

**PRICE STABILIZATION CORPORATION, PETITIONER, VS. JUDGE OF
BRANCH VIII, COURT OF FIRST INSTANCE OF MANILA AND MANILA
SURETY & FIDELITY CO., INC., RESPONDENTS.***G.R. No. L-7959. May 30, 1955*

Ponente: REYES, A., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0cb9a505320b/>**REYES, A., J.:**

On November 19, 1952, the PRISCO (Price Stabilization Corporation) brought suit in the Court of First Instance of Manila against George W. Batchelder and his surety, the Manila Surety & Fidelity Co., to recover the price of merchandise sold on credit bought by said Batchelder from PRISCO, payment of which was guaranteed by the surety company. In due time summons was issued to defendants, but having failed to file an answer within the time prescribed by the rules, they were at the instance of plaintiff declared in default on February 9, 1953, and on August 7 of that same year judgment was rendered against them for the amount claimed, with costs.

On September 8, the surety company filed a motion for reconsideration and new trial, explaining that its failure to file an answer was due to excusable neglect which ordinary prudence could not have guarded against in that when the complaint and summons were received by one of its employees they were by this employee handed to another employee who was in charge of its bonds department and who instead of forwarding the same to its attorneys kept them in his drawer, and alleging that it had a good and valid defense in the action, namely, a written undertaking executed in its favor by its co-defendant, George Batchelder, which could be alleged in a cross-complaint. The motion was not verified though it was accompanied by an affidavit of the assistant manager of the surety company explaining that the failure of the said company to file an answer was due to the negligence of one of its employees. The motion was objected to by the PRISCO on the ground that it did not contain an affidavit of merit showing that if new trial were granted the surety company would have a good defense against the plaintiff, and that the company's neglect was not excusable because the records incontrovertibly show that on December 10, 1952, the sheriff of Manila served the summons and copy of the complaint in this case upon its corporate secretary, Mr. de Santos * * * ; that on February 4, 1953, the movant was served with a copy of plaintiff's motion to declare defendants in default * * *," so that moving defendant had "ample opportunity to file an answer and a cross complaint against its co-defendant." On the ground that the motion was not accompanied by an affidavit of merit showing that the moving defendant had a valid defense against plaintiff's claim, for the fact that said defendant may have a cross-claim against its co-defendant did not necessarily mean that it had a good defense to plaintiff's action, the court denied the motion in its order dated September 9, 1953. On the 25th of that same month the surety company filed a motion for reconsideration of this order alleging that its previous motion for reconsideration and new trial was accompanied by an affidavit of its assistant general manager, explaining the company's reasons for its failure to file its answer and further alleging— for the first time—that it had a good defense against plaintiff in that it was apparent on the face of the complaint that under the terms of the surety bond sued upon the company's liability as surety had already expired. Again the PRISCO opposed the motion, this time on the ground that the ground for the second motion was already available to the movant at the time the first

motion was presented and must therefore be deemed waived when it was not there raised, and that the second motion was filed out of time because the same was not filed within the reglementary period of 30 days after notice of judgment. Despite these objections, the court granted the second motion which, together with the first motion, it considered as a petition for relief. Reconsideration of this last order having been denied, PRISCO brought the case here on certiorari, alleging that the lower court, in granting the second motion for reconsideration, "acted with grave abuse of discretion and in excess of jurisdiction."

We find merit in the petition.

The Rules of Court require that a petition for relief under Rule 38 must be accompanied by an affidavit of merit showing that petitioner has a valid cause of action or defense. The surety company's first motion for reconsideration does not comply with this requisite because, although accompanied by an affidavit explaining its failure to file an answer, it contained no sworn allegation of a valid defense against the plaintiff. In other words, it was unaccompanied by an affidavit of merit. Its second motion for reconsideration contains an allegation that it has a valid defense against the plaintiff, but the allegation is not verified. The two motions, therefore, even when taken together, can not be considered as a petition for relief because of the fatal defect of lack of an affidavit of merit. In this connection it should be stated that an affidavit of merit should state facts and not mere opinion or conclusions of law.

It is also to be noted that at the time the first motion for reconsideration and new trial was filed the alleged valid defense which the surety company wants to set up against the plaintiff was already in existence and available, and yet the same was not set up in the motion. Such being the case, the defense cannot be raised in the petition for relief. As was said in the case of *Rili vs. Chunaco*, 48 Off. Gaz. 614, "the grounds existing and available at the time a motion to set aside a judgment was filed cannot be raised in a petition for relief under Rule 38, because under Rule 26, section 8, a motion attacking a pleading or proceeding shall include all objections then available, and all objections not so included shall be deemed waived." (syllabus.)

In entertaining the surety company's two motions as a petition for relief under the circumstances mentioned, the court below committed a grave abuse of discretion amounting to want of jurisdiction.

Consequently, the petition for certiorari is granted, with costs against the respondent surety company.

Pablo, Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.