

**ALFREDO TAGLE, PETITIONER, VS. EQUITABLE PCI BANK
(FORMERLY PHILIPPINE COMMERCIAL INTERNATIONAL BANK)
AND THE HONORABLE HERMINIA V. PASAMBA, ACTING PRESIDING
JUDGE, REGIONAL TRI...**

G.R. No. 172299. April 22, 2008

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-172299/>

CHICO-NAZARIO, J.:

This Petition for Certiorari under Rule 65 of the Revised Rules of Court filed by petitioner Alfredo Tagle (petitioner Alfredo) stemmed from the following Resolutions promulgated by the Court of Appeals: (1) the 6 September 2005 Resolution[1] dismissing the Petition for Certiorari filed by petitioner Alfredo, docketed as CA-G.R. SP No. 90461, assailing the 4 April 2005 Order of the Regional Trial Court (RTC), Branch 82, City of Malolos, Bulacan, in LRC Case No. P-71-2004[2]; (2) the 16 February 2006 Resolution[3] denying petitioner Alfredo's Motion for Reconsideration; and (3) the 11 April 2006 Resolution[4] denying petitioner Alfredo's Second Motion for Reconsideration.[5]

Petitioner Alfredo urges this Court to set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the 4 April 2005 Order[6] of the RTC in LRC Case No. P-71-2004, which denied petitioner Alfredo's Motion to Stop Writ of Possession. He prays that this Court certify "for review with prayer for preliminary injunction to stop the writ of possession [of] the property located at Concepcion Subdivision, Baliuag, Bulacan and embraced in Transfer Certificate of Title No. T-143715 of the Registry of Deeds for the Province of Bulacan [subject property] and after due hearing, let judgment be rendered annulling or modifying the proceedings of the Honorable Regional Trial Court Branch 82, [City of Malolos, Bulacan,] and the Court of Appeals as the law requires with costs." [7]

According to petitioner Alfredo, the subject property is registered in his name and was constituted as a Family Home in accordance with the provisions of the Family Code. He and his wife Arsenia Bautista Tagle (Arsenia) never mortgaged the subject property to respondent Equitable PCI Bank (respondent E-PCI) whether before or after the subject property was constituted as their Family Home. It was Josefino Tagle (Josefino), who was not the owner of the subject property, who mortgaged the same with respondent E-PCI. Josefino was religiously paying the installments on his mortgage obligation and had paid more than half thereof. Josefino, however, passed away. Petitioner Alfredo was then forced to assume Josefino's outstanding mortgage obligation. Even as petitioner Alfredo was already paying Josefino's mortgage obligation in installments, respondent E-PCI still foreclosed the mortgage on the subject property. [8]

On the other hand, respondent E-PCI recounts that the subject property was formerly registered in the name of petitioner Alfredo. It was mortgaged, pursuant to a Special Power of Attorney executed by petitioner Alfredo, to secure the obligation of the spouses Josefino and Emma Tagle with respondent E-PCI. Respondent E-PCI foreclosed the mortgage on the subject property upon default in payment by spouses Josefino and Emma, and

upon the expiration of the period of redemption, caused the consolidation and transfer of the title to the subject property in its name. Consequently, respondent E-PCI filed with the RTC a Petition for Issuance of Writ of Possession of the subject property, which was docketed as LRC Case No. P-71-2004. Petitioner Alfredo, however, filed a Motion to Stop Writ of Possession on the ground that the subject property is a Family Home which is exempt from execution, forced sale or attachment. [9]

On 4 April 2005, the RTC issued the assailed Order denying petitioner Alfredo's Motion, the dispositive part of which reads:

WHEREFORE, premises considered, the Motion to Stop Writ of Possession is hereby DENIED.

In denying the motion, the RTC held that:

In the case at bar, the mortgage transaction happened on May 9, 1997 (Exhibit D), after the effectivity of the Family Code.

With Article 155 in application, it is crystal clear that this instant case does not fall under the exemptions from execution provided in the Family Code, as the case stemmed from the mortgage transaction entered into between the [herein respondent E-PCI] and [herein petitioner Alfredo and his spouse Arsenia] dating back in (sic) 1997. This fact will militate against the so-called exemption by sheer force of exclusion embodied in said article. Hence, the law's protective mantle cannot be availed of by [petitioner Tagle and his spouse Arsenia].[10]

Petitioner Alfredo and his spouse Arsenia filed with the RTC a Motion for Reconsideration of its foregoing order. However, it was likewise denied by the RTC in another Order[11] dated 21 June 2005.

Thereafter, petitioner Alfredo[12] elevated the case to the Court of Appeals on a Petition for Certiorari [and Prohibition] under Rule 65 of the Revised Rules of Court, docketed as CA-G.R. SP No. 90461, assailing and seeking the nullification and the setting aside of the denial of his Motion to Stop Writ of Possession.

In a Resolution dated 6 September 2005, the appellate court resolved to dismiss the petition, stating thus:

The instant petition is not accompanied by (i) the order denying petitioner's motion to exempt from foreclosure of mortgage; and (ii) a relevant and pertinent document, i.e., motion to exempt from foreclosure of mortgage (Sec. 1, Rule 65, in relation to Sec. 3, Rule 46, 1997 Rules of Civil Procedure).

WHEREFORE, the petition is DISMISSED outright.[13]

In due time, petitioner Alfredo moved for the reconsideration of the afore-quoted Resolution.

On 16 February 2006, the Court of Appeals promulgated a Resolution denying petitioner Alfredo's motion for reconsideration, decreeing that:

Petitioner [Alfredo] seeks reconsideration of Our resolution dated September 6, 2005 dismissing the petition for not being accompanied by the order dated April 4, 2005 (denying his motion to exempt from foreclosure mortgage) and motion to exempt from foreclosure of mortgage. Instead of the aforesaid order and motion, however, petitioner submitted certified true copies of the order dated June 21, 2005 (which was already attached to the petition) and motion to stop writ of possession.

WHEREFORE, for lack of merit, the motion for reconsideration is DENIED.[14]

Undaunted still, petitioner Alfredo once more filed a Motion for Reconsideration of the appellate court's 16 February 2006 Resolution.

On 11 April 2006, the Court of Appeals promulgated the last of its Resolutions, denying, as expected, petitioner

Alfredo's Second Motion for Reconsideration, stated in full below:

For consideration is petitioner's [Alfredo's] motion for reconsideration of Our February 16, 2006 resolution denying its (sic) motion for reconsideration of Our resolution dated September 6, 2005 dismissing the petition.

Appellant has not cured the formal defects of the petition noted in Our resolution dated September 6, 2005. And, more importantly, a second motion for reconsideration of a final order is not allowed (Sec. 5, Rule 37, 1997 Rules of Civil Procedure; Obando vs. Court of Appeals, 366 SCRA 673).

WHEREFORE, the subject motion for reconsideration is DENIED.[15]

Hence, this Petition for Certiorari with Prohibition filed under Rule 65 of the Revised Rules of Court.

Petitioner Alfredo filed the instant petition designating it in both the caption and the body as one for "certiorari" under Rule 65 of the Revised Rules of Court. He anchors the present petition on the sole issue of "whether or not the subject property subject of the mortgage being a family home is exempt from foreclosure of mortgage." [16] He argues:

That from the records of the mortgage, the same was not constituted before or after the constitution of the family home by the petitioner and as such the Honorable Court of Appeals has acted without or in excess of its or his jurisdiction or with grave abuse of discretion in the proceedings complained of. [17]

He thus prays for this Court to issue a preliminary injunction to stop the implementation of the writ of possession of the subject property, and after due hearing, render a judgment annulling or modifying the proceedings before the RTC and the Court of Appeals, with costs. [18]

On the other hand, respondent E-PCI counters that the petition at bar must be dismissed on the following grounds:

First, petitioner Alfredo's "Petition for Certiorari" with this Court failed to comply with the technical requirements of the Rules of Court [19] for petitions for certiorari in that (a) the present petition was filed out of time considering that the 60-day period within which to file the same was reckoned from receipt of the 11 April 2006 Resolution denying petitioner Alfredo's second Motion for Reconsideration, instead of the 16 February 2006 Resolution denying his first Motion for Reconsideration; [20] (b) petitioner Alfredo did not allege in the present petition that the Court of Appeals "acted without or in excess of its or his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction" [21] when it dismissed his petition in CA-G.R. SP No. 90461 for failure to attach thereto certified true copies of the 4 April 2005 RTC Order denying his Motion to Stop Writ of Possession, as well as the very motion subject of the assailed order; (c) the present petition lacks the proper verification and is considered an unsigned pleading which produces no effect whatsoever; [22] and (d) the present petition requested for the issuance of an injunction without stating the grounds therefor. [23]

Second, petitioner Alfredo's second Motion for Reconsideration filed with the Court of Appeals is prohibited by law, [24] as a second motion for reconsideration of a judgment or final resolution is clearly disallowed by Sec. 2, Rule 52 of the Rules of Court, as amended.

And third, granting arguendo that the petition at bar was properly filed by petitioner Alfredo with this Court, the Court of Appeals did not err in dismissing the Petition for Certiorari in CA-G.R. SP No. 90461 for failure of petitioner Alfredo to submit the required documents. [25]

Respondent E-PCI then concludes that "the present Petition for Certiorari was filed not to question the jurisdiction of the Court of Appeals but as a vain hope of appealing the Order dated April 4, 2005 issued by the Regional Trial Court x x x." [26]

In reply to the foregoing counter-arguments, petitioner Alfredo contends:

1. That Rule 52 Sec. 2 of the 1997 Rules of Procedure is not applicable to the present case because what is applicable is a Second Motion for Reconsideration in the Supreme Court;
2. That the 60 day period within which petitioner [Alfredo] may file subject Petition for Certiorari has been reckoned from April 11, 2006 denying the petitioner's [Alfredo's] Second Motion for Reconsideration and the Rules of Court does not distinguished (sic) whether the denial is first or second;

x x x x

4. That the issue of whether or not the mortgage was executed before or after the constitution of the Family Home is a necessary question in a Petition for Certiorari under Rule 65; and
5. That the verification based on personal knowledge is proper because the Rules of Court did not distinguish whether the facts is based on personal knowledge or an (sic) authentic records;[27]

For its substantive as well as procedural infirmities, the instant petition must be dismissed.

Given the above-stated arguments raised by both parties, the threshold question that must be initially resolved is whether or not the present Petition for Certiorari filed under Rule 65 of the Revised Rules of Court is the proper remedy for petitioner Alfredo to avail of in seeking the reversal of the three Resolutions of the Court of Appeals dated 6 September 2005, 16 February 2006 and 11 April 2006.

A petition for certiorari is governed by Rule 65 of the Revised Rules of Court, which reads:

Section 1. Petition for certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of [its or his] jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

A special civil action for Certiorari, or simply a Petition for Certiorari, under Rule 65 of the Revised Rules of Court is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.[28]

A writ of certiorari may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Such cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.[29]

For a petition for certiorari to prosper, the essential requisites that have to concur are: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[30]

The phrase "without jurisdiction" means that the court acted with absolute lack of authority[31] or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority.[32] "Excess of jurisdiction" occurs when the

court transcends its power or acts without any statutory authority;[33] or results when an act, though within the general power of a tribunal, board or officer (to do) is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting.[34] While that of "grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; simply put, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[35]

In the present case, there is no question that the 6 September 2005 Resolution of the Court of Appeals dismissing petitioner Alfredo's petition in CA-G.R. SP No. 90461 is already a disposition on the merits. Therefore, said Resolution, as well as the Resolutions dated 16 February 2006 and 11 April 2006 denying reconsideration thereof, issued by the Court of Appeals, are in the nature of a final disposition of CA-G.R. SP No. 90461 by the appellate court, and which, under Rule 45 of the Revised Rules of Court, are appealable to this Court via a Petition for Review on Certiorari, viz:

SECTION 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (Emphasis supplied.)

From the words of Rule 45, it is crystal that decisions (judgments), final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[36]

In the case at bar, the assailed Resolutions of the Court of Appeals dismissing petitioner Alfredo's petition in CA-G.R. SP No. 90461 were final orders.[37] They were not interlocutory because the proceedings were terminated; and left nothing more to be done by the appellate court. There were no remaining issues to be resolved in CA-G.R. SP No. 90461. Consequently, the proper remedy available to petitioner Alfredo then was to file before this Court a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court of the assailed Resolutions of the Court of Appeals, and not a special civil action for certiorari.

From the foregoing discussion, it is fairly obvious that the third requisite for a petition for certiorari is wanting, that is, there must be no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. The availability to petitioner Alfredo of the remedy of a petition for review on certiorari from the assailed Resolutions of the Court of Appeals effectively barred his right to resort to a petition for certiorari.

Basic is the rule that a writ of certiorari will not issue where the remedy of appeal is available to an aggrieved party. A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency.[38] In this case, appeal was not only available but also a speedy and adequate remedy.[39] Moreover, petitioner Alfredo failed to show circumstances that would justify a deviation from the general rule as to make available to him a petition for certiorari in lieu of making an appeal.

Petitioner Alfredo failed to show any valid reason why the issue raised in his petition for certiorari could not have been raised on ordinary appeal by certiorari. He simply argued that the appellate court gravely abuse its discretion which amounted to lack or excess of jurisdiction in dismissing his petition in CA-G.R. SP No. 90461 and not

finding that the subject property covered by the Writ of Possession was a Family Home, hence, exempt from execution or forced sale. He did not give a single explanation as to why the errors committed by the Court of Appeals cannot possibly be cured by ordinary appeal under Rule 45 of the Revised Rules of Court.

The remedies of appeal in the ordinary course of law and that of certiorari under Rule 65 of the Revised Rules of Court are mutually exclusive and not alternative or cumulative.[40] Time and again this Court has reminded members of the bench and bar that the special civil action of Certiorari cannot be used as a substitute for a lost appeal[41] where the latter remedy is available; especially if such loss or lapse was occasioned by one's own negligence or error in the choice of remedies.[42]

To be sure, once again, we take this opportunity to distinguish between a Petition for Review on Certiorari (an appeal by certiorari) and a Petition for Certiorari (a special civil action/an original action for Certiorari), under Rules 45 and 65, respectively, of the Revised Rules of Court. *Madrigal Transport Inc. v. Lapanday Holdings Corporation*,[43] summarizes the distinctions between these two remedies, to wit:

As to the Purpose. Certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light: 'When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of certiorari.'

The supervisory jurisdiction of a court over the issuance of a writ of certiorari cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court -- on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari. Where the error is not one of jurisdiction, but of an error of law or fact -- a mistake of judgment -- appeal is the remedy.

As to the Manner of Filing. Over an appeal, the CA exercises its appellate jurisdiction and power of review. Over a certiorari, the higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts. An appeal is thus a continuation of the original suit, while a petition for certiorari is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. The parties to an appeal are the original parties to the action. In contrast, the parties to a petition for certiorari are the aggrieved party (who thereby becomes the petitioner) against the lower court or quasi-judicial agency, and the prevailing parties (the public and the private respondents, respectively).

As to the Subject Matter. Only judgments or final orders and those that the Rules of Court so declared are appealable. Since the issue is jurisdiction, an original action for certiorari may be directed against an interlocutory order of the lower court prior to an appeal from the judgment; or where there is no appeal or any plain, speedy or adequate remedy.

As to the Period of Filing. Ordinary appeals should be filed within fifteen days from the notice of judgment or final order appealed from. Where a record on appeal is required, the appellant must file a notice of appeal and a record on appeal within thirty days from the said notice of judgment or final order. A petition for review should be filed and served within fifteen days from the notice of denial of the decision, or of the petitioner's timely filed motion for new trial or motion for reconsideration. In an appeal by certiorari, the petition should be filed also within fifteen days from the notice of judgment or final order, or of the denial of the petitioner's motion for new trial or motion for reconsideration.

On the other hand, a petition for certiorari should be filed not later than sixty days from the notice of judgment, order, or resolution. If a motion for new trial or motion for reconsideration was timely filed, the period shall be counted from the denial of the motion.

As to the Need for a Motion for Reconsideration. A motion for reconsideration is generally required prior to the filing of a petition for certiorari, in order to afford the tribunal an opportunity to correct the alleged errors. Note also that this motion is a plain and adequate remedy expressly available under the law. Such motion is not required before appealing a judgment or final order.

Evidently, therefore, petitioner Alfredo erred in filing a Petition for Certiorari instead of an ordinary appeal by certiorari, already a sufficient justification for dismissing the instant petition. But even if his present petition is given due course, we still find it bereft of merit.

When the Court of Appeals resolved to dismiss the petition in CA-G.R. SP No. 90461, it did so on the ground that petitioner Alfredo failed to attach certified true copies of the following: (1) the 4 April 2005 Order of the RTC in LRC Case No. P-71-2004 denying petitioner Alfredo's Motion to Stop Writ of Possession; and (2) petitioner Alfredo's Motion to Stop Writ of Possession submitted to the RTC. Suitably, therefore, the proper issue which petitioner Alfredo should raise before this Court in his instant Petition for Certiorari should be whether or not the Court of Appeals gravely abused its discretion in dismissing his petition in CA-G.R. SP No. 90461 for failure to attach thereto the pertinent documents.

In dismissing the petition in CA-G.R. SP No. 90461, the appellate court relied on Sec. 1, Rule 65, in relation to Sec. 3, Rule 46, of the Revised Rules of Court. Sec. 1 of Rule 65[44] reads:

SECTION 1. Petition for certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of [its or his] jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphasis supplied.)

And Sec. 3 of Rule 46[45] provides:

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. - The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly-authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly

legible plain copies of all documents attached to the original.

x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied.)

The afore-quoted provisions are plain and unmistakable. Failure to comply with the requirement that the petition be accompanied by a duplicate original or certified true copy of the judgment, order, resolution or ruling being challenged is sufficient ground for the dismissal of said petition. Consequently, it cannot be said that the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the petition in CA-G.R. SP No. 90461 for non-compliance with Sec. 1, Rule 65, in relation to Sec. 3, Rule 46, of the Revised Rules of Court.

It is true that in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice,[46] this Court has, before,[47] treated a petition for certiorari as a petition for review on certiorari, particularly (1) if the petition for certiorari was filed within the reglementary period within which to file a petition for review on certiorari;[48] (2) when errors of judgment are averred; [49] and (3) when there is sufficient reason to justify the relaxation of the rules.[50]

But these exceptions are not applicable to the present factual milieu.

Pursuant to Sec. 2, Rule 45 of the Revised Rules of Court:

SEC. 2. Time for filing; extension. - The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. x x x.

In the case at bar, the Court of Appeals dismissed the petition of petitioner Alfredo in CA-G.R. SP No. 90461 by virtue of a Resolution dated 6 September 2005. Petitioner Alfredo's Motion for Reconsideration of the dismissal of his petition was denied by the appellate court in its Resolution dated 16 February 2006. Petitioner Alfredo thus had 15 days from receipt of the 16 February 2006 Resolution of the Court of Appeals within which to file a petition for review. The reckoning date from which the 15-day period to appeal shall be computed is the date of receipt by petitioner Alfredo of the 16 February 2006 Resolution of the Court of Appeals, and not of its 11 April 2006 Resolution denying petitioner Alfredo's second motion for reconsideration, since the second paragraph of Sec. 5, Rule 37 of the Revised Rules of Court is explicit that a second motion for reconsideration shall not be allowed. And since a second motion for reconsideration is not allowed, then unavoidably, its filing did not toll the running of the period to file an appeal by certiorari. Petitioner Alfredo made a critical mistake in waiting for the Court of Appeals to resolve his second motion for reconsideration before pursuing an appeal.

Another elementary rule of procedure is that perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional. For this reason, petitioner Alfredo's failure to file this petition within 15 days from receipt of the 16 February 2006 Resolution of the Court of Appeals denying his first Motion for Reconsideration, rendered the same final and executory, and deprived us of jurisdiction to entertain an appeal thereof.

The relaxation of procedural rules may be allowed only when there are exceptional circumstances to justify the same. Try as we might, however, we fail to find the existence of such exceptional circumstances in this case, and neither did petitioner Alfredo endeavour to prove the existence of any. In fact, there is total lack of effort on petitioner Alfredo's part to at least explain his inability to comply with the clear requisites of the Revised Rules of Court.

Worth noting is the observation of respondent E-PCI that, essentially, petitioner Alfredo is using the present Petition for Certiorari, to seek the reversal and setting aside of the 4 April 2005 Order of the RTC, and not to assail the three Resolutions of the Court of Appeals. This he cannot validly do for it is an apparent disregard of the proper exercise of jurisdiction by the appellate court. We cannot overlook the ruling of the Court of Appeals and proceed right away to a review of the RTC order, absent any error of judgment or jurisdiction committed by the former.

All told, a perusal of the challenged Resolutions of the Court of Appeals fail to illustrate any reversible error, much less, a showing of any iota of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the appellate court, to warrant the exercise by this Court of its discretionary appellate jurisdiction in the case at bar. Considering the allegations, issues and arguments adduced and our disquisition above, without need of further delving deeper into the facts and issues raised by petitioner Alfredo in this Petition for Certiorari with prayer for preliminary injunction, we hereby dismiss the instant petition for being the wrong remedy under the Revised Rules of Court, as well as his failure to sufficiently show that the challenged Resolutions of the Court of Appeals were rendered in grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, premises considered, the instant Petition for Certiorari is DISMISSED for lack of merit. The three Resolutions of the Court of Appeals dated 6 September 2005, 16 February 2006 and 11 April 2006, respectively, in CA-G.R. SP No. 90461, are hereby AFFIRMED in toto. With costs against petitioner Alfredo Tagle.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Romeo A. Brawner and Jose C. Mendoza, concurring; rollo, p. 17.

[2]"In Re: Ex-parte Petition for the Issuance of a Writ of Possession on the Property Located at BaliuAg, Bulacan Embraced in Transfer Certificate of Title No. T-143715 of the Registry of Deeds for the Province of Bulacan: EQUITABLE PCI BANK (formerly Philippine Commercial International Bank), Petitioner." Id. at 11-12.

[3]Annex "C" of the Petition; id. at 16.

[4]Annex "B" of the Petition; id. at 14.

[5] A Motion for Reconsideration of the 16 February 2006 Resolution which denied the Motion for Reconsideration of the 6 September 2005 Resolution.

[6] Annex "A" of the Petition; rollo, pp. 11-12.

[7] Id. at 9.

[8]Id. at 66-67.

[9] Id. at 73-74.

[10]Id. at 11-12.

[11]Records, pp. 104-05.

[12] When the case was elevated to the Court of Appeals, the petitioner in the case was solely Alfredo Tagle.

[13] Rollo, p. 17.

[14] Id. at 14.

[15] Id. at 16.

[16] Id. at 67.

[17] Id. at 8.

[18] Id. at 9.

[19] Id. at 78.

[20] Id. at 37.

[21] Id.

[22] Id. at 80.

[23] Id. at 81.

[24] Id. at 76.

[25] Id. at 82.

[26] Id. at 3-4; id. at 38-39.

[27] Id. at 61-62.

[28] *People of the Philippines v. Court of Appeals*, 468 Phil. 1, 10 (2004).

[29] *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 784 (2003); *Rivera v. Hon. Espiritu*, 425 Phil. 169, 179-180 (2002); *Barangay Blue Ridge "A" of Quezon City v. Court of Appeals*, 377 Phil. 49, 53, (1999); *Silverio v. Court of Appeals*, G.R. No. L-39861, 17 March 1986, 141 SCRA 527, 539.

[30] *Land Bank of the Philippines v. Court of Appeals*, id. at 784-785; *Sanchez v. Court of Appeals*, 345 Phil. 155, 179 (1997).

[31] *Alafriz v. Nable*, 72 Phil. 278, 280 (1941). See also *Land Bank of the Philippines v. Court of Appeals*, *supra* note 27 at 785.

[32] *Land Bank of the Philippines v. Court of Appeals*, *supra* note 29 at 785.

[33] Id.

[34] Id.

[35] *Cuison v. Court of Appeals*, 351 Phil. 1089, 1102 (1998); *Lalican v. Hon. Vergara*, 342 Phil. 485, 495 (1997); *Pure Foods Corp. v. National Labor Relations Commission*, G.R. No. 78591, 21 March 1989, 171 SCRA 415, 426; *Palma v. Q & S Inc.*, 123 Phil. 958, 960 (1966).

[36] *Heirs of Marcelino Pagobo v. Court of Appeals*, G.R. No. 121687, 16 October 1997, 280 SCRA 870, 883.

[37] *Heirs of Placido Miranda v. Court of Appeals*, 325 Phil. 674, 685 (1996); *Marahay v. Melicor*, G.R. No. 44980, 6 February 1990, 181 SCRA 811, 814; *Santos v. Pecson*, 79 Phil. 261, 263 (1947).

[38] *Chua v. Santos*, G.R. No. 132467, 18 October 2004, 440 SCRA 365, 374.

[39] *National Irrigation Administration v. Court of Appeals*, G.R. No. 129169, 17 November 1999, 318 SCRA

255, 265.

[40] Cathay Pacific Steel Corp. v. Court of Appeals, G.R. No. 164561, 30 August 2006, 500 SCRA 226, 236.

[41] Land Bank of the Philippines v. Continental Watchman Agency Incorporated, 465 Phil. 607, 615 (2004).

[42] Land Bank of the Philippines v. Court of Appeals, *supra* note 29 at 785.

[43] G.R. No.156067, 11 August 2004, 436 SCRA 123, 134-136.

[44] Entitled "CERTIORARI, PROHIBITION AND MANDAMUS."

[45] Entitled "ORIGINAL CASES."

[46] Oaminal v. Sps. Castillo, 459 Phil. 542, 556 (2003).

[47] *Id.*

[48] Republic v. Court of Appeals, 379 Phil. 92, 98 (2000); Eternal Gardens Memorial Park Corp. v. Court of Appeals, 347 Phil. 232, 256 (1997).

[49] Delsan Transport Lines, Inc. v. Court of Appeals, 335 Phil. 1066, 1075 (1997).

[50] Banco Filipino Savings and Mortgage Bank v. Court of Appeals, 389 Phil. 644 (2000); Bank of America, NT & SA v. Gerochi, Jr., G.R. No. 73210, 10 February 1994, 230 SCRA 9, 15 citing Alto Sales Corp. v. Intermediate Appellate Court, 274 Phil. 914 (1991); Filcon Manufacturing Corp. v. National Labor Relations Commission, G.R. No. 78576, 31 July 1991, 199 SCRA 814; Kabushi Kaisha Isetan v. Intermediate Appellate Court, G.R. No. 75420, 15 November 1991, 203 SCRA 583.

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.