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HMHMI. The Court directs the Sandiganbayan to proceed with the final disposition of Civil Case No. 0022, in accordance with the mandates of Republic Act No. 8493, within the period prescribed therein.

The Sandiganbayan must complete the trial stage in six (6) months from notice of this decision and decide the case within three (3) months from submission. It shall inform the Court of the decision within ten (10) days from promulgation thereof.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and *Ynares-Santiago, JJ.,* concur.

EN BANC

[G.R. No. 137448. January 31, 2002]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **BENGSON COMMERCIAL BUILDINGS, INC.,** *respondent.*

[G.R. No. 141454. January 31, 2002]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **COURT OF APPEALS, JUDGE VICENTE PACQUING, RTC-San Fernando, La Union, Branch 26, SHERIFF MARIO ANACLETO M. BAÑEZ, Provincial Sheriff of La Union, BENGSON COMMERCIAL BLDGS., and MR. ENRIQUE LL. YUSINGCO, in his capacity as Corporate Secretary of SAN MIGUEL CORPORATION,** *respondents.*

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SYNOPSIS

Private respondent Bengson Commercial Buildings, Inc. (BENGSON) obtained loans from the GSIS secured by real estate and chattel mortgages. For BENGSON'S failure to settle its arrearages despite due notice, the mortgaged properties were extra-judicially foreclosed and sold at public auction to the highest bidder, the GSIS itself. A certificate of sale and new certificates of title were thereafter issued in favor of GSIS. BENGSON filed an action for the annulment of the foreclosure sale, which the court decided in favor of BENGSON. BENGSON filed with the trial court a motion for hearing on the costs of suit. The trial court issued an order awarding to BENGSON the sum of ₱31 million as costs of suit. After some time, the trial court ordered the issuance of an *alias* writ for the execution of the award of ₱31 million costs of suit. Pursuant thereto, a writ was issued and 6.2 million class "A" shares of stocks of San Miguel Corporation owned by GSIS were garnished and later sold at public auction with BENGSON as the only bidder. The Court of Appeals dismissed the petitions on the grounds of forum shopping. Hence, this petition.

The Supreme Court ruled that the reliefs sought in the questioned petitions were distinct from each other. Hence, the proscription against forum-shopping was not violated by GSIS. The dismissal of both petitions on the ground of forum-shopping cannot, therefore be sustained. For forum-shopping to exist, there should be (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Thus, there is no forum-shopping where, for instance, the civil action for *certiorari* and the appeal brought by a party do not involve the same issue.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM-SHOPPING; ELEMENTS.**— Forum-shopping is

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an act of a party against whom an adverse judgment or order has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. For it to exist, there should be (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

2. **ID.; ID.; ID.; ID.; THERE IS NO FORUM-SHOPPING WHEN THE RELIEFS SOUGHT IN BOTH PETITIONS FOR *CERTIORARI* ARE DISTINCT FROM EACH OTHER; CASE AT BAR.**— The petition in CA-G.R. SP No. 47669 was a special civil action for *certiorari* filed by GSIS after its petition for relief from the 6 April 1995 Order of the trial court and its motion for reconsideration were both denied in the 16 January 1997 Decision and 23 April 1998 Order of the trial court, respectively. On the other hand, the petition in CA-G.R. No. 51131, which was formerly G.R. No. 136874 filed by GSIS and referred by us to the Court of Appeals, was a petition for *certiorari* seeking the annulment of (1) the 16 December 1998 Order of the trial court directing the issuance of an *alias* writ of execution to enforce the 6 April 1995 Order; and (2) the 8 January 1999 Order denying petitioner's Motion for Reconsideration with Motion to Quash the *Alias* Writ of Execution. The main issue or argument raised in the first petition was that the 6 April 1995 Order awarding ₱31 million costs of suit contradicted the pertinent provisions of the Rules of Court, equity and justice. In the second petition, GSIS argued that the *Alias* Writ of Execution, together with the corresponding levy and execution sale of the 6.2 million shares of stock in San Miguel Corporation, was void for being contrary to the provision of Republic Act No. 8291, which exempts the "funds and/or properties" of GSIS from attachment, garnishment, execution or levy. Moreover, the reliefs sought in both petitions were distinct from each other. Hence, the proscription against forum-shopping was not violated by GSIS. The dismissal of

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CA-G.R. SP Nos. 47669 and 51131 on the ground of forum-shopping cannot, therefore, be sustained.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PETITION; CONTENTS AND FILING; EFFECT OF NON-COMPLIANCE WITH REQUIREMENTS.**— We rule, however, that the Court of Appeals did not err in dismissing CA-G.R. SP No. 47669 for non-compliance with some of the requirements mentioned in Section 3, Rule 46 of the 1997 Rules of Civil Procedure. It is undisputed that the petition was not accompanied with a clearly legible duplicate copy or a certified true copy of the judgment subject thereof. Indeed, what was submitted was not a certified true copy of the 16 January 1997 Decision of the trial court. Hence, on this score alone the special civil action was properly dismissed by the Court of Appeals. Moreover, the Verification and Certificate on Non-Forum Shopping were executed by petitioner's counsel, not by its duly authorized officer. This was also in itself a sufficient ground to dismiss the petition.

4. **ID.; ID.; ID.; ID.; TIMELINESS OF FILING PETITION; CASE AT BAR.**— It must be observed that if the petition in CA G.R. SP No. 47669 had assailed the 23 April 1998 Order of the trial court denying petitioner's motion for reconsideration, as well as its 16 January 1997 Decision denying the petition for relief from judgment, as stated in petitioner's motion for extension of time to file a petition, the said petition could not have been said to have been filed out of time. The records disclose that the petitioner received on 4 February 1997 a copy of the 16 January 1997 Decision denying its petition for relief from judgment. On 16 February 1997, petitioner filed a motion for reconsideration. On 29 April 1998, it received a copy of the 23 April 1998 Order denying its motion for reconsideration. It then filed a Motion for Extension of Time to File Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction to question the 23 April 1998 Order of the trial court. On 11 June 1998, it filed the petition for *certiorari*, which was docketed as CA-G.R. SP No. 47669.

5. **ID.; CIVIL PROCEDURE; PETITION FOR RELIEF FROM JUDGMENT; PURPOSE.**— Under the former rule, an order denying a petition for relief from judgment was subject to appeal and, in the course thereof, the appellant could assail the judgment

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on the merits. The purpose of this rule was to enable the appellate court to determine not only the existence of any of the grounds relied upon whether it be fraud, accident, mistake or excusable negligence, but also and primarily the merit of appellant's cause of action or defense, as the case may be. Should the appellate court find that one of the grounds for relief from judgment existed and the petitioner had a good cause of action or defense, it would not reverse or modify the judgment on the merits because the judgment involved had become final and executory. Instead, it would reverse the denial or dismissal of the petition for relief from judgment, set aside the judgment in the main case, and remand the case to the lower court for a new trial in accordance with then Section 7 of Rule 38 of the former Rules.

6. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO QUESTION ORDER DENYING PETITION FOR RELIEF FROM JUDGMENT; PETITION SEASONABLY FILED; CASE AT BAR.**— [T]he 1997 Rules of Civil Procedure, specifically Section 1(b) of Rule 41, provides that no appeal may be taken from an order denying a petition for relief or any similar action seeking the relief from judgment. The last paragraph thereof, however, allows the aggrieved party to file a special civil action for *certiorari* under Rule 65 of the Rules. Under Section 4 of Rule 65 of the new Rules, the petition may be filed not later than 60 days from notice of the judgment, order, or resolution sought to be annulled. The petition for *certiorari* in CA-G.R. SP No. 47669 was filed on 11 June 1998, or 43 days from receipt of the 24 April 1998 Order, and hence it was seasonably filed.

7. **LEGAL ETHICS; ATTORNEYS; NEGLIGENCE OR MISTAKE OF COUNSEL GENERALLY BINDS THE CLIENT; EXCEPTION.**— As a general rule, the negligence or mistake of counsel binds the client, for otherwise there would never be an end to a suit so long as a new counsel could be employed who could allege and show that the former counsel had not been sufficiently diligent, experienced, or learned. But if under the circumstances of the case, the rule deserts its proper office as an aid to justice and becomes a great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a miscarriage of justice. In other words, the court has the power to except a particular case from the operation of the rule whenever the purposes of justice require

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it. What should guide judicial action is that a party is given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, honor or property on mere technicalities.

PARDO, *J., separate opinion:*

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; AWARD OF COSTS OF SUIT IN THE AMOUNT OF THIRTY-ONE MILLION PESOS, A CASE OF; CASE AT BAR.**— The costs of suit in the amount of thirty-one million (₱31,000,000.00) awarded to BENGSON was patently irregular and absurd. There is "grave abuse of discretion" where "a power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law." In *Pacific Mills, Inc. v. National Labor Relations Commission,* the Court held that to deny "the opportunity to right a clear error in the execution of judgment constitutes grave abuse of discretion." It is at once patent that the trial court erred and gravely abused its discretion in awarding "costs of suit" to respondent Bengson in the amount of thirty-one million pesos (₱31,000,000.00). Thus, the trial court grievously erred amounting to grave abuse of discretion in denying GSIS's petition for relief from judgment.

2. **ID.; CIVIL PROCEDURE; PETITION FOR RELIEF FROM JUDGMENTS; FRAUD, AS A GROUND, MUST BE EXTRINSIC OR COLLATERAL.**— The 1997 Rules of Civil Procedure, as amended, provide that "when a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside." To support such petition, the fraud must be extrinsic or collateral. "Fraud is regarded as extrinsic or collateral, where a litigant commits acts outside of the trial of the case, 'the effect of which prevents a party from having trial, a real contest or from presenting all of his case to the court, or where it operates upon matters pertaining, not to the judgment itself, but to the manner in which it was procured so that there is not a fair submission of the controversy."'

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3. **ID.; ID.; ID.; ID.; MUST BE SUPPORTED BY PROOF OR EVIDENCE THEREOF.**— [T]o annul a judgment on the ground of extrinsic or collateral fraud, there must be proof or evidence thereof. In *National Power Corporation v. Court of Appeals*, the Court ruled that relief from judgment is an "act of grace" granted "when the demands of equity and justice should prompt the Court to give petitioner a last chance to defend his right or to protect his interest."

4. **ID.; ID.; ID.; PROPER REMEDY TO ANNUL JUDGMENT ISSUED WITH GRAVE ABUSE OF DISCRETION; CASE AT BAR.**— In this case, the award of "costs of suit" in the amount of thirty-one million pesos (₱31,000,000.00) was patently absurd and void. It was so glaringly bloated that we would normally expect the trial court and the Court of Appeals to inquire into the *absurdity* of the award and not to dismiss GSIS's petition on the technical ground that relief from judgment was not a substitute for appeal lost through its counsel's gross inaction or neglect. A judgment may be annulled when issued with grave abuse of discretion. In *Castanos v. Escano, Jr.*, we held that when there is "a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority." Thus, independent of the issues of "extrinsic fraud" and "gross negligence of counsel," the trial court's order granting "costs of suit" in the exorbitant amount of thirty one million pesos was patently void. Thus, the trial court's denial of the petition for relief from judgment was in grave abuse of discretion.

5. **ID.; COSTS; DEFINED.**— "Costs are certain allowances authorized by statute to reimburse the successful party for expenses incurred in prosecuting or defending an action or special proceedings." These costs have their own legal meaning and import, for, as it was said, 'costs are in the nature of incidental damages allowed to the successful party to indemnify him against the expense of asserting his rights in court, when the necessity of so doing was caused by other's breach of legal duty.'"

6. **ID.; ID.; ID.; REFER EXCLUSIVELY TO THOSE SPECIFIED IN RULE 142, REVISED RULES OF COURT.**— In this

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jurisdiction, the only "costs" that a winning party may recover are those prescribed in Rule 142, Revised Rules of Court (1964 Revision). Any pecuniary award granted to a party in the form of "costs of suit" referred *exclusively* to the costs specified in Rule 142. These provisions bind all lower courts, including the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Courts, and Municipal Trial Courts. No court may award costs in excess of the sums specified therein. The afore-cited rule limits the recovery of "costs of suit" to the items enumerated therein. Thus, the prevailing party may recover only the costs fixed therein "and no other." Consequently, the trial court's award to respondent Bengson of thirty-one million pesos (₱31,000,000.00) as "costs of suit" cannot be justified by any stretch of the imagination, unless the total amount claimed runs to billions of pesos for which the filing fees would amount to such sum.

7. **ID.; ID.; ID.; ID.; HEARING TO RECEIVE EVIDENCE ON THE COSTS OF SUIT, NOT PROVIDED BY THE RULE.**— What is more, the trial court conducted a "hearing to receive evidence" on the "costs of suit." This is a manifest error. The rules prescribe the procedure for taxation of costs.... Clearly, the rule does not provide that the trial court shall conduct a hearing to determine the amount of the "costs of suit." All that must be done is for the prevailing party to give five (5) days written notice to the adverse party of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. As heretofore stated, the items of costs and the specified amounts thereof are fixed in the rule, "and no other." Within the five-day period, the adverse party may object, specifying the items objected to. The clerk of the court shall then tax the "costs." Even if there be no objection to the items of costs, the clerk of the court cannot tax costs in amounts more than that specified in the items prescribed in Rule 142. Either party may appeal to the court from the clerk's taxation. It is at this stage that the court takes part in the taxation of costs, not otherwise.

8. **ID.; ID.; JUDGMENT; EXECUTION OF MONEY JUDGMENT; PROCEDURE ON HOW TO EXECUTE A MONEY JUDGMENT, VIOLATED IN CASE AT BAR.**— [T]he procedure on how to execute a money judgment is prescribed in the Rules. ... Here, obviously, the provincial

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sheriff of La Union did not follow the Rule. He immediately levied on 6.2 million shares of San Miguel Corporation owned by GSIS at its par value of five pesos (₱5.00) per share. SMC shares at that time were worth ₱67.50 per share. The respondent sheriff could easily check the market value of the SMC shares by just reading the newspapers of general circulation, stock market quotations. Plainly, the respondent sheriff grossly violated the Rule, degraded his office and laid himself open to charges of graft and corruption. Thus, the sheriff's levy on shares of SMC that petitioner owned was excessive considering its market value, and hence, a patent nullity.

APPEARANCES OF COUNSEL

The Legal Services Group counsel for GSIS.

Pacifico C. Yadao for private respondent Bengson.

Abello Concepcion Regala & Cruz for respondent in G.R. No. 141454.

D E C I S I O N

DAVIDE, JR., *C.J.*:

Before us are two consolidated cases docketed as G.R. No. 137448 and G.R. No. 141454, which were both filed by the Government Service Insurance System (GSIS, for brevity). The first is a petition for review on *certiorari* assailing the 24 November 1998[1] and 29 January 1999[2] Resolutions of the Court of Appeals in CA-G.R. SP No. 47669, which denied GSIS's petition for *certiorari* for having been filed out of time and for non-compliance with procedural requirements. The second is a special civil action for *certiorari* challenging the 14 January 2000 Decision[3] of the Court of Appeals in the consolidated cases of CA-G.R. SP Nos. 51131 & 47699, which dismissed GSIS's petitions on the ground of forum-shopping.

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[1] *Rollo*, G.R. No. 137448, 28-31. Per Reyes, R., *J.* with Montoya, S. and Bello, E., *JJ.*, concurring.

[2] *Id.*, 32-35.

[3] *Rollo,* G.R. No. 141454, 25-43.

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The pertinent facts are as follows:

Private respondent Bengson Commercial Buildings, Inc., (hereafter BENGSON) obtained loans from GSIS on 20 August 1965 and 23 November 1971 in the amounts of ₱1.25 million and ₱3 million, respectively, or in the aggregate sum of P4.25 million. As a security for the payment of these loans, BENGSON executed real estate and chattel mortgages in favor of GSIS. On 26 May 1972, BENGSON sold to GSIS nine units of debenture bonds in the total amount of ₱900,000. For BENGSON's failure to settle its arrearages despite due notices, the mortgaged properties were extra-judicially foreclosed and sold at public auction to the highest bidder, the GSIS itself. A certificate of sale and new certificates of title were thereafter issued in favor of GSIS.[4]

On 23 June 1977, BENGSON filed with then Court of First Instance of San Fernando, La Union, an action for the annulment of the foreclosure sale, which was docketed as Civil Case No. 2794. After trial, the trial court (Regional Trial Court of San Fernando, La Union, Branch 26) rendered a decision (1) nullifying the foreclosure of BENGSON's mortgaged properties; (2) ordering the cancellation of the titles issued to GSIS and the issuance of new ones in the name of BENGSON; (3) ordering BENGSON to pay GSIS ₱900,000 for the debenture bonds; and (4) directing GSIS to (a) restore to BENGSON full possession of the foreclosed properties, (b) restructure the ₱4.25 million loans at the legal rate of interest from the finality of the judgment, (c) pay BENGSON ₱1.9 million representing accrued monthly rentals and ₱20,000 rental monthly until the properties are restored to BENGSON's possession, and (e) pay the costs.[5]

In its 19 January 1988 Decision in CA-G.R. Civil Case No. 09361, the Court of Appeals affirmed with modification the decision of the court *a quo*, and the case was ordered remanded to the trial court for reception of evidence on the costs of suit and for the determination of the veracity of the provincial sheriff's report that the mortgaged properties were no longer in existence,

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[4] See Statement of Facts, *GSIS v. Gines*, 219 SCRA 724, 725-727 [1993].

[5] See Statement of Facts, *GSIS v. Gines*, 219 SCRA 727-728 [1993].

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as well as a determination of their replacement value should GSIS fail to return them. As stated in our decision in *GSIS v. Gines*,[6] GSIS "did not lift a finger to question the legality and soundness of that decision"; it did not file a motion for reconsideration or an appeal, and hence that decision of the Court of Appeals became final and executory on 10 February 1988.

On 15 July 1988, BENGSON filed with the trial court a Motion for Hearing on the Costs of Suit and submitted a Schedule of Costs of Suit,[7] which consisted of various loans owing to different persons, mortgaged jewelry, foreclosed appliances, car, *etc.*, amounting to ₱42,619,798.56. The trial court thus conducted hearings.

On 6 April 1995, the trial court issued an order[8] awarding to BENGSON the sum of ₱31 million as costs of suit. A copy of that order was received on that same date by GSIS's counsel Atty. Rogelio Terrado. After the said order became final, or on 24 April 1995, the trial court granted[9] Bengson's *ex-parte* motion for execution.

It was only on 4 May 1995, upon receipt of a copy of the order of execution, that GSIS became aware of the 6 April 1995 Order because Atty. Terrado had been absent without official leave (AWOL) since 6 April 1995. Hence, on 15 May 1995, GSIS, through its corporate counsel, Atty. Oscar Garcia, filed with the trial court an Urgent Omnibus Motion.[10] Attached to the motion was an affidavit of merit[11] executed by Margarito

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[6] *Supra* note 4, at 734. This case was also an offshoot of Civil Case No. 2794; the principal issue therein was whether the 19 January 1988 Decision of the Court of Appeals in CA-G.R. CV No. 09361, which has been partially executed, could still be challenged.

[7] *Rollo*, G.R. No. 137448, 36-42.

[8] *Id.*, 51-56.

[9] *Rollo*, CA-G.R. SP No. 47669, 280-281.

[10] *Rollo*, G.R. No. 137448, 77-80.

[11] *Rollo*, CA-G.R. SP No. 47669, 126-132.

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C. Recto, Manager of Legal Department II of GSIS Legal Services Group, stating that the Omnibus Motion should be considered by the court as a petition for relief from the 6 April 1995 Order. He also stated that GSIS had not received yet the said Order because its former counsel Atty. Terrado had been on AWOL since 6 April 1995, and that this gross negligence of Atty. Terrado should not legally bind GSIS, for to do otherwise would result in the deprivation of GSIS's property "without due process of law on mere technicality." He then proceeded to discuss GSIS's "good and substantial defenses."

Incidentally, on 5 June 1995, Atty. Terrado was administratively charged with gross misconduct for his alleged willful, unlawful and deliberate act of not filing the appropriate motion for the reconsideration of, or appeal from, the questioned orders of the trial court.[12] He was eventually found guilty and dismissed from the service.[13]

In its Decision[14] of 16 January 1997, the trial court denied GSIS's Urgent Omnibus Motion, which was treated as a petition for relief from judgment, on the following grounds: (1) GSIS is bound by the negligence of its counsel; (2) to grant the petition would be to revive the right to appeal which GSIS had irretrievably lost through its gross inaction; (3) equity or fairness could not be invoked as valid grounds for petition for relief from judgment; (4) the case could not be reopened because *res judicata* had already set in; (5) no evidence of extrinsic or collateral fraud was adduced by GSIS; and (6) the questioned orders are already final and executory. Petitioner received a copy of this order on 4 February 1997, and filed its motion for reconsideration on 16 February 1997.

Its motion for reconsideration having been denied in the Order of 23 April 1998 of the trial court,[15] which it received on 29

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[12] *Id.*, 122-125.

[13] *Id.*, 238.

[14] *Rollo*, G.R. No. 137448, 57-76. Per Judge Vicente A. Paquing.

[15] *Rollo*, G.R. No. 137448, 227-234.

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April 1998, GSIS instituted on 11 June 1998 with the Court of Appeals a special civil action for *certiorari*. This case was docketed as *CA-G.R. SP No. 47669*.

In its 24 November 1998 Resolution, the Court of Appeals dismissed the petition in *CA-GR SP No. 47669* for the following reasons: (1) the petition was filed out of time, as three years had already lapsed since the issuance of the order awarding ₱31 million costs of suit; (2) the Verification and Certification on Non-Forum Shopping were not done by petitioner's duly authorized officer, but only by its counsel; (3) no copy of the relevant writ of execution allegedly issued on 24 April 1995 was attached to the petition; (4) the copy of the 16 January 1997 Decision was not a certified true copy; (5) petitioner did not rebut BENGSON's evidence; and (6) the assailed Order of 6 April 1995 had become final and executory.

When its motion for the reconsideration[16] of the Resolution of 24 November 1998 was denied by the Court of Appeals in its Resolution of 29 January 1999, GSIS filed with us a petition, which was docketed as *G.R. No. 137448*.

Meanwhile, on 16 December 1998, the trial court ordered[17] the issuance of an *alias* writ for the execution of the award of ₱31 million costs of suit adjudged in its 6 April 1995 Order. Pursuant thereto, an *alias* writ was issued and 6.2 million Class "A" shares of stocks of San Miguel Corporation owned by GSIS were garnished and later sold at public auction, with BENGSON as the only bidder. Upon denial on 8 January 1999[18] by the trial court of the Motion for Reconsideration with Motion to Quash *Alias* Writ of Execution,[19] GSIS filed with this Court a petition, docketed as G.R. No. 136874, seeking the annulment of both the 16 December 1998 and 8 January 1999 Orders of the trial court.

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[16] *Rollo*, CA-G.R. SP No. 47669, 235-244.

[17] *Rollo*, CA-G.R. SP No. 51131, 21-22.

[18] *Rollo*, CA-G.R. SP No. 51131, 23-26.

[19] *Id.*, 27-31.

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On 31 January 1999, this Court issued a Temporary Restraining Order (TRO)[20] enjoining the implementation of the 6 April 1995 Order and the transfer, registration or issuance of new certificates of stocks in the name of BENGSON. The Court thereafter referred the petition to the Court of Appeals for consideration and adjudication on the merits or any other action it would deem appropriate.[21] The petition was thus re-docketed as *CA-G.R. SP No. 51131.*

On 29 November 1999, CA-G.R. SP No. 47669, which was then still pending in view of BENGSON's unresolved motion for partial reconsideration of the 29 January 1999 Resolution of the Court of Appeals, was ordered consolidated with CA-G.R. SP No. 51131. On 14 January 2000, the Court of Appeals rendered a consolidated decision dismissing both petitions on the ground of forum-shopping and lifting the TRO issued in G.R. No. 136874.

Hence, GSIS filed with this Court a special civil action for *certiorari* with very urgent motion for the issuance of a preliminary injunction and/or TRO. This petition was docketed as *G.R. No. 141454* and consolidated with G.R. No. 137448. A TRO[22] was issued on 7 February 2000, and as clarified in our 2 October 2000 Resolution,[23] it enjoined the following: (1) the implementation of the 14 January 2000 Decision of the Court of Appeals; (2) the execution of the 6 April 1995 Order awarding ₱31 million costs of suit; (3) the recording, transfer, or registration of any disposition or issuance of new certificates of stocks in the name of BENGSON; and (4) any disposition or alienation by BENGSON of said shares to third persons.

We find merit in the petition docketed as G.R. No. 141454, which ascribes to the Court of Appeals grave abuse of discretion in dismissing CA-G.R. SP Nos. 51131 and 47669 on the ground of forum-shopping.

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[20] *Id.*, 51-53.

[21] *Rollo*, CA-G.R. SP NO. 51131, 70.

[22] *Rollo*, G.R. No. 141454, 74.

[23] *Id.*, 75.

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Forum-shopping is an act of a party against whom an adverse judgment or order has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari.*[24] It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[25] For it to exist, there should be (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[26] Thus, there is no forum-shopping where, for instance, the special civil action for *certiorari* and the appeal brought by a party do not involve the same issue.[27]

The petition in CA-G.R. SP No. 47669 was a special civil action for *certiorari* filed by GSIS after its petition for relief from the 6 April 1995 Order of the trial court and its motion for reconsideration were both denied in the 16 January 1997 Decision and 23 April 1998 Order of the trial court, respectively. On the other hand, the petition in CA-G.R. No. 51131, which was formerly G.R. No. 136874 filed by GSIS and referred by us to the Court of Appeals, was a petition for *certiorari* seeking the annulment of (1) the 16 December 1998 Order of the trial court directing the issuance of an *alias* writ of execution to enforce

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[24] *Santo Tomas University Hospital v. Surla*, 294 SCRA 382, 391 [1998]; *Progressive Development Corp. Inc. v. Court of Appeals*, 301 SCRA 637, 655 [1999]; *Aquino v. Court of Appeals*, 309 SCRA 578, 585 [1999]; *PNB-Republic Bank v. Court of Appeals,* 314 SCRA 328, 331 [1999].

[25] *Benguet Electric Cooperative, Inc. v. Flores*, 287 SCRA 449, 458 [1998]; *Santo Tomas University Hospital v. Surla, supra; MSF Tire and Rubber, Inc. v. Court of Appeals,* 311 SCRA 784, 790 [1999].

[26] *Saura v. Saura* 313 SCRA 465, 475 [1999]. See also *Yulienco v. Court of Appeals,* 308 SCRA 206, 213-214 [1999]; *International School, Inc. (Manila) v. Court of Appeals,* 309 SCRA 474, 480 [1999].

[27] *Argel v. Court of Appeals*, 316 SCRA 511, 520-521 [1999].

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the 6 April 1995 Order; and (2) the 8 January 1999 Order denying petitioner's Motion for Reconsideration with Motion to Quash the *Alias* Writ of Execution. The main issue or argument raised in the first petition was that the 6 April Order awarding ₱31 million costs of suit contradicts the pertinent provisions of the Rules of Court, equity and justice. In the second petition, GSIS argued that the *Alias* Writ of Execution, together with the corresponding levy and execution sale of the 6.2 million shares of stock in San Miguel Corporation, is void for being contrary to the provision of Republic Act No. 8291, which exempts the "funds and/or properties" of GSIS from attachment, garnishment, execution or levy. Moreover, the reliefs sought in both petitions were distinct from each other. Hence, the proscription against forum-shopping was not violated by GSIS. The dismissal of CA-G.R. SP Nos. 47669 and 51131 on the ground of forum-shopping cannot, therefore, be sustained.

We rule, however, that the Court of Appeals did not err in dismissing CA-G.R. SP No. 47669 for non-compliance with some of the requirements mentioned in Section 3, Rule 46 of the 1997 Rules of Civil Procedure. It is undisputed that the petition was not accompanied with a clearly legible duplicate copy or a certified true copy of the judgment subject thereof. Indeed, what was submitted was not a certified true copy of the 16 January 1997 Decision of the trial court. Hence, on this score alone the special civil action was properly dismissed by the Court of Appeals. Moreover, the Verification and Certificate on Non-Forum Shopping were executed by petitioner's counsel, not by its duly authorized officer. This was also in itself a sufficient ground to dismiss the petition.[28]

It must be observed that if the petition in CA G.R. SP No. 47669 had assailed the 23 April 1998 Order of the trial court denying petitioner's motion for reconsideration, as well as its 16 January 1997 Decision denying the petition for relief from judgment, as stated in petitioner's motion for extension of time

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[28] *Far Eastern Shipping Company v. Court of Appeals*, 297 SCRA 30 [1998]; *Escorpizo v. University of Baguio*, 306 SCRA 206 [1999]; *People v. Gako*, G.R. No. 135045, 15 December 2000.

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to file a petition, the said petition could not have been said to have been filed out of time.

The records disclose that the petitioner received on 4 February 1997 a copy of the 16 January 1997 Decision denying its petition for relief from judgment. On 16 February 1997, petitioner filed a motion for reconsideration. On 29 April 1998, it received a copy of the 23 April 1998 Order denying its motion for reconsideration. It then filed a Motion for Extension of Time to File Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction to question the 23 April 1998 Order of the trial court. On 11 June 1998, it filed the petition for *certiorari*, which was docketed as CA-G.R. SP No. 47669.

Under the former rule,[29] an order denying a petition for relief from judgment was subject to appeal and, in the course thereof, the appellant could assail the judgment On the merits. The purpose of this rule was to enable the appellate court to determine not only the existence of any of the grounds relied upon whether it be fraud, accident, mistake or excusable negligence, but also and primarily the merit of appellant's cause of action or defense, as the case may be. Should the appellate court find that one of the grounds for relief from judgment existed and the petitioner had a good cause of action or defense, it would not reverse or modify the judgment on the merits because the judgment involved had become final and executory. Instead, it would reverse the denial or dismissal of the petition for relief from judgment, set aside the judgment in the main case, and remand the case to the lower court for a new trial in accordance with then Section 7 of Rule 38 of the former Rules.[30]

On the other hand, the 1997 Rules of Civil Procedure, specifically Section 1(b) of Rule 41, provides that no appeal may be taken from an order denying a petition for relief or any similar action seeking the relief from judgment. The last paragraph

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[29] Section 2, rule 41 of the former Rules.

[30] *Service Specialists, Inc. v. Sheriff of Manila*, 145 SCRA 139, 148 [1986].

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thereof, however, allows the aggrieved party to file a special civil action for *certiorari* under Rule 65 of the Rules.

Under Section 4 of Rule 65 of the new Rules, the petition may be filed not later than 60 days from notice of the judgment, order, or resolution sought to be annulled. The petition for *certiorari* in CA-G.R. SP No. 47669 was filed on 11 June 1998, or 43 days from receipt of the 24 April 1998 Order, and hence it was seasonably filed.

A plain reading of the petition in CA-G.R. SP No. 47669, however, discloses that GSIS did not assail the denial of both its petition for relief from judgment and its motion for reconsideration; neither did it allege or show the "fraud" or "negligence" purportedly committed by its former counsel Atty. Terrado. As correctly pointed out by the Court of Appeals, the petition challenged, and focused instead on, the 6 April 1995 Order awarding to BENGSON ₱31 million costs of suit, and then prayed for its nullification. We cannot, therefore, ascribe error to the Court of Appeals when it said that the petition was filed out of time, three years having elapsed since the issuance of the 6 April 1995 Order awarding ₱31 million costs of suit.

Nevertheless, it must be noted that in its motion for the reconsideration of the 24 November 1998 Resolution of the Court of Appeals, GSIS (again through a new counsel) pointed out that the lengthy discussion on the 6 April 1995 Order was just to emphasize the grave injustice resulting from the trial court's denial of the petition for relief. A pattern of fraud perpetrated against GSIS is evident from the following statement of the trial court in its 6 April 1995 Order:

> (a) the defendant's [herein petitioner's] counsel previously opted not to present evidence to controvert plaintiff's [herein private respondent's] evidence in support of its claim for cost of suit;
>
> (b) the defendant did not submit its comment [on] the veracity of the accounts contained in plaintiff's documentary exhibits.

Worse, according to GSIS, after personally going to the trial court, without any official trip or authorization to get a copy of

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the 6 April 1995 Order, Atty. Terrado did not notify it of said Order and went on AWOL. This deprived GSIS of the chance to move to reconsider or appeal the Order. If Atty. Terrado's acts did not constitute fraud, they amounted to gross negligence, at the very least.

Along with the motion for reconsideration, GSIS submitted, for admission by the Court of Appeals, a certified true copy of the 16 January 1997 Decision; the duplicate original of the 23 April 1998 Order; a copy of the 24 April 1995 Order of Execution; and the Verification and Certificate on Non-Forum Shopping signed by GSIS's authorized officer.

It is readily apparent that part of GSIS's predicament stemmed from the negligence or mistake, to put it mildly, of its former counsels.

Indeed, it is undisputed that despite ample opportunity, GSIS's former counsel, Atty. Rogelio Terrado, did not rebut BENGSON's evidence on the costs of suit or, at the very least, verify the schedule of costs and cross-examine BENGSON's witnesses. Much worse, he allowed the 6 April 1995 Order awarding BENGSON P31 million costs of suit to attain finality by not filing a motion for reconsideration with the trial court or a petition with the Court of Appeals. Instead, he went on AWOL without informing GSIS of the said Order. These acts constituted gross negligence, if not fraud, and resulted in the deprivation of GSIS of an opportunity to move to reconsider or appeal the adverse order.

But petitioner was left with no recourse. Another remedy was available to it: a petition for relief from judgment. Its Urgent Omnibus Motion was in fact treated as a petition for relief, with Atty. Terrado's negligence and act of fraud as grounds therefor. When that petition was denied in the trial court's 16 January 1997 Decision, a timely motion for reconsideration was filed. From the Order of 23 April 1998 denying such motion, the remedy available to GSIS was a special civil action for *certiorari* pursuant to Section 1(b), Rule 41 of the 1997 Rules of Civil Procedure, as earlier discussed. This remedy was, however, rendered futile on account of procedural and substantive

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defects arising from the negligence or mistake of its next counsel, Atty. Faustino R. Madriaga, thus compounding the predicament of GSIS.

In the Motion for Extension of Time to File Petition for *Certiorari,* Atty. Madriaga stated that petitioner would be filing a Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction to question the 23 April 1998 Order denying the motion for the reconsideration of the denial of the petition for relief from judgment. In the petition itself, however, what he questioned was the 6 April 1995 Order, which was already final and executory at the time. And, it bears repeating that he did not attempt therein to show the gross negligence of GSIS's former counsel, Atty. Terrado, that could justify relief from that final and executory order. He also failed to attach a certified true copy of the Decision denying the petition for relief and the Order of Execution dated 24 April 1995. Moreover, he was the one who signed the Verification and Certificate on Non-Forum Shopping, not an authorized officer of GSIS. All these have prompted the Court of Appeals, and rightly so, to dismiss the petition.

As a general rule, the negligence or mistake of counsel binds the client,[31] for otherwise there would never be an end to a suit so long as a new counsel could be employed who could allege and show that the former counsel had not been sufficiently diligent, experienced, or learned.[32] But if under the circumstances of the case, the rule deserts its proper office as an aid to justice and becomes a great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a miscarriage of justice. In other words, the court has the power to except a particular case from the operation of the rule whenever the purposes of justice require it. What should guide judicial action is that a party is given the fullest opportunity to establish the

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[31] *Barangay 24 of Legazpi City v. Imperial,* G.R. No. 140321, 24 August 2000; *Biglang-awa v. Judge Bacalla,* G.R. No. 139927 & 139936, 22 November 2000; *Sapad v. Court of Appeals,* G.R. No. 132153, 15 December 2000.

[32] *Gacutana-Fraile v. Domingo,* G.R. No. 138518, 15 December 2000.

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merits of his action or defense rather than for him to lose life, honor or property on mere technicalities.[33]

Apropos is the ruling of this Court in *People's Homesite & Housing Corp. v. Tiongco*,[34] thus:

> Although the above judgment was received by counsel for the appellants, he never informed the latter about the matter. Neither did he take steps to protect the interests of his clients, by presenting a motion for reconsideration and/or filing a petition to set aside judgment. Appellants only came to know that an adverse decision had been promulgated when on May 12, 1961, the Deputy Sheriff of Quezon City, served upon them a copy of [the] writ of execution ordering them to vacate the premises and to pay the amounts ordained therein.... Atty. Tañega admitted to the court that he did not inform the appellants of the hearing, as he forgot all about the same; that he received the decision but did not also inform the appellants about it, because he forgot all about the case, explaining that he had so many ejectment cases then, that the orders and decisions in the case just escaped his attention.
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> . . . . . .
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> Viewed from the strictly legal perspective, it appears that the petition was presented outside the reglementary period of sixty (60) days from notice of judgment. Nevertheless due to the very peculiar circumstances obtaining in the premises, We consider that the rule was substantially complied with and the petition for relief from judgment was seasonably filed. The rules should receive liberal interpretation in order to promote their object and to assist the parties in obtaining a just, speedy and inexpensive determination of every action. Procedural technicality should not be made a bar to the vindication of a legitimate grievance. When such technicality "deserts from being an aid to justice," the Courts are justified in excepting from its operation a particular case. We find no better opportunity to apply this prerogative than in the case at bar.
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> There was something fishy and suspicious concerning the actuations of former counsel Atty. Tañega in this case. He did not give any

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[33] *Aguilar v. Court of Appeals*, 250 SCRA 371, 374-375 [1995]; *Apex Mining, Inc. v. Court of Appeals*, 319 SCRA 456, 468 [1999].

[34] 12 SCRA 471, 474-476 [1964].

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significance at all to the processes of the Court, which has proven prejudicial to the rights of his clients... Counsel had simply ignored the rights of his clients by giving a lame and flimsy explanation that the court's processes just escaped his attention. He deprived them of their day in court.

There should be no dispute regarding the doctrine that normally notice to counsel is notice to parties, and that such doctrine has beneficient effects upon the prompt dispensation of justice. Its application to a given case, however, should be looked into and adopted, according to the surrounding circumstances; otherwise, in the court's desire to make a short cut of the proceedings, it might foster, wittingly or unwittingly, dangerous collusions to the detriment of justice. It would then be easy for one lawyer to sell one's rights down the river, by just alleging that he just forgot every process of the court affecting his clients, because he was so busy. Under this circumstance, one should not insist that a notice to such irresponsible lawyer is also notice to his clients. (Emphasis and italics ours; Footnotes omitted)

Similarly, in the higher interest of justice and equity, and the ground for relief from the 6 April 1995 Order of the trial court being evident, we shall reverse and set aside the 24 November 1998 and 8 January 1999 Resolutions of the Court of Appeals, as well as the 16 January 1997 Decision and 23 April 1998 Order of the trial court. We shall then remand the case to the trial court, and pursuant to Section 6 of Rule 38 of the 1997 Rules of Civil Procedure the case shall stand as if the 6 April 1995 Order has never been issued. Thereafter, the court shall proceed to hear and determine the case as if a timely motion for a new trial or reconsideration has been granted by it.

WHEREFORE, the petitions at bar are *GRANTED*. The Resolutions of the Court of Appeals dated 24 November 1998, 8 January 1999, and 14 January 2000, as well as the 16 January 1997 Decision and 23 April 1998 Order of the Regional Trial Court, Branch 26, San Fernando, La Union, are hereby *REVERSED* and *SET ASIDE*. The cases are hereby ordered remanded to the trial court, which shall then proceed to hear and determine the case as if a timely motion for a new trial or reconsideration has been granted by it. Since the issues raised

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in CA-G.R. SP No. 51131 are irretrievably linked with, or are but a consequence of, the 6 April 1995 Order of the trial court, the said case shall be suspended or held in abeyance until after the aforementioned proceedings in the trial court shall have been finally resolved. The Temporary Restraining Order we issued on 7 February 2000 shall remain in effect until further orders from the Court.

No costs.

SO ORDERED.

Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and *Carpio, JJ.*, concur.

Puno, J., joins *J.* Pardo.

Pardo, J., concurs in the result, and submits a separate opinion.

SEPARATE OPINION

PARDO, *J.*:

I concur in the *fallo* to grant the petitions at bar. However, I vote to annul expressly the order dated April 6, 1995, in Civil Case No. 2794 of the trial court, Regional Trial Court, La Union, Branch 26, at San Fernando. I wish to stress certain points in these cases.

We rewind the facts.

On August 20, 1965 and November 23, 1971, BENGSON obtained loans from the GSIS amounting to four million and two hundred fifty thousand pesos (₱4,250,000.00), secured by real estate and chattel mortgages. At first, BENGSON paid amortizations to GSIS but later defaulted on its loans. This prompted GSIS to send BENGSON a letter[1] stating that unless

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[1] Dated November 13, 1974 (Statement of Facts, *Government Insurance System v. Gines*, 219 SCRA 724, 726 [1993]).

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BENGSON settled its arrearages GSIS would foreclose on the mortgaged properties.[2]

On February 10, 1977, at the instance of GSIS, the Clerk of Court and *ex-officio* Sheriff, province of La Union conducted a foreclosure of the mortgages on BENGSON's property mortgaged to GSIS, and at the public auction sale, GSIS emerged as the highest bidder.[3] Four (4) days later, the provincial sheriff issued to GSIS a certificate of sale covering the foreclosed properties.

On June 23, 1977,[4] BENGSON filed with the Court of First Instance, La Union, Branch 26, San Fernando an action for annulment of the foreclosure sale.[5]

After due trial, on September 30, 1985, the trial court[6] rendered a judgment against GSIS violating the extra-judicial foreclosure of Bengson's mortgaged property and ordering GSIS to re-structure the loan. We quote the decretal portion:[7]

"1. Declaring the extra-judicial foreclosure of the plaintiff's properties by defendant null and void *ab initio* and directing defendant to restore plaintiff possession of said properties; and the Register of Deeds of La Union to cancel the titles issued to defendant and in lieu thereof to issue new ones in the name of plaintiff;

"2. Ordering defendant to restructure the loans of Plaintiff amounting to ₱4,250,000.00 at the legal rate of interest from the finality of this judgment;

"3. Ordering plaintiff to pay ₱900,000.00 to pay at the rate of interest for the debenture bonds from finality of this judgment;

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[2] G.R. No. 141454, Petition for *Certiorari*, Annex "B", *Rollo*, p. 47.

[3] G.R. No. 141454, Court of Appeals Decision, *Rollo*, pp. 27-28.

[4] See Statement of Facts, *Government Service Insurance System v. Gines, supra*, Note 10, at p. 727.

[5] Docketed as Civil Case No. 2794. G.R. No. 137448, Petition for Review on *Certiorari*, *Rollo*, pp. 11, 158.

[6] Judge Antonio J. Fineza, presiding.

[7] RTC Decision, Original Record, Vol. 1, pp. 605-614. G.R. No. 141454 Petition for *Certiorari*, Annex "B", *Rollo*, pp. 47-48.

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"4. Ordering defendant to reimburse to plaintiff ₱1,900,000.00 representing the accrued monthly rentals belonging to plaintiff from February, 1977 and, thereafter the monthly rental of ₱20,000.00 until the properties are restored to the possession of plaintiff, and

"5. Ordering the defendant to pay costs."[8]

On October 11, 1985, GSIS appealed to the Court of Appeals.[9]

On January 19, 1988,[10] the Court of Appeals promulgated its decision ruling against GSIS and affirming the trial court's decision with modification. The Court of Appeals remanded the case to the trial court, ordering it to receive evidence on the costs of suit, thus:[11]

"Wherefore, we affirm the appealed decision with MODIFICATION as follows:

"1. The foreclosure and auction sale on February 10, 1997 of BENGSON's properties covered by real estate and chattel mortgages mentioned in the notice of sale issued by the La Union provincial sheriff are set aside;

"2. The writ of possession issued to GSIS as the highest bidder by the defunct Court of First Instance, sitting as a *cadastral* court, as a consequence of said foreclosure sale, is annulled.

"3. The Register of Deeds of La Union is ordered to cancel the present certificates of title covering those properties and issue new ones in lieu thereof in the same names and with the same annotations, terms and conditions, including the mortgage in question, as appeared (*sic*) in the previous certificates of title as of the date BENGSON

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[8] Notice of this decision was received by the GSIS on October 4, 1985. See Notice of Appeal, Original Record, p. 615.

[9] Notice of Appeal, original Record, p. 615, envelope showing date of posting by registered mail on October 11, 1985. Docketed as CA-G.R. CV No. 09361. G.R. No. 137448, Petition for Review on *Certiorari, Rollo*, p. 11.

[10] See Statement of Facts, *Government Service Insurance System v. Gines, supra*, Note 10.

[11] G.R. No. 141454, Petition for *Certiorari,* Annex "B", *Rollo,* pp. 48-49; G.R. No. 137448, *Rollo*, pp. 326-348.

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constituted the mortgage on those properties in favor of GSIS, it being understood that all expenses to be incurred incidental to such title cancellation and issuance shall be borne by GSIS;

"4. GSIS is ordered to restore to BENGSON full possession Of those mortgaged properties in San Fernando, La Union;

"5. All properties under the mortgage in question, including those parcels of land situated in San Fernando, La Union and in Quezon City, shall remain under mortgage in favor of-GSIS;

"6. GSIS is ordered to reimburse BENGSON'S loan as promised, the restructuring to proceed from the premise that as of the foreclosure date, *i.e.* February 10, 1997, BENGSON had paid GSIS an aggregate amount of ₱288,000.00 on the subject loan;

"7. The interest rates per annum stated in the first and second mortgage loan contracts entered into between BENGSON and GSIS, as well as all other terms and conditions provided for therein — except as qualified by the subsequent agreement of the parties regarding the promised loan restructuring and deferment of foreclosure by reason of the arrearages incurred shall — remain as originally stipulated upon by the parties;

"8. BENGSON is ordered to pay GSIS the debenture bond with an aggregate face value of ₱900,000.00 at the stipulated interest rate of 14% per annum, quarterly: and to pay 14% interest per annum, compounded monthly, on the interest on the said debenture bond, that had become due quarterly, in accordance with stipulations provided for therein;

"9. GSIS shall reimburse BENGSON the monthly rent of ₱20,000.00 representing income produced by one of the latter's mortgaged properties, *i.e.* the Regent Theater building, from February 15, 1977 until GSIS shall have restored the full possession of said building, together with the land on which it stands, to BENGSON.

"10. The entire record of this case is ordered remanded to the trial court and the latter is directed to ascertain whether such mortgaged properties as machineries, equipment, and other paraphernalia, *etc.*, are in fact no longer in existence per report of the provincial sheriff, as well as to determine their replacement value if GSIS fails to return them; and as prayed for by BENGSON, ***to receive evidence from the parties on the costs of suit awarded to it.***

"No pronouncement as to cost of this appeal.

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"SO ORDERED (*emphasis ours*)."

On February 10, 1988, the afore-quoted decision became final and executory.[12] On March 14, 1988, the records were remanded to the trial court.[13] In accordance with the judgment, GSIS paid BENGSON almost thirty-eight million pesos (₱38,000,000.00) to cover the value of properties adjudged wrongly foreclosed, as GSIS could no longer return the properties themselves to BENGSON.[14]

On April 5, 1988, BENGSON filed with the trial court an "Omnibus Motion" including a prayer for reception of evidence on the costs of suit awarded to BENGSON.[15] BENGSON also submitted a "schedule of costs of suit" (hereafter "the schedule"). The schedule listed persons from whom money was obtained and utilized, including the value of mortgaged jewelry, stock certificates, foreclosed appliances, cars, *etc.* amounting to forty two million, six hundred nineteen thousand and seven hundred and ninety-eight pesos and fifty-six centavos (₱42,619,798.56).[16]

During the hearings, GSIS's counsel, Atty. Rogelio P. Terrado did not rebut BENGSON's evidence, did not verify the accounts in the schedule and did not cross examine BENGSON's witness.[17] He also did not submit controverting evidence.[18]

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[12] In *Government Service Insurance System v. Gines, supra*, Note 10, the Court ruled that the January 19, 1988 decision of the Court of Appeals was final and executory and could no longer be challenged.

[13] See *Statement of Facts, Government Service Insurance System v. Gines, supra*, Note 10.

[14] G.R. No. 141454, Petition for *Certiorari, Rollo*, p. 6.

[15] Original Record, pp. 667-670. See *Statement of Facts, Government Service Insurance System v. Gines, supra*, Note 10, at p. 731.

[16] G.R. No. 137448, Petition for Review on *Certiorari*, Annex "C", *Rollo*, pp. 36-42.

[17] G.R. No. 137448, Petition for Review on *Certiorari, Rollo*, p. 1.

[18] G.R. No. 137448, Petition for Review on *Certiorari*, Annex "E", Order of the Trial Court in Civil Case No. 2796 dated April 6, 1995, *Rollo*, pp. 51-56, at p. 52 (where the trial court held that, "Defendant however, was

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On April 6, 1995, the trial court issued an order awarding "costs of suit" to BENGSON in the amount of thirty one million pesos (₱31,000,000.00), to wit:[19]

"WHEREFORE, premises considered, this Court resolves in furtherance to the final and executory decision of the Court of Appeals CA-G.R. Civil Case 09361 dated Jan. 19, 1988, to order, as it hereby orders:

"1. The defendant GSIS to pay the amount of ₱31 Million Pesos Philippine Currency to the plaintiff, as cost of suit;

"2. That the restructuring date of the loan of the plaintiff is on August 4, 1975 for ₱4,520,690.25 Philippine Currency, and that the plaintiff and defendant GSIS to submit to this court for its approval, the restructured loan agreement.

"3. The Office of the Provincial Sheriff, Regional Trial Court of San Fernando, La Union, to issue the Writ of Garnishment upon finality of this Order, by furnishing a copy of this Order to the Philippine National Bank (PNB), Escolta, Manila, the depository bank of the GSIS funds under "hold order" by way of levy and/or garnishment to secure satisfaction of judgment made by this court and for the same copy of this Order upon finality, to be furnished to the Land Bank, Makati, Metro Manila, the other depository bank of GSIS funds for the same amount under "hold order" by way of levy and/or garnishment for the same amount of ₱31,000,000.00.

"SO ORDERED."

On April 24, 1995, the trial court granted BENGSON's "*ex-parte* motion for execution" of the above-quoted order. Atty. Terrado received a copy of the order on April 6, 1995.[20]

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given in the said proceedings the privilege to produce counter-vailing evidence. Defendant however, opted not to present any").

[19] Original Record, Vol. 2, pp, 271-276. This time with Judge Vicente A. Pacquing, presiding (he died on August 15, 2000). In the course of the proceedings, Branch 26 became vacant and the Supreme Court authorized Judge Pacquing under Administrative Circular No. 3-94 to decide Civil Case No. 2794 (G. R. No. 137448, Petition for Review on *Certiorari, Rollo,* p. 12). *Ibid.*, Order dated April 6, 1995, Annex "E", *Rollo*, pp. 51-56.

[20] G.R. No. 137448, Petition for Review on *Certiorari,* order of January 16, 1997, Annex "F", *Rollo*, pp. 13, 51-56.

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On May 4, 1995, GSIS received a copy of the order of execution dated April 24, 1995. It was only then that GSIS became aware of the April 6, 1995 order. On May 15, 1995,[21] GSIS immediately filed with the trial court an "urgent omnibus motion" through another lawyer, government corporate counsel Atty. Oscar I. Garcia. GSIS averred that its former counsel, Atty. Rogelio P. Terrado[22] did not inform it of the April 6, 1995 order.[23] GSIS averred that Atty. Terrado deliberately did not appeal the order because of fraud and gross negligence.[24]

On January 16, 1997, the trial court by an order which it termed as "decision" dismissed the GSIS urgent omnibus motion (which it treated as a petition for relief from judgment).

The trial court reasoned: First, GSIS is bound by the negligence of its counsel. Second, to grant the petition would be tantamount to reviving the right to appeal which had lapsed. Third, "equity" and "fairness" were not valid grounds that could be invoked to grant a petition for relief from judgment. Fourth, *res judicata* applied and thus the case could not be reopened. Fifth, there was no evidence of extrinsic or collateral fraud.[25] Notice of this "decision" was received by the GSIS on February 7, 1997.[26]

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[21] G.R. No. 137448, Petition for Review on *Certiorari*, urgent omnibus motion, Annex "G", *Rollo*, pp. 77-81.

[22] Atty. Rogelio P. Terrado has been "absent without leave" since April 6, 1995. Subsequently, GSIS filed administrative charges against him for failing to take appropriate steps to protect its interest (G.R. No. 137448, Petition for Review on *Certiorari, Rollo*, p. 13).

[23] G.R. No. 137448, *Rollo*, p. 13.

[24] G.R. No. 141454, Petition for *Certiorari*, *Rollo*, p. 6.

[25] G.R. No. 137448, Petition for Review on *Certiorari*, RTC "decision" dated January 16, 1997, Annex "F", *Rollo*, pp. 57-76.

[26] Original Record, Vol. 2, back of p. 572.

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On February 18, 1997, GSIS filed with the trial court a motion for reconsideration of the afore-quoted "decision";[27] however, on April 23, 1998, the trial court denied the motion.[28]

On June 11, 1998, GSIS filed with the Court of Appeals a petition for *certiorari*[29] questioning the decision of the trial court dated January 16, 1997, and the order of April 23, 1998.[30]

After due proceedings, on November 24, 1998, the Court of Appeals[31] promulgated a resolution dismissing the petition on the grounds that: First, the petition was filed three years after the issuance of the assailed order of the trial court and was thus filed out of time. Second, the verification and certification against non-forum shopping were done by GSIS's counsel and not by its duly authorized officer. Third, no copy of the relevant writ of execution was attached to the petition. Fourth, the copy of the judgment dismissing the petition for relief from judgment is not a certified true copy. Fifth, during hearing of the case, GSIS did not rebut the evidence that Bengson submitted. Sixth, the assailed order of the trial court has become final and executory.[32]

On December 16, 1998, before GSIS could file with the Court of Appeals a motion for reconsideration of its resolution,[33]

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[27] By registered mail posted on February 18, 1997, Original Record, Vol. 2, pp. 575-581, envelope at p. 586.

[28] Original Record, Vol. 2, pp. 701-708. Notice of this order was re-received by the GSIS on April 29, 1998 (at back of p. 708). G.R. No. 137448, order, dated April 23, 1998, *Rollo*, pp. 227-234.

[29] Under Rule 65, 1997 Rules of Civil Procedure, as amended.

[30] Docketed as CA-G.R. SP No. 47669.

[31] R.T. Reyes, *J., ponente,* R.V. Cosico and E.R. Bello, Jr., *JJ.*, concurring.

[32] G.R. No. 137448, *Rollo*, Petition for Review on *Certiorari,* Court Court of Appeals Decision of November 24, 1998, Annex "A", pp. 28-31.

[33] GSIS filed a motion for reconsideration of the November 24, 1998 resolution only on December 21, 1998 (G.R. No. 141454, Petition for *Certiorari*, p. 7); CA *Rollo,* CA-G.R. SP No. 51131, pp. 33-46.

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the trial court issued an order of *alias* execution in *Civil Case No. 2794*. We quote:[34]

"Considering the above, let an *Alias* Writ of Execution be issued confirming the final and executory character of the Order dated April 6, 1995, ordering:

"1. The defendant GSIS to pay the amount of ₱31 Million Pesos Philippine Currency to the plaintiff, as cost of suit;

"2. That the restructuring date of the loan of the plaintiff is on August 4, 1975 for ₱4,520,690.25, Philippine Currency, and that the plaintiff and defendant GSIS to submit to this court for its approval, the restructured loan agreement;

"3. The Office of the Provincial Sheriff, Regional Trial of San Fernando, La Union, to issue the Writ of Garnishment upon finality of this Order to the Philippine National Bank (PNB), Escolta, Manila, the depositary bank of the GSIS funds under "hold order" by way of levy and/or garnishment to secure satisfaction of judgment made by this court and for the same copy of this Order upon finality, to be furnished to the Land Bank, Makati, Metro Manila, the other depository bank of GSIS funds for the same amount under "hold order: by way of levy and/or garnishment for the same amount of ₱31,000,000.00.

"SO ORDERED."

On the same day, December 16, 1998, the clerk of court and *ex-officio* sheriff, province of La Union issued an *alias* writ of execution.[35]

On December 21, 1998, GSIS filed with the Court of Appeals a motion for reconsideration of its November 24, 1998 resolution.[36]

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[34] Original Record, vol. 2, pp. 772-773. G.R. No. 141454, Petition, Annex "A" Court of Appeals Decision, *Rollo*, pp. 25-43, at pp. 31-32; CA *Rollo*, CA-G.R. SP No. 51131, pp. 47-48.

[35] Petition for *Certiorari*, Annex "E", CA-G.R. SP No. 51131, CA *Rollo*, pp. 47-48.

[36] G.R. No. 137448, Petition for Review on *Certiorari*, Annex "B", *Rollo*, pp. 32-35, at p. 33.

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On December 23, 1998, GSIS filed with the trial court a motion for reconsideration of the *alias* writ of execution.[37]

On December 26, 1998, the clerk of court and *ex-officio* sheriff, province of La Union[38] issued a "notice of levy and garnishment" to the Corporate Secretary, SMC, attaching shares of stock of SMC owned by GSIS to cover the amount of thirty-one million pesos (₱31,000,000.00).[39]

On December 28, 1998, the clerk of court and *ex-officio* sheriff, province of La Union issued a "notice of sale on execution" of the shares of stock in SMC owned by GSIS which were levied upon and scheduled for sale at public auction on January 6, 1999, at two o'clock p.m. at the Hall of Justice, Regional Trial Court, La Union, San Fernando.[40]

On January 6, 1999, the clerk of court and *ex-officio* sheriff, province of La Union issued a certificate of sale of personal property on execution of six million two hundred thousand (6,200,000) class "A" shares (based at par value) of SMC owned by GSIS covering the sum of thirty-one million pesos (₱31,000,000.00) in favor of BENGSON and/or Romualdo F. Bengson (the only bidder).[41]

On January 8, 1999, the trial court denied the GSIS motion for reconsideration filed on December 23, 1998.[42]

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[37] Original Record, Vol. 2, pp. 779-783. G.R. No. 141454, Petition for *Certiorari, Rollo*, p. 7.

[38] Clerk of Court and *ex-Officio* Sheriff, province of La Union, Mario Anacleto M. Bañez.

[39] G.R. No. 141454, Comment of Private Respondent, San Miguel Corporation, Annex "1", *Rollo*, p. 113.

[40] *Ibid.*, Annex "2", *Rollo*, p. 114; G.R. No. 137448, *Rollo*, p. 471.

[41] G.R. No. 141454, comment of Private Respondent, San Miguel Corporation, Annex "5", *Rollo*, p. 118.

[42] Original Record, Vol. 2, pp. 880-883. CA *Rollo*, CA-G. R. SP No. 51131, pp. 23-30.

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On January 15, 1999, GSIS filed with the Supreme Court a petition[43] to annul the order of the trial court dated December 16, 1998, directing the issuance of an "*alias* writ of execution" to enforce its order of April 6, 1995, and the order of the trial court dated January 8, 1999, denying petitioner's motion for reconsideration, for being issued with grave abuse of discretion amounting to lack of jurisdiction.[44]

On January 21, 1999, the Supreme Court issued a temporary restraining order, stating:[45]

"NOW, THEREFORE, the Court Resolved to: xxx (b) ISSUE the TEMPORARY RESTRAINING ORDER prayed for enjoining respondent Regional Trial Court, San Fernando, La Union, Branch 26 from proceeding with the implementation of the decision in Civil Case No. 2794 and respondent Enrique LL. Yusingco, Corporate Secretary, San Miguel Corporation from transferring and/or registering, as well as from issuing new certificates of stock, in the name of private respondent Bengson Commercial Building, Inc., the ₱6,200,000.00 Class "A" Shares of Stock sold at public auction on January 7, 1999, or should there already be a transfer, enjoining private respondent Bengson Commercial Building, Inc., from transferring, alienating, selling or otherwise disposing of said shares of stock to any third person until further orders from this Court xxx."

On January 25, 1999, the Court resolved to refer the petition to the Court of Appeals[46] for "consideration and adjudication on the merits or any other action as it may deem appropriate."[47]

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[43] Docketed as G.R. No. 136874. G.R. No. 141454, Petition for *Certiorari*, Annex "B", *Rollo*, pp. 44-60.

[44] *Ibid.*, p. 45.

[45] In. G.R. No. 136874. G.R. No. 141454, Petition for *Certiorari*, Annex "C", *Rollo*, pp. 61-63.

[46] In G.R. No. 136874. Docketed as CA-G.R. SP No. 51131, CA *Rollo*, pp. 3-20.

[47] CA *Rollo*, p. 70.

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On January 29, 1999, the Court of Appeals denied GSIS's motion for reconsideration of its November 24, 1998 resolution.[48]

On March 29, 1999, GSIS filed with the Supreme Court a petition for review on *certiorari*[49] seeking the reversal of the resolution of the Court of Appeals promulgated on November 24, 1998.[50]

On November 29, 1999, the, Court of Appeals[51] ordered the consolidation of *CA-G.R. SP No. 51131* with *CA-G.R. SP No. 47669*. According to the Court of Appeals, *CA-G.R. SP No. 47669* was still pending on account of a timely motion for reconsideration of the resolution of dismissal filed by BENGSON, which had not been resolved.[52]

On January 14, 2000, the Court of Appeals promulgated a consolidated decision in *CA-G. R. SP 51131* and *CA-G.R. SP No. 47669*. We quote the dispositive portion:[53]

"*WHEREFORE*, the petition is *DISMISSED* on the ground of *forum-shopping*. The temporary restraining order issued in G. R. No. 136974 on January 21, 1999 is hereby *LIFTED*.

"SO ORDERED."

On January 31, 2000, GSIS filed with the Supreme Court, a petition for *certiorari*[54] with a very urgent motion for the issuance

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[48] In CA-G.R. SP No. 47669. G.R. No. 141454, Petition, Annex "A", Court of Appeals Decision, *Rollo*, pp. 25-43, at p. 28.

[49] Docketed as G.R. No. 137448, Petition for Review on *Certiorari, Rollo*, pp. 9-27.

[50] G.R. No. 137448. On August 30, 1999, the Court resolved to give due course to the petition. (*Rollo*, pp. 147-A-147-C).

[51] Jacinto, *J.*, *ponente*, Barrios and Rosario, *JJ.*, concurring.

[52] G.R. No. 137448, *Rollo*, pp. 299-301.

[53] G.R. No. 141454, Petition, Annex "A", Court of Appeals Decision, *Rollo*, p. 25-43, at p. 43.

[54] Under Rule 65, 1997 Rules of Civil Procedure, as amended. G.R. No. 141454, Petition for *Certiorari, Rollo*, pp. 3-24.

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of a preliminary injunction or temporary restraining order questioning the Court of Appeals' decision of January 14, 2000, for having been issued with grave abuse of discretion.

On February 7, 2000, we issued a temporary restraining order as prayed for and resolved to consolidate *G.R. No. 137448* and *G.R. No. 141454*.[55]

On October 2, 2000, we clarified the temporary restraining order of February 7, 2000 and resolved to enjoin the following specific acts, to wit:[56]

"(a) Respondent Court of Appeals from enforcing its decision promulgated on January 14, 2000 in CA-G.R. SP No. 51131;

"(b) Respondent Judge Vicente A. Pacquing, (who died recently) or anyone acting in his place as presiding judge, and respondent Mario Anacleto M. Bañez, as Clerk of Court and *Ex-Officio* Sheriff, of the Regional Trial Court, San Fernando La Union, Branch 26, are hereby enjoined from implementing and executing the decision in Civil Case No. 2794;

"(c) The Corporate Secretary San Miguel Corporation, from recording, transferring and/or registering any disposition of the 6.2 million shares of stock any class of San Miguel Corporation auctioned on January 7, 1999, as well as issuing new certificates of stock, in the name of private respondent Bengson Commercial Buildings, Inc. or its assignees;

"(d) Respondent Bengson Commercial Buildings, Inc. from exercising acts of ownership, transferring, alienating, selling or otherwise transferring, alienating, selling or otherwise disposing of said shares of stock to any third person, if any such stock were transferred, recorded or registered in its name until further orders from this Court."

The costs of suit in the amount of thirty-one million (₱31,000,000.00) awarded to BENGSON was patently irregular and absurd.

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[55] *Ibid.* On March 22, 2000, the Court gave due course to the petition in G.R. No. 141454 and reiterated the temporary restraining order issued on February 7, 2000, G.R. No. 141454, *Rollo,* p. 222.

[56] G.R. No. 137448, *Rollo*, Volume 2, pp. 785-794.

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There is "grave abuse of discretion" where "a power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law."[57]

In *Pacific Mills, Inc. v. National Labor Relations Commission*,[58] the Court held that to deny "the opportunity to right a clear error in the execution of judgment constitutes grave abuse of discretion."

It is at once patent that the trial court erred and gravely abused its discretion in awarding "costs of suit" to respondent Bengson in the amount of thirty-one million pesos (₱31,000,000.00).

Thus, the trial court grievously erred amounting to grave abuse of discretion in denying GSIS's petition for relief from judgment.

Relief from Judgment

The 1997 Rules of Civil Procedure, as amended, provide that "when a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside."[59]

To support such petition, the fraud must be extrinsic or collateral. "Fraud is regarded as extrinsic or collateral, where a litigant commits acts outside of the trial of the case, 'the effect of which prevents a party from having trial, a real contest or from presenting all of his case to the court, or where it operates upon matters pertaining, not to the judgment itself, but to the

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[57] *Garcia-Rueda v. Pascasio*, 344 Phil. 323, 330 [1997], citing *Commissioner of Internal Revenue v. Court of Appeals*, 327 Phil. 1, 57 [1996].

[58] 181 SCRA 130 [1990].

[59] Rule 38, Section 1, 1997 Rules of Civil Procedure, as amended.

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manner in which it was procured so that there is not a fair submission of the controversy."'[60]

True, to annul a judgment on the ground of extrinsic or collateral fraud,[61] there must be proof or evidence thereof.[62] In *National Power Corporation v. Court of Appeals,*[63] the Court ruled that relief from judgment is an "act of grace" granted "when the demands of equity and justice should prompt the Court to give petitioner a last chance to defend his right or to protect his interest."

In this case, the award of "costs of suit" in the amount of thirty-one million pesos (₱31,000,000.00) was patently absurd and void. It was so glaringly bloated that we would normally expect the trial court and the Court of Appeals to inquire into the *absurdity* of the award[64] and not to dismiss GSIS's petition on the technical ground that relief from judgment was not a substitute for appeal lost through its counsel's gross inaction or neglect.

A judgment may be annulled when issued with grave abuse of discretion.[65] In *Castanos v. Escano, Jr.,*[66] we held that when there is "a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial

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[60] *Strait Times, Inc. v. Court of Appeals*, 356 Phil. 217, 225 [1998].

[61] *Santos v. Court of Appeals*, 224 SCRA 673 [1993].

[62] *Top Management Programs Corporation v. Court of Appeals*, 222 SCRA 763 [1993].

[63] 218 SCRA 42 [1993].

[64] "Absurdity" means anything which is irrational, unnatural or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion (*Republic v. Court of Appeals*, 359 Phil. 530 [1998]), concurring opinion of Justice Reynato S. Puno, at p. 277.

[65] *Regidor v. Court of Appeals*, 219 SCRA 530 [1993].

[66] 321 Phil. 527, 554 [1995].

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authority." Thus, independent of the issues of "extrinsic fraud" and "gross negligence of counsel," the trial court's order granting "costs of suit" in the exorbitant amount of thirty one million pesos was patently void. Thus, the trial court's denial of the petition for relief from judgment was in grave abuse of discretion.

Meaning of "Costs of Suit"

"Costs are certain allowances authorized by statute to reimburse the successful party for expenses incurred in prosecuting or defending an action or special proceedings."[67] These costs have their own legal meaning and import, for, as it was said, 'costs are in the nature of incidental damages allowed to the successful party to indemnify him against the expense of asserting his rights in court, when the necessity of so doing was caused by other's breach of legal duty."'[68]

In this jurisdiction, the only "costs" that a winning party may recover are those prescribed in Rule 142, Revised Rules of Court (1964 Revision).[69] Any pecuniary award granted to a party in the form of "costs of suit" referred *exclusively* to the costs specified in Rule 142. These provisions bind all lower courts, including the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Courts, and Municipal Trial Courts. No court may award costs in excess of the sums specified therein.

The afore-cited rule limits the recovery of "costs of suit" to the items enumerated therein. Thus, the prevailing party may recover only the costs fixed therein "and no other."[70] Consequently, the trial court's award to respondent Bengson of thirty-one million pesos (₱31,000,000.00) as "costs of suit" cannot be justified by any stretch of the imagination, unless the

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[67] Martin, *Rules of Court in the Philippines*, Vol. 6, Revised Edition, 1981, p. 367, citing 20 C.J.S. 257.

[68] *Singbengco v. Arellano*, 99 Phil. 952, 958-959 [1956].

[69] Cf. *Corpus v. Corpus*, 100 Phil. 529, 531 [1956].

[70] Rule 142, Sections 9, *et seq.*, Revised Rules of Court (1964 Revision).

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total amount claimed runs to billions of pesos for which the filing fees would amount to such sum.[71]

What is more, the trial court conducted a "hearing to receive evidence" on the "costs of suit." This is a manifest error. The rules prescribe the procedure for taxation of costs.

Rule 142, Section 8, provides:

"SEC. 8.— *Costs, how taxed.*— In inferior courts, the costs shall be taxed by the municipal or city judge and included in the judgment. In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution."

Clearly, the rule does not provide that the trial court shall conduct a hearing to determine the amount of the "costs of suit." All that must be done is for the prevailing party to give five (5) days written notice to the adverse party of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. As heretofore stated, the items of costs and the specified amounts thereof are fixed in the rule, "and no other." Within the five-day period, the adverse party may object, specifying the items objected to. The clerk of the court shall then tax the "costs." Even if there be no objection to the items of costs, the clerk of the court cannot tax costs in amounts more than that specified in the items prescribed in Rule 142. Either party may appeal to the court from the clerk's taxation. It is at this stage that the court takes part in the taxation of costs, not otherwise.

Consequently, the trial court's order dated April 6, 1995 awarding costs of suit in favor of respondent Bengson in the

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[71] Rule 142, Sec. 10 (g), Revised Rules of Court (1964 Revision).

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staggering amount of ₱31,000,000.00 is plainly and patently ridiculous and absurd on its face. It is *void-ab-initio.*

The courts cannot vary or modify the above specified procedure in the taxation of costs. When the clerk's taxation had become final, the costs shall be inserted in the judgment if taxed before its entry and payment thereof shall be enforced by execution.[72]

Again, the procedure on how to execute a money judgment is prescribed in the Rules. Rule 39, Section 9 provides:

"SEC. 9. *Execution of judgments for money, how enforced.— (a) Immediate payment on demand.*— The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ."

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Here, obviously, the provincial sheriff of La Union did not follow the Rule. He immediately levied on 6.2 million shares of San Miguel Corporation owned by GSIS at its par value of five pesos (₱5.00) per share. SMC shares at that time were worth ₱67.50 per share. The respondent sheriff could easily check the market value of the SMC shares by just reading the newspapers of general circulation, stock market quotations.

Plainly, the respondent sheriff grossly violated the Rule, degraded his office and laid himself open to charges of graft and corruption. Thus, the sheriff's levy on shares of SMC that petitioner owned was excessive considering its market value, and hence, a patent nullity.

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[72] *Alejo v. Javier*, 74 Phil. 94 [1943].

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WHEREFORE, I vote to grant the petitions and to annul the order dated April 6, 1995, in Civil Case No. 2794 of the Regional Trial Court, La Union, Branch 26, at San Fernando.

I vote to direct the Court Administrator, Supreme Court, to initiate administrative charges against respondent Clerk of Court and *ex-officio* sheriff, province of La Union, Atty. Mario Anacleto M. Bañez, San Fernando, La Union, for incompetence, serious misconduct, conduct prejudicial to the service, and violation of R. A. No. 3019, Section 3 (e), within ten (10) days from notice.

FIRST DIVISION

[G.R. No. 137681. January 31, 2002]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. CONRADO R. ANTONA, in his capacity as presiding judge, Regional Trial Court, Branch 4, Batangas City, DANTE FAJARDO, SR., PATERNO DE CASTRO, FILIPINA FAJARDO ARCE, and JOHN DOE, as principals and PIO ARCE, as accomplice,** *respondents.*

SYNOPSIS

On January 19, 1998, an information for murder was filed against Dante Fajardo, Sr., Paterno de Castro, Filipina Fajardo Arce and John Doe as principals and against Pio Arce as accomplice. Fajardo and Arce, while still at large, filed an urgent petition for bail. It was not acted upon by the trial court on the ground that all the accused were still at large. But later, subject to the condition that the accused will voluntarily surrender to its jurisdiction, the court *a quo* granted the motion for the resetting of the urgent petition for bail filed by the accused. Subsequently, the trial court scheduled several hearing dates for the petition for bail. The prosecution asked for a