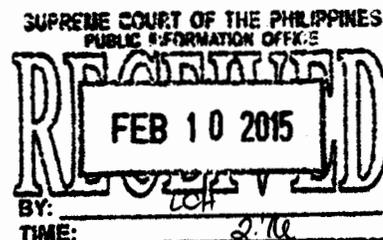




Republic of the Philippines  
Supreme Court  
Manila  
FIRST DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 3, 2014** which reads as follows:*

“**G.R. No. 214807** (Arturo F. Fajardo, *petitioner*, v. Virginia San Miguel-Fajardo, *respondent*). - This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 100693 dated 3 October 2014, which affirmed the Decision of the lower court granting the Petition for Legal Separation filed by respondent.

The facts, as affirmed by the CA, are as follows:

On 28 December 1962, petitioner and respondent were married in a civil ceremony before the Office of the Municipal Mayor of Binalonan, Pangasinan. Thereafter, they had three (3) children, now all of legal ages and residents of the United States of America (USA). In 1984, the Fajardo Family migrated to the USA where they had since resided for several years. Sometime in 2008, petitioner went home to the Philippines for a vacation.<sup>2</sup>

In January 2009, while in the USA, respondent received news that petitioner was living-in with another woman named Gloria Cayabyab (Gloria). This prompted respondent to confront petitioner over the phone about his other woman. Petitioner admitted having an illicit relationship with Gloria and even confessed to having impregnated her. Constrained to come home to the Philippines on 7 February 2009, respondent discovered

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<sup>1</sup> *Rollo*, pp. 11-21; Penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba concurring.

<sup>2</sup> *Id.* at 12.

that petitioner had also purchased a house for Gloria, where the two have been staying, and that petitioner had not gone home for a week due to the birth of his son with Gloria named Justine Paul. In March 2009, fed up with petitioner's extra-marital affair, respondent told him that she wanted a legal separation. This infuriated petitioner who threatened to kill respondent. Out of fear, the latter left and reported the incident to the *Barangay*.<sup>3</sup>

Consequently, on 23 March 2009, respondent filed before the Regional Trial Court, Branch 49, Urdaneta City, Pangasinan (RTC) a Petition for Legal Separation with Temporary Protection Order (TPO) and Permanent Protection Order (PPO), docketed as Civil Case No. U-9242, alleging, among others, that during their marriage, she and petitioner acquired various real and personal properties in the Philippines. Hence, in addition to the grant of her petition for legal separation, respondent sought for the dissolution of their conjugal partnership of gains, and the issuance of a TPO, to be thereafter replaced by PPO, pursuant to Section 11 of Republic Act (RA) No. 9262.<sup>4</sup>

On 27 April 2009, the RTC issued a TPO restraining petitioner from committing acts of violence against respondent, harassing, annoying or contacting her, and ordering him to stay away from her and other designated family member at a distance of 200 meter radius. Moreover, petitioner was ordered to present to the court documents proving his ownership of the properties that he had allegedly purchased during the marriage. He was likewise prohibited from carrying or possessing any firearm or deadly weapon, and instructed to attend professional counseling.<sup>5</sup>

Petitioner admitted in his Answer about the said illicit relationship and even acknowledged having a son as a result thereof, but denied having threatened to kill respondent, or inflicted any physical harm or emotional pain on her. He further claimed that the lands covered by TCT No. 285007 and TCT No. 285056 are his exclusive properties.<sup>6</sup> Subsequently, on 6 December 2012, the Petition for Legal Separation was granted by the RTC.

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<sup>3</sup> Id.  
<sup>4</sup> Id. at 12-13.  
<sup>5</sup> Id. at 13.  
<sup>6</sup> Id. at 13-14.

Aggrieved, petitioner appealed before the CA raising the arguments that: (1) the RTC erred in ruling that all the properties of the parties belong to their conjugal partnership; and (2) the RTC erred in resolving the case without fully apprising the petitioner of his right to counsel which in effect violated his right to procedural due process. Consequently, in denying the appeal in the assailed 3 October 2014 Decision, the appellate court explained that “when an immovable was acquired by purchase during the marriage, it is considered as conjugal property. In fact, even if the manner of its acquisition was not shown, the presumption applies and it will be regarded as conjugal in nature.”<sup>7</sup> It is therefore not necessary to prove that the property was acquired with funds of the partnership. Furthermore, it stressed that petitioner having manifested his desire to represent himself during the proceedings, coupled with his active participation therein, albeit only through several personal letters addressed to the trial court, he is deemed estopped from raising belatedly in the instant appeal the issue of lack of legal representation.<sup>8</sup>

Dissatisfied, petitioner filed the instant petition submitting the same issues presented before the CA, with the additional query of whether or not the CA erred in affirming *in toto* the RTC’s decision granting the petition for legal separation.

A perusal of the instant petition however reveals that the same was filed beyond the reglementary period allowed by law. As alleged and admitted in his petition, petitioner only had until 3 November 2014 to file the present petition for review on *certiorari* considering that he received the assailed CA Decision on 16 October 2014.<sup>9</sup> Without any explanation offered on why his petition was belatedly filed only on 4 November 2014, we are constrained to declare that petitioner miserably failed to comply with the mandatory provision of Section 2,<sup>10</sup> Rule 45 of the Rules of Court, as amended. To emphasize, this Court has invariably ruled that the right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in

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<sup>7</sup> Id. at 17.

<sup>8</sup> Id. at 19.

<sup>9</sup> Id. at 3-4; Part III of the Petition.

<sup>10</sup> Rule 45. *Appeal By Certiorari to the Supreme Court.* –

Sec. 2. Time for Filing; extension. – The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner’s motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

accordance with the provisions of the law. 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.<sup>11</sup> Stated differently, the right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed. So it is with petitioner.

While it is true that rules of procedure are not cast in stone, it is equally true that strict compliance with the Rules is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.<sup>12</sup> Unfortunately for petitioner, failure to file within the reglementary period to file the same is fatal to his appeal since it is petitioner's duty to strictly comply with the Rules of Court and to be vigilant in protecting his rights, thereby making the relief prayed for unavailing.

Although we are not unaware that the Court, in the interest of equity and justice, sometimes allows a liberal reading of the rules, so long as the petitioner is able to prove the existence of cogent reasons to excuse its non-observance,<sup>13</sup> we do not however find a justification to warrant such relaxation in the present case.

Be that as it may, the factual findings of the RTC, as affirmed *in toto* by the CA, as a rule, bind us. It is well settled that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised.<sup>14</sup> 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 CA are conclusive and binding on the Court.<sup>15</sup> Thus, in the absence of any attendant grave abuse of discretion, the factual findings of the CA are entitled not only to respect, but to our final recognition in this appellate review.

**WHEREFORE,** premises considered, the petition is hereby **DENIED.**

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<sup>11</sup> *Villanueva v. CA*, G.R. No. 99347, 27 January 1992, 205 SCRA 537, 544 citing *Tropical Homes, Inc. v. National Housing Authority*, 236 Phil. 580 (1987); *Borre v. Court of Appeals*, 242 Phil. 345 (1988); *Ozaeta v. Court of Appeals*, 259 Phil. 428 (1989).

<sup>12</sup> *Id.* at 545 citing *Alvero vs. Dela Rosa*, 76 Phil. 428 (1946).

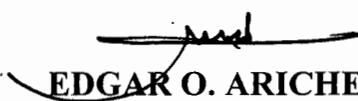
<sup>13</sup> *Delos Santos v. Elizalde*, 543 Phil. 12, 29 (2007).

<sup>14</sup> *Salcedo v. People*, 400 Phil. 1302, 1308 (2000).

<sup>15</sup> *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, 28 April 2004, 428 SCRA 79, 86.

**SO ORDERED.”**

Very truly yours,

  
**EDGAR O. ARICHETA**

Division Clerk of Court *w/v*

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The Hon. Presiding Judge  
Regional Trial Court, Br. 49  
Urdaneta City 2428 Pangasinan  
(Civil Case No. U-9242)

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