Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

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| **ANDREW D. FYFE, RICHARD T. NUTTALL, and RICHARD J. WALD,** Petitioners, | **G.R. NO. 160071** |
| | Present: |
| | *SERENO, *C.J.*, |
| | **LEONARDO-DE CASTRO, *Acting Chairperson*, |
| - *versus* - | BERSAMIN, PERLAS-BERNABE, and CAGUIOA, *JJ.* |
| **PHILIPPINE AIRLINES, INC.,** Respondent. | Promulgated: |
| | JUN 06 2016 |

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**DECISION**

**BERSAMIN, *J.***

This case concerns the order issued by the Regional Trial Court granting the respondent's application to vacate the adverse arbitral award of the panel of arbitrators, and the propriety of the recourse from such order.

**The Case**

Under review are the resolutions promulgated in C.A.-G.R. No. 71224 entitled *Andrew D. Fyfe, Richard T. Nuttall and Richard J. Wald v. Philippine Airlines, Inc.* on May 30, 2003[1] and September 19, 2003,[2] whereby the Court of Appeals (CA) respectively granted the respondent's

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* On leave.

** Acting Chairperson per Special Order No. 2355 dated June 2, 2016.

1 *Rollo* (Vol. I), pp. 75-77; penned by Associate Justice Amelita G. Tolentino (retired), concurred in by Associate Justice Buenaventura J. Guerrero (retired/deceased) and Associate Justice Mariano C. del Castillo (now a Member of this Court).

2 Id. at 79.

*Motion to Dismiss Appeal (without Prejudice to the Filing of Appellee's Brief)*, and denied the petitioners' *Motion for Reconsideration.*

## Antecedents

In 1998, the respondent underwent rehabilitation proceedings in the Securities and Exchange Commission (SEC),[3] which issued an order dated July 1, 1998 decreeing, among others, the suspension of all claims for payment against the respondent.[4] To convince its creditors to approve the rehabilitation plan, the respondent decided to hire technical advisers with recognized experience in the airline industry. This led the respondent through its then Director Luis Juan K. Virata to consult with people in the industry, and in due course came to meet Peter W. Foster, formerly of Cathay Pacific Airlines.[5] Foster, along with Michael R. Scantlebury, negotiated with the respondent on the details of a proposed technical services agreement.[6] Foster and Scantlebury subsequently organized Regent Star Services Ltd. (Regent Star) under the laws of the British Virgin Islands.[7] On January 4, 1999, the respondent and Regent Star entered into a *Technical Services Agreement* (TSA) for the delivery of technical and advisory or management services to the respondent,[8] effective for five years, or from January 4, 1999 until December 31, 2003.[9] On the same date, the respondent, pursuant to Clause 6 of the TSA,[10] submitted a Side Letter,[11] the relevant portions of which stated:

> For and in consideration of the services to be faithfully performed by Regent Star in accordance with the terms and conditions of the Agreement, the Company agrees to pay Regent Star as follows:
>
> > 1.1 Upon execution of the Agreement, Four Million Seven Hundred Thousand US Dollars (US$4,700,000.00), representing advisory fees for two (2) years from the date of signature of the Agreement, with an additional amount of not exceeding One Million Three Hundred Thousand US Dollars (US$1,300,000.00) being due and demandable upon Regent Star's notice to the Company of its engagement of an individual to assume the position of CCA under the Agreement;
> >
> > x x x x

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3 SEC Case No. 06-98-6004

4 *Rollo* (Vol. I), pp. 149-150, 150.

5 *Rollo* (Vol. II), pp. 1387-1388.

6 *Rollo* (Vol. I), pp. 421-422.

7 Id. at 422.

8 Id. at 286-296.

9 Id. at 288.

10 6. Remuneration

The Company shall pay to Regent Star certain fees in an amount and on the dates agreed upon by way of a side letter with the Company."

11 *Rollo* (Vol. I), pp. 100-103.

> In addition to the foregoing, the Company agrees as follows:
>
> x x x x
>
> In the event of a full or partial termination of the Agreement for whatever reason by either the Company or a Senior Technical Adviser/Regent Star prior to the end of the term of the Agreement, the following penalties are payable by the terminating party:
>
> A. During the first 2 years
>
> | | | |
> |---|---|---|
> | 1. Senior Company Adviser (CCA) | - | US$800,000.00 |
> | 2. Senior Commercial Adviser (SCA) | - | 800,000.00 |
> | 3. Senior Financial Adviser (FSA) | - | 700,000.00 |
> | 4. Senior Ground Services and Training Adviser (SAG) | - | 500,000.00 |
> | 5. Senior Engineering and Maintenance Adviser (SAM) | - | 500,000.00 |
>
> x x x x
>
> For the avoidance of doubt, it is understood and agreed that in the event that the terminating party is an individual Senior Technical Adviser the liability to pay such Termination Amount to the Company shall rest with that individual party, not with RSS. Similarly, if the terminating party is the Company, the liability to the aggrieved party shall be the individual Senior Technical Adviser, not to RSS. [12]

Regent Star, through Foster, conformed to the terms stated in the Side Letter.[13] The SEC approved the TSA on January 19, 1999.[14]

In addition to Foster and Scantlebury, Regent Star engaged the petitioners in respective capacities, specifically: Andrew D. Fyfe as Senior Ground Services and Training Adviser; Richard J. Wald as Senior Maintenance and Engineering Adviser; and Richard T. Nuttall as Senior Commercial Adviser. The petitioners commenced to render their services to the respondent immediately after the TSA was executed.[15]

On July 26, 1999, the respondent dispatched a notice to Regent Star terminating the TSA on the ground of lack of confidence effective July 31, 1999.[16] In its notice, the respondent demanded the offsetting of the penalties due to the petitioners with the two-year advance advisory fees it had paid to Regent Star, thus:

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[12] Id. at 100-102.
[13] Id. at 103.
[14] Id. at 104-105.
[15] Id. at 14.
[16] Id. at 106-107.

The side letter stipulates that "[i]n the event of a full or partial termination of the Agreement for whatever reason by either the Company or a Senior Technical Adviser/Regent Star prior to the end of the term of the Agreement, the following penalties are payable by the terminating party:"

During the first 2 years:

| | | |
|---|---|---|
| Senior Company Adviser | - | US$800,000.00 |
| Senior Commercial Adviser | - | 800,000.00 |
| Senior Financial Adviser | - | 700,000.00 |
| Senior Ground Services and Training Adviser | - | 500.000.00 |
| Senior Engineering and Maintenance Adviser | - | 500,000.00 |
| **TOTAL** | | **US$3,300,000.00** |

There is, therefore, due to RSS from PAL the amount of US$3,300,000.00 by way of stipulated penalties.

However, RSS has been paid by PAL advance "advisory fee for two (2) years from date of signature of the Agreement" the amount of US$5,700,000. Since RSS has rendered advisory services from 4 January to 31 July 1999, or a period of seven months, it is entitled to retain only the advisory fees for seven months. This is computed as follows:

$$\frac{\text{US\$5,700,000}}{\text{24 months}} = \text{US\$237,500/month} \times 7 = \text{US\$1,662,500}$$

The remaining balance of the advance advisory fee, which corresponds to the unserved period of 17 months, or US$4,037,500, should be refunded by RSS to PAL.

Off-setting the amount of US$3,300,000 due from PAL to RSS against the amount of US$4,037,500 due from RSS to PAL, there remains a net balance of US$737,500 due and payable to PAL. Please settle this amount at your early convenience, but not later than August 15, 1999.[17]

On June 8, 1999, the petitioners, along with Scantlebury and Wald, wrote to the respondent, through its President and Chief Operating Officer, Avelino Zapanta, to seek clarification on the status of the TSA in view of the appointment of Foster, Scantleburry and Nuttall as members of the Permanent Rehabilitation Receiver (PRR) for the respondent.[18] A month later, Regent Star sent to the respondent another letter expressing disappointment over the respondent's ignoring the previous letter, and denying the respondent's claim for refund and set-off. Regent Star then

[17] Id. at 106- 107.
[18] Id. at 303.

proposed therein that the issue be submitted to arbitration in accordance with Clause 14[19] of the TSA.[20]

Thereafter, the petitioners initiated arbitration proceedings in the Philippine Dispute Resolution Center, Inc. (PDRCI) pursuant to the TSA.

**Ruling of the PDRCI**

After due proceedings, the PDRCI rendered its decision ordering the respondent to pay termination penalties,[21] *viz.*:

> On issue No. 1 we rule that the Complainants are entitled to their claim for termination penalties.
>
> When the PAL terminated the Technical Services Agreement on July 26, 1999 which also resulted in the termination of the services of the senior technical advisers including those of the Complainants it **admitted** that the termination penalties in the amount of US$3,300,000.00 as provided in the Letter dated January 4, 1999 are payable to the Senior Technical Advisers by PAL. Xxx. PAL's admission of its liability to pay the termination penalties to the complainants was made also in its Answer. PAL's counsel even stipulated during the hearing that the airline company admits that it is liable to pay Complainants the termination penalties.xxx.
>
> However, PAL argued that although it is liable to pay termination penalties the Complainants are not entitled to their respective claims because considering that PAL had paid RSS advance "advisory fees for two (2) years" in the total amount of US$5,700,000.00 and RSS had rendered advisory services for only seven (7) months from January 4, 1999 to July 31, 1999 that would entitle RSS to an (sic) advisory fees of only US$1,662,500.00 and therefore the unserved period of 17 months equivalent to US$4,037,500.00 should be refunded. And setting off the termination penalties of US$3,300,000.00 due RSS from PAL against the amount of US$4,037,500.00 still due PAL from RSS there would remain a net balance of US$737,500.00 still due PAL from RSS and/or the Senior Technical Advisers which the latter should pay pro-rata as follows: Peter W. Forster, the sum of US$178,475.00; Richard T. Nuttall, the sum of US$178,475.00; Michael R. Scantlebury; the sum of US$156,350.00, Andrew D. Fyfe, the sum of US$111,362.50; and Richard J. Wald the sum of US$111,362.50. RSS is a special company which the Senior Technical Advisers had utilized for the specific purpose of providing PAL with technical advisory services they as a group had contracted under the

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[19] 14. Dispute Resolution and Arbitration

The parties shall use good faith efforts to settle all questions, disputes or other differences in any way arising out of or in relation to this Agreement. Any dispute should be clearly stated in writing by the aggrieved party to the other party. Both parties agree to use their best endeavours to resolve issues within 30 days of written notice of a dispute through good faith negotiations and discussions.

Upon failure of the foregoing, any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Philippine Dispute Resolution Center, Inc. (PDRCI) in accordance with its own International Commercial Arbitration Rules as at present in force. (see *rollo*, Vol. I, p. 294)

[20] *Rollo* (Vol. I), p. 304.

[21] Id. at 421-461.

> Agreement. Hence when PAL signed the Agreement with RSS, it was for all intents and purposes an Agreement signed individually with the Senior Technical Advisers including the Complainants. The RSS and the five (5) Senior Technical Advisers should be treated as one and the same,
>
> **The Arbitration Tribunals is not convinced.**
>
> x x x x
>
> PAL cannot refuse to pay Complainants their termination penalties by setting off against the unserved period of seventeen (17) months of their advance advisory fees as the Agreement and the Side Letter clearly do not allow refund. This Arbitration Tribunal cannot read into the contract, which is the law between the parties, what the contract does not provide or what the parties did not intend. It is basic in contract interpretation that contracts that are not ambiguous are to be interpreted according to their literal meaning and **should not be interpreted beyond their obvious intendment**. x x x. The penalties work as security for the Complainants against the uncertainties of their work at PAL whose closure was a stark reality they were facing. (TSN Hearing on April 27, 2000, pp. 48-49) This would not result in unjust enrichment for the Complainants because the termination of the services was initiated by PAL itself without cause. In fact, PAL admitted that at the time their services were terminated the Complainants were performing well in their respective assigned works.[22] x x x.
>
> PAL also presented hypothetical situations and certain computations that it claims would result to an "injustice" to PAL which would then "lose a very substantial amount of money" if the claimed refund is not allowed. PAL had chosen to pre-terminate the services of the complainants and must therefore pay the termination penalties provided in the Side Letter. If it finds itself losing "substantial" sums of money because of its contractual commitments, there is nothing this Arbitration Tribunal can do to remedy the situation. Jurisprudence teaches us that neither the law nor the courts will extricate a party from an unwise or undesirable contract that he or she entered into with all the required formalities and with full awareness of its consequences. (*Opulencia vs. Court of Appeals*, 293 SCRA 385 (1998)[23]

## Decision of the RTC

Dissatisfied with the outcome, the respondent filed its Application to Vacate Arbitral Award in the Regional Trial Court, in Makati City (RTC), docketed as SP Proc. M-5147 and assigned to Branch 57,[24] arguing that the arbitration decision should be vacated in view of the July 1, 1998 order of the SEC placing the respondent under a state of suspension of payment pursuant to Section 6(c) of Presidential Decree No. 902-A, as amended by P.D. No. 1799.[25]

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22 Id. at 428-429, 447, 453.
23 Id. at 453.
24 Id. at 474-528.
25 Id. at 523-524.

The petitioners countered with their Motion to Dismiss,[26] citing the following grounds, namely: (a) lack of jurisdiction over the persons of the petitioners due to the improper service of summons; (b) the application did not state a cause of action; and (c) the application was an improper remedy because the respondent should have filed an appeal in the CA pursuant to Rule 43 of the *Rules of Court*.[27]

On March 7, 2001, the RTC granted the respondent's Application to Vacate Arbitral Award,[28] disposing:

> WHEREFORE, the subject arbitral award dated September 29, 2000 is hereby vacated and set aside, without prejudice to the complainants' filing with the SEC rehabilitation receiver of PAL their subject claim for appropriate adjudication. The panel of arbitrators composed of lawyers Beda Fajardo, Arturo de Castro and Bienvenido Magnaye is hereby ordered discharged on the ground of manifest partiality.
>
> No pronouncement as to cost and attorney's fees.
>
> SO ORDERED.[29]

Anent jurisdiction over the persons of the petitioners, the RTC opined:

> On the objection that the Court has not acquired jurisdiction over the person of the complainants because summonses were not issued and served on them, the Court rules that complainants have voluntarily submitted themselves to the jurisdiction of the Court by praying the Court to grant them affirmative relief, i.e., that the Court confirm and declare final and executory the subject arbitral award. Moreover, under Sections 22 and 26 of the Arbitration Law (R.A. 876), an application or petition to vacate arbitral award is deemed a motion and service of such motion on the adverse party or his counsel is enough to confer jurisdiction upon the Court over the adverse party.
>
> It is not disputed that complainants were duly served by personal delivery with copies of the application to vacate. In fact, they have appeared through counsel and have filed pleadings. In line with this ruling, the objection that the application to vacate does not state a cause of action against complainants must necessarily fall inasmuch as this present case is a special proceeding (Sec. 22, Arbitration Law), and Section 3(a), Rule 1 of the 1997 Rules of Civil Procedure is inapplicable here.[30]

On whether or not the application to vacate was an appropriate remedy under Sections 24 and 26 of the Arbitration Law, and whether or not

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26 Id. at 612-633.
27 *Rollo* (Vol. II), p. 1396.
28 *Rollo* (Vol. I), pp. 1064-1069.
29 Id. at 1069.
30 Id. at 1064-1065.

the July 1, 1998 order of the SEC deprived the Panel of Arbitrators of the authority to hear the petitioners' claim, the RTC held:

> The rationale for the suspension is to enable the rehabilitation receiver to exercise his powers without any judicial or extra-judicial interference that might unduly hinder the rescue of the distressed corporation. x x x. PD No. 902-A does not provide for the duration of the suspension; therefore, it is deemed to be effective during the entire period that the corporate debtor is under SEC receivership.
>
> There is no dispute that PAL is under receivership (Exhibits "1" and "2"). In its Order dated 1 July 1998, the SEC declared that "all claims for payment against PAL are deemed suspended." This Order effectively deprived all other tribunals of jurisdiction to hear and decide all actions for claims against PAL for the duration of the receivership.
>
> x x x x
>
> Unless and until the SEC lifts the Order dated 1 July 1998, the Panel of Arbitrators cannot take cognizance of complainant' claims against PAL without violating the exclusive jurisdiction of the SEC. The law has granted SEC the exclusive jurisdiction to pursue the rehabilitation of a private corporation through the appointment of a rehabilitation receiver (Sec 6 (d), PD No. 902-A, as amended by PD 1799). "exclusive jurisdiction precludes the idea of co-existence and refers to jurisdiction possessed to the exclusion of others. x x x. Thus, "(I)nstead of vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is the duly appointed officer of the SEC. x x x.[31]

After their motion for reconsideration[32] was denied,[33] the petitioners appealed to the CA by notice of appeal.

## Resolution of the CA

The respondent moved to dismiss the appeal,[34] arguing against the propriety of the petitioners' remedy, and positing that Section 29 of the Arbitration Law limited appeals from an order issued in a proceeding under the Arbitration Law to a review on *certiorari* upon questions of law.[35]

On May 30, 2003, the CA promulgated the now assailed resolution granting the respondent's Motion to Dismiss Appeal.[36] It declared that the appropriate remedy against the order of the RTC vacating the award was a petition for review on *certiorari* under Rule 45, *viz.*:

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31 Id. at 1066.
32 Id. at 1070-1085.
33 Id. at 1101-1102.
34 Id. at 1279-1285.
35 Id. at 28.
36 Id. at 75-77.

> The term "*certiorari*" in the aforequoted provision refers to an ordinary appeal under Rule 45, not the special action of certiorari under Rule 65. As Section 29 proclaims, it is an "appeal." This being the case, the proper forum for this action is, under the old and the new rules of procedure, the Supreme Court. Thus, Section 2(c) of Rule 41 of the 1997 Rules of Civil Procedure states that,
>
> > *"In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45."*
>
> Furthermore, Section 29 limits the appeal to "questions of law," another indication that it is referring to an appeal by certiorari under Rule 45 which, indeed, is the customary manner of reviewing such issues.
>
> Based on the foregoing, it is clear that complainants-in-arbitration/appellants filed the wrong action with the wrong forum.
>
> WHEREFORE, premises considered, the Motion to Dismiss Appeal (*Without Prejudice to the Filing of Appellee's Brief*) is **GRANTED** and the instant appeal is hereby ordered **DISMISSED**.
>
> SO ORDERED.[37]

The petitioners moved for reconsideration,[38] but the CA denied their motion.[39]

Hence, this appeal by the petitioners.

## Issues

The petitioners anchor this appeal on the following grounds, namely:

> I
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> SECTION 29 OF THE ARBITRATION LAW, WHICH LIMITS THE MODE OF APPEAL FROM THE ORDER OF A REGIONAL TRIAL COURT IN A PROCEEDING MADE UNDER THE ARBITRATION LAW TO A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES, IS UNCONSTITUTIONAL FOR UNDULY EXPANDING THE JURISDICTION OF THIS HONORABLE COURT WITHOUT THIS HONORABLE COURT'S CONCURRENCE;
>
> II
>
> THE COURT OF APPEALS HAD JURISDICTION OVER THE CA APPEAL BECAUSE:

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37 Id. at 77.
38 Id. at 1340-1357.
39 Id. at 79.

A.

THIS HONORABLE COURT HAS PREVIOUSLY UPHELD THE EXERCISE BY THE COURT OF APPEALS OF JURISDICTION OVER AN APPEAL INVOLVING QUESTIONS OF FACT OR OF MIXED QUESTIONS OF FACT AND LAW FROM A REGIONAL TRIAL COURT'S ORDER VACATING AN ARBITRAL AWARD

B.

WHERE, AS IN THIS CASE, THE ISSUES ON APPEAL CONCERNED THE ABSENCE OF EVIDENCE AND LACK OF LEGAL BASIS TO SUPPORT THE REGIONAL TRIAL COURT'S ORDER VACATING THE ARBITRAL AWARD, GRAVE MISCHIEF WOULD RESULT IF THE REGIONAL TRIAL COURT'S BASELESS FINDINGS OF FACT OR MIXED FINDINGS OF FACT ARE PLACED BEYOND APPELLATE REVIEW; AND

C.

THE COURT OF APPEALS' DISMISSAL OF THE CA APPEAL WOULD IN EFFECT RESULT IN THE AFFIRMATION OF THE REGIONAL TRIAL COURT'S EXERCISE OF JURISDICTION, OVER PERSONS UPON WHOM IT FAILED TO VALIDLY ACQUIRE SUCH JURISDICTION AND OF APPELLATE JURISDICTION OVER THE PDRCI ARBITRAL AWARD EVEN IF SUCH APPELLATE POWER IS EXCLUSIVELY LODGED WITH THE COURT OF APPEALS UNDER RULE 43 OF THE RULES

III

INSTEAD OF DISMISSING THE CA APPEAL OUTRIGHT, THE COURT OF APPEALS SHOULD HAVE SHORTENED THE PROCEEDINGS AND EXPEDITED JUSTICE BY EXERCISING ORIGINAL JURISDICTION OVER THE APPLICATION TO VACATE PURSUANT TO RULE 43 OF THE RULES, ESPECIALLY CONSIDERING THAT THE PARTIES HAD IN FACT ALREADY FILED THEIR RESPECTIVE BRIEFS AND THE COMPLETE RECORDS OF BOTH THE RTC APPLICATION TO VACATE AND THE PDRCI ARBITRATION WERE ALREADY IN ITS POSSESSION; AND

IV

IN THE EVENT THAT AN APPEAL FROM AN ORDER VACATING AN ARBITRAL AWARD MAY BE MADE ONLY IN *CERTIORARI* PROCEEDINGS AND ONLY TO THE SUPREME COURT, THE COURT OF APPEALS SHOULD NOT HAVE DISMISSED THE CA APPEAL, BUT IN THE HIGHER INTEREST OF JUSTICE, SHOULD HAVE INSTEAD ENDORSED THE SAME TO THIS HONORABLE COURT, AS WAS DONE IN *SANTIAGO V. GONZALES*.[40]

The petitioners contend that an appeal from the order arising from arbitration proceedings cannot be by petition for review on *certiorari* under Rule 45 of the *Rules of Court* because the appeal inevitably involves mixed

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[40] Id. at 30-31.

questions of law and fact; that their appeal in the CA involved factual issues in view of the RTC's finding that the panel of arbitrators had been guilty of evident partiality even without having required the respondent to submit independent proof thereon; that the appropriate remedy was either a petition for *certiorari* under Rule 65 of the *Rules of Court*, or an ordinary appeal under Rule 41 of the *Rules of Court*, conformably with the rulings in *Asset Privatization Trust v. Court of Appeals*[41] and *Adamson v. Court of Appeals*,[42] respectively; and that the CA erroneously upheld the RTC's denial of their Motion To Dismiss Appeal on the basis of their counsel's voluntary appearance to seek affirmative relief because under Section 20, Rule 14 of the *Rules of Court* their objection to the personal jurisdiction of the court was not a voluntary appearance even if coupled with other grounds for a motion to dismiss.

In riposte, the respondent avers that the petition for review on *certiorari* should be denied due course because of the defective verification/certification signed by the petitioners' counsel; and that the special powers of attorney (SPAs) executed by the petitioners in favor of their counsel did not sufficiently vest the latter with the authority to execute the verification/certification in their behalf.

On the merits, the respondent maintains that: (*a*) the term *certiorari* used in Section 29 of the Arbitration Law refers to a petition for review under Rule 45 of the *Rules of Court*; (*b*) the constitutional challenge against Section 29 of the Arbitration Law was belatedly made; (*c*) the petitioners' claim of lack of jurisdiction on the part of the RTC should fail because an application to vacate an arbitral award under Sections 22 and 26 of the Arbitration Law is only required to be in the form of a motion; and (*d*) the complete record of the arbitration proceedings submitted to the RTC sufficiently proved the manifest partiality and grave abuse of discretion on the part of the panel of arbitrators.

To be resolved are: (*a*) whether or not the petition for review should be dismissed for containing a defective verification/certification; and (*b*) whether or not the CA erred in dismissing the appeal of the petitioners for being an inappropriate remedy.

**Ruling of the Court**

We deny the petition for review on *certiorari*.

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41 G.R. No. 121171, December 29, 1998, 300 SCRA 579

42 G.R. No. 106879, May 27, 1994, 232 SCRA 602.

## I
## There was sufficient compliance with the rule on verification and certification against forum shopping

The respondent insists that the verification/certification attached to the petition was defective because it was executed by the petitioners' counsel whose authority under the SPAs was only to execute the certification of non-forum shopping; and that the signing by the counsel of the certification could not also be allowed because the *Rules of Court* and the pertinent circulars and rulings of the Court require that the petitioners must themselves execute the same.

The insistence of the respondent is unwarranted. The SPAs individually signed by the petitioners vested in their counsel the authority, among others, "*to do and perform on my behalf any act and deed relating to the case, which it could legally do and perform, including any appeals or further legal proceedings.*" The authority was sufficiently broad to expressly and specially authorize their counsel, Atty. Ida Maureen V. Chao-Kho, to sign the verification/certification on their behalf.

The purpose of the verification is to ensure that the allegations contained in the verified pleading are true and correct, and are not the product of the imagination or a matter of speculation; and that the pleading is filed in good faith.[43] This purpose was met by the verification/certification made by Atty. Chao-Kho in behalf of the petitioners, which pertinently stated that:

> 2. Petitioners caused the preparation of the foregoing Petition for Review on *Certiorari*, and have read and understood all the allegations contained therein. Further, said allegations are true and correct based on their own knowledge and authentic records in their and the Firm's possession.[44]

The tenor of the verification/certification indicated that the petitioners, not Atty. Chao-Kho, were certifying that the allegations were true and correct based on their knowledge and authentic records. At any rate, a finding that the verification was defective would not render the petition for review invalid. It is settled that the verification was merely a formal requirement whose defect did not negate the validity or efficacy of the verified pleading, or affect the jurisdiction of the court.[45]

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[43] *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 146923, April 30, 2003, 402 SCRA 449, 454.

[44] *Rollo* (Vol. I), p. 66.

[45] *Navarro v. Court of Appeals*, G.R. No. 141307, March 28, 2001, 355 SCRA 672, 679.

We also uphold the efficacy of the certification on non-forum shopping executed by Atty. Chao-Kho on the basis of the authorization bestowed under the SPAs by the petitioners. The lawyer of the party, in order to validly execute the certification, must be "specifically authorized" by the client for that purpose.[46] With the petitioners being non-residents of the Philippines, the sworn certification on non-forum shopping by Atty. Chao-Kho sufficiently complied with the objective of ensuring that no similar action had been brought by them or the respondent against each other, to wit:

> 5. Significantly, Petitioners are foreign residents who reside and are presently abroad. Further, the Firm is Petitioners' sole legal counsel in the Philippines, and hence, is in a position to know that Petitioners have no other cases before any court o[r] tribunal in the Philippines;[47]

In this regard, we ought not to exact a literal compliance with Section 4, Rule 45, in relation to Section 2, Rule 42 of the *Rules of Court*, that only the party himself should execute the certification. After all, we have not been shown by the respondent any intention on the part of the petitioners and their counsel to circumvent the requirement for the verification and certification on non-forum shopping.[48]

## II
## Appealing the RTC order vacating an arbitral award

The petitioners contend that the CA gravely erred in dismissing their appeal for being an inappropriate remedy, and in holding that a petition for review on *certiorari* under Rule 45 was the sole remedy under Section 29 of the Arbitration Law. They argue that the decision of the RTC involving arbitration could be assailed either by petition for *certiorari* under Rule 65, as held in *Asset Privatization Trust*, or by an ordinary appeal under Rule 41, as opined in *Adamson*.

The petitioners are mistaken.

Firstly, the assailed resolution of the CA did not expressly declare that the petition for review on *certiorari* under Rule 45 was the sole remedy from the RTC's order vacating the arbitral award. The CA rather emphasized that the petitioners should have filed the petition for review on *certiorari* under Rule 45 considering that Section 29 of the Arbitration Law has limited the

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[46] *Hydro Resources Contractors Corporation v. National Irrigation Administration*, G.R. No. 160215, November 10, 2004, 441 SCRA 614, 636.

[47] *Rollo* (Vol. I), p. 66.

[48] *Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc.*, G.R. No. 159831, October 14, 2005, 473 SCRA 151, 162.

ground of review to "questions of law." Accordingly, the CA correctly dismissed the appeal of the petitioners because pursuant to Section 2,[49] Rule 41 of the *Rules of Court* an appeal of questions of law arising in the courts in the first instance is by petition for review on *certiorari* under Rule 45.

It is noted, however, that since the promulgation of the assailed decision by the CA on May 30, 2003, the law on the matter underwent changes. On February 4, 2004. Republic Act No. 9285 (*Alternative Dispute Resolution Act of 2004*) was passed by Congress, and was approved by the President on April 2, 2004. Pursuant to Republic Act No. 9285, the Court promulgated on September 1, 2009 in A.M. No. 07-11-08-SC the *Special Rules of Court on Alternative Dispute Resolution*, which are now the present rules of procedure governing arbitration. Among others, the *Special Rules of Court on Alternative Dispute Resolution* requires an appeal by petition for review to the CA of the final order of the RTC *confirming*, *vacating*, *correcting* or *modifying* a domestic arbitral award, to wit:

> Rule 19.12 *Appeal to the Court of Appeals.* – An appeal to the Court of Appeals through a petition for review under this Special Rule shall only be allowed from the following orders of the Regional Trial Court:
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> a. Granting or denying an interim measure of protection;
>
> b. Denying a petition for appointment of an arbitrator;
>
> c. Denying a petition for assistance in taking evidence;
>
> d. Enjoining or refusing to enjoin a person from divulging confidential information;
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> **e. Confirming, vacating or correcting/modifying a domestic arbitral award;**
>
> f. Setting aside an international commercial arbitration award;
>
> g. Dismissing the petition to set aside an international commercial arbitration award even if the court does not decide to recognize or enforce such award;
>
> h. Recognizing and/or enforcing an international commercial arbitration award;

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[49] Sec. 2. *Modes of appeal.*—

(a) *Ordinary appeal.*— The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.*— The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

**(c) *Appeal by certiorari.*— In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.** (n)

i. Dismissing a petition to enforce an international commercial arbitration award;

j. Recognizing and/or enforcing a foreign arbitral award;

k. Refusing recognition and/or enforcement of a foreign arbitral award;

l. Granting or dismissing a petition to enforce a deposited mediated settlement agreement; and

m. Reversing the ruling of the arbitral tribunal upholding its jurisdiction.

Although the *Special Rules of Court on Alternative Dispute Resolution* provides that the appropriate remedy from an order of the RTC vacating a domestic arbitral award is an appeal by petition for review in the CA, not an ordinary appeal under Rule 41 of the *Rules of Court*, the Court cannot set aside and reverse the assailed decision on that basis because the decision was in full accord with the law or rule in force at the time of its promulgation.

The ruling in *Asset Privatization Trust v. Court of Appeals*[50] cannot be the governing rule with respect to the order of the RTC vacating an arbitral award. *Asset Privatization Trust* justified the resort to the petition for *certiorari* under Rule 65 only upon finding that the RTC had acted without jurisdiction or with grave abuse of discretion in confirming the arbitral award. Nonetheless, it is worth reminding that the petition for *certiorari* cannot be a substitute for a lost appeal.[51]

Also, the petitioners have erroneously assumed that the appeal filed by the aggrieved party in *Adamson v. Court of Appeals*[52] was an ordinary one. *Adamson* concerned the correctness of the ruling of the CA in reversing the decision of the trial court, not the propriety of the remedy availed of by the aggrieved party. Nor did *Adamson* expressly declare that an ordinary appeal could be availed of to assail the RTC's ruling involving arbitration. As such, the petitioners' reliance on *Adamson* to buttress their resort to the erroneous remedy was misplaced.

We remind that the petitioners cannot insist on their chosen remedy despite its not being sanctioned by the Arbitration Law. Appeal as a remedy is not a matter of right, but a mere statutory privilege to be exercised only in the manner and strictly in accordance with the provisions of the law.[53]

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[50] Supra, note 41, at 600-601

[51] *Celino, Sr. v. Court of Appeals*, G.R. No. 170562, June 29, 2007, 526 SCRA 195, 200.

[52] Supra, note 42.

[53] *Boardwalk Business Ventures, Inc. v. Villareal, Jr.*, G.R. No. 181182, April 10, 2013, 695 SCRA 468, 477; *R Transport Corporation v. Philippine Hawk Transport Corporation*, G.R. No. 155737, October 19, 2005, 473 SCRA 342, 348.

## III
## Panel of Arbitrators had no jurisdiction to hear and decide the petitioners' claim

The petitioners' appeal is dismissible also because the arbitration panel had no jurisdiction to hear their claim. The RTC correctly opined that the SEC's suspension order effective July 1, 1998 deprived the arbitration panel of the jurisdiction to hear any claims against the respondent. The Court has clarified in *Castillo v. Uniwide Warehouse Club, Inc.*[54] why the claim for payment brought against a distressed corporation like the respondent should not prosper following the issuance of the suspension order by the SEC, regardless of when the action was filed, to wit:

> Jurisprudence is settled that the suspension of proceedings referred to in the law uniformly applies to all actions for claims filed against a corporation, partnership or association under management or receivership, without distinction, except only those expenses incurred in the ordinary course of business. In the oft-cited case of *Rubberworld (Phils.) Inc. v. NLRC*, the Court noted that aside from the given exception, the law is clear and makes no distinction as to the claims that are suspended once a management committee is created or a rehabilitation receiver is appointed. Since the law makes no distinction or exemptions, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos. Philippine Airlines, Inc. v. Zamora* declares that the automatic suspension of an action for claims against a corporation under a rehabilitation receiver or management committee embraces all phases of the suit, that is, the entire proceedings of an action or suit and not just the payment of claims.
>
> **The reason behind the imperative nature of a suspension or stay order in relation to the creditors claims cannot be downplayed, for indeed the indiscriminate suspension of actions for claims intends to expedite the rehabilitation of the distressed corporation by enabling the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the rescue of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation, instead of being directed toward its restructuring and rehabilitation.**
>
> At this juncture, **it must be conceded that the date when the claim arose, or when the action was filed, has no bearing at all in deciding whether the given action or claim is covered by the stay or suspension order. What matters is that as long as the corporation is under a management committee or a rehabilitation receiver, all actions for claims against it, whether for money or otherwise, must yield to the greater imperative of corporate revival, excepting only, as**

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[54] G.R. No. 169725, April 30, 2010, 619 SCRA 641.

**already mentioned, claims for payment of obligations incurred by the corporation in the ordinary course of business.**[55] (Bold emphasis supplied)

## IV
## The requirement of due process was observed

The petitioners' challenge against the jurisdiction of the RTC on the ground of the absence of the service of the summons on them also fails.

Under Section 22[56] of the Arbitration Law, arbitration is deemed a special proceeding, by virtue of which any application should be made in the manner provided for the making and hearing of motions, except as otherwise expressly provided in the Arbitration Law.

The RTC observed that the respondent's Application to Vacate Arbitral Award was duly served personally on the petitioners, who then appeared by counsel and filed pleadings. The petitioners countered with their Motion to Dismiss *vis-à-vis* the respondent's application, specifying therein the various grounds earlier mentioned, including the lack of jurisdiction over their persons due to the improper service of summons. Under the circumstances, the requirement of notice was fully complied with, for Section 26[57] of the Arbitration Law required the application to be served upon the adverse party or his counsel within 30 days after the award was filed or delivered "as prescribed by law for the service upon an attorney in an action."

## V
## Issue of the constitutionality of the Arbitration Law is devoid of merit

The constitutionality of Section 29 of the Arbitration Law is being challenged on the basis that Congress has thereby increased the appellate jurisdiction of the Supreme Court without its advice and concurrence, as required by Section 30, Article VI of the 1987 Constitution, to wit:

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[55] Id. at 648-650.

[56] Sec. 22. *Arbitration deemed a special proceeding.* - Arbitration under a contract or submission shall be deemed a special proceeding, of which the court specified in the contract or submission, or if none be specified, the Court of First Instance for the province or city in which one of the parties resides or is doing business, or in which the arbitration was held, shall have jurisdiction. Any application to the court, or a judge thereof, hereunder shall be made in manner provided for the making and hearing of motions, except as otherwise herein expressly provided.

[57] Sec. 26. *Motion to vacate, modify, or correct an award: when made.* – Notice of a motion to vacate, modify or correct the award must be served upon the adverse party or his counsel within thirty days after the award is filed or delivered, as prescribed by law for the service upon an attorney in an action.

> Section 30. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

The challenge is unworthy of consideration. Based on the tenor and text of Section 30, Article VI of the 1987 Constitution, the prohibition against increasing the appellate jurisdiction of the Supreme Court without its advice and concurrence applies prospectively, not retrospectively. Considering that the Arbitration Law had been approved on June 19, 1953, and took effect under its terms on December 19, 1953, while the Constitution was ratified only on February 2, 1987, Section 29 of the Arbitration Law could not be declared unconstitutional.

**WHEREFORE**, the Court **DENIES** the petition for review on *certiorari* for lack of merit; **AFFIRMS** the resolution promulgated on May 30, 2003 by the Court of Appeals in CA-G.R. CV No. 71224; and **ORDERS** the petitioners to pay the costs of suit.

**SO ORDERED.**

**LUCAS P. BERSAMIN**
Associate Justice

**WE CONCUR:**

(On Leave)
**MARIA LOURDES P. A. SERENO**
Chief Justice

**TERESITA J. LEONARDO-DE CASTRO**
Associate Justice
Acting Chairperson

**ESTELA M. PERLAS-BERNABE**
Associate Justice

**ALFREDO BENJAMIN S. CAGUIOA**
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.

**TERESITA J. LEONARDO-DE CASTRO**
Associate Justice
Acting Chairperson, First Division

## 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.

**ANTONIO T. CARPIO**
Acting Chief Justice