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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

BERNICE JOAN TI,
Petitioner,

- *versus* -

MANUEL S. DIÑO,
Respondent.

G.R. No. 219260

Present:

CARPIO, *J.*, *Chairperson,*
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, *JJ.*

Promulgated:

06 NOV 2017

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DECISION

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated July 31, 2015 of petitioner Bernice Joan Ti that seeks to reverse and set aside the Decision[1] dated January 10, 2014 and Resolution[2] dated June 30, 2015 of the Court of Appeals (*CA*) reversing the Order[3] dated May 20, 2011 of the Regional Trial Court (*RTC*), Branch 77, Quezon City in SP. Civil Action No. Q-09-65933, disapproving respondent's Notice of Appeal for being filed out of time.

The facts follow.

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1 Penned by Associate Justice Sesinando E. Villon, with the concurrence of Associate Justices Florito S. Macalino and Zenaida T. Galapate-Laguilles; *rollo*, pp. 22-28.

2 *Id.* at 30-31.

3 Penned by Acting Presiding Judge Ma. Belen Ringis-Liban; *id.* at 141-142.

The Office of the City Prosecutor (*City Prosecutor*), on February 19, 2008, issued a Resolution recommending the filing of an Information against petitioner and a certain Julieta Fernandez (*Fernandez*) for falsification of public documents, to which the petitioner and Fernandez filed a Motion for Reconsideration of said resolution. The Metropolitan Trial Court (*MeTC*) allowed the reinvestigation of the case and, thereafter, the first ruling of the City Prosecutor was reversed and set aside. Thus, a Motion to Withdraw Information was filed before the MeTC which was granted by the latter in an Order dated June 24, 2008.

Subsequently, respondent, through a private prosecutor, filed a Motion for Reconsideration of the MeTC's Order dated June 24, 2008 and, on November 14, 2008, the MeTC issued an Order granting the same motion for reconsideration and, thus, finding probable cause to indict petitioner and Fernandez for the crime charged.

As such, petitioner and Fernandez filed a petition for *certiorari* and prohibition with prayer for temporary restraining order/preliminary injunction with the RTC, Branch 77, Quezon City and the case was docketed as SP. Civil Action No. Q-09-65933 seeking to enjoin the MeTC from proceeding with the case claiming that the MeTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted respondent's motion for reconsideration.

On March 8, 2010, the RTC rendered a decision and ruled that the MeTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in reviving and reinstating the criminal case against petitioner and Fernandez on the basis of respondent's motion for reconsideration filed by the private prosecutor without the concurrence or conformity of the public prosecutor. Respondent, thereafter, filed a Motion for Reconsideration dated April 5, 2010, with the contention that the RTC erred in its resolution because the private prosecutor had the right to file a motion for reconsideration even without the conformity or concurrence of the public prosecutor.

Thereafter, petitioner and Fernandez filed a Motion to Expunge the Motion for Reconsideration dated April 5, 2010 of the respondent on the ground that there was a violation of the 3-day notice rule for motions and the lack of MCLE Compliance of the respondent's counsel. Respondent also filed an Opposition to the motion to expunge the motion for reconsideration.

The RTC, on December 28, 2010, denied respondent's Motion for Reconsideration dated April 5, 2010. It was ruled that the failure of the respondent movant to comply with the 3-day notice rule on motions

rendered the said motion for reconsideration defective. It was found by the RTC that respondent's motion for reconsideration was set for hearing on April 16, 2010, and that a copy thereof was received by the petitioner's counsel only on April 19, 2010 or three (3) days after the hearing. Respondent received a copy of the said RTC Resolution on February 11, 2011. Thereafter, respondent filed a Notice of Appeal on February 24, 2011 which petitioner opposed. Respondent also filed a Motion for the Transmittal of the Records of the Case to the Court of Appeals.

On May 20, 2011, the RTC disapproved respondent's Notice of Appeal for not having been perfected within the fifteen-day reglementary period, and thus, no order was made to transfer the records of the case to the CA.

Respondent, therefore, filed a petition for *certiorari* under Rule 65 with the CA assailing the Order of the RTC. Respondent contended that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying respondent's motion to transmit the records of the case to the CA despite the filing of the notice of appeal on time.

On January 10, 2014, the CA granted respondent's petition and reversed and set aside the RTC's Order dated May 20, 2011 and, thus, the notice of appeal of respondent was given due course. The CA further directed the RTC to transmit the entire records of the case to the former. The dispositive portion of the CA's decision reads as follows:

> WHEREFORE, on all the foregoing, the instant petition for *certiorari* is GRANTED. The assailed Resolution dated May 20, 2011 is hereby REVERSED and SET ASIDE and petitioner's Notice of Appeal in SP Civil Action No. Q-09-65933 is GIVEN DUE COURSE. Accordingly, the court *a quo* is hereby DIRECTED to transmit the entire records of the said case to this Court.
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> SO ORDERED.[4]

According to the CA, the respondent was able to file the notice of appeal within the fifteen-day reglementary period, thus, the RTC should have ordered the transfer of the records of the case with the CA. Aggrieved, petitioner filed a motion for reconsideration, which the CA denied in its Resolution dated June 30, 2015.

Hence, the present petition.

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4 *Rollo*, pp. 27-28.

Petitioner contends that respondent's filing of a petition for *certiorari* under Rule 65 with the CA was premature. According to petitioner, the respondent should have first filed a motion for reconsideration of the RTC's denial of respondent's notice of appeal and motion for the transmittal of records to the CA before he filed the petition for *certiorari* before the CA. Petitioner further insists that respondent violated the three-day notice rule requiring every movant of a motion required to be heard to ensure the receipt of the said motion with notice of hearing to the other party at least three (3) days before the date of the hearing. Petitioner argues that respondent should have resorted to personal service of the motion because such is not impossible considering that the counsel of petitioner's office is located in Ortigas Center, Pasig City, while that of the respondent's counsel is located in Malate, Manila.

In his Comment[5] dated October 13, 2015, respondent reiterates the CA's decision and claims that the CA did not commit any error. In her Reply[6] dated December 18, 2015, petitioner rehashes the arguments she stated in her petition.

The petition is meritorious.

The basic issue presented before this Court is whether or not, under the circumstances of this case, the provisions of the Rules of Court be interpreted liberally.

Sections 4 and 5, Rule 15 of the Rules of Court read as follows:

> Section 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
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> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
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> Section 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

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5 *Id.* at 190-203.

6 *Id.* at 209-218.

These requirements are mandatory.[7] Except for motions which the court may act on without prejudice to the adverse party, all motions must set a hearing.[8] This includes motions for reconsideration.

The notice of hearing on the motion must be directed to the adverse party and must inform him or her of the time and date of the hearing.[9] Failure to comply with these mandates renders the motion fatally defective, equivalent to a useless scrap of paper.[10]

The RTC, in its Order[11] dated December 28, 2010, ruled that respondent failed to comply with the 3-day notice rule in filing his motion for reconsideration, hence, the court treated the motion as mere scrap of paper and as such, the court granted petitioner's motion to expunge respondent's motion for reconsideration. The said Order reads as follows:

> x x x x
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> The records show that the private respondent's motion for reconsideration was set for hearing on April 16, 2010, and that a copy thereof was received by the petitioner's counsel only on April 19, 2010 or three (3) days after the hearing; and that there was no appearance on the part of the petitioners and their counsel at the hearing on the said motion for reconsideration.
>
> The failure of the private respondent movant to comply with the 3-day notice rule on motions rendered the motion for reconsideration fatally defective. It is pro forma, a mere scrap or worthless piece of paper which is not entitled to judicial cognizance.
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> x x x x
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> Thus, the petitioner's "Motion to Expunge" from the record the private respondent's motion for reconsideration and to declare as final the Decision rendered in this case is meritorious.
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> Consequently, the Decision rendered in this case has become final after the lapse of fifteen (15) days or on May 5, 2010, pursuant to the ruling that a defective motion does not toll the running of the period to appeal from the judgment or final order.[12]

It is indisputable that petitioner was not able to receive respondent's notice of hearing on time. According to respondent, a notice of hearing was

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7 *Deogracia Valderrama v. People, et al.*, G.R. No. 20054, March 27, 2017, citing *De la Peña v. De la Peña*, 327 Phil. 936, 941 (1996) [Per J. Belosillo, First Division].

8 *Id.*

9 *Id.*

10 *Id.*

11 *Rollo*, pp. 126-127.

12 *Id.*

sent to petitioner through registered mail. However, petitioner was only able to receive the said notice three days after the scheduled hearing. The Rules of Court mandates that every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing. In this case, respondent failed to ensure the receipt by the petitioner of the notice of hearing at least three days before the date of such hearing. The sending of a registered mail can hardly be an assurance that such notice will fall under the hands of the other party on time. Under the circumstances of the case, respondent should have personally served the notice of hearing since the offices of the respondent and petitioner's counsels are both located in the National Capital Region. The CA, however, did not find fault on the respondent, but ruled that the RTC should have exerted an effort to determine whether or not petitioner received the said notice of hearing, thus:

> From the foregoing, it could be gleaned that public respondent court merely delved into technicalities instead of on the merits of the issues raised in petitioner's Motion for Reconsideration. In so ruling, it did not take into account the fact that, indeed, as alleged by herein petitioner, and, as proven by the certification issued by the Postmaster of the Pasig Central Post Office, the subject motion was served by registered mail to private respondent a considerable number of days before the scheduled hearing. Public respondent should not have faulted petitioner for private respondent's receipt of the said motion after the date set for hearing. It would have been more prudent for the court to schedule a resetting of the hearing on the motion rather than to outrightly deny the same on the basis of a technicality. The absence of private respondent on the day of the scheduled hearing should have prompted the court first to determine whether a copy of the motion had, indeed, been served on the opposing party and then to consider whether, under normal circumstances, the same should have been received by the addressee at least three days before the scheduled hearing stated therein. Considering that such fact cannot be established on the very day of the hearing, as the registry return card had not yet been returned to the sender, petitioner herein, the court should have made a resetting of the case so as not to prejudice the rights of the litigants to be heard. Courts should consider public policy and necessity of putting an end to litigation speedily and yet harmonizing such necessity with the right of litigants to an opportunity to be heard. The rules of fair play would have been adequately met had the trial court heard the arguments or objections to petitioner's motion and, as regards the latter, to hear the reasons thereof.
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> Be that as it may, it has been categorically ruled by the Supreme Court that it is the motion that does not contain a notice of hearing that is deemed mere scrap of paper. As such, it presents no question which merits the attention of the court. Being a mere scrap of paper, the trial court had no alternative but to disregard it. In this case, the motion for reconsideration contains a notice of hearing and in fact was set for hearing on April 16, 2010. Private respondents were furnished with a copy thereof by registered mail on April 5, 2010, same day that it was filed in court. We take note of the fact that the addressee's office is located in Ortigas

> Center, Pasig City while that of petitioner's counsel was in Malate, Manila. Service on the addressee would normally take only a week since both offices are located in the National Capital Region (NCR). But, for one reason or another unknown to petitioner, private respondents received a copy of said motion two weeks after the date the same was mailed. Such fact cannot be reflective of petitioner's supposed "failure" or "neglect" to furnish his opponents with a copy of the motion. Petitioner surely would not have intentionally prevented the speedy resolution of his case by foregoing a procedural requirement such as that attributed to him.
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> Again, it would have been more prudent for the court a quo to simply order a resetting of the hearing on the subject motion, pending the determination thereof if, indeed, a copy of the motion had been served on private respondents. Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. After all, no party can ever claim a vested right in technicalities. Litigations should, as much as possible, be decided on the merits and not on technicalities.
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> x x x.[13]

A close reading of the provisions of Section 4, Rule 15 of the Rules of Court clearly shows that the directive to ensure that the receipt by the other party of the notice of hearing at least three (3) days before the date of the said hearing is for the party who filed the motion. Nowhere in the said rule does it state that the court is obligated to determine whether a copy of the motion had, indeed, been served on the opposing party. The court is not required by the rules to reset the hearing in case the other party fails to attend the hearing on the motion. In fact, what the rules allow is for the court to set the hearing on shorter notice for good cause and not to delay or reset the hearing. The fault, therefore, is with the respondent and not with the RTC. It was the respondent who resorted to a mode of service other than personal service and, thus, he should have been the one who ensured that such notice was received by the petitioner. Under the Rules, whenever practicable, the service and filing of pleadings and other papers shall be done personally. Section 11, Rule 13 of the Rules of Court 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 the case to consider the paper as not filed.

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13 *Id.* at 26-27.

In *Solar Team Entertainment, Inc. v. Judge Ricafort,*[14] this Court emphasized the importance of resorting to personal service first before any other mode of service, thus:

> Personal *service* and *filing* are preferred for obvious reasons. Plainly, such should expedite action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service or filing is done by mail, considering the inefficiency of the postal service. Likewise, personal service will do away with the practice of some lawyers who, wanting to appear clever, resort to the following less than ethical practices: (1) serving or filing pleadings by mail to catch opposing counsel off-guard, thus leaving the latter with little or no time to prepare, for instance, responsive pleadings or an opposition; or (2) upon receiving notice from the post office that the registered parcel containing the pleading of or other paper from the adverse party may be claimed, unduly procrastinating before claiming the parcel, or, worse, not claiming it at all, thereby causing undue delay in the disposition of such pleading or other papers.
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> If only to underscore the mandatory nature of this innovation to our set of adjective rules requiring personal service whenever practicable, Section 11 of Rule 13 then gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place. The exercise of discretion must, necessarily, consider the practicability of personal service, for Section 11 itself begins with the clause whenever practicable.
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> We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal *service* and *filing* is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading sought to be expunged for violation of Section 11. This Court cannot rule otherwise, lest we allow circumvention of the innovation introduced by the 1997 Rules in order to obviate delay in the administration of justice.

In this case, the office of petitioner's counsel is located in Ortigas Center, Pasig City, while that of the respondent's counsel is at Malate, Manila. Personal service, therefore, is the most practicable considering the close proximity of the places. Nevertheless, respondent was not able to satisfactorily explain why he made use of registered mail instead of

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[14] 355 Phil. 404, 413-414 (1998).

personally serving the notice of hearing. It must be remembered that "only when personal service or filing is not practicable may the resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with."[15] Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules.[16]

It must be emphasized that procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules.[17] While in certain instances, the Court allows a relaxation in the application of the rules, it never intends to forge a weapon for erring litigants to violate the rules with impunity.[18] The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances.[19] While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[20] Party-litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules, for these rules illumine the path of the law and rationalize the pursuit of justice.[21] It is this symbiosis between form and substance that guarantees that discernible result.[22]

The use of the words "substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules.[23] Procedural rules are not to be belittled or dismissed, simply because their non-observance may have resulted in prejudice to a party's substantive rights.[24] Like all rules, they are required to be followed except only for the most persuasive of reasons, when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[25] Thus, as called upon by the respondents, the Court yields to the time-honored principle "Justice is for all." Litigants must have equal footing in a court of law; the rules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding.[26]

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15 *Id.*
16 *Oasis Park Hotel v. Leslee V. Navaluna*, G.R. No. 197191, November 21, 2016.
17 *Rural Bank of Seven Lakes (S.P.C.), Inc. v. Belen A. Dan*, 595 Phil. 1061, 1073 (2008).
18 *Id.*
19 *Id.*
20 *Id.*
21 *Land Bank of the Philippines v. Natividad*, 497 Phil. 738, 745 (2005).
22 *Rivera v. Sandiganbayan*, 489 Phil. 590, 607 (2005).
23 *Rural Bank of Seven Lakes (S.P.C.), Inc. v. Belen A. Dan, supra.*
24 *Id.*
25 *Pedrosa v. Spouses Hill*, 327 Phil. 153, 159 (1996).
26 *Far Corporation v. Magdaluyo*, 485 Phil. 599, 611 (2004).

Hence, the RTC did not commit any grave abuse of discretion when it ruled that respondent violated the three-day rule as provided in Section 4, Rule 15 of the Rules of Court. The RTC, therefore, was correct in ruling that the Decision rendered in this case has become final after the lapse of fifteen (15) days or on May 5, 2010, pursuant to the ruling that a defective motion does not toll the running period to appeal from the judgment or final order.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated July 31, 2015 of petitioner Bernice Joan Ti is **GRANTED.** Consequently, the Decision dated January 10, 2014 and Resolution dated June 30, 2015 of the Court of Appeals are **REVERSED** and **SET ASIDE** and the Order dated May 20, 2011 of the Regional Trial Court, Branch 77, Quezon City in SP. Civil Action No. Q-09-65933 is **AFFIRMED** and **REINSTATED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ESTELA M. PERLAS BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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