



Republic of the Philippines
Supreme Court

Manila

THIRD DIVISION

NATIVIDAD LIM,
Petitioner,

G.R. No. 178789

Present:

- versus -

VELASCO, JR., *J.*, Chairperson,
PERALTA,
ABAD,
PEREZ,* and
MENDOZA, *JJ.*

**NATIONAL POWER CORPORATION,
SPOUSES ROBERTO LL. ARCINUE
and ARABELA ARCINUE,**
Respondents.

Promulgated:

14 November 2012

Macapang

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DECISION

ABAD, *J.*:

This case is about the consequence of a party's failure to explain in his motion why he served a copy of it on the adverse party by registered mail rather than by personal service.

The Facts and the Case

On February 8, 1995 respondent National Power Corporation (NPC) filed an expropriation suit¹ against petitioner Natividad B. Lim (Lim) before the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 37 in Civil Case 17352 covering Lots 2373 and 2374 that the NPC needed for its Sual

* Designated Acting Member, per Special Order 1299 dated August 28, 2012.

¹ *Rollo*, pp. 100-103.

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Coal-Fired Thermal Power Project. Since Lim was residing in the United States, the court caused the service of summons on her on February 20, 1995 through her tenant, a certain Wilfredo Tabongbong.² On March 1, 1995, upon notice to Lim and the deposit of the provisional value of the property, the RTC ordered the issued writ of possession in NPC's favor that would enable it to cause the removal of Lim from the land.³

On April 24, 1995, however, Lim, represented by her husband Delfin, filed an omnibus motion to dismiss the action and to suspend the writ of possession,⁴ questioning the RTC's jurisdiction over Lim's person and the nature of the action. She also assailed the failure of the complaint to state a cause of action. The RTC denied the motions.⁵

On December 6, 1996 respondent spouses Roberto and Arabela Arcinue (the Arcinues) filed a motion for leave to admit complaint in intervention,⁶ alleging that they owned and were in possession of Lot 2374, one of the two lots subject of the expropriation. On January 7, 1997 the RTC granted the Arcinues' motion and required both the NPC and Lim to answer the complaint-in-intervention within 10 days from receipt of its order.⁷

When Lim and the NPC still did not file their answers to the complaint-in-intervention after 10 months, on December 7, 1998 the Arcinues filed a motion for judgment by default.⁸ Lim sought to expunge the motion on the ground that it lacked the requisite explanation why the Arcinues resorted to service by registered mail rather than to personal service. At the scheduled hearing of the motion, Lim's counsel did not

² Id. at 106.

³ Id. at 108.

⁴ Id. at 109-112.

⁵ Id. at 114-115.

⁶ Id. at 116-118.

⁷ Id. at 119.

⁸ Id. at 120-121.

appear. The NPC for its part manifested that it did not file an answer since its interest lay in determining who was entitled to just compensation.

On March 1, 1999 the RTC issued an order of default⁹ against both Lim and the NPC. The RTC pointed out that the Arcinues' failure to explain their resort to service by registered mail had already been cured by the manifestation of Lim's counsel that he received a copy of the Arcinues' motion on December 7, 1998 or 10 days before its scheduled hearing. Lim filed a motion for reconsideration¹⁰ to lift the default order but the Court denied the motion,¹¹ prompting Lim to file a petition for *certiorari*¹² before the Court of Appeals (CA) in CA-G.R. SP 52842.

On March 23, 2007 the CA rendered a decision¹³ that affirmed the RTC's order of default. Lim filed a motion for reconsideration¹⁴ but the CA denied it,¹⁵ prompting her to file the present petition for review.¹⁶ On September 24, 2007 the Court initially denied Lim's petition¹⁷ but on motion for reconsideration, the Court reinstated the same.¹⁸

Issue Presented

The only issue presented in this case is whether or not the CA gravely abused its discretion in affirming the order of default that the RTC entered against Lim.

Ruling of the Court

Lim points out that an answer-in-intervention cannot give rise to

⁹ Id. at 122-123.

¹⁰ Id. at 124-125.

¹¹ Id. at 127.

¹² Id. at 128-131.

¹³ Id. at 10-20.

¹⁴ CA *rollo*, pp. 130-148.

¹⁵ *Rollo*, pp. 22-23.

¹⁶ Id. at 25-53.

¹⁷ Id. at 158.

¹⁸ Id. at 218.

default since the filing of such an answer is only permissive. But Section 4, Rule 19¹⁹ of the 1997 Rules of Civil Procedure requires the original parties to file an answer to the complaint-in-intervention within 15 days from notice of the order admitting the same, unless a different period is fixed by the court. This changes the procedure under the former rule where such an answer was regarded as optional.²⁰ Thus, Lim's failure to file the required answer can give rise to default.

The trial court had been liberal with Lim. It considered her motion for reconsideration as a motion to lift the order of default and gave her an opportunity to explain her side. The court set her motion for hearing but Lim's counsel did not show up in court. She remained unable to show that her failure to file the required answer was due to fraud, accident, mistake, or excusable negligence. And, although she claimed that she had a meritorious defense, she was unable to specify what constituted such defense.²¹

Lim points out that the RTC should have ordered the Arcinues' motion for judgment by default expunged from the records since it lacked the requisite explanation as to why they resorted to service by registered mail in place of personal service.

There is no question that the Arcinues' motion failed to comply with the requirement of Section 11, Rule 13 of the 1997 Rules of Civil Procedure which provides:

SECTION 11. *Priorities in modes of service and filing.* — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation, why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

¹⁹ **Section 4. Answer to complaint-in-intervention.** — The answer to the complaint-in-intervention shall be filed within fifteen (15) days from notice of the order admitting the same, unless a different period is fixed by the court. (2[d]a, R12)

²⁰ Remedial Law Compendium, Volume I, Tenth Edition, Florenz D. Regalado.

²¹ *David v. Gutierrez-Fruelda*, G.R. No. 170427, January 30, 2009, 577 SCRA 357, 362.

But the above does not provide for automatic sanction should a party fail to submit the required explanation. It merely provides for that possibility considering its use of the term “may.” The question is whether or not the RTC gravely abused its discretion in not going for the sanction of striking out the erring motion.

The Court finds no such grave abuse of discretion here. As the RTC pointed out, notwithstanding that the Arcinues’ failed to explain their resort to service by registered mail rather than by personal service, the fact is that Lim’s counsel expressly admitted having received a copy of the Arcinues’ motion for judgment by default on December 7, 1998 or 10 days before its scheduled hearing. This means that the Arcinues were diligent enough to file their motion by registered mail long before the scheduled hearing.

Personal service is required precisely because it often happens that hearings do not push through because, while a copy of the motion may have been served by registered mail before the date of the hearing, such is received by the adverse party already after the hearing. Thus, the rules prefer personal service. But it does not altogether prohibit service by registered mail when such service, when adopted, ensures as in this case receipt by the adverse party.


WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the Court of Appeals Decision in CA-G.R. SP 52842 dated March 23, 2007 and Resolution dated July 5, 2007 that upheld the orders of the Regional Trial Court in Civil Case 17352. The Court **DIRECTS** the RTC to proceed with its hearing and adjudication of the case.

SO ORDERED.



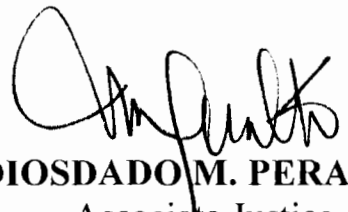
ROBERTO A. ABAD
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



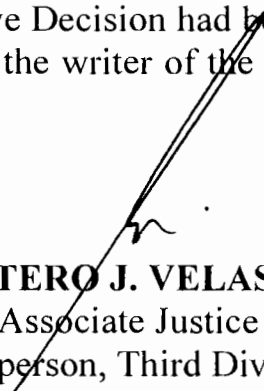
JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
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.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.



MARIA LOURDES P. A. SERENO
Chief Justice