Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GEORGE PHILIP P. PALILEO and JOSE DE LA CRUZ,
Petitioners,

- versus -

PLANTERS DEVELOPMENT BANK,
Respondent.

G.R. No. 193650

Present:

CARPIO, *Chairperson,*
DEL CASTILLO,
MENDOZA,
PERLAS BERNABE,* *and*
LEONEN, *JJ.*

Promulgated:
OCT 08 2014

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the July 28, 2009 Amended Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 01317-MIN, entitled "*Planters Development Bank, Petitioner, versus Hon. Eddie R. Roxas (in his capacity as the former Pairing Judge), Hon. Panambulan M. Mimbisa (in his capacity as the Presiding Judge of RTC, Branch 37, General Santos City), Sheriff Marilyn P. Alano, Sheriff Ramon A. Castillo, George Philip P. Palileo, and Jose Dela Cruz, Respondents*," as well as its August 23, 2010 Resolution[3] denying reconsideration of the assailed amended judgment.

Factual Antecedents

In a June 15, 2006 Decision[4] rendered by the Regional Trial Court (RTC) of General Santos City, Branch 37, in an action for specific performance/sum of money with damages docketed as Civil Case No. 6474 and entitled "*George*

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* Per Special Order No. 1829 dated October 8, 2014.

1 *Rollo*, pp. 12-27. Erroneously titled "Petition for *Certiorari*".

2 Id. at 41-62; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Michael P. Elbinias and Ruben C. Ayson.

3 Id. at 6-9; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Edgardo T. Lloren and Ramon Paul L. Hernando.

4 Id. at 106-112; penned by Judge Eddie R. Rojas.

Philip P. Palileo and Jose Dela Cruz, Plaintiffs, versus, Planters Development Bank, Engr. Edgardo R. Torcende, Arturo R. delos Reyes, Benjamin N. Tria, Mao Tividad and Emmanuel Tesalonia, Defendants," it was held thus:

> Before this Court is a complaint for specific performance and/or sum of money and damages with prayer for the issuance of writs of preliminary attachment and preliminary injunction filed by Plaintiff George Philip Palileo and Jose L. Dela Cruz against Engr. Edgardo R. Torcende, Planters Development Bank (defendant Bank), Arturo R. Delos Reyes, Benjamin N. Tria, Mao Tividad, and Emmanuel Tesalonia on 22 December 1998.
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> After summons together with the verified Complaint and its annexes were duly served upon defendants, the latter answered. During Pre-Trial conference defendant Bank manifested [its] intention of settling the case amicably and several attempts to explore the said settlement [were] made as per records of this case. In the last pre-trial hearing dated 17 November 2000, only plaintiffs[,] George Philip Palileo and Jose L. Dela Cruz[,] and their counsel appeared, thus, the latter move [sic] for the presentation of evidence *ex-parte*, which was granted by the Court with the reservation of verifying the return card [to determine] whether the order for the pre-trial was indeed received by defendants. Finally, [at the] 21 November 2001 hearing, x x x defendants [again] failed to appear and their failure to file pre-trial brief was noted; thus [plaintiffs were] allowed to present evidence *ex-parte* before the Clerk of Court.
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> x x x x
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> IN LIGHT OF THE FOREGOING, defendants are hereby ORDERED to jointly and severally PAY plaintiffs as follows:
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> i) Actual Damages;
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> a) Plaintiff George Philip Palileo[,] the amount of Two Million Six Hundred Five Thousand Nine [sic] Seventy Two Pesos and Ninety Two Centavos (₱2,605,972.92), with 12% compounded interest [*per annum*] reckoned from the filing of this case until full settlement thereof;
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> b) Plaintiff Jose R. Dela Cruz[,] the amount of One Million Five Hundred Twenty Nine Thousand Five Hundred Eight Thousand [sic] and Eighty Centavos (₱1,529,508.80), with 12% compounded interest [*per annum*] reckoned from the filing of this case until full settlement thereof;
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> ii) Moral damages in the amount of Five Hundred Thousand Pesos (₱500,000.00) each;
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> iii) Exemplary Damages in the amount of Five Hundred Thousand Pesos (₱500,000.00) each;
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> iv) Attorney's Fees in the amount of Five Hundred Thousand [Pesos] (₱500,000.00) each x x x and to pay the costs.
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> SO ORDERED.[5]

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[5] Id. at 112.

Respondent Planters Development Bank (PDB) received a copy of the RTC Decision on July 17, 2006.

On July 31, 2006, PDB filed by private courier service – specifically LBC[6] – an Omnibus Motion for Reconsideration and for New Trial,[7] arguing therein that the trial court's Decision was based on speculation and inadmissible and self-serving pieces of evidence; that it was declared in default after its counsel failed to attend the pre-trial conference on account of the distance involved and difficulty in booking a flight to General Santos City; that it had adequate and sufficient defenses to the petitioners' claims; that petitioners' claims are only against its co-defendant, Engr. Edgardo R. Torcende [Torcende]; that the award of damages and attorney's fees had no basis; and that in the interest of justice, it should be given the opportunity to cross-examine the petitioners' witnesses, and thereafter present its evidence.

Petitioners' copy of the Omnibus Motion for Reconsideration and for New Trial was likewise sent on July 31, 2006 by courier service through LBC, but in their address of record – Tupi, South Cotabato – there was no LBC service at the time.

On August 2, 2006, PDB filed with the RTC another copy of the Omnibus Motion for Reconsideration and for New Trial via registered mail; another copy thereof was simultaneously sent to petitioners by registered mail as well.

Meanwhile, petitioners moved for the execution of the Decision pending appeal.

In an August 30, 2006 Order,[8] the RTC denied the Omnibus Motion for Reconsideration and for New Trial, while it granted petitioners' motion for execution pending appeal, which it treated as a motion for the execution of a final and executory judgment. The trial court held, as follows:

> Anent the first motion, records show that the Omnibus Motion for Reconsideration and for New Trial dated 28 July 2006 was initially filed via an LBC courier on 28 July 2006 and was actually received by the Court on 31 July 2006, which was followed by filing of the same motion thru registered mail on 2 August 2006. Said motion was set for hearing by the movant on 18 August 2006 or 16 days after its filing.

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[6] LBC Express is a domestic corporation that offers cargo and courier services to and from different parts of the country. *http://www.lbcexpress.com/*

[7] *Rollo*, pp. 93-99.

[8] Id. at 119-120.

> The motion fails to impress. Section 5, Rule 15[9] of the 1997 Rules of Civil Procedure as amended is pertinent thus:
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> > *Section 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.* (Underscoring and italics supplied)
>
> The aforesaid provision requires [that] every motion shall be addressed to all parties concerned, and shall specify the time and date of the hearing NOT later than ten (10) days after the filing of the motion. Being a litigated motion, the aforesaid rule should have been complied [with]. Its noncompliance renders it defective.
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> [The] Rule is settled that a motion in violation thereof is *pro forma* and a mere scrap of paper. It presents no question which the court could decide [upon]. In fact, the court has NO reason to consider it[;] neither [does] the clerk of court [have] the right to receive the same. Palpably, the motion is nothing but an empty formality deserving no judicial cognizance. Hence, the motion deserves a short shrift and peremptory denial for being procedurally defective.
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> As such, it does not toll the running of the reglementary period thus making the assailed decision final and executory. This supervening situation renders the Motion for Execution pending appeal academic but at the same time it operates and could serve [as] well as a motion for execution of the subject final and executory decision. Corollarily, it now becomes the ministerial duty of this Court to issue a writ of execution thereon.
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> IN LIGHT OF THE FOREGOING, the Omnibus Motion for Reconsideration and New Trial is hereby DENIED, and the Motion for Execution Pending Appeal (which is treated as a motion for execution of a final and executory judgment) is also GRANTED as explained above. Accordingly, let A WRIT OF EXECUTION be issued against herein defendants to enforce the FINAL and EXECUTORY Decision dated 15 June 2006.
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> SO ORDERED.[10]

PDB received a copy of the above August 30, 2006 Order on September 14, 2006.[11]

On August 31, 2006, a Writ of Execution[12] was issued. PDB filed an Urgent Motion to Quash Writ of Execution,[13] arguing that it was prematurely issued as the June 15, 2006 Decision was not yet final and executory; that its counsel has not received a copy of the writ; and that no entry of judgment has been made with respect to the trial court's Decision. Later on, it filed a Supplemental

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9 On Motions.
10 *Rollo*, pp. 119-120.
11 Id. at 158. PDB's Comment to the instant Petition.
12 CA *rollo*, pp. 62-63.
13 Id. at 186-189.

Motion to Quash Writ of Execution,[14] claiming that the writ was addressed to its General Santos branch, which had no authority to accept the writ.

On September 7, 2006, PDB filed a Notice of Appeal.[15]

In an October 6, 2006 Order,[16] the RTC denied the motion to quash the writ of execution.

On October 9, 2006, the RTC issued a second Writ of Execution.[17]

Ruling of the Court of Appeals

On October 11, 2006, PDB filed with the CA an original Petition for *Certiorari*, which was later amended,[18] assailing 1) the trial court's August 30, 2006 Order – which denied the omnibus motion for reconsideration of the RTC Decision and for new trial; 2) its October 6, 2006 Order – which denied the motion to quash the writ of execution; and 3) the August 31, 2006 and October 9, 2006 writs of execution.

On May 31, 2007, the CA issued a Decision[19] dismissing PDB's Petition for lack of merit. It sustained the trial court's pronouncement, that by setting the hearing of the Omnibus Motion for Reconsideration and for New Trial on August 18, 2006 – or 16 days after its filing on August 2, 2006 – PDB violated Section 5, Rule 15 of the Rules of Court which categorically requires that the notice of hearing shall specify the time and date of the hearing which must not be later than 10 days after the filing of the motion. Citing this Court's ruling in *Bacelonia v. Court of Appeals*,[20] the CA declared that the 10-day period prescribed in Section 5 is mandatory, and a motion that fails to comply therewith is *pro forma* and presents no question which merits the attention and consideration of the court.

The appellate court further characterized PDB's actions as indicative of a deliberate attempt to delay the proceedings, noting that it did not timely move to reconsider the trial court's November 17, 2000 ruling[21] allowing petitioners to present their evidence *ex parte*, nor did it move to be allowed to present evidence in support of its defense. It was only after the RTC rendered its June 15, 2006

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[14] Id. at 195-198.
[15] Id. at 190-191.
[16] *Rollo*, pp. 121-124.
[17] CA *rollo*, pp. 200-201.
[18] *Rollo*, pp. 125-145; Amended Petition (with Urgent Motion for Issuance of Temporary Restraining Order/ Preliminary Injunction).
[19] Id. at 28-40; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Mario V. Lopez and Michael P. Elbinias.
[20] 445 Phil. 300 (2003).
[21] *Rollo*, p. 36; ruling of the RTC during pre-trial hearing of even date.

Decision that PDB moved to be allowed to cross-examine petitioners' witnesses and to present its evidence on defense.

The CA likewise held that the RTC did not err in ruling that the omnibus motion for reconsideration did not toll the running of the prescriptive period, which thus rendered the June 15, 2006 Decision final and executory. It noted as well that PDB's September 7, 2006 notice of appeal was tardy.

The CA found no irregularity with respect to the writs of execution, which contained the *fallo* of the June 15, 2006 Decision of the RTC – thus itemizing the amount of the judgment obligation. Additionally, it held that the fact that the judgment debtors are held solidarily liable does not require that the writs should be served upon all of the defendants; that it is not true that the sheriffs failed to make a demand for the satisfaction of judgment upon PDB, as the mere presentation of the writ to it operated as a demand to pay; and that PDB failed to attach the Sheriff's Return to its Petition, which thus prevents the appellate court from resolving its claim that the writs were not validly served.

PDB filed a Motion for Reconsideration,[22] arguing that Rule 15, Section 5 of the Rules of Court should be relaxed in view of the fact that judgment against it was based on a technicality – and not on a trial on the merits; that there was no deliberate intention on its part to delay the proceedings; that the court acted with partiality in declaring that the Omnibus Motion for Reconsideration and for New Trial was *pro forma*; that its notice of appeal was timely; and that the writs of execution are null and void.

On July 28, 2009, the CA made a complete turnaround and issued the assailed Amended Decision, which decreed thus:

> WHEREFORE, the motion for reconsideration is GRANTED. This Court's May 31, 2007 Decision is SET ASIDE and a new one is rendered GRANTING the petition for *certiorari*. The trial court's Order dated August 30, 2006 is SET ASIDE and the Writ of Execution issued by the trial court is QUASHED. The trial court is ORDERED to hear and rule on the merits of petitioner's "Omnibus Motion for Reconsideration and New Trial."
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> SO ORDERED.[23]

The CA reversed its original finding that the Omnibus Motion for Reconsideration and for New Trial was *pro forma*. This time, it held just the opposite, ruling that PDB's "tacit argument" that the "distances involved in the case at bench call for a relaxation of the application of Section 5, Rule 15 of the

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22 CA *rollo*, pp. 337-351.
23 *Rollo*, p. 61.

Rules of Court" deserved consideration. It held that Section 5 should be read together with Section 4[24] of the same Rule, thus:

> When a pleading is filed and served personally, there is no question that the requirements in Sections 4 and 5 of Rule 15 of the Revised Rules of Civil Procedure pose no problem to the party pleading. Under this mode of service and filing of pleadings, the party pleading is able to ensure receipt by the other party of his pleading at least three days prior to the date of hearing while at the same time setting the hearing on a date not later than ten days from the filing of the pleading.
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> When, as in the case at bench, the address of the trial court as well as that of the opposing counsel is too distant from the office of the counsel of the party pleading to personally effect the filing and service of the pleading, the latter counsel faces a real predicament. In a perfect world with the best postal service possible, it would be problematic enough to ensure that both requisites are fully met: that opposing counsel receives the pleading at least three days before the date of hearing and that the date of hearing is no more than ten days after the filing (mailing) of the pleading. But, as a matter of fact, given the state of the postal service today – a matter the Court takes judicial notice of – the party pleading often finds himself [locked] between the horns of a dilemma.
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> The case at bench presents the Court with the novel issue of whether the same rigid application of the cited Sections-and-Rule is warranted when the filing and service of pleadings is by mail. The Court is of the opinion that when confronted between [sic] the demands of sufficient notice and due process on the one hand and the requirement that the date of hearing be set no later than ten days from filing, the stringent application of the Rules is not warranted and a liberal posture is more in keeping with Section 6, Rule 1 of the 1997 Rules of Civil Procedure which provides:
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>> SECTION 6. Construction. - These Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding.[25]

The CA further sustained PDB's argument that since judgment against it was arrived at by mere default or technicality, it is correspondingly entitled to a relaxation of the Rules, in line with the principles of substantial justice. It likewise held that PDB counsel's act of setting the hearing of the Omnibus Motion for Reconsideration and for New Trial 16 days after its filing was an excusable lapse; that no scheme to delay the case is evident from PDB's actions; that more telling is the trial court's "blurring in cavalier fashion" the distinction between Sections 1

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[24] Sec. 4. *Hearing of motion*.
Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[25] *Rollo*, pp. 54-55.

and 2 of Rule 39 of the Rules of Court,[26] as well as its unequal treatment of the parties from its strict application of Section 5, Rule 15 against respondent, while it bent backward to accommodate petitioners by converting the latter's motion for execution pending appeal into a motion for execution of a final and executory judgment.

Lastly, the appellate court concluded that the trial court committed grave abuse of discretion, which thus warrants the grant of PDB's Petition for *Certiorari.*

Petitioners filed their Urgent Motion for Reconsideration,[27] which the CA denied through its assailed August 23, 2010 Resolution. Hence, the instant Petition.

Issues

Petitioners frame the issues involved in this Petition, as follows:

> Being assailed herein is the refusal of the Court of Appeals, which is a patent error, for not giving credence to petitioners-appellants' arguments that the respondent-appellees' special civil action for certiorari before it is clearly devoid of merit as (i) the Decision dated June 15, 2006 of the RTC, Branch 37, General Santos City had become final and executory before the special civil action for Certiorari was filed before it which should have been dismissed outright, and which issue of "finality" was never ruled upon, (ii) granting arguendo that a certiorari proceeding could still be had, the same should be filed under Rule 45 instead of Rule 65 of the 1997 Rules of Civil Procedure, (iii) the alleged attendant abuse of discretion on the part of the public respondent judges, even granting

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[26] Section 1. Execution upon judgments or final orders.
Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.
If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.
The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution.
Sec. 2. Discretionary execution.
(a) Execution of a judgment or final order pending appeal. – On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.
After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.
Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.
(b) Execution of several, separate or partial judgments. – A several, separate or partial judgment may be executed under the same terms and conditions as execution of a judgment or final order pending appeal.

[27] *Rollo*, pp. 63-80.

> arguendo that it exist [sic], were [sic] not grave but on the contrary were purely errors of judgment and, (iv) the substantial and glaring defects of the petition in the special civil action for certiorari before the Court of Appeals were consistently and clearly called to its attention but were unjustifiably ignored by it.[28]

Petitioners' Arguments

In their Petition and Reply,[29] petitioners seek to reverse the assailed CA dispositions and to reinstate the appellate court's original May 31, 2007 Decision, arguing that the trial court's June 15, 2006 Decision became final and executory on account of PDB's failure to timely file its Omnibus Motion for Reconsideration and for New Trial, as it properly filed the same only on August 2, 2006 – or beyond the 15-day period allowed by the Rules of Court.

Petitioners argue that PDB's filing of its Omnibus Motion for Reconsideration and for New Trial on July 31, 2006 by courier service through LBC was improper, since there was no LBC courier service in Tupi, South Cotabato at the time; naturally, they did not receive a copy of the omnibus motion. This is precisely the reason why PDB re-filed its omnibus motion on August 2, 2006 through registered mail, that is, to cure the defective service by courier; but by then, the 15-day period within which to move for reconsideration or new trial, or to file a notice of appeal, had already expired, as the last day thereof fell on August 1, 2006 – counting from PDB's receipt of the trial court's Decision on July 17, 2006.

Petitioners add that PDB's notice of appeal – which was filed only on September 7, 2006 – was tardy as well; that PDB's resort to an original Petition for *Certiorari* to assail the trial court's August 30, 2006 Order denying the Omnibus Motion for Reconsideration and for New Trial was improper, for as provided under Section 9, Rule 37 of the Rules of Court,[30] an order denying a motion for new trial or reconsideration is not appealable, the remedy being an appeal from the judgment or final order; that *certiorari* was resorted to only to revive PDB's appeal, which was already lost; and that it was merely a face-saving measure resorted to by PDB to recover from its glaring blunders, as well as to delay the execution of the RTC Decision. They also assert that *certiorari* is not an available remedy, since PDB did not file a motion for reconsideration with respect to the other assailed orders of the trial court.

Petitioners maintain as well that the CA erred in relaxing the application of

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[28] Id. at 13-14.

[29] Id. at 166-177.

[30] On New Trial or Reconsideration.

Sec. 9. Remedy against order denying a motion for new trial or reconsideration.

An order denying a motion for new trial or reconsideration is not appealable, the remedy being an appeal from the judgment or final order.

the Rules of Court as to PDB, a banking institution with adequate resources to engage counsel within General Santos City and not relegate Civil Case No. 6474 to its Manila lawyers who are thus constrained by the distance involved.

Respondent's Arguments

Seeking the denial of the Petition, PDB in its Comment[31] maintains that the CA did not err in declaring that its Omnibus Motion for Reconsideration and for New Trial was not *pro forma*; that there are justifiable grounds to move for reconsideration and/or new trial; that it had no intention to delay the proceedings; that it was correct for the appellate court to relax the application of Section 5, Rule 15; and that the CA is correct in finding that the trial court committed grave abuse of discretion in misapplying the Rules and in exhibiting partiality.

Our Ruling

The Court grants the Petition.

The proceedings in the instant case would have been greatly abbreviated if the court *a quo* and the CA did not overlook the fact that PDB's Omnibus Motion for Reconsideration and for New Trial was filed one day too late. The bank received a copy of the trial court's June 15, 2006 Decision on July 17, 2006; thus, it had 15 days – or up to August 1, 2006 – within which to file a notice of appeal, motion for reconsideration, or a motion for new trial, pursuant to the Rules of Court.[32] Yet, it filed the omnibus motion for reconsideration and new trial only on August 2, 2006.

Indeed, its filing or service of a copy thereof to petitioners by courier service cannot be trivialized. Service and filing of pleadings by courier service is a mode not provided in the Rules.[33] This is not to mention that PDB sent a copy of

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31 *Rollo*, pp. 155-164.

32 RULE 37. NEW TRIAL OR RECONSIDERATION
Section 1. Grounds of and period for filing motion for new trial or reconsideration.
Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes x x x.
RULE 41. APPEAL FROM THE REGIONAL TRIAL COURTS
Sec. 2. Modes of appeal.
(a) Ordinary appeal.- The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. x x x
Sec. 3. Period of ordinary appeal.
The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.
The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

33 Rule 13, on Filing and Service of Pleadings, Judgments and Other Papers; *Heirs of Numeriano Miranda, Sr. v. Miranda*, G.R. No. 179638, July 8, 2013, 700 SCRA 746, 755.

its omnibus motion to an address or area which was not covered by LBC courier service at the time. Realizing its mistake, PDB re-filed and re-sent the omnibus motion by registered mail, which is the proper mode of service under the circumstances. By then, however, the 15-day period had expired.

PDB's Notice of Appeal, which was filed only on September 7, 2006, was tardy; it had only up to August 1, 2006 within which to file the same. The trial court therefore acted regularly in denying PDB's notice of appeal.

Since PDB's Omnibus Motion for Reconsideration and for New Trial was filed late and the 15-day period within which to appeal expired without PDB filing the requisite notice of appeal, it follows that its right to appeal has been foreclosed; it may no longer question the trial court's Decision in any other manner. "Settled is the rule that a party is barred from assailing the correctness of a judgment not appealed from by him."[34] The "presumption that a party who did not interject an appeal is satisfied with the adjudication made by the lower court"[35] applies to it. There being no appeal taken by PDB from the adverse judgment of the trial court, its Decision has become final and can no longer be reviewed, much less reversed, by this Court. "Finality of a judgment or order becomes a fact upon the lapse of the reglementary period to appeal if no appeal is perfected, and is conclusive as to the issues actually determined and to every matter which the parties might have litigated and have x x x decided as incident to or essentially connected with the subject matter of the litigation, and every matter coming within the legitimate purview of the original action both in respect to matters of claim and of defense."[36] And "[i]n this jurisdiction, the rule is that when a judgment becomes final and executory, it is the ministerial duty of the court to issue a writ of execution to enforce the judgment;"[37] "execution will issue as a matter of right x x x (a) when the judgment has become final and executory; (b) when the judgment debtor has renounced or waived his right of appeal; [or] (c) when the period for appeal has lapsed without an appeal having been filed x x x."[38]

Neither can the Court lend a helping hand to extricate PDB from the effects of its mistake; indeed, PDB erred more than once during the course of the proceedings. *For one*, it did not attempt to set right its failure to appear during pre-trial, which prompted the court to allow petitioners to present evidence *ex parte* and obtain a favorable default judgment. *Second*, assuming for the sake of argument that it timely filed its Omnibus Motion for Reconsideration and for New Trial, it nonetheless violated the ten-day requirement on the notice of hearing under Section 5 of Rule 15. *Third*, even before it could be notified of the trial court's resolution of its omnibus motion on September 14, 2006 – assuming it was

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[34] *Heirs of Juan Oclarit v. Court of Appeals*, G.R. No. 96644, June 17, 1994, 233 SCRA 239, 249.
[35] *Spouses Catungal v. Hao,* 407 Phil. 309, 325 (2001).
[36] *Amarante v. Court of Appeals*, G.R. No. 49698, May 3, 1994, 232 SCRA 104, 109-110.
[37] *Torres v. National Labor Relations Commission*, 386 Phil. 513, 520 (2000).
[38] *Florendo v. Paramount Insurance Corporation*, G.R. No. 167976, January 20, 2010, 610 SCRA 377, 384.

timely filed, it filed a notice of appeal on September 7, 2006 – which thus implies that it abandoned its bid for reconsideration and new trial, and instead opted to have the issues resolved by the CA through the remedy of appeal. If so, then there is no Omnibus Motion for Reconsideration and for New Trial that the trial court must rule upon; its August 30, 2006 Order thus became moot and academic and irrelevant. "[W]here [an action] or issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value."[39]

Fourth, instead of properly pursuing its appeal to free itself from the unfavorable effects of the trial court's denial of its notice of appeal, PDB chose with disastrous results to gamble on its Omnibus Motion for Reconsideration and for New Trial by filing an original Petition for *Certiorari* to assail the trial court's denial thereof. Time and again, it has been said that *certiorari* is not a substitute for a lost appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss.[40]

What remains relevant for this Court to resolve, then, is the issue relative to the trial court's October 6, 2006 Order – which denied the motion to quash the writ of execution – and the August 31, 2006 and October 9, 2006 writs of execution. The Court observes that the October 6, 2006 Order and the August 31, 2006 and October 9, 2006 writs of execution were set aside and quashed merely as a necessary consequence of the CA's directive in the Amended Decision for the trial court to hear and rule on the merits of PDB's Omnibus Motion for Reconsideration and for New Trial. Other than this singular reason, the CA would have sustained them, and this is clear from a reading of both its original May 31, 2007 Decision and its subsequent Amended Decision. Now, since the Court has herein declared that PDB's omnibus motion may not be considered for being tardy and for having been superseded by the bank's filing of a notice of appeal, then the CA's original pronouncement regarding the October 6, 2006 Order and the August 31, 2006 and October 9, 2006 writs of execution should necessarily be reinstated as well.

In light of the above conclusions, the Court finds no need to further discuss the other issues raised by the parties. They are rendered irrelevant by the above pronouncements.

WHEREFORE, the Petition is **GRANTED**. The assailed July 28, 2009 Amended Decision and August 23, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 01317-MIN are **REVERSED and SET ASIDE**. The Regional Trial Court of General Santos City, Branch 37 is **ORDERED** to proceed with the

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[39] *The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto*, 519 Phil. 15, 29 (2006).

[40] *Teh v. Tan*, G.R. No. 181956, November 22, 2010, 635 SCRA 593, 604.

execution of its June 15, 2006 Decision in Civil Case No. 6474.

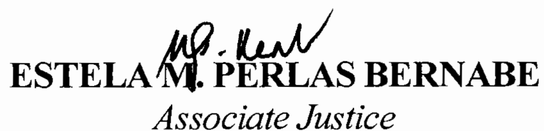
SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

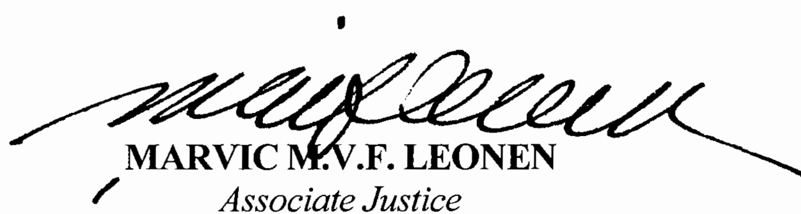
WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE CATRAL MENDOZA
Associate Justice



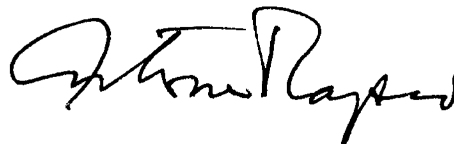
ESTELA M. PERLAS BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice