P10

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

NG CHING TING, Petitioner,	**G.R. No. 224972**
	Present:
- versus -	CARPIO, *J.* Chairman, PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*
PHILIPPINE BUSINESS BANK, INC. Respondent.	Promulgated: 09 JUL 2018

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DECISION

REYES JR., *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Ng Ching Ting (petitioner) assailing the Decision[1] dated September 29, 2015 and Resolution[2] dated June 1, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 128864.

Antecedent Facts

On July 23, 2009, Philippine Business Bank, Inc. (respondent) filed a Complaint[3] for Recovery of Sum of Money against Jonathan Lim

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1 Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Ricardo R. Rosario and Ramon Paul L. Hernando, concurring; *rollo*, pp. 93-99.

2 Id. at 101-103.

3 Id. at 104-110.

(Jonathan), Carolina Lim (Carolina) and Ng Ching Ting (petitioner) also known as Richard Ng, which was docketed as Civil Case No. C-22359. It appears that Jonathan, owner of Teen's Wear Fashion, obtained several loans from the respondent, which were all covered by promissory notes, in the following amounts:[4]

Promissory Note No.	Date Granted	Amount
001-005-008278-5	May 24, 2006	₱900,000.00
001-004-011087-7	Jul. 27, 2006	₱517,152.00
001-004-011127-9	Aug. 03, 2006	₱521,800.00
001-004-011193-8	Aug. 09, 2006	₱201,573.00
001-004-011265-7	Aug. 16, 2006	₱209,582.10
001-004-011364-9	Aug. 28, 2006	₱266,428.10
001-004-011456-1	Sept. 06, 2006	₱244,321.29
001-004-011530-5	Sept. 13, 2006	₱167,935.00
001-004-011633-0	Sept. 25, 2006	₱284,820.00
001-004-011723-1	Oct. 04, 2006	₱486,588.28
001-004-011866-4	Oct. 18, 2006	₱274,995.00
001-004-011884-6	Oct. 23, 2006	₱376,753.50

As of December 17, 2007, the total outstanding obligation of Jonathan and/or Teen's Wear Fashion amounted to ₱5,183,416.40. As security thereto, a continuing suretyship agreement was executed by Carolina and the petitioner, both ensuring the prompt payment of the loans contracted by Jonathan from the respondent. To further secure the loans, Jonathan and Carolina executed a real estate mortgage over a parcel of land situated in Dasmariñas, Cavite, covered by Transfer Certificate of Title (TCT) No. 891918, which was registered under their names.[5]

Jonathan defaulted in the payment of his monthly amortizations and failed to settle the same despite repeated demands. Thus, on November 6, 2007, the respondent bank filed a petition for extrajudicial foreclosure of the mortgaged property. Subsequently, a public auction was conducted by the Office of the Ex-Officio Sheriff of Imus, Cavite and the subject property was awarded to the highest bidder in the amount of ₱915,600.00. Since the amount realized from the auction sale was way below the amount of the obligation, the respondent, through counsel, sent a demand letter to Jonathan, Carolina and the petitioner to settle the deficiency in the amount of ₱4,267,816.40, within five (5) days from receipt thereof, but they refused to heed. By reason of said refusal to pay, the respondent filed a collection suit against Jonathan, Carolina and the petitioner.

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[4] Id. at 105.
[5] Id. at 106.

On November 23, 2009, the petitioner, through counsel, filed a Motion[6] to Dismiss, alleging the following grounds: (1) that the complaint was filed with a defective certification of non-forum shopping;[7] (2) that the complaint was based on a falsified continuing suretyship agreement,[8] and; (3) that no summons was served upon the principal debtor.[9]

On September 20, 2010, the RTC issued an Order,[10] denying the motion to dismiss, the dispositive portion of which reads as follows:

> WHEREFORE, the instant Motion to Dismiss filed by [herein petitioner] Ng Ching Ting is hereby DENIED for lack of merit.
>
> SO ORDERED.[11]

Almost a year thereafter, the RTC issued an Order[12] dated August 11, 2011, *motu proprio* dismissing the case by reason of inaction of both parties. It reads, thus:

> A cursory examination of the records of this case disclosed that per Order of the Court dated September 20, 2010, the Motion to Dismiss filed by [herein petitioner] Ng Ching Ting was denied for lack of merit.
>
> Reckoned from that time, there was no action on the part of both the plaintiff and the defendants.
>
> WHEREFORE, in view of the foregoing, let this case be as it is hereby ordered dismissed.
>
> SO ORDERED.[13]

Subsequently, a Motion for Reconsideration[14] dated October 17, 2011 was filed by the respondent bank, asseverating that they are still interested in pursuing the case and explained that the reason for their inaction was due to the resignation of its two (2) in-house counsels.

The petitioner filed an Opposition[15] to the motion for reconsideration. Shortly thereafter, he filed an Urgent Manifestation[16] and attached thereon

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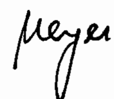
6 Id. at 116-127.
7 Id. at 117.
8 Id. at 121.
9 Id. at 124.
10 Id. at 140.
11 Id.
12 Id. at 141.
13 Id.
14 Id. at 142-144.
15 Id. at 145-148.
16 Id. at 149-152.



two (2) certifications both dated February 24, 2012, which states that the respondent and its counsel received the Order dated August 11, 2011 on September 23, 2011. This being the case, it only had fifteen (15) days from September 23, 2011 or until October 8, 2011 within which to file its motion for reconsideration. Thus, when the motion for reconsideration was filed on October 17, 2011, it was already filed out of time and the order of dismissal had already become final and executory.[17]

Ruling of the RTC

In an Order[18] dated November 16, 2012, the RTC granted the respondent's motion for reconsideration, pertinently stating thus:

> Be that as it may, as mentioned in the plaintiff's instant motion, right after the issuance of the Order dated September 20, 2010 issued by the Court, the previous handling lawyers for the plaintiff, Attys. Dencio Somera and Noel Aperocho, resigned from their position as in-house counsels without informing the plaintiff and its new in-house counsels of the status of the instant case. Hence, the plaintiff and its in-house counsels were surprised to receive the questioned Order dated August 11, 2011.
>
> The argument of the oppositor [herein petitioner] Ng Ching Ting that the Order dated August 11, 2011 was received by the plaintiff and its in-house counsels on September 23, 2011 could not be given credence because the person who received the said Order was not an employee of the plaintiff.
>
> WHEREFORE, the instant Motion for Reconsideration of the plaintiff is hereby GRANTED and the questioned Order dated August 11, 2011 is hereby RECONSIDERED and SET ASIDE.
>
> SO ORDERED.[19]

Unyielding, the petitioner filed a petition for *certiorari* with the CA, alleging that the RTC committed grave abuse of discretion in granting the motion for reconsideration despite being filed out of time.[20]

Ruling of the CA

In a Decision dated September 29, 2015,[21] the CA affirmed the Order dated November 16, 2012 of the RTC, disposing thus:

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[17] Id. at 149-150.
[18] Id. at 161-162.
[19] Id.
[20] Id. at 169.
[21] Id. at 93-99.

> WHEREFORE, the petition for *certiorari* is DENIED for lack of merit. The Order dated November 16, 2012 issued by the Regional Trial Court of Caloocan City, Branch 125 is hereby SUSTAINED.
>
> SO ORDERED.[22]

The petitioner filed a motion for reconsideration but in a Resolution dated June 1, 2016, the CA denied the same. Hence, this petition.

Ruling of the Court

The petitioner contends that the CA acted in a manner not in accordance with the law and jurisprudence when it failed to consider that the respondent's motion for reconsideration was filed out of time. He further argues that the respondent's case does not fall under the exceptions to the general rule that a dismissal based on failure to prosecute amounts to a dismissal with prejudice.[23]

The petition is meritorious.

In *Fortich vs. Corona*,[24] the Court elaborated on the significance of the of the rules of procedure, *viz.*:

> Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and **administrative bodies,** the adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules.[25]

Corolarilly, "rules prescribing the time for doing specific acts or for taking certain proceedings are considered **absolutely indispensable** to prevent needless delays and to orderly and promptly discharge judicial business. By their very nature, these rules are regarded as mandatory."[26]

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22 Id. at 98.
23 Id. at 22.
24 359 Phil. 210 (1998).
25 Id. at 220.
26 *Laguna Metts Corporation v. Court of Appeals*, 611 Phil. 530, 535 (2005).

In the instant case, the petitioner questions the CA's affirmance of the Order dated November 16, 2012 of the RTC, setting aside the dismissal of Civil Case No. C-22359 on the ground of failure to prosecute, since there was no excusable neglect on the part of the respondent and the motion for reconsideration was filed out of time. The CA, however, justified the setting aside of the order of dismissal on the ground that substantial justice must take precedence over technical rules of procedure. It likewise ratiocinated that the dismissal of a case based on failure to prosecute is a matter addressed to the sound discretion of the trial court.[27]

Indeed, in some cases, the Court relaxed the application of procedural rules for the greater interest of substantial justice. It must be pointed out, however, that "resort to a liberal application, or suspension of the application of procedural rules remains the exception to the well-settled principle that rules must be complied with for the orderly administration of justice."[28] It can only be upheld "in proper cases and under justifiable causes and circumstances."[29]

Apparently, in the present case, the respondent overlooked procedural rules more than once. *First*, it reneged on its duty to prosecute its case diligently and, *second*, it failed to file its motion for reconsideration on time.

The records bear out that the respondent went into unexplained inaction for almost a year from the time the motion to dismiss filed by the petitioner was denied by the RTC in its Order dated September 20, 2010. Despite receipt of the copy of the order, it failed to actively pursue its case or take the proper steps until the case reaches conclusion. This prompted the RTC to dismiss the complaint in its Order dated August 11, 2011, on the basis of Section 3, Rule 17 of the Rules of Court, which reads as follows:

> **Section 3.** *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, **or to prosecute his action for an unreasonable length of time**, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

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[27] *Rollo*, p. 102.

[28] *Building Care Corporation v. Myrna Macaraeg*, 700 Phil. 749, 755 (2012).

[29] *Romulo J. Marohomsalic v. Reynaldo D. Cole*, 570 Phil. 420, 429 (2008).

In *BPI vs. Court of Appeals*,[30] the Court noted that dismissal based on failure to prosecute is a matter addressed to the sound discretion of the court. It was held, thus:

> Indeed the dismissal of a case whether for failure to appear during trial or prosecute an action for an unreasonable length of time rests on the sound discretion of the trial court. But this discretion must not be abused, nay gravely abused, and must be exercised soundly. Deferment of proceedings may be tolerated so that cases may be adjudged only after a full and free presentation of all the evidence by both parties. The propriety of dismissing a case must be determined by the circumstances surrounding each particular case.[31]

The Court can no less agree that the full presentation of the parties' case should be favored over termination of the proceedings on technical grounds. Ideally, "technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice would be better served, the application of technical rules of procedure may be relaxed."[32]

It must be emphasized, however, that the "invocation of substantial justice is not a magical incantation that will automatically compel this Court to suspend procedural rules. Rules of procedure are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights."[33] In *Daikoku Electronics Phils., Inc vs. Raza*,[34] it was stressed, thus:

> To merit liberality, petitioner must show **reasonable cause** justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice. x x x The desired leniency cannot be accorded absent **valid and compelling reasons** for such a procedural lapse.[35] (Emphasis supplied)

It is in the abovementioned occasion that the exercise of sound discretion is required of the judge. In doing so, he must weigh the circumstances, the merits of the case and the reason proffered for the non-compliance. He must deliberate whether relaxation of the rules is necessary in the interest of substantial justice.

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30 362 Phil. 362 (1999).
31 Id. at 369.
32 *Andrea Uy v. Arlene Villanueva*, 553 Phil. 69, 80 (2007).
33 *Charles Cu-Unjieng v. Court of Appeals*, 515 Phil. 568, 578 (2006).
34 606 Phil. 796 (2009).
35 Id. at 803-804.

Here, the respondent justified its failure to diligently prosecute by explaining that the resignation of the in-house counsels handling the case caused it to lose track of the proceedings.[36] In addition, it argued that it cannot de deemed to have been properly notified of the Order dated August 11, 2011 since the person who allegedly received the same, Shirley Bilan (Bilan), is not and has never been an employee of the bank.[37]

The RTC, exercising its discretion, reversed the dismissal of Civil Case No. C-22359 in its Order dated November 16, 2012. It accepted the explanation offered by the respondent and found it reasonable enough to warrant the setting aside of its earlier order. The CA agreed and upheld the RTC's exercise of discretion, specifically thus:

> This Court is mindful that the dismissal of a case for failure to prosecute is a matter addressed to the sound discretion of the court. The availability of this recourse must be determined according to the procedural history of each case, the situation at the time of the dismissal and the diligence of the plaintiff to proceed therein. Based on the appreciation of this Court, all of these factors were duly considered by the public respondent before granting the private respondent's motion for reconsideration. Thus, no grave abuse of discretion amounting to lack or excess of jurisdiction can be imputed against him for granting the said motion.[38]

After a careful examination of the records, however, the Court finds the RTC's setting aside of the order of dismissal contrary to existing rules and jurisprudence, hence, amounting to grave abuse of discretion.

In *V.C. Ponce Company, Inc. vs. Municipality of Parañaque*,[39] the Court rejected the petitioner's plea for relaxation of the rules on the reglementary period, specifically for failing to file the motion for reconsideration on time due to lack of counsel. It ratiocinated, thus:

> **It is incumbent upon the client to exert all efforts to retain the services of new counsel. VCP knew since August 29, 2006, seven months before the CA rendered its Decision, that it had no counsel. Despite its knowledge, it did not immediately hire a lawyer to attend to its affairs**. Instead, it waited until the last minute, when it had already received the adverse CA Decision on April 10, 2007, to search for a counsel; and even then, VCP did not rush to meet the deadline. It asked for an extension of 30 days to file a Motion for Reconsideration. It finally retained the services of a new counsel on May 24, 2007, nine months from the time that its former counsel withdrew her appearance. VCP did not

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[36] *Rollo*, p. 159.
[37] Id. at 157.
[38] Id. at 102.
[39] 698 Phil. 338, 351 (2012).

> even attempt to explain its inaction. The Court cannot grant equity where it is clearly undeserved by a grossly negligent party.[40]

In the same way, in this case, the respondent cannot simply lay the blame on the resignation of its in-house counsels since it is incumbent upon it, as the complainant, to promptly hire new lawyers to represent it in the proceedings. Much vigilance and diligence are expected of it considering that it is the one who initiated the action. Upon the resignation of its in-house counsels, it should have taken immediate steps to hire replacements so it may be able to keep up with the pending incidents in the case. Surely, it cannot expect the court to wait until it has settled its predicament. It must take prompt action to keep pace with the proceedings. As it was, however, the respondent dilly-dallied for almost a year until the court, *motu proprio*, ordered the dismissal of the case for failure to prosecute.

Plainly, the resignation of its in-house counsels does not excuse the respondent from non-observance of procedural rules, much less, in its duty to prosecute its case diligently. This contingency should have prompted the respondent to be even more mindful and ensure that there will be a proper transition and transfer of responsibility from the previous counsels to the new counsels. Thus, it can reasonably impose as the employer of its in-house counsels, who had all the authority to require them to make an orderly transfer of records in their custody before they are cleared of accountabilities.

It also did not escape the attention of the Court that the respondent simply narrated this contingency in his motion for reconsideration but failed to mention what it did to address the matter. The allegations were wanting of details exhibiting its response or how it acted to remedy the situation. Without these averments, there is no basis to say that there was excusable neglect. While indeed there was a contingency, the respondent was not without any means to resolve the same. It should have done something and not merely slack and thereafter plea for the liberality from the court.

Assuming that, notwithstanding the foregoing, the RTC still finds in it good judgment that the allegations of the respondent warrant the grant of the plea for the liberal application, such exercise of discretion ends when the judgment has already attained finality.

It must be pointed out that based on the Certification[41] issued by the Caloocan Central Post Office, the respondent received the copy of the Order dated August 11, 2011 on September 23, 2011. From this date, it had only

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40 Id.

41 *Rollo*, p. 155.

fifteen (15) days to file a motion for reconsideration.[42] Based on its own admission, however, it only filed a motion for reconsideration on October 17, 2011[43] or twenty-four (24) days after receipt of the notice of the order of dismissal, which was nine (9) days beyond the 15-day period to file the same. At that time, the order of dismissal had already lapsed into finality and is already beyond the jurisdiction or discretion of any court to modify or set aside.

In *Social Security System vs. Isip*,[44] it was held that the "belated filing of the motion for reconsideration rendered the decision of the Court of Appeals final and executory. A judgment becomes final and executory by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period."

To stress, the finality of the decision comes by operation of law and there is no need for any judicial declaration or performance of an act before such takes effect. The pronouncement of the Court in *Testate Estate of Maria Manuel vs. Biascan*,[45] is on point. It was held, thus:

> It is well-settled that judgment or orders become final and executory by operation of law and not by judicial declaration. Thus, finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or motion for reconsideration or new trial is filed. **The trial court need not even pronounce the finality of the order as the same becomes final by operation of law. In fact, the trial court could not even validly entertain a motion for reconsideration filed after the lapse of the period for taking an appeal.** As such, it is of no moment that the opposing party failed to object to the timeliness of the motion for reconsideration or that the court denied the same on grounds other than timeliness considering that at the time the motion was filed, the Order dated April 2, 1981 had already become final and executory. Being final and executory, the trial court can no longer alter, modify, or reverse the questioned order. The subsequent filing of the motion for reconsideration cannot disturb the finality of the judgment or order.[46]

That the judgment or order becomes final by *operation of law* means that no positive act is required before this consequence takes place. It can only be stalled if the proper legal remedy is taken with the prescriptive period. After this period, "the court loses jurisdiction over the case and not

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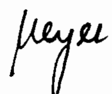
42 Section 1, Rule 52, Rules of Court.

43 Id. at 142.

44 549 Phil. 112, 116 (2007).

45 401 Phil. 49 (2000).

46 Id. at 59.



even an appellate court would have the power to review a judgment that has acquired finality."[47]

In the instant case, there are two (2) Certifications[48] issued by the Caloocan Central Post Office, confirming that the registered mails which contained copies of the order of dismissal were sent to the respondent and its counsel and were duly received by Bilan on September 23, 2011. Thus, when respondent filed its motion for reconsideration twenty-four days after receipt, the order of dismissal dated August 11, 2011 had already attained finality and therefore the RTC gravely abused its discretion in setting it aside.

The respondent attempted to obscure this fact by stating in its motion for reconsideration that it received the copy of the order of dismissal only on October 10, 2011 which makes its filing on October 25, 2011 well-within the prescribed 15-day period. This bare allegation, however, was refuted by official certifications from the Caloocan Central Post Office to the effect that the copies of the order was received by the respondent and its counsel on September 23, 2011. The petitioner likewise submitted the Affidavit[49] executed by Garivic Rodriguez (Rodriguez), the letter-carrier of the Caloocan Central Post Office, who personally handed the registered mails to Bilan. Attached to the said affidavit is the certified true copy[50] of the portion of the logbook where Bilan affixed her signature as proof of receipt of the registered mails.

On the other hand, the respondent failed to present evidence to prove that the details in the said certifications and affidavit were incorrect or that they were mere fabrications. Instead, it simply denied that Bilan was an employee of the bank. The denial, however, invites incredulity considering that based on the affidavit of Rodriguez, Bilan was wearing the bank's uniform at that time and was manning the section which receives notices and all kinds of correspondence. She was also the one who signed the logbook to attest to the receipt of the registered mails. Certainly, the letter-carrier or anyone in his reasonable mind would think that the person posted at the section that receives notices and even signs the logbook attesting to receipt of the same is the person authorized to receive official correspondence.

Verily, the respondent's bare denial cannot stand against the fundamental rule that unless the contrary is proven, official duty is presumed to have been performed regularly. "As between the claim of non-receipt of notices of registered mail by a party and the assertion of an official whose

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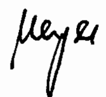
[47] *Heirs of the Late Flor Tungpalan v. Court of Appeals*, 499 Phil. 384, 389 (2005).
[48] *Rollo*, pp. 155-156.
[49] Id. at 187.
[50] Id. at 188.



duty is to send notices, which assertion is fortified by the presumption that official duty has been regularly performed, the choice is not difficult to make."[51] Without contrary proof, it is deemed that the notices were sent and received by the recipient on the date stated in the official logbook of the representative of the post office. On the basis of documentary evidence, copies of the order of dismissal were received on September 23, 2011 and therefore, the motion for reconsideration of the respondent was filed at the time when the order had already attained finality. As such, the order had become "immutable and unalterable."[52] In *Mayon Estate Corporation vs. Altura*,[53] the Court stressed:

> Nothing is more settled in law than that when a final judgment is executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land.[40] The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.[54]

In view of the foregoing, the CA should not have upheld the RTC's reversal of its earlier order of dismissal which had already become final and executory. At that point, it is no longer subject to the disposal or discretion of any court and may not be set aside on mere plea for liberality of the rules. It is well to remember that "rules of procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose."[55] Moreover, there are legal implications that result from the lapse of reglementary periods which can sometimes be inescapable. This must place litigants on guard in order not to squander their chances for relief. For, "the laws aid the vigilant, not those who slumber on their rights. *Vigilantibus sed non dormientibus jura subveniunt*."[56]

WHEREFORE, the petition is **GRANTED**. The Decision dated September 29, 2015 and Resolution[57] dated June 1, 2016 of the Court of Appeals in CA-G.R. SP No. 128864 are hereby **REVERSED and SET ASIDE**. The Order dated November 16, 2012 of the RTC, Branch 125, Caloocan City, in Civil Case No. C-22359, is **DECLARED NULL and VOID**, and the Order dated August 11, 2011 is hereby **REINSTATED and AFFIRMED**.

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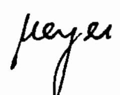
51 *Santos v. CA*, 356 Phil. 458, 466 (1998).
52 *Social Security System v. Ma. Fe F. Isip*, 549 Phil. 112, 116 (2007).
53 483 Phil. 404 (2004).
54 Id. at 413.
55 *Bonifacio M. Mejillano v. Enrique Lucillo*, 607 Phil. 660, 668 (2009).
56 Supra note 47, at 390.
57 *Rollo*, pp. 101-103.



SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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
Senior Associate Justice
(Per Section 12, R.A. No. 296 The Judiciary Act of 1948, as amended)