Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

FAR EAST FUEL CORPORATION,		**G.R. No. 254267**
	Petitioner,	
		Present:
		GESMUNDO, *C.J.*, *Chairperson*,
- *versus* -		HERNANDO,
		ZALAMEDA,
		ROSARIO, and
		MARQUEZ, *JJ.*
AIRTROPOLIS CONSOLIDATORS PHILIPPINES, INC.,		Promulgated:
		FEB 01 2023
	Respondent.	

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DECISION

HERNANDO, *J.*:

This appeal,[1] filed by Far East Fuel Corporation (FEFC), seeks the reversal of the February 21, 2020 Decision[2] and the November 5, 2020 Resolution[3] of the Court of Appeals (CA) in the consolidated cases docketed as CA-G.R. SP No. 156251 and CA-G.R. CV No. 113349. The appellate court 1) affirmed the Regional Trial Court's (RTC) Orders dated January 8, 2018[4] and

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1 *Rollo*, pp. 9-33 (sans annexes).
2 Id. at 35-55. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Pedro B. Corales, and Perpetua Susan T. Atal-Paño.
3 Id. at 58-59. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Pedro B. Corales, and Perpetua Susan T. Atal-Paño.
4 Id. at 197-198. Penned by Judge Edwin B. Ramizo.

March 19, 2018,[5] which denied petitioner's Motion to Lift Order of Default; and 2) affirmed with modification the RTC Order dated November 27, 2018,[6] and ordered petitioner to pay respondent Airtropolis Consolidators Philippines, Inc. (ACPI), the amount of PHP 1,460,800.00 with 6% legal interest per *annum*.

The Antecedents

This case stemmed from a Complaint for Collection of Sum of Money (Complaint)[7] filed by respondent ACPI againstpetitioner FEFC on February 29, 2016, which was docketed as Civil Case No. R-PSY-16-21929-CV.

ACPI claimed that sometime in 2014 and 2015, FEFC engaged its services for the carriage of certain oil products to be transported from a foreign country into the City of Manila, Philippines.[8] The agreement was not reduced into writing.[9] As evidence of the transactions, however, ACPI attached several waybills covering the shipments, to wit:

Document No.	Waybill No.	Date Issued
SIMNL1500937	8355514	November 24, 2014
SIMNL1500938	137115	December 10, 2014
SIMNL1502312	740715	December 28, 2014
SIMNL1502313	1206415	February 4, 2015
SIMNL1502314	441215	December 14, 2014
SIMNL1502315	940915	January 12, 2015
SIMNL1502316	1398915	January 28, 2015[10]

ACPI alleged that with respect to waybills nos. 8355514 and 137115, the subject shipments were delivered by it and consequently received by petitioner as evidenced by the delivery receipts dated March 6, 2015 and March 12, 2015.[11] As regards the shipments covered by waybills nos. 740715, 1206415, 441215, and 940915, the same were also allegedly delivered to petitioner after the lifting of abandonment under the Memorandum for the District Collector dated March 17, 2015, March 21, 2015, March 3, 2015, and April 7, 2015, issued by the Manila International and Container Port (MICP) of the Bureau of Customs (BOC).[12] With respect to the shipment covered by waybill no. 1398915, the same was transported by ACPI at the port of its entry in Manila under PO2B MICP, and evidenced by the BOC Import Entry and Internal Revenue Declaration Form.[13]

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5 Id. at 207. Penned by Pairing Judge Francisco G. Mendiola.
6 Id. at 263-268. Penned by Acting Presiding Judge Restituto V. Mangalindan, Jr.
7 Id. at 79-82.
8 Id.
9 Id. at 36.
10 Id.
11 Id.
12 Id.
13 Id.

ACPI alleged that the necessary billing statements were issued to FEFC; however, despite receipt of the same, petitioner failed to settle its outstanding obligation.[14] Thus, ACPI sent FEFC a Statement of Account dated August 23, 2015 which shows the latter's accumulated unpaid obligation from May 2015 to July 2015, amounting to PHP 1,721,800.00, broken down as follows:

Document No.	Waybill No.	Date	Amount Due (PHP)
SIMNL1500937	8355514	May 1, 2015	56,000.00
SIMNL1500938	137115	May 1, 2015	1,238,800.00
SIMNL1502312	740715	July 24, 2015	113,000.00
SIMNL1502313	1206415	July 24, 2015	53,000.00
SIMNL1502314	441215	July 24, 2015	95,000.00
SIMNL1502315	940915	July 24, 2015	113,000.00
SIMNL1502316	1398915	July 24, 2015	53,000.00
TOTAL			**1,721,800.00**[15]

According to ACPI, several demands, verbal and written, were made upon FEFC to make good its obligation and settle the same in full but to no avail.[16] Respondent sent petitioner a letter dated September 10, 2015 as a final demand to pay the said outstanding obligation.[17] As proof of receipt of the said letter, ACPI attached the transmittal issued by LBC, which caused delivery thereof to FEFC's office address.[18] Despite receipt, however, petitioner allegedly ignored the same and refused to pay its obligation.[19] Aside from the amount of PHP 1,721,800.00, ACPI prayed that it be granted attorney's fees and appearance fees.[20]

Summons was thereafter served to FEFC on September 26, 2016.[21] On October 11, 2016, the last day for filing its responsive pleading, petitioner moved for an extension of time to file an answer or appropriate pleading.[22] On October 28, 2016, petitioner instead moved to dismiss the Complaint, arguing that ACPI had no cause of action because a) there was no contractual relationship between the parties; b) it already paid the amounts due under waybills nos. 8355514, 137115, 1206415, and 940915; c) there was no proof that the products covered by waybills nos. 740715, 441215, and 1398915, were

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14 Id. at 80-81.
15 Id. at 36.
16 Id. at 81.
17 Id.
18 Id.
19 Id.
20 Id.
21 Id. at 36.
22 Id. at 37.

actually delivered considering that said shipments were declared abandoned by the BOC; and d) no prior demand was made by ACPI.[23]

For its part, respondent pointed out that petitioner did not attach any evidence to show that it already paid the amounts due under waybills nos. 8355514, 137115, 1206415, and 940915; whereas, respondent showed proof of the transactions and the demand made upon petitioner.[24]

The trial court issued an Order dated March 1, 2017 which denied petitioner's motion to dismiss, and held that the issues raised in the said motion were evidentiary matters which should be thoroughly threshed out in a full-blown trial.[25] Thereafter, or on June 27, 2017, respondent moved to declare petitioner in default arguing that based on the records, the Order denying petitioner's motion to dismiss was received by the latter on April 18, 2017, and that despite that, no answer or any responsive pleading was filed by petitioner.[26]

On July 28, 2017, FEFC filed a Comment with Motion to Admit Answer,[27] alleging the reasons why it failed to file its answer, to wit:

> 2. To be candid to this Honorable Court, the answer of [petitioner] in this case has been prepared long time ago but he was advised by the [petitioner] to hold the filing thereof because of the on-going effort on their part to reach out with the [respondent] for an out of court settlement. Due to [the] busy schedule of the undersigned counsel requiring his presence in out of town meetings and hearing[,] he already forgot about his deadline in filing this Answer. And he only realized his omission after he received the [respondent's] Motion to Declare Defendant in Default.
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> 3. In the interest of substantial justice, [petitioner] requests that the attached answer be admitted to the records of this case.[28]

However, the trial court did not give credence to the justifications proffered by petitioner. Thus, in an Order dated September 4, 2017, the trial court denied petitioner's motion; consequently, petitioner was declared in default, while respondent was allowed to present its evidence *ex parte*.[29]

Then, on October 2, 2017, petitioner filed a Motion to Lift Order of Default and to Cancel Plaintiff's *Ex Parte* Presentation of Evidence[30] (Motion to Lift Order of Default), wherein it argued that its failure to timely file an

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23 Id.
24 Id.
25 Id.
26 Id. at 38.
27 Id.
28 Id.
29 Id.
30 Id. at 38-39.

answer was due to excusable negligence and that the action must be determined based on its merits and not on technicalities.[31] On the other hand, respondent pointed out that petitioner's negligence was not excusable, and that the Motion to Lift Order of Default was not accompanied by an affidavit of merit.[32]

FEFC countered that the attached Answer to its Comment with Motion to Admit Answer already contained its defenses, and was already sufficient to satisfy the requirement of an affidavit of merit.[33]

Ruling of the Regional Trial Court

In its January 8, 2018 Decision,[34] the trial court denied petitioner's Motion to Lift Order of Default, thus:

> WHEREFORE, defendant's Motion to Lift Order of Default and to Cancel Plaintiff's [*Ex Parte*] Presentation of Evidence dated September 29, 2017 is hereby denied for lack of merit.
>
> Set the [*ex parte*] presentation of evidence for the plaintiff on March 5, 2018 at 10:00 o'clock in the morning.
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> SO ORDERED.[35]

In so ruling, the trial court reasoned that petitioner failed to show that its failure to file its answer was due to fault, accident, mistake, or excusable negligence.[36] Petitioner's explanation that its counsel heeded its request not to file its answer in view of the discussions between the parties cannot be regarded as excusable negligence, and thus, fails to justify the lifting of the order of default.[37] Petitioner was given ample time from the service of summons on September 27, 2016 within which to prepare its answer, but failed to do so.[38] Moreover, the trial court observed that petitioner's Motion to Lift Order of Default was fatally flawed as it was not accompanied by an affidavit of merit as required by Rule 9, Section 3(b) of the Rules of Court; and that the Answer attached to its Comment with Motion to Admit Answer cannot substitute the required affidavit of merit.[39] In fact, petitioner's Motion to Admit Answer has been denied in the trial court's Order dated September 4, 2017.[40]

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31 Id. at 39.
32 Id.
33 Id.
34 Id. at 197-198.
35 Id. at 198.
36 Id. at 197.
37 Id. at 198.
38 Id.
39 Id.
40 Id.

Aggrieved, petitioner moved for reconsideration, but this was also denied in the trial court's Order dated March 19, 2018.[41] Thus, FEFC filed a Petition for *Certiorari* and Prohibition[42] with the CA under Rule 65 of the Rules of Court ascribing to the trial court grave abuse of discretion in denying its Motion to Lift Order of Default. This was docketed as CA-G.R. SP No. 156251.

Meanwhile, the proceedings in Civil Case No. R-PSY-16-21929-CV continued where ACPI presented its evidence *ex parte*. On November 27, 2018, the trial court rendered its Decision[43] where it held that respondent was able to prove that petitioner had an outstanding obligation in the total amount of PHP 1,721,800.00 and that despite demand, petitioner failed to pay. It also imposed a 12% legal interest per *annum* computed from September 10, 2015, the date of the final demand, until the obligation is fully paid. It also held petitioner liable for attorney's fees and costs of suit, thus:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Airtropolis Consolidators Phil., Inc. and finding defendant Far East fuel Corporation liable to pay the sum of ONE MILLION SEVEN HUNDRED TWENTY ONE THOUSAND EIGHT HUNDERED PESOS (P1,721,800.00) plus legal rate of 12% interest per [*annum*] computed from September 10, 2015 until the obligation is fully paid and to pay attorney's fees in the amount of P50,000.00 plus cost of suit.
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> **SO ORDERED.**[44] (Emphasis in the original)

Petitioner appealed to the CA on January 23, 2019, which was docketed as CA-G.R. CV No. 113349. Then, on January 27, 2020, the CA issued a Resolution ordering the consolidation of CA-G.R. SP No. 156251 and CA-G.R. CV No. 113349.

Ruling of the Court of Appeals

The CA dismissed petitioner's *certiorari* case as it found no grave abuse of discretion on the part of the trial court in denying petitioner's Motion to Lift Order of Default. It held that the affidavit of merit is an indispensable requirement to be attached to the Motion to Lift Order of Default;[45] that the exception to such requirement is when the motion itself already contains the reasons for the failure to file the answer and the facts constituting the prospective defense/s of petitioner, which is not present here;[46] that petitioner's Answer attached to its Comment could not be considered an equivalent to the

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41 Id. at 207.
42 Id. at 40.
43 Id. at 263-268.
44 Id. at 268.
45 Id. at 45-46.
46 Id. at 46.

required affidavit of merit;[47] and that even assuming that petitioner's Motion to Lift Order of Default was not technically flawed, its reasons for failing to file its answer do not constitute excusable negligence that can warrant the lifting of the order of default.[48]

Meanwhile, the CA partially granted petitioner's appeal and modified the trial court's November 27, 2018 Decision. It observed that petitioner admitted having received the shipments pertaining to waybills nos. 8355514, 137115, 1206415, and 940915, but raised the defense of payment. However, it failed to present any receipt as proof of payment thereof.[49] As to waybills nos. 740715 and 441215, petitioner denied having received the same, and the Memoranda issued by the MICP of the BOC lifting the orders of abandonment presented by respondent do not prove that the shipments were actually delivered to petitioner.[50] As regards waybill no. 1398915, petitioner also denied having received the same, and ACPI's proof consisting of the BOC Import Entry and Internal Revenue Declaration Form does not prove that the shipment was actually delivered to FEFC.[51]

Thus, the CA held that in the absence of any concrete proof of delivery, respondent's claim with respect to waybills nos. 740715, 441215, and 1398915 are not proven.[52] ACPI was only able to prove its claim as to waybills nos. 8355514, 137115, 1206415, and 940915, and thus, should only be entitled to the amount of PHP 1,460,800.00.[53] The CA also deleted the award of attorney's fees for lack of basis, and reduced the interest to 6% per *annum* in accordance with the present regulations.[54]

The *fallo* of the assailed February 21, 2020 Decision[55] of the appellate court states:

> **WHEREFORE**, the petition for *certiorari* and prohibition is **DENIED**. The assailed Order and Resolution which declared the defendant-appellant in default are **AFFIRMED**.
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> The appeal, on the other hand, is **PARTIALLY GRANTED**. The assailed Decision is **AFFIRMED** with the **MODIFICATION** that: 1) the defendant-appellant is held liable for the sum of P1,460,800.00; 2) the award of attorney's fees is deleted; and 3) the interest rate is reduced to six percent (6%).
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> **IT IS SO ORDERED**.[56] (Emphasis in the original)

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47 Id.
48 Id. at 47.
49 Id. at 50-51.
50 Id. at 51.
51 Id. at 52.
52 Id.
53 Id.
54 Id. at 53-54.
55 Id. at 35-55.
56 Id. at 54.

The appellate court denied petitioner's Motion for Reconsideration in its November 5, 2020 Resolution.[57]

Hence, this instant Petition for Review on *Certiorari*[58] (Petition) under Rule 45 of the Rules of Court wherein petitioner argues that the appellate court erred a) when it ruled that the trial court did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of its Orders dated January 8, 2018 and March 19, 2018;[59] and b) when it sustained the trial court's ruling that petitioner is liable under waybills nos. 8355514, 137115, 1206415, and 940915 in the aggregate amount of PHP 1,460,800.00.[60]

Issue

The sole issue for resolution of this Court is whether the appellate court committed a reversible error in its February 21, 2020 Decision and November 5, 2020 Resolution.

Our Ruling

We rule in the negative.

Petitioner ascribes error to the appellate court in not finding any grave abuse of discretion on the part of the trial court in denying its Motion to Lift Order of Default. Petitioner posits that the affidavit of merit may be dispensed with, and its attached Answer to its Comment should have sufficed to satisfy the requirement.[61] Petitioner further contends that cases should be decided on the merits and not on the game of technicalities, especially in this case where petitioner has no deliberate intent to disregard the rules of procedure,[62] *e.g.*, since the non-filing of its answer was grounded purely on the honest belief of petitioner's counsel that the parties had been negotiating for an out-of-court settlement.[63] It maintains that the order of default should have been the exception rather than the rule,[64] and courts are bound to relax the application of the rules to give the parties the opportunity to present their respective cases.[65]

Petitioner's arguments fail to convince.

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57 Id. at 58-59.
58 Id. at 9-33.
59 Id. at 16.
60 Id. at 17.
61 Id. at 24-25.
62 Id. at 22.
63 Id. at 23.
64 Id.
65 Id. at 21.

It is settled that to constitute "grave abuse of discretion" warranting the issuance of a writ of *certiorari*, the court against which such writ is sought for must have exercised its jurisdiction in such capricious and whimsical manner as is equivalent to lack of jurisdiction; or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[66] With this parameter in mind, We subscribe to the appellate court's ruling that the trial court did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's Motion to Lift Order of Default.

To recall, petitioner was validly served Summons on September 26, 2016. It has been held that when a defendant is served with summons and a copy of the complaint, he or she is required to answer within 15 days from its receipt.[67] The defendant may also move to dismiss the complaint "[w]ithin the time for but before filing the answer."[68] True enough, petitioner moved for the dismissal of the Complaint on October 28, 2016, but the trial court denied the same in its Order dated March 1, 2017, which petitioner admits to have received on April 18, 2017.[69] Under the then provisions of the 1997 Rules of Civil Procedure,[70] petitioner is required to file its answer within the balance of the period allowed under Rule 11, but not less than five days, upon receipt of the Order denying its motion to dismiss.

However, it was only when petitioner was notified of respondent's motion to declare it in default that it filed its Comment with Motion to Admit Answer[71] on July 28, 2017, which is almost three months from the time it received the Order on April 18, 2017. For petitioner's failure to file its answer within the reglementary period, the trial court rightly declared it in default.

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66 *Philippine National Bank v. Spouses Perez*, 667 Phil. 450, 466 (2011), citing *Chamber of Real Estate and Builders Associations, Inc. v. The Secretary of Agrarian Reform*, 635 Phil. 283, 303 (2010).

67 RULES OF COURT, Rule II, Sec. 1.

68 RULES OF COURT, Rule 16, Sec. 1.

69 *Rollo*, p. 12.

70 Prior to the effectivity of the 2019 Amended Rules of Court, a party whose motion to dismiss the complaint is denied, may file an answer within the balance of the period provided under Rule 11, but not less than five days, from the receipt of the order denying such motion. Rule 16, Section 4, of the 1997 Rules of Civil Procedure provides:

> Sec. 4. *Time to plead.*- If the motion is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. If the pleading is ordered to be amended, he shall file his answer within the period prescribed by Rule 11 counted from service of the amended pleading, unless the court provides a longer period.

71 *Rollo*, p. 38.

Rule 9, Sec. 3 of the Rules of Court[72] provides for when a party to an action may be declared in default. Further, Sec. 3(b) thereof provides for the remedy from orders of default, to wit:

> SEC. 3. *Default; declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his or her pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.
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> (b) *Relief from order of default.* — A party declared in default may at any time after notice thereof and before judgment, file a **motion under oath** to set aside the order of default **upon proper showing that his or her failure to answer was due to fraud, accident, mistake or excusable negligence and that he or she has a meritorious defense.** In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice. (Emphasis supplied)

Thus, the remedy against an order of default is a motion under oath to set it aside on the ground of fraud, accident, mistake, or excusable negligence. In *Spouses Manuel v. Ong*,[73] the Court required that aside from the motion, the same must be accompanied by an affidavit showing the invoked ground, and another, denominated affidavit of merit, setting forth facts constituting the party's meritorious defense or defenses.[74] The Court explained that the need for an affidavit of merit is consistent with Rule 8, Sec. 5 of the Rules of Court which requires that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity."[75]

The Court also held in *Montinola, Jr. v. Republic Planters Bank*,[76] that there are three requisites that must be satisfied by a motion in order to warrant the setting aside of an order of default for failure to file an answer, *viz.*:

> (1) it must be made by motion under oath by one that has knowledge of the facts;
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> (2) it must be shown that the failure to file answer was due to fraud, accident, mistake or excusable negligence; and
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> (3) there must be a proper showing of the existence of a meritorious defense.[77]

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[72] 2019 AMENDED RULES OF COURT.
[73] 745 Phil. 589, 602 (2014), citing *Agravante v. Patriarca*, 262 Phil. 127, 133-134 (1990).
[74] Id.
[75] Id.
[76] 244 Phil. 49 (1988).
[77] Id. at 56.

Consistent with jurisprudence, a motion to lift the order of default must show the ground relied upon for the non-filing of the answer, and be accompanied by an affidavit of merit setting forth the facts constituting the party's meritorious defense/s. Nonetheless, this rule is not absolute, for jurisprudence has allowed an instance when an affidavit of merit may be dispensed with as "when a motion to lift an order of default contains the reasons for the failure to answer as well as the facts constituting the prospective defense of the defendant and it is sworn to by said defendant."[78]

As accurately observed by the lower courts, however, petitioner's Motion to Lift Order of Default only contains the reasons why it failed to file its answer, but lacks the allegations of facts constituting its prospective defenses. Thus, the exception as established by jurisprudence finds no application.

We cannot agree with petitioner's insistence that the Answer attached to its Comment with Motion to Admit Answer should satisfy this requirement. After all, the trial court has already denied petitioner's motion to admit its answer as early as September 4, 2017. Thus, petitioner was already aware of the said trial court's Order denying the admission of its Answer, such that when it filed its Motion to Lift Order of Default on October 2, 2017, it had no reason for it not to comply with the Rules and jurisprudence, especially the requirement to allege the facts constituting its prospective defenses in its Motion.

In any case, even when We ignore the aforesaid technical defects, the reasons given by petitioner in failing to file its answer: honest belief by petitioner's counsel that the parties are entering into a settlement out-of-court, such that petitioner's counsel failed to notice that the 15-day period to file the answer had already passed,[79] cannot be considered an excusable negligence so as to justify setting aside the order of default.

Jurisprudence is clear that excusable negligence is "one which ordinary diligence and prudence could not have guarded against," and these circumstances should be properly alleged and proved.[80] Here, the negligence of petitioner's counsel could have been prevented by the exercise of ordinary diligence and prudence. It cannot possibly use the supposed negotiation between the parties to ignore the mandatory processes of the court in relation to the ongoing case.

This Court emphasized in *Maripol v. Tan*[81] that it is not error, or an abuse of discretion, on the part of the court to refuse to set aside its order of default and to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the answer, to wit:

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[78] *Tanhu v. Judge Ramolete*, 160 Phil. 1101, 1115 (1975).
[79] *Rollo*, p. 189.
[80] *Lui Enterprises, Inc. v. Zuellig Pharma Corporation*, 729 Phil. 440, 442 (2014).
[81] 154 Phil. 193 (1974).

> It is within the sound discretion of the court to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired, but it is not error, or an abuse of discretion, on the part of the court to refuse to set aside its order of default and to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the answer. In the motions for reconsideration of an order of default, the moving party has the burden of showing such diligence as would justify his being excused from not filing the answer within the reglementary period as provided by the Rules of Court, otherwise these guidelines for an orderly and expeditious procedure would be rendered meaningless. Unless it is shown clearly that a party has justifiable reason for the delay, the court will not ordinarily exercise its discretion in his favor.[82]

Thus, the trial court, guided by the applicable rules and jurisprudence, cannot be said to have exercised its discretion in a capricious and whimsical manner when it denied petitioner's Motion to Lift Order of Default. While the courts should avoid orders of default, and should be, as a rule, liberal in setting aside such orders, they could not ignore the abuse of procedural rules by litigants like the petitioner, who only had themselves to blame.[83]

Meanwhile, as to the liability of petitioner under waybills nos. 8355514, 137115, 1206415, and 940915, We have no reason to disturb the factual findings of the appellate court.

To reiterate, the appellate court found that petitioner admitted to have received the shipment pertaining to the said waybills but raised the defense of payment; however, it failed to present any receipt as proof of its payment thereof.[84] Meanwhile, for absence of actual proof of delivery to petitioner of the shipment covered by the other waybills, respondent was only able to prove its claims to the extent of PHP 1,460,800.00.[85]

Time and again, only questions of law may be raised in a petition for review on *certiorari*.[86] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this Court.[87] However, this Court recognizes several exceptions to this rule, to wit:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant

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82 Id. at 199-200.
83 See *Momarco Import Co., Inc. v. Villamena*, 791 Phil. 457, 467 (2016).
84 *Rollo*, pp. 50-51.
85 Id.
86 RULES OF COURT, Rule 45, Sec. 1.
87 *Pascual v. Burgos*, 776 Phil. 167, 169 (2016), citing *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003).

> and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[88]

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties.[89] This review includes assessment of the "probative value of the evidence presented."[90] There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties.[91]

Although jurisprudence has provided several exceptions to these rules, exceptions must be alleged, substantiated, and proved by the parties so this Court may evaluate and review the facts of the case.[92] In any event, even in such cases, this Court retains full discretion on whether to review the factual findings of the CA.[93] Here, petitioner failed to allege, substantiate, and prove the exceptions to warrant a review by this Court of the appellate court's factual findings.

Nonetheless, We reviewed the evidence on record and find the appellate court's factual findings to be in order. Petitioner failed to attach any evidence of its alleged payment on waybills nos. 8355514, 137115, 1206415, and 940915, even in its Motion to Dismiss the Complaint. To be sure, the best evidence to prove payment of the goods is the official receipt,[94] which petitioner failed to present.

Meanwhile, We affirm the finding that respondent was able to prove its claim to the extent of the said waybills; but failed to present proof of actual delivery of the other shipments covered by waybills nos. 740715, 441215, and 1398915. The issue on what constitutes "delivery" can be explained by the basic provisions of the law on sales.

Under the Civil Code, the vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale.[95] The

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88 See *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990). Citations omitted.

89 *Pascual v. Burgos*, supra, citing *Republic v. Ortigas and Company Limited Partnership*, 728 Phil. 277, 288 (2014), and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 788 (2011).

90 *Pascual v. Burgos*, supra at 183, (2016), citing *Republic v. Ortigas and Company Limited Partnership*, supra.

91 Id.

92 Id.

93 Id.

94 *El Oro Engraver Corporation v. Court of Appeals and Everett Construction Supply, Inc.*, 569 Phil. 373, 380 (2008).

95 CIVIL CODE, Art. 1495.

ownership of the thing sold is considered acquired by the vendee once it is delivered to him in the following wise:

> Art. 1496. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.
>
> Art. 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee.

Thus, ownership does not pass by mere stipulation but only by delivery.[96] "The delivery of the thing x x x signifies that title has passed from the seller to the buyer."[97] The purpose of delivery is not only for the enjoyment of the thing but also a mode of acquiring dominion and determines the transmission of ownership, the birth of the real right.[98] The delivery under any of the forms provided by Articles 1497 to 1505 of the Civil Code signifies that the transmission of ownership from vendor to vendee has taken place.[99] Here, emphasis is placed on Art. 1497 of the Civil Code, which contemplates what is known as real or actual delivery, when the thing sold is placed in the control and possession of the vendee.[100]

As accurately observed by the appellate court, the shipments covered by waybills nos. 740715, 441215, and 1398915 are considered as not having been delivered, since there was no proof that the same were delivered at petitioner's official business address, or that the latter had gained control or possession thereof in some other way. We agree that the Memoranda issued by the MICP of the BOC lifting the orders of abandonment, or the BOC Import Entry and Internal Revenue Declaration Form, do not prove that the shipments were actually delivered to petitioner and/or placed in its control and possession. Thus, absent any delivery receipt or any other proof of actual delivery to petitioner, respondent failed to prove its claims as to the shipments covered by waybills nos. 740715, 441215, and 1398915.

Lastly, as to whether there was final demand upon petitioner, the same has been passed upon by the appellate court and the latter correctly held that respondent has sufficiently proven petitioner's receipt thereof. All told, there is no basis to overturn the appellate court's findings.

WHEREFORE, We **DENY** the petition and **AFFIRM** the February 21, 2020 Decision and the November 5, 2020 Resolution of the Court of Appeals in the consolidated cases docketed as CA-G.R. CV No. 113349 and CA-G.R. SP No. 156251.

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96 *Cebu Winland Development Corporation v. Ong Siao Hua*, 606 Phil. 103, 113 (2009).
97 Id. at 114.
98 Id.
99 Id.
100 Id.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice