

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. FAR EAST MOLASSES CORPORATION, RESPONDENT.

G.R. No. 89125. July 02, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal by certiorari to review the decision[1] of the Court of Appeals of 24 February 1989 in C.A.-G.R. SP No. 12722[2] granting respondent's petition for certiorari, setting aside the trial court's order of 24 August 1987 in Civil Case No. 23282 which granted the motion for execution of judgment, and giving due course to its appeal, as well as its Resolution dated 11 July 1989, denying petitioner's motion for reconsideration.

The antecedent facts are not disputed.

On 15 April 1976, petitioner filed with the Court of First Instance (now Regional Trial Court) of Rizal a complaint[3] for recovery of a sum of money against herein respondent and L & A Company, Inc., Estate of Trinidad Lazatin and the Intestate Estate of Eduardo Ayson, praying therein for judgment ordering said defendants, jointly and severally, to pay herein petitioner the aggregate amount of P575,043.75 plus interest at the rate of 14% per annum and a service fee of 2% per annum from and after March 16, 1976 until the amount is fully paid. The complaint was docketed as Civil Case No. 23282.

After due trial, the lower court rendered on 26 June 1987 its decision thereon,[4] the dispositive portion of which reads:

"WHEREFORE, this Court in the furtherance of justice and equity, hereby renders judgment in favor of plaintiff, Bank of Philippines (sic) Islands (petitioners herein) and against the defendants L.A. & Co. Inc., and Far East Molasses Corporation, BY WAY OF THE MAIN COMPLAINT, to wit:

1. Ordering the defendants L.A. & Co. Inc., and Far East Molasses Corporation jointly and severally to pay the plaintiff, Bank of the Philippine Islands, the sum of P575,043.75 plus interest at the rate of 14% per annum and a service fee of 2% per annum from and after March 16, 1976 until the amount is fully paid and dismissing the defendants (sic) counterclaims;
2. Ordering the defendants L.A. & Co. Inc., and Far East Molasses Corporation to pay jointly and severally, the plaintiff, Bank of the Philippine Islands, the sum equivalent of 10% of the total amount due as an attorney's fee (sic), dismissing FEMOLA cross claim against defendant L.A. & Corp. and
3. Ordering the defendants jointly and severally, to pay the costs of the suit.

AND

BY WAY OF THIRD PARTY COMPLAINT

THIS Court hereby renders judgment in favor of the third party plaintiff LA & Co. Inc., against the third party defendants, to wit:

1. Ordering the third-party defendant Pampanga Sugar Mills Inc. (PASUMIL) together with other third-party defendants Buena Industrial Development Corporation (BIDC), Valeriano C. Bueno, National Sugar Development Corporation (NASUDECO) and Philippine National Bank (PNB), by way of reimbursement, joint (sic) and severally the defendant and third-party plaintiff LA & Co. Inc., for any amount covering all claims, damages and attorneys (sic) fees and costs awarded in favor of the plaintiff, Bank of Philippine (sic) Islands, by this Court, against the third-party plaintiff and defendant LA & Co. Inc., on plaintiff's complaint.

SO ORDERED."

Private respondent (then defendant) received a copy of the Decision on 7 July 1987. It had, therefore, until 22 July 1987 within which to appeal therefrom. Instead of filing a notice of appeal within the period, it filed, in the morning of 22 July 1987, a motion to reconsider the decision. The motion, however, did not contain any notice of hearing.[5]

It appears nevertheless, that on 22 July 1987, probably to cure the defect of lack of notice of hearing, counsel for respondent allegedly mailed by ordinary mail a so-called. Manifestation and Motion incorporating therein the omitted notice of hearing,[6] and claiming that said notice was inadvertently omitted from the said Motion for Reconsideration." The incorporated notice reads:

"The Clerk of Court

RTC-Branch 69

Pasig, Metro Manila

G R E E T I N G S:

Please take notice that on 6 August 1987 at 8:30 A.M., the undersigned will submit the foregoing motion for the consideration and resolution of the Honorable Court."[7] (underscoring supplied).

The "foregoing motion" refers to the motion for reconsideration.

This so-called Manifestation and Motion, as admitted by respondent,[8] appears to have been received by the trial court only on 7 August 1987. Petitioner claims that it never received a copy of said pleading[9] and that there is even doubt as to when it was actually mailed since the messenger of private respondent's lawyer, in his affidavit, Annex "AA" of Petition, could not even state the name of the Post Office where he supposedly mailed it.

On 27 July 1987, the trial court denied respondent's motion for reconsideration on the ground that it "finds no sufficient basis to justify departure from its original decision." [10]

On 3 August 1987, petitioner filed with the trial court a motion for execution of judgment on the ground that it had already become final since the motion for reconsideration did not stop the running of the period to appeal, considering that it did not contain the notice required by Section 5 of Rule 15 of the Rules of Court.[11]

Also on 3 August 1987, upon receipt of the Order of 27 July 1987, respondent filed a Notice of Appeal.[12]

On 10 August 1987, the trial court issued its order denying the motion for execution,[13] ruling that:

"The question boils down to whether the Motion for Reconsideration interrupted the running of the period of appeal. Considering the argument of the defendant, this Court believes and so holds that the defect on the Motion for Reconsideration was cured on the same day by timely incorporation of the omitted notice in substantial compliance with Section 5, Rule 15 of the Rules of Court, and consequently the Motion for Execution is hereby denied (Annex I)."

On 13 August 1987, petitioner filed a motion for the reconsideration^[14] of the above order.

On 24 August 1987, the trial court issued an order^[15] granting the motion for reconsideration and ordering the execution of the decision, the pertinent portion of which reads:

"Acting upon the Motion for Reconsideration filed by the plaintiff, thru counsel or taking into account the more exhaustive arguments of parties or counsel, based on the decisions of the Supreme Court in *Lucila B. Vda. de Azarias vs. Hon. Mando Maddela, etc.*, 38 SCRA 35; *PNB vs. Ponasco*, 7 SCRA 409; *Manakil vs. Revilla*, 42 Phil. 81; *In re Almacen*, 3 SCRA 562; *Inesin vs. Canonoy*, 107 Phil. 217; *Manansala vs. Heras*, 103 Phil. 575; *Sun Un Giok vs. Melusa*, 101 Phil. 727; *Cledera vs. Sarmiento*, 39 SCRA 552, and considering further doubts expressed by counsel on some data relative to the records of the case, the order of this Court under date of August 10, 1987 is hereby reconsidered and set aside and that plaintiff's motion for execution is hereby granted.

SO ORDERED."

Unable to accept the above order, respondent herein filed with the Court of Appeals a Special Civil Action for Certiorari with Preliminary Injunction and Temporary Restraining Order seeking the nullification of the order of 24 August 1987. Said petition was docketed as C.A.-G.R. SP No. 12722.

In its Decision of 24 February 1989,^[16] the Court of Appeals made the following disquisitions:

"On the question of jurisdiction, August 3, 1987 may or may not be the last or 15th day of the period of appealing in this case. The last day of appealing (sic) depends on the day the parties received their copies of the decision, the last to receive its copy being the last day of appealing (sic), irrespective of whether the last party to receive its copy of the decision is the appellant. However, if all the parties hereto received the copy of the decision on the same day, July 22, 1987, as did petitioner, the last day of (sic) perfecting an appeal therefrom by anyone of the parties is on August 3, 1987. (*Belgado vs. Intermediate Appellate Court*, 147 SCRA 258; *Yabut vs. Intermediate Appellate Court*, 142 SCRA 124; *Montelibano vs. Bacolod-Murcia*, 136 SCRA 295). These decisions interpreted the phrase 'last day to appeal by any party' contained in Section 23, Interim Rules and Guidelines.

Assuming therefore, that the period of appeal against the decision of respondent Court ended on August 3, 1987, the notice of appeal of petitioner as well as the motion for execution of private respondent were seasonably filed on time and consequently respondent court had jurisdiction to resolve them.

Did the respondent Court act correctly in issuing the challenged order of August 24, 1987 which granted execution by reconsidering its prior order of August 10, 1987? It did not. It acted with grave abuse of discretion. Most of the cases cited in its order of August 24, 1987 are not applicable to the case at bar. The others support petitioner's position.

The case of *Manakil vs. Revilla*, 42 Phil. 81, August 29, 1921, involved a motion for reconsideration without the time or place of hearing, which was attempted to be cured by setting the date of the hearing after the decision had become final and executory. In this case, the defective motion for reconsideration was cured on the same day it was filed and before the decision had become final and executory. The case of *Azarias vs. Maddela*, 38 SCRA 35, May 19, 1971, involved a Motion for Reconsideration which was merely 'respectfully submitted for the consideration of the respondent court'. In the case of *In Re Almacen*, cited in the *Azarias* case, the motion for reconsideration did not contain the time or date of its hearing. In *Cledera vs. Sarmiento*, 39 SCRA 552, June 10, 1971, the motion for reconsideration was submitted 'for resolution of the Honorable Court upon receipt thereof'. In *Bautista Angelo vs. Alfaro*, cited in the *Azarias* case, the motion for reconsideration was filed without specifying the time or place of hearing. In *Manila Surety & Fidelity Co., vs. Batu Construction*, 14 SCRA 435, 1965, also cited in the *Azarias* case, the motion for reconsideration did not have any time or date of hearing.

In *Inesin vs. Canonoy*, 107 Phil. 213, Feb. 29, 1960, the motion for reconsideration did not contain the time and date of hearing because counsel of movant did not know when the Presiding Judge of Pagadian, Zamboanga would hear cases in that town, since the Judge goes to Pagadian only once a year, and so the court in said case held that the motion for reconsideration suspended the period of appeal.

In *Sun Un Giok vs. Teodoro*, 101 Phil. 727, May 31, 1957, the motion to dismiss did not bear the time and date of hearing. However, the court itself set the motion for hearing for the reasons (sic) that the adverse party was properly notified of the existence of the motion to dismiss. The Supreme Court ruled therein:

'What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard.' (Citing *Borja vs. Tan*, 93 Phil. 167, and *Duran vs. Penolio*, 93 Phil. 782).

In the case at bar, the deficiency or omission was corrected on July 22, 1987, before the judgment became final and fourteen (14) days before the hearing set for August 6, 1987. Again, private respondents were duly heard on the matter of inquiry. It was the subject of the order of August 10, 1987, with private respondent Bank of the Philippine Islands filing a motion for reconsideration of the said order of August 10, 1987. The filing of a motion for reconsideration cures the lack of procedural due process (*de Leon vs. COMELEC*, 129 SCRA 117; *Ramerco Garments vs. Minister of Labor and Employment*, 135 SCRA 167; *Sumadchat vs. Court of Appeals*, 111 SCRA 469).

Courts are fully cognizant of man's failings. They punish those who act negligently, or out of skill, or in utter bad faith. In the spirit of fair play, they help those who immediately rise to the occasion, admit their mistakes, and try to cure them quickly. Courts abhor technicalities, they act to give every litigant the opportunity to be heard either in the trial stage or on appeal, for truth is best forged in the anvil of due process."^[17]

and on the basis thereof, concluded and held:

"In OUR own view, WE believe that the respondent Judge certainly committed grave abuse of discretion amounting to excess of jurisdiction in issuing the challenged order dated August 24, 1987 in Civil Case No. 23282.

WHEREFORE, the petition for certiorari is GRANTED. The order of August 24, 1987 of the respondent Court is hereby set aside and the petitioner's appeal is hereby allowed and given due course. No costs."

On 20 March 1989, petitioner filed a motion for the reconsideration^[18] of the above decision, which was denied in the resolution of 11 July 1989.^[19]

Hence, this petition, which was filed on 28 July 1989. Petitioner assigns the following errors as having been committed by the Court of Appeals:

1. The former Sixth Division of the Court of Appeals erroneously concluded that the Notice of Appeal of respondent was seasonably filed.
2. The former Sixth Division of the Court of Appeals mistakenly maintained that the court a quo acted with grave abuse of discretion in issuing its order of August 24, 1987 reconsidering the motion for execution of judgment of the petitioner
3. The former Sixth Division of the Court of Appeals wrongly miscomprehended the true intent and purpose of the decisions of this Honorable Court in line with Sections 4, 5 and 6 of the Rules of Court; and wrongly concluded that said decisions was (sic) contrary to petitioner's petition.^[20]

We required respondent to comment on the petition.^[21]

The Comment was filed on 6 September 1989.^[22]

In the Resolution of 18 September 1989, We resolved to require the petitioner to implead the Court of Appeals as party respondent and to file a reply to the Comment of private respondent.

The Reply was filed on 14 October 1989.[23]

Thereafter, We gave due course to the petition and required the parties to submit their respective memoranda,[24] which the petitioner complied with on 29 November[25] and the private respondent on 12 December 1989.[26]

We find the instant appeal by certiorari to be impressed with merit. The challenged decision of respondent Court of Appeals is not in accord with the rules and settled jurisprudence and must perforce be reversed and set aside. Its findings and conclusions are not supported by facts and are based on erroneous assumptions.

As shown above, private respondent received a copy of the 26 June 1987 decision of the trial court in Civil Case No. 23282 on 7 July 1987. It had therefore, until 22 July 1987 within which to appeal, if it wished to, from said decision. Instead of filing a notice of appeal on or before the latter date, private respondent filed in the morning of 22 July 1987 a Motion for Reconsideration. Unfortunately, the said motion did not contain a notice of hearing. On 3 August 1987, herein petitioner filed a motion for the execution of judgment alleging therein that the decision had already become final and executory since the motion for reconsideration, being merely a worthless piece of paper for its failure to comply with the requirement of notice, did not stop the running of the period to appeal from the decision. It appears however, that on 7 August 1987, the trial court received a copy of a so-called Manifestation and Motion signed by counsel for private respondent wherein there was incorporated a notice addressed to the Clerk of Court informing the latter that said counsel will submit the motion [for reconsideration] for the consideration and resolution of the Court on 6 August 1987 at 8:30 A.M.. This manifestation and motion was allegedly sent by ordinary mail in the afternoon of 22 July 1987; however, the affidavit[27] of the messenger who purportedly mailed it deliberately fails to mention the name of the Post Office concerned. The reason he gave for the mailing was that it was already late in the afternoon and he anticipated that the manifestation and motion can no longer be filed on time.

The unripped doctrine in this jurisdiction is that a motion that does not contain a notice of hearing is but a mere scrap of paper; it presents no question which merits the attention and consideration of the court. It is not even a motion for it does not comply with the rules and hence, the clerk has no right to receive it.[28]

The requirement of notice under Sections 4 and 5, Rules 15 of the Rules of Court on Motions, reading as follows:

"SEC. 4. Notice. - Notice of a motion shall be served by the applicant to all parties concerned at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause, may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion.

SEC. 5. Contents of notice. - The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion."

in relation to Section 2 of Rule 37 of the Rules of Court which reads:

"SEC. 2. Contents of motion for new trial and notice thereof. - The motion shall be made in writing stating the grounds therefor, a written notice of which shall be served by the movant on the adverse party."

x x x

is mandatory.[29] Accordingly, the absence of a notice of hearing is fatal and, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency. In *Sembrano vs. Ramirez, et al.*,[30] We emphasized anew the above principle:

"The Court has invariably held that a motion without notice of hearing is a mere scrap of paper.[31] It does not toll the running of the period of appeal.[32] This requirement of notice of hearing equally applies to a motion for reconsideration.[33] Without such notice, the motion is pro forma. And a pro forma motion for reconsideration does not suspend the running of the period to appeal.[34]

In the light of the foregoing pronouncements of the Court, private respondent's motion for reconsideration filed on 22 July 1987 did not, therefore, suspend or toll the running of the period to appeal. However, private respondent argues, and respondent court erroneously concedes, that the failure of notice was cured by the Manifestation and Motion which it filed by ordinary mail in the afternoon of that date. This pleading is another useless piece of paper. There is no showing that petitioner was furnished with a copy thereof; on the contrary, petitioner denied having received one. That none at all was furnished to petitioner is undisputably confirmed by the failure of the affidavit of the messenger of private respondent's counsel[35] to state the contrary. Personal service of a copy could have been easily done since the office of counsel for petitioner is located at Juan Luna St., Manila, while that of counsel for private respondent is located at Makati, Metro Manila. Besides, the so-called notice incorporated in the Manifestation and Motion is not the notice required by law. As stated above, it is a notice to the Clerk of Court and not to counsel for the petitioner. Section 5 of Rule 15 of the Rules of Court expressly and unequivocally requires that the notice "shall be directed to the parties concerned." It did not then cure the fatal defect of the motion for reconsideration.

In *Magno vs. Ortiz*, supra., We did not even consider a notice of hearing subsequently issued by the court as having cured the defect of lack of notice for:

"x x x in the first place, the duty to give such notices devolves upon the movant, not upon the court. In *Fulton Insurance Co. vs. Manila Railroad Co., et al.*, supra., it was pointed out categorically that section 2 of Rule 37 repealed the provision of section 146 of the old Code of Civil Procedure and the rulings founded thereon, to the effect that the notice must be served by the court on the adverse party. Secondly, even granting that the court a quo had authority to issue motu proprio the notice of hearing, such notice nevertheless did not cure the defect of the motion for reconsideration. For while the motion was filed on the thirtieth day from notice of the decision the notice of hearing was only issued sixteen (16) days thereafter."

In the instant case, there was no subsequent notice of hearing that was issued by the trial court. If any was issued, it would have been, undisputably, beyond the period to appeal since it is not denied that the trial court received a copy of the manifestation only on 7 August 1987, or on the sixteenth (16th) day after the expiry date (22 July 1987) of the period to appeal. Even if We are to stretch then the Court's liberality and spread it as thinly as possible by conceding for the sake of argument that the so-called motion incorporated in the Manifestation and Motion is substantial compliance with the required notice under Section 5 of Rule 15 and Section 2 of Rule 37 of the Rules of Court, and even if We disregard for the moment the absence of proof of service thereof to petitioner, still no relief is forthcoming to private respondent. The copy of the manifestation and motion for the trial court was sent by ordinary mail. No credible justification has been offered by private respondent as to why it was not sent by registered mail. Section 5 of Rule 13 of the Rules of Court on service by registered or ordinary mail requires service by registered mail where registry service exists. Otherwise stated, service by ordinary mail is allowed only in instances where no registry service exists.[36] Private respondent fails to indicate that no registry service was available at the Post Office where it was mailed. Considering nevertheless, that the office of counsel for private respondent is in Makati, Metro Manila, We cannot be persuaded to admit that there is no Post Office thereat which does not offer registry service. This Court takes judicial notice of the fact that Makati is a very prosperous and progressive municipality and is now the business and financial center of the National Capital Region. Neither can We expect counsel for private respondent, who belongs to a big law firm, to be so naive as to choose a Post Office without such service for the mailing of a very important pleading. Nonetheless, even

conceding some lapses in the degree of diligence required of counsel, and admitting that it did send by ordinary mail the manifestation and motion in the afternoon of the day it filed the defective motion for reconsideration, still the former did not cure the defect. For, to all legal intents and purposes, the manifestation and motion must be deemed to have been filed on the day that it was received by the court, i.e., on 7 August 1987. Commenting on Section 8 of Rule 13 of the Rules of Court on completeness of service, Moran says:

"x x x If by ordinary mail, since it is not easy to determine the exact date when the notice is received by the addressee, the service is deemed complete and effective upon the expiration of five (5) days after the date of mailing, as that is the estimated period of time in which a letter sent by registered mail reaches its destination anywhere in the Philippines, except in few places requiring more time which cannot be fixed before-hand, and as to which the court must provide, in each case, a special period upon the expiration of which the service may be deemed complete and effective, and except when the actual date of receipt is shown to be otherwise. x x x." [37] (underscoring supplied for emphasis).

Having been filed clearly beyond the period to appeal, it did not operate to cure the defect of the motion for reconsideration. It cannot be given a retroactive effect. In *Manila Surety & Fidelity Co., Inc. vs. Batu Construction & Co., et al.*, supra., We ruled:

"We are not impressed by the argument that the 'supplement' filed by appellant on May 30 should be deemed retroactive as of the date the motion for reconsideration was filed and therefore cured the defect therein. To so consider it would be to put a premium on negligence and subject the finality of judgment to the forgetfulness or whims of parties-litigants and their lawyers. This of course would be intolerable in a well-ordered judicial system."

Hence, the decision of the trial court became final on 22 July 1987 and it did not commit any error when it issued the Order of 24 August 1987 granting the motion of herein petitioner for the execution of the decision.

Upon the other hand, respondent Court of Appeals chose to be oblivious to the foregoing rules and unripped doctrine and to be extravagantly liberal to the private respondent not only by accepting as true the incredible claim that the Manifestation and Motion was sent by ordinary mail on 22 July 1987 but also by considering as valid and sufficient the notice incorporated therein. Contrary to the findings of the respondent court, the mailing of the Manifestation and Motion was not evidence of those "who immediately rise to the occasion, admit [their] mistakes, and try to cure them quickly," but a crude attempt to cover-up a late discovery of neglect or omission. It is not at all improbable, as petitioner contended, that the "discovery" was made by private respondent only after petitioner filed a motion for execution on 3 August 1987. Thus, instead of evoking the sympathy of the Court, petitioner's counsel should be reprimanded for employing a malicious strategy to avoid the consequences of his fatal mistake.

There is another aspect of the challenged decision which must be squarely addressed because the conclusions made are not supported by facts. Moreover, it makes an erroneous pontification as to the date the period to appeal from a decision commences to run. Said court states:

"On the question of jurisdiction, August 3, 1987 may or may not be the last or 15th day of the period of appealing in this case. The last day of appealing (sic) depends on the day the parties received their copies of the decision, the last to receive its copy being the last day of appealing (sic), irrespective of whether the last party to receive its copy of the decision is the appellant. However, if all the parties hereto received the copy of the decision on the same day, July 22, 1987, as did petitioner [private respondent herein], the last day of perfecting an appeal therefrom by anyone of the parties is on August 3, 1987. (*Belgado vs. Intermediate Appellate Court*, 147 SCRA 258; *Yabut vs. Intermediate Appellate Court*, 142 SCRA 124; *Montelibano vs. Bacolod?Murcia*, 136 SCRA 295). These decisions interpreted the phrase 'last day to appeal by any party' contained in Section 23, Interim Rules and Guidelines."

In the first place, it is not true that both parties received a copy of the decision of the trial court on 22 July 1987. In its own findings of facts, the Court of Appeals categorically stated that private respondents received a copy of the decision on 7 July 1987 and that 22 July 1987 was the last day to file a notice of appeal, had they wished to appeal. Moreover, the commencement of the period to appeal should not be reckoned, as seems to be suggested by the Court of Appeals, from the latest date any of the parties received a copy of the decision, but from the respective dates each of the parties received a copy of the decision. Therefore, each party has a different period within which to appeal, unless, of course, all of them received their copies on the same date and none filed a motion for reconsideration. Section 23 of the Interim Rules of Court and the decisions referred to, contrary again to the perception of the respondent Court of Appeals, do not interpret the phrase "last day to appeal by any party," but rather refer to the perfection of the appeal. There is a whole of a difference between last day to appeal and perfection of the appeal. The last day to appeal is the fifteenth day from receipt by a party of a copy of the decision. However, that appeal is not considered perfected until the expiration of the period to appeal by the other party in the case. The distinction assumes importance only in cases involving execution of judgment pending appeal.

WHEREFORE, the instant petition is GRANTED and the Decision of the respondent Court of Appeals of 24 February 1987 in C.A.-G.R. SP No. 12722 is REVERSED and SET ASIDE. The Order of the Regional Trial Court of Pasig, Rizal (Branch 69) in Civil Case No. 23282 of 24 August 1987 is hereby REINSTATED.

Costs against private respondent.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

Fernan, C.J., no part, formerly counsel for petitioner's Cebu branch and related to counsel for respondent.

[1] Per Associate Justice Bonifacio Caceda, Jr., concurred in by Associate Justices Florelina Castro-Bartolome and Ricardo L. Pronove, Jr.

[2] Entitled Far East Molasses corp. vs. Hon Jainal P. Rasul, etc., Bank of the Philippine Islands and L.A. & Co., Inc.

[3] Annex "A" Petition Rollo, 25, et seq.

[4] Annex "E" of Petition Id., 46, et seq.

[5] Annex "G" of Petition; Rollo, 64.

[6] Paragraphs 2 and 3 of respondent's Manifestation/Opposition filed before the trial court (Annex "J" of Petition); Rollo, 68, et. seq.

[7] Decision in C.A.-G.R. SP No. 12722, p. 3; Id., 110; Annex "Z" of Petition; Id., 123.

[8] P. 8 of Comment; Id., 135.

[9] Id., 19, 74, and 180.

[10] Annex "H" of Petition; Rollo, 65, et seq.

[11] Annex "F" of Petition; Id., 57, et seq.

[12] Annex "I" of Petition; Id., 66, et seq.

- [13] Annex "K" of Petition; Id., 70, et seq.
- [14] Annex "L" of Petition Id., 72, et seq.
- [15] Annex "P" of Petition; Rollo, 87.
- [16] Annex "W" of Petition; Id., 108, et seq.
- [17] Rollo, 112-114.
- [18] Annex "X" of Petition; Rollo, 116, et. seq.
- [19] Annex "Y" of Petition; Id., 122.
- [20] Rollo, 8, 15, and 17.
- [21] Resolution of 9 August 1989; Id., 127.
- [22] Id., 128.
- [23] Id., 157.
- [24] Resolution of 25 October 1989; Id., 167.
- [25] Id., 171.
- [26] Id., 198.
- [27] Annex "AA" of Petition; Rollo, 125.
- [28] *Firme, et al. vs. Reyes, et al.*, 92 SCRA 713, citing *Manakil, et al. vs. Revilla, et al.*, 42 Phil. 81; *Roman Catholic Bishop of Lipa vs. Municipality of Umisan*, 44 Phil. 866; *Director of Lands vs. Sanz*, 45 Phil. 117. See also *Filipinas Fabricators & Sales, Inc., et al. vs. The Hon. Magsino, et al.*, 157 SCRA 469.
- [29] *Cledera vs. Sarmiento*, 39 SCRA 552; *Manila Surety and Fidelity Co., Inc. vs. Batu Construction and Co., et al.*, 14 SCRA 435; *Fulton Insurance Co. vs. Manila Railroad Co.*, 21 SCRA 975; *Magno vs. Ortiz*, 26 SCRA 692; *Calero vs. Yaptinchay*, 31 SCRA 562; and *Sebastian vs. Cabal*, 32 SCRA 453. See also *Azajar vs. Court of Appeals*, 145 SCRA 333.

[30] 166 SCRA 30.

- [31] Citing *Manakil vs. Revilla*, supra., and *Roman Catholic Bishop of Lipa vs. Municipality of Umisan*, supra.
- [32] Citing *Calero vs. Yaptinchay*, and *Sebastian vs. Cabal*, supra.
- [33] Citing *Firme vs. Reyes*, supra., and *Republic Planters Bank vs. IAC*, 131 SCRA 631.
- [34] Citing *Cruz vs. J.M. Tuazon & Co., Inc.*, 76 SCRA 543; *Balquidra vs. CFI*, 80 SCRA 123; *Garcia vs. Echiverri*, 132 SCRA 631. See also *Phil. Advertising Counselors Inc. vs. Revilla*, 52 SCRA 246 and *Ferrer vs. Golez*, 25 SCRA 331.
- [35] Annex "AA" of Petition.
- [36] MORAN, *Comments on the Rules of Court*, vol. I, Part I, 1979 ed., p. 425.
- [37] Op. cit., p 427.

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