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Even though [the] taxpayer here did not request the refund made to him, and the situation is entirely due to an error on the part of the government, taxpayer and not the government has had the use of the money during the period involved and it is not unjustly penalizing taxpayer to require him to pay compensation for this use of money.

Based on established doctrine, these charges incident to delinquency are compensatory in nature and are imposed for the taxpayers' use of the funds at the time when the State should have control of said funds. Collecting such charges is mandatory. Therefore, the Decision of the Court of Appeals imposing a 20% delinquency interest over the assessment reduced by the CTA was justified and in accordance with Section 249(c)(3) of the NIRC.

WHEREFORE, premises considered, this Court *DENIES* this petition and *AFFIRMS* the Decision of the Court of Appeals in CA-G.R. SP No. 35383 dated 14 August 1998, ordering that petitioner Bank of the Philippine Islands to pay Respondent Commissioner of Internal Revenue the deficiency documentary stamp tax in the amount of ₱690,030.00 inclusive of surcharge and compromise penalty, plus 20% annual interest from 7 June 1990 until fully paid. Costs against the petitioner.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Austria-Martinez, and *Callejo, Sr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 144024. July 27, 2006]

PEDRO TAGABI and DEMETRIO TABANIAG, *petitioners, vs.* **MARGARITO TANQUE,** *respondent.*

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SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS; RESORT TO MODES OF SERVICE OTHER THAN PERSONAL SERVICE REQUIRES A WRITTEN EXPLANATION WHY THE SERVICE IS NOT DONE PERSONALLY.**— Section 11, Rule 13 of the Rules of Court provides that personal service of petitions and other pleadings is the general rule, while a resort to other modes of service and filing is the exception. Where recourse is made to the exception, a written explanation why the service and the filing were not done personally is indispensable, *even when such explanation by its nature is acceptable and manifest. Where no explanation is offered to justify the resort to other modes, the discretionary power of the court to expunge the pleading becomes mandatory.* Thus, the CA did not err when it granted respondent's Motion to Dismiss and ordered that petitioners' brief be expunged from the records in view of the latter's failure to present a written explanation why they did not personally file their appeal brief with the CA.

2. **ID.; RULES OF PROCEDURE; HOW CONSTRUED; CASE AT BAR.**— Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. In the present case, the CA already extended to petitioners the benefit of a liberal construction of the Rules of Court by not dismissing their appeal on the ground that their appellants' brief was belatedly filed by one day. What cannot be ignored, however, are petitioners' successive violations of the Rule requiring explanation why they did not personally file their brief with the CA. The first violation was committed when they filed their appellants' brief and the second violation was incurred when they filed their Comment on respondent's Motion to Dismiss. Petitioners cannot feign ignorance of such Rule because they are represented by counsel. Moreover, they were already informed of such lapse through the Motion to Dismiss filed by herein respondent.

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3. ID.; CIVIL PROCEDURE; APPEALS; THE RIGHT TO APPEAL IS A STATUTORY RIGHT AND THE PARTY WHO SEEKS TO AVAIL OF THE SAME MUST COMPLY WITH THE REQUIREMENTS OF THE RULES.— The right to appeal is a statutory right and the party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost, more so, as in this case, where petitioners violated the same Rule not only once but twice. The utter disregard of the rules made by petitioners cannot justly be rationalized by harking on the policy of liberal construction and substantial compliance. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality not only to explain and justify his failure to abide by the rules but also to avoid committing the same mistake in the future. Hence, petitioners' repeated failure to comply with the provisions of Section 11, Rule 13 is enough basis to dismiss the present petition.

4. CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; CAN BE ALTERED, MODIFIED, OR CANCELLED ONLY IN A DIRECT PROCEEDING IN ACCORDANCE WITH LAW.— Settled is the rule that a certificate of title cannot be subject to collateral attack and can be altered, modified, or cancelled only in a direct proceeding in accordance with law. *In Mallilin, Jr. v. Castillo*, the Court held that an action is considered as an attack on a title when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of an action or proceeding is to annul, or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof. In the present case, the attack on respondent's title is definitely merely collateral as the relief being sought by respondent in his action was recovery of ownership and possession. Petitioners' attack on the validity of respondent's certificate of title was merely raised as a defense in their Answer filed with the trial court.

APPEARANCES OF COUNSEL

Gregorio M. Rubias for petitioners.
Medardo Castro for respondent.

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DECISION

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court which seeks to set aside the Resolutions of the Court of Appeals (CA) dated April 17, 2000[1] and June 16, 2000[2] dismissing herein petitioners' appeal docketed as CA-G.R. CV No. 58697, and denying petitioners' Motion for Reconsideration, respectively.

The facts, as found by the trial court are as follows:

Plaintiff Margarito Tanque is the son of Anastasio Tanque who, during his lifetime, owned and possessed a parcel of land with an area of 47,443 square meters, more or less, situated at Barangay Jolason, Tubungan, Iloilo. Upon the death of his father on December 16, 1966, plaintiff took over the ownership and possession of the said land and declared the same in his name for taxation purposes. He has, since then, paid the real property taxes on the land until the present time.

The same parcel of land was the subject of a civil case for recovery of ownership filed sometime in 1968 by plaintiff against Genaro Tablatin, *et al.* docketed as Civil Case No. 7551 of the Court of First Instance of Iloilo, which was decided on February 8, 1974 (Exh. "K") in favor of herein plaintiff and which decision, on appeal by the losing party, was affirmed by the Court of Appeals on February 2, 1979 (Exh. "K"). The decision of the Court of Appeals attained finality on March 4, 1979 (Exh. "M").

When the lands in Tubungan, Iloilo were cadastrally surveyed by the Bureau of Lands in 1982, plaintiff's parcel of land was surveyed and identified as Cadastral Lot 2104 with an area of 4.7433 hectares. On February 24, 1986, Original Certificate of Title No. F-31883 was issued to plaintiff based on Free Patent No. 17553 obtained from the Bureau of Lands (Exh. "D").

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[1] Penned by Justice Renato C. Dacudao and concurred in by Justices Quirino D. Abad Santos, Jr. (now retired) and B.A. Adefuin-Dela Cruz (now retired), *rollo*, pp. 50-52.

[2] *Id.* at 61.

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Sometime in 1988, defendant Pedro Tagabi asserted ownership over a portion of Cadastral Lot 2104 with an area of 654 square meters, claiming that the same forms part of Cadastral Lot 2097 which is owned by him. Without the knowledge and consent of plaintiff, defendant Tagabi had the said portion entered into by his co-defendant, Demetrio Tabaniag, who planted the same with palay and corn.

Plaintiff then went to the Bureau of Lands and asked that Cadastral Lot 2104 be relocated to determine whether a portion was encroached upon by the defendant. Accordingly, relocation survey was made by Geodetic Engineer Ernesto Ciriaco in the presence of both plaintiff and defendants and, thereafter, a sketch, Exhibit "O", was prepared and issued by the said Geodetic Engineer. It was found out that, indeed, a portion with an area of 654 square meters within lot 2104 was encroached upon by the defendants. The matter was then referred by plaintiff to the barangay officials concerned for conciliation. But no settlement was reached (Exhs. "P"; "P-1"). Hence, plaintiff filed the present action in court to recover possession of the disputed portion, plus damages.[3]

On May 26, 1997, the Regional Trial Court (RTC) of Iloilo City, Branch 26, rendered a Decision with the following dispositive portion:

WHEREFORE, judgment is hereby rendered declaring plaintiff the lawful owner of the property in question and ordering the defendants to vacate and deliver possession of the same to plaintiff and to pay plaintiff, jointly and severally, (1) the sum of ₱1,850.00 representing the produce of the land annually from the time of filing of the complaint on September 29, 1992 until possession is delivered to plaintiff; (2) the sum of ₱5,600.00 representing expenses for the relocation survey; (3) attorney's fees in the sum of ₱8,000.00; plus (4) costs of this suit.

SO ORDERED.[4]

Aggrieved by the judgment of the trial court, defendants Pedro Tagabi and Demetrio Tabaniag (petitioners) filed an appeal with the CA.

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[3] CA *rollo*, pp. 65-66.

[4] *Id.* at 71.

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On February 26, 2000, plaintiff-appellee Margarito Tanque (respondent) filed a Motion to Dismiss on grounds that the appellants' brief was filed beyond the period allowed by the CA and that the said brief was not accompanied by a written explanation why it was not filed personally in violation of Section 11, Rule 13 of the Rules of Court.[5]

Petitioners filed their Comment on the Motion to Dismiss contending that the delay of one day in the filing of their appellants' brief does not automatically cause the dismissal of the appeal. Petitioners further contend that since there was no allegation of any prejudice on the part of the appellee which may have been caused by the delay and since the issues raised are substantial enough to merit consideration by the appellate court, the liberal interpretation of the rules is justified. On the matter of lack of explanation why the appellants' brief was not filed personally with the CA, petitioners aver that the practicability of the filing is self-explanatory considering that the law office of their counsel is in Iloilo City while the CA is in Manila; and that the court may take judicial notice of the distance between these two places and, hence, the impracticability of personal filing.[6]

In his Reply to petitioners' Comment, respondent asserted that a correct interpretation of the provisions of Section 1, Rule 50 of the Rules of Court would show that it is mandatory on the part of the CA to dismiss an appeal if any of the grounds provided therein exists; that even a delay of one day is a sufficient ground for dismissing the appeal. Respondent claimed that the requirement of a written explanation in cases where briefs and other pleadings are not filed or served personally is mandatory, and non-compliance therewith will result in the dismissal of an appeal. Respondent brought to the appellate court's attention the fact that petitioners' Comment on the Motion to Dismiss is not also accompanied by a written explanation why it was not filed with the CA personally. This, respondent contends, is evidence of petitioners' deliberate violation of the Rules.[7]

[5] *Id.* at 72.

[6] *Id.* at 76-78.

[7] *Id.* at 81-83.

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On April 17, 2000, the CA issued the presently assailed Resolution whereby, in the exercise of its judicial discretion, it admitted herein petitioners' brief for appellants despite having been filed one day late but granted respondent's Motion to Dismiss for failure to comply with Section 11, Rule 13[8] of the Rules of Court and ordered that petitioners' brief be expunged from the records of the case.[9] Petitioners filed a Motion for Reconsideration but the same was denied by the CA in a Resolution issued on June 16, 2000.[10]

Hence, the present petition raising the sole issue, to wit:

> The petitioners submit that when the Court of Appeals dismissed the appeal of the petitioners on the ground that there was no explanation why the said brief was filed by registered mail and not by personal service in strictest compliance with Section 11, Rule 13 of the 1997 Rules of Civil Procedure, the Court of Appeals acted not in accord with the said provisions and with the cited decision of the Supreme Court.[11]

Petitioners argue that the dismissal by the CA of herein petitioners' appeal on the ground of failure to strictly comply with the provisions of Section 11, Rule 13 of the Rules of Court is not in accord with the policy of liberal construction of the said Rules as provided in Section 6, Rule 1 thereof. Petitioners submit that a strict interpretation of the above-cited provisions of the Rules of Court will obstruct rather than serve the broader interests of justice. Moreover, petitioners assert that the CA can take judicial notice of the distance between the CA office in Manila and the law office of counsel for petitioners in Iloilo City; and that said distance renders personal filing impracticable.

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[8] Section 11. *Priorities in modes of service and filing.* – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

[9] CA *rollo*, p. 88.

[10] *Id.* at 110.

[11] *Rollo*, p. 14.

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Petitioners also contend that a mere perusal of their brief already filed with the CA shows merit in their appeal and that its dismissal would prejudice the substantial rights of herein petitioners.

In his Comment, respondent reiterates his contention that the requirements provided under Section 11, Rule 13 of the Rules of Court are mandatory. Moreover, respondent contends that the said Rule does not provide for any exception that would justify non-compliance therewith.

The Court finds the petition without merit on technical and substantive grounds.

On technical grounds, Section 11, Rule 13 of the Rules of Court provides that personal service of petitions and other pleadings is the general rule, while a resort to other modes of service and filing is the exception.[12] Where recourse is made to the exception, a written explanation why the service and the filing were not done personally is indispensable, **even when such explanation by its nature is acceptable and manifest.**[13] **Where no explanation is offered to justify the resort to other modes, the discretionary power of the court to expunge the pleading becomes mandatory.**[14] Thus, the CA did not err when it granted respondent's Motion to Dismiss and ordered that petitioners' brief be expunged from the records in view of the latter's failure to present a written explanation why they did not personally file their appeal brief with the CA.

Citing *Kowloon House/Willy Ng v. Court of Appeals,*[15] this Court reiterated the following pronouncements in *United Pulp and Paper Co., Inc. v. United Pulp and Paper Chapter-Federation of Free Workers:*[16]

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[12] *Zulueta v. Asia Brewery, Inc.*, G.R. No. 138137, March 8, 2001, 354 SCRA 100, 109.

[13] *Id.* at 109-110.

[14] *Id.* at 110.

[15] G.R. No. 140024, June 18, 2003.

[16] G.R. No. 141117, March 25, 2004, 426 SCRA 329.

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[R]ules of procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard in the correct form and manner, at the prescribed time in a peaceful though adversarial confrontation before a judge whose authority litigants acknowledge. Public order and our system of justice are well served by a conscientious observance of the rules of procedure, particularly by government officials and agencies.[17]

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights.[18] Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[19]

In the present case, the CA already extended to petitioners the benefit of a liberal construction of the Rules of Court by not dismissing their appeal on the ground that their appellants' brief was belatedly filed by one day. What cannot be ignored, however, are petitioners' successive violations of the Rule requiring explanation why they did not personally file their brief with the CA. The first violation was committed when they filed their appellants' brief and the second violation was incurred when they filed their Comment on respondent's Motion to Dismiss. Petitioners cannot feign ignorance of such Rule because they are represented by counsel. Moreover, they were already informed of such lapse through the Motion to Dismiss filed by herein respondent.

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[17] *Id.* at 334-335.

[18] *Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista*, G.R. No. 164668, February 14, 2005, 451 SCRA 294, 300, citing *Galang v. Court of Appeals*, G.R. No. 76221, July 29, 1991, 199 SCRA 683, 689.

[19] *Id.*

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In explaining the importance of faithful compliance with procedural rules, this Court held in *Land Bank of the Philippines v. Natividad*[20] that:

> [P]rocedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, there is no intention to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice.[21]

The right to appeal is a statutory right and the party who seeks to avail of the same must comply with the requirements of the Rules.[22] Failing to do so, the right to appeal is lost, more so, as in this case, where petitioners violated the same Rule not only once but twice. The utter disregard of the rules made by petitioners cannot justly be rationalized by harking on the policy of liberal construction and substantial compliance.[23] Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality not only to explain and justify his failure to abide by the rules but also to avoid committing the same mistake in the future. Hence, petitioners' repeated failure to comply with the provisions of Section 11, Rule 13 is enough basis to dismiss the present petition.

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[20] G.R. No. 127198, May 16, 2005, 458 SCRA 441.

[21] *Id.* at 449-450.

[22] *Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista*, *supra* note 18, at 301.

[23] *MC Engineering, Inc. v. National Labor Relations Commission*, 412 Phil. 614, 625 (2001).

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However, to write finis to the present controversy, the Court shall dwell on the merits of the case in the interest of substantial justice and in consonance with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses.[24]

Even on substantive grounds, the Court still finds the present petition without merit.

The Court is not persuaded by petitioners' contention in their appeal brief filed with the CA that they are not bound by the report filed by the court-appointed commissioner showing that the questioned area of 654 square meters is inside Cadastral Lot 2104. The Court finds no cogent reason to deviate from the trial court's ruling, to wit:

> As may be gleaned from the report submitted by the Commissioner, the 654-square-meter-portion in dispute falls within Cadastral Lot 2104 of the Cadastral Survey of Tubungan, Iloilo. Since Lot 2104 is owned by plaintiff in whose name the same is registered under Original Certificate of Title No. F-31883, the conclusion is inevitable that plaintiff has a better right to the portion in dispute.
>
> Defendants objected to the findings and report of the Commissioner contending that the "resurvey should have been made on the basis of the previous survey not on the Cadastral Survey." (Written Objection dated April 29, 1993, page 89, Records). Defendants' objection is woefully untenable.
>
> Note that the Order dated February 5, 1993 was issued at the instance of both parties and this Order categorically states that the relocation survey should be made to ascertain whether the disputed portion is "within Cadastral Lot 2097 or 2104 of the Cadastral Survey of Tubungan, Iloilo". Since the lots to be relocated are cadastral lots, it is but logical and proper that the relocation survey should be conducted on the basis of the data gathered during the cadastral survey.
>
> According to Geodetic Engineer Filomeno Dano, both plaintiff and defendant Tagabi, were present during the relocation survey and

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[24] *Añonuevo, Jr. v. Court of Appeals*, G.R. No. 152998, September 23, 2003, 411 SCRA 621, 626.

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both were fully aware of and, in fact, agreed to the use by the Commissioner of the cadastral records and the available data pertinent to the cadastral survey of the two lots. In fact, both parties helped the Commissioner and pointed to the disputed portion using the available cadastral records relative to the two cadastral lots.

In any case, it is quite clear from the text of the Order dated February 5, 1993 appointing the Commissioner that the parties agreed to abide by the results of the relocation survey which results, according to the same Order, "shall be made the basis of resolving the dispute between them". It is now too late in the day, so to speak, for the defendants to back out from such commitment that they had made.

Having agreed to abide by the results of the relocation survey, defendants are now estopped from questioning the same. In *Bulacan vs. Torcino*, the Supreme Court held:

> "The Torcinos try to impugn the results of the relocation survey. We agree with the appellee that the appellants are now estopped on this issue because they themselves prayed in the stipulation of facts that the findings of the geodetic engineer would be the basis for the decision of the Court of First Instance. We see no error, much less any grave abuse of discretion, in the lower court's findings that the house of the Torcinos encroached on the lot of Victoriano Bulacan" (134 SCRA 252; 259).

Defendants are thus bound by the results of the relocation survey conducted by Geodetic Engineer Filomeno Dano, Chief of the Technical Services, DENR, Region VI, Iloilo City.[25]

Petitioners argue that the commissioner's report stating that the disputed property is within Cadastral Lot 2104 is not enough since there is nothing in the said report which categorically states that the subject property is not inside Cadastral Lot 2097. The Court finds this reasoning specious. Since the contested property has been declared to be within Cadastral Lot 2104, it necessarily follows that it is not within Cadastral Lot 2097. Thus, there is no longer any need to declare that the same property is not located within Cadastral Lot 2097. Any statement or declaration to that effect is superfluous.

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[25] *Rollo*, pp. 46-47.

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The Court, likewise, does not agree with petitioners' argument that it was erroneous for the lower court to consider their defense that respondent's title over Cadastral Lot 2104 was illegally obtained as a collateral attack on the said title.

Settled is the rule that a certificate of title cannot be subject to collateral attack and can be altered, modified, or cancelled only in a direct proceeding in accordance with law.[26] In *Mallilin, Jr. v. Castillo,*[27] the Court held that an action is considered as an attack on a title when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of an action or proceeding is to annul, or set aside such judgment, or enjoin its enforcement.[28] On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.[29] In the present case, the attack on respondent's title is definitely merely collateral as the relief being sought by respondent in his action was recovery of ownership and possession. Petitioners' attack on the validity of respondent's certificate of title was merely raised as a defense in their Answer filed with the trial court.

However, considering the undisputed fact that respondent had been convicted by final and executory judgment of the crime of falsification of public document used by him to support his application for free patent[30] on which basis the certificate of title was issued in his favor, it behooves the Court to modify the trial court's decision to the effect that its finding in Civil Case No. 20636 is without prejudice to the filing of the proper action for cancellation or annulment of title in the proper court.

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[26] *Vda. de Mistica v. Naguiat*, G.R. No. 137909, December 11, 2003, 418 SCRA 73, 82-83; *Tan v. Philippine Banking Corporation,* G.R. No. 137739, March 26, 2001, 355 SCRA 292, 299.

[27] 389 Phil. 153 (2000).

[28] *Id.* at 165.

[29] *Id.*

[30] Memorandum for the Respondent, *rollo*, pp. 97-98; Memorandum for Petitioners, *rollo*, p. 120.

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WHEREFORE, the petition is *DENIED*. However, the Decision dated May 26, 1997 of the Regional Trial Court, Iloilo City, Branch 26 in Civil Case No. 20636 is *MODIFIED* to the effect that it is without prejudice to the filing of cancellation or annulment of title in the proper court.

No costs.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Callejo, Sr., and *Chico-Nazario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 146472. July 27, 2006]

EASTERN SHIPPING LINES, INC., *petitioner, vs.* **N.V. THE NETHERLANDS INSURANCE COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW BEFORE THE SUPREME COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTIONS.— While in a petition for review before this Court, only questions of law may be raised, there are instances when factual findings of the Court of Appeals may be reviewed. Thus in *Insular Life Assurance Company, Ltd v. Court of Appeals,* this Court stressed: "It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the C[ourt of] A[ppeals] are conclusive and binding on the Court. However, the Court had recognized several exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the