition for *certiorari* under Rule 65 only on April 21, 2009 or 64 days after receipt by its counsel of the assailed CA Resolution. Thus, petitioner lost its right to appeal. A *certiorari* under Rule 65 is not a remedy or substitute for a lost appeal. Nonetheless, even assuming that petitioner could avail of the *certiorari* under Rule 65, the same was filed out of time as it was filed 64 days from receipt of the February 6, 2009 Resolution, clearly beyond the 60-day period within which to file the petition.[41]

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35 Id. at 203-204.
36 Id. at 216.
37 Id. at 218.
38 Id. at 256-260.
39 Id. not paginated.
40 Id.
41 Id.

Moreover, respondent contends that the CA correctly dismissed the petition when the petitioner failed to comply with the September 12, 2008 Resolution of the CA to furnish the court of the present and complete address of the respondent and his counsel. The dismissal of the petition was due to the neglect and absolute non-compliance for an unreasonable length of time by the petitioner with the order or resolution of the CA.

Finally, respondent claims that a thorough reading of the instant petition would readily show that it is a mere rehash of the arguments which were already passed upon by the NLRC.

Our Ruling

After due consideration, we resolve to dismiss the petition.

Wrong mode of appeal.

Section 1 of Rule 45 provides that when a party desires to appeal by *certiorari* from a judgment, final order or resolution of the CA, he or she may file with the Supreme Court a verified petition for review on *certiorari* which shall raise only questions of law. Clearly, the assailed September 12, 2008 and February 6, 2009 Resolutions of the appellate court may be elevated to this Court via a petition for review on *certiorari* under Rule 45 on pure questions of law. However, as can be gleaned from the records, the petitioner availed of a petition for *certiorari* under Rule 65 instead. It is settled that an extraordinary remedy of *certiorari* will not lie if there is a plain, speedy, and adequate remedy in the ordinary course of law,[42] as in this case. Petitioner should have availed of a petition for review on *certiorari* under Rule 45 and not a petition for *certiorari* under Rule 65 as its petition was dismissed by the appellate court based on Section 3 of Rule 117 which is an adjudication on the merits and not merely an interlocutory order.

Nonetheless, it must be clarified that for purposes of discussion, the petition was filed within the 60-day reglementary period under Rule 65, contrary to the contention of the respondent that it was filed out of time or 64 days from receipt of the CA's February 6, 2009 Resolution on February 16, 2009. The records clearly show that the petition for *certiorari* under Rule 65 was filed on April 16, 2009 which is within the 60-day reglementary period to file a petition.

Despite the foregoing, We are inclined to dismiss the petition. The right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of law.[43] The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of the party to conform to the

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[42] *Republic v. Yang Chi Hao*, 617 Phil. 422, 432 (2009).
[43] *Nueva Ecija II Electric Cooperative, Inc. v. Mapagu*, 805 Phil. 823 (2017).

rules regarding appeal will render the judgment final and executory.[44]

Although we have applied a liberal application of the rules of procedure in a number of cases, this can be invoked only in proper cases and under justifiable causes and circumstances.[45] Petitioner failed to cite any reasonable cause to justify non-compliance with the rules for its availment of a wrong remedy. In fact, it resorted to a wrong mode of appeal by filing a petition for *certiorari* under Rule 65 instead of a petition for review on *certiorari* under Rule 45. Whatever may be the reason for taking such option, the petitioner failed to apprise this Court. Its petition, invoking grave abuse of discretion on the appellate court, unmistakably confirms that it intended to file a petition for *certiorari* under Rule 65 to assail the September 12, 2008 and February 6, 2009 Resolutions. However, one cannot simply substitute *certiorari* under Rule 65 for a lost remedy of appeal as they are mutually exclusive and not alternative or successive.

No abandonment on the part of Ibay; he was illegally dismissed by the company.

Even granting that petitioner availed of the correct remedy and that the same was filed within the reglementary period, the petition still warrants its dismissal. Although the appellate court's September 12, 2008 and February 6, 2009 Resolutions did not delve on the issue of respondent Ibay's illegal dismissal, we deem it necessary to completely resolve and settle this issue considering the duty of the Court to consider and give due regard to everything on record relevant and material to the resolution of the issues presented. As can be gleaned from the records, respondent Ibay did not abandon his work in Inter-Island as in fact he immediately filed a complaint for illegal dismissal after he was prevented from entering the company premises. This only proves that respondent Ibay had no intention to sever his employer-employee relationship with Inter-Island.

The contention that Ibay had applied to work abroad is not supported by evidence on record. Even if the same is true, Ibay's intent to earn a living during the pendency of the labor case should not be taken against him. Besides, even if he indeed applied for a new job abroad in November 2003, petitioner's illegal dismissal of respondent Ibay and the latter's subsequent filing of a complaint were *fait accompli,* having already been accomplished in October 2003 or way before respondent Ibay's alleged application for work abroad. This cannot erase the fact that the company illegally dismissed its employee without just and authorized cause and prevented the latter from entering the company premises.

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[44] *Land Bank of the Phils. v. Court of Appeals,* 789 Phil. 577, 583 (2016) citing *Land Bank of the Philippines v. Court of Appeals*, 663 Phil. 112 (2011) citing *Zamboanga Forest Managers Corp. v. New Pacific Timber and Supply Co.*, 647 Phil. 403 (2010).

[45] Id., citing *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg,* 700 Phil. 749 (2012).

company premises.

Further, petitioner's contention that it issued several return-to-work orders is without any factual basis. Petitioner's allegation that it ordered its worker to return to work during the mandatory conference on January 12, 2004, as reiterated in its position paper dated February 5, 2004 and in its Rejoinder dated May 12, 2004, were substantially refuted by Ibay who claimed non-receipt of petitioner's written notice to return to work.

As a final note, the obstinate failure of respondent Ibay and his counsel of record before the LA and the NLRC, Atty. Erro, to comply with the appellate court and this Court's numerous directives has not escaped Our notice. While it is true that Ibay's cause was ultimately proven to be meritorious, this fact does not excuse nor justify Ibay's or Atty. Erro's repeated failure to comply with the orders of the Court. In fact, this case has dragged on for 11 years since the filing of the petition for *certiorari* under Rule 65 before this Court in 2009 due to the mere fact that Atty. Erro could not be located to be served the notices of this Court. Even respondent Ibay was not found in his address on record during the service of the warrant of arrest for contempt.

Although we recognize Atty. Erro's appointment as undersecretary of DAR during the pendency of this case and his inability to continue private law practice because of conflict of interest, this does not excuse him from complying with his responsibility to update the Court and the IBP of his current and complete address and to his clients. Clearly, petitioner cannot be faulted when it relied on the information of Atty. Erro's address as stated in his pleadings filed before the LA and NLRC. His failure to withdraw as counsel of record of respondent Ibay in this case or even the proper turn-over of the same to his partner Atty. Pahilga undoubtedly shows negligence on his part.

As a consequence, this Court imposes upon Atty. Erro an additional ₱5,000 for his non-compliance with this Court's June 10, 2009 Resolution and the other Resolutions subsequent thereto. On the other hand, respondent Ibay's lack of enthusiasm towards the outcome of this case for his failure to inform the court of his counsel of record's incapability to represent him warrants the imposition as well of a fine of ₱5,000.

WHEREFORE, the petition is **DISMISSED.** The September 12, 2008 and February 6, 2009 Resolutions of the Court of Appeals in CA-G.R. SP No. 103148 are hereby **AFFIRMED.**

Respondent Cham Q. Ibay and Atty. David D. Erro are **ORDERED** to **PAY** within five (5) days from receipt of this Decision an additional fine of ₱5,000.00 each for their repeated failure to heed the directives of this Court and are **STERNLY WARNED** that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

WE CONCUR:

On Wellness Leave.
MARVIC M. V. F. LEONEN
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

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

RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice