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hereby SET ASIDE. Petitioners' Motion for the reopening of the ballot boxes in Voting Center No. 57 at Barangay Mabini, Cadiz City, is granted. The case is hereby remanded to the Municipal Trial Court at Cadiz City for the opening of the ballot boxes in Voting Center No. 57 so that a determination of these election contests can be better had by the proof afforded by the ballots contained therein.[8] Thereafter, the said Municipal Trial Court shall resolve the election contests with deliberate speed. No costs.

SO ORDERED.

Teehankee, Actg. C.J., Plana, Gutierrez, Jr., and *Patajo, JJ.*, concur.

EN BANC

[Adm. Matter No. R-146-P. March 14, 1986]

ROMULO S. J. TOLENTINO, *petitioner, vs.* **SHERIFF ROLANDO A. BORJA,** *respondent.*

SYLLABUS

ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; FAILURE TO IMPLEMENT THE WRIT OF EXECUTION WITHIN THE PRESCRIBED PERIOD CONSTITUTES DERELICTION OF DUTIES.— The records reveal, that respondent failed to make a return of the writs within the period provided by law. The Sheriff's Return in Civil Case No. P-703 shows that it was stamped "Received" on October 18, 1983. But since the writ was issued on July 11, 1983, respondent should have made the return a month earlier. Similarly, in Civil Case No. S-329, the Sheriff's Return shows that it was stamped

[8] see *Mandac vs. Samonte*, 49 Phil. 284 (1926).

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"Received" on October 19, 1983. Having been issued, however, on July 30, 1983, the return should have been filed on September 1, 1983. In both instances, therefore, respondent filed his returns beyond the 60-day life-span of the writs of execution prescribed by Section 11, Rule 39 of the Rules of Court. Respondent was thus remiss in the performance of his duties.

RESOLUTION

Administrative Matter No. R-146-P (*Romulo S.J. Tolentino vs. Sheriff Rolando A. Borja*). — Complainant, Atty. Romulo Tolentino, charges respondent Deputy Sheriff Rolando Borja of Naga City with conduct unbecoming a public officer, malfeasance, gross misconduct, and dereliction of duty for having failed to implement the Writs of Execution issued in Civil Case No. P-703 and Civil Case No. S-329 of the Regional Trial Court of Naga City, respectively.

Executive Judge Juan Llaguno to whom the case was referred for investigation has recommended the dismissal of the complaint after finding respondent's comment satisfactory.

The records reveal, however, that respondent failed to make a return of the writs within the period provided by law. The Sheriff's Return in Civil Case No. P-703 shows that it was stamped "Received" on October 18, 1983. But since the writ was issued on July 11, 1983, respondent should have made the return a month earlier.

Similarly, in Civil Case No. S-329, the Sheriff's Return shows that it was stamped "Received" on October 19, 1983. Having been issued, however, on July 30, 1983, the return should have been filed on September 1, 1983.

In both instances, therefore, respondent filed his returns beyond the 60-day life-span of the writs of execution prescribed by Section 11, Rule 39 of the Rules of Court. Respondent was thus remiss in the performance of his duties.

ACCORDINGLY, respondent Deputy Sheriff Rolando Borja of Naga City is hereby found guilty of dereliction of duty and

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is suspended from office for a period of one (1) month, without pay, effective from the date this resolution becomes final.

EN BANC

[G.R. No. L-39861. March 17, 1986.]

RICARDO C. SILVERIO, *petitioner, vs.* **HON. COURT OF APPEALS and CIRIACO B. MENDOZA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; EXECUTION PENDING APPEAL; RULE WHERE JUDGMENT EXECUTED IS REVERSED TOTALLY OR PARTIALLY ON APPEAL.**— The Court rules that the appellate court's previous dismissal of the special civil action of *certiorari* instituted by respondent-appellant to assail an order of the court of First Instance directing the execution pending appeal of a specific portion of its judgment does not preclude the said party-appellant from appealing the entirety of the judgment nor the same appellate court from passing upon the merits of the entire appealed judgment. The Rules of Court precisely provide in such cases of execution pending appeal that "where the judgment executed is reversed totally or partially on appeal, the trial court, on motion, after the case is remanded to it, may issue such orders of restitution as equity and justice may warrant under the circumstances."

2. **ID.; SPECIAL CIVIL ACTION; *CERTIORARI*; PURPOSE OF THE PETITION.**— The provisions of the Rules of Court permit an aggrieved party, in the general types of cases, to