Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

FAUSTINO T. CHINGKOE and GLORIA CHINGKOE, Petitioners,	**G.R. No. 183608**
	Present:
- versus -	VELASCO, JR., *J.*, Chairperson, PERALTA, ABAD, MENDOZA, and LEONEN, *JJ.*
REPUBLIC OF THE PHILIPPINES, represented by the BUREAU OF CUSTOMS, Respondent.	Promulgated: JUL 31 2013

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DECISION

VELASCO, JR.:

Before Us is a Petition for Review on Certiorari under Rule 45, seeking the reversal of the April 30, 2008 Decision[1] of the Court of the Appeals (CA) and its subsequent June 27, 2008 Resolution[2] in CA-G.R. SP No. 101394. The assailed CA issuances granted the Petition for Certiorari filed by respondent Bureau of Customs, thereby revoking the July 14, 2006 and August 31, 2007 Orders[3] of the Regional Trial Court (RTC), Branch 34 in Manila and denying the Motion for Reconsideration, respectively.

The Facts

This petition stemmed from two collection cases filed by the Republic of the Philippines (Republic), represented by the Bureau of Customs (BOC) before the Regional Trial Court (RTC) of Manila. In the first Complaint[4] for collection of money and damages, entitled *Republic of the Philippines, represented by the Bureau of Customs v. Chiat Sing Cardboard Inc. (defendant and third party plaintiff) v. Filstar Textile Industrial Corporation, Faustino T. Chingkoe (third party defendants)* and docketed as Civil Case No. 02-102612, the Republic alleged that Chiat Sing Cardboard

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[1] *Rollo*, pp. 25-33. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Bienvenido L. Reyes and Vicente Q. Roxas.

[2] Id. at 35-37.

[3] Penned by Judge Romulo A. Lopez.

[4] *Rollo*, pp. 95-97.

Inc. (Chiat Sing), a corporation that imports goods to the Philippines, secured in 1997 fake and spurious tax credit certificates from Filstar Textile Industrial Corporation (Filstar), amounting to six million seventy-six thousand two hundred forty-six pesos (PhP 6,076,246). It claimed that Chiat Sing utilized the fraudulently-acquired tax credit certificates to settle its customs duties and taxes on its importations. BOC initially allowed the use of the said tax credit certificates, but after investigation, discovered that the same were fake and spurious. Despite due demand, Chiat Sing failed and refused to pay the BOC the amount of the tax credit certificates, exclusive of penalties, charges, and interest.

Along with its Answer,[5] Chiat Sing, with leave of court,[6] filed a Third-Party Complaint against Filstar. It claimed that it acquired the tax credit certificates from Filstar for valuable consideration, and that Filstar represented to it that the subject tax credit certificates are good, valid, and genuine.

Meanwhile, in the second Complaint, entitled *Republic of the Philippines, represented by the Bureau of Customs v. Filstar Textile Industrial Corporation* and docketed as Civil Case No. 02-102634, the Republic alleged that in the years 1992-1998, defendant Filstar fraudulently secured 20 tax credit certificates amounting to fifty-three million six hundred fifty-four thousand six hundred seventy-seven pesos (PhP 53,654,677). Thereafter, Filstar made various importations, using the tax credit certificates to pay the corresponding customs duties and taxes. Later, BOC discovered the fact that they were fraudulently secured; thus, the Republic claimed, the customs duties and tax liability of Filstar remained unpaid.[7]

The Complaint was amended to include Dominador S. Garcia, Amalia Anunciacion, Jose G. Pena, Grace T. Chingkoe, Napoleon Viray, Felix T. Chingkoe, Faustino Chingkoe, and Gloria Chingkoe as party defendants. Later, however, pursuant to an Order of the trial court, the case against Felix Chingkoe was dismissed.[8]

After an Order[9] of consolidation was issued on June 23, 2003, the two cases were jointly heard before the RTC, initially by Branch 40, Manila RTC,[10] but after the presiding judge there inhibited from the case, they were re-raffled to Branch 34, Manila RTC.

Pursuant to a Notice of Mediation Hearing sent to the parties on October 17, 2005,[11] the cases were referred to the Philippine Mediation

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[5] Id. at 103-108.
[6] Id. at 109.
[7] Id. at 27.
[8] Id.
[9] Issued by Judge Antonio M. Eugenio, Jr.
[10] *Rollo*, pp. 164-165.
[11] Id. at 166.

Center (PMC) for mandatory mediation.[12] The pre-trial for the consolidated cases was initially set on January 9, 2006, but come said date, the report of the mediation has yet to be submitted; hence, on the motion of the counsel of defendant Chiat Sing, the pre-trial was canceled and rescheduled to February 15, 2006.[13]

On February 15, 2006, the PMC reported that the proceedings are still continuing; thus, the trial court, on motion of the same counsel for Chiat Sing, moved for the re-setting of the pre-trial to March 17, 2006.[14] Unfortunately, the mediation proceedings proved to be uneventful, as no settlement or compromise was agreed upon by the parties.

During the March 17, 2006 pre-trial setting, the Office of the Solicitor General (OSG), representing the Republic, failed to appear. The counsel for defendant Filstar prayed for a period of 10 days within which to submit his motion or manifestation regarding the plaintiff's pre-trial brief. The trial court granted the motion, and again ordered a postponement of the pre-trial to April 19, 2006.[15]

Come the April 19, 2006 hearing, despite having received a copy of the March 17, 2006 Order, the OSG again failed to appear. It also failed to submit its comment. Thus, counsels for the defendants Filstar, Chiat Sing, and Chingkoe moved that plaintiff be declared non-suited. Meanwhile, the counsel for BOC requested for an update of their case. In its Order[16] on the same date, the trial court warned the plaintiffs Republic and BOC that if no comment is submitted and if they fail to appear during the pre-trial set on May 25, 2006, the court will be constrained to go along with the motion for the dismissal of the case.

The scheduled May 25, 2006 hearing, however, did not push through, since the trial court judge went on official leave. The pre-trial was again reset to June 30, 2006.

During the June 30, 2006 pre-trial conference, the OSG again failed to attend. A certain Atty. Bautista Corpin, Jr. (Atty. Corpin Jr.), appearing on behalf of BOC, was present, but was not prepared for pre-trial. He merely manifested that the BOC failed to receive the notice on time, and moved for another re-setting of the pre-trial, on the condition that if either or both lawyers from the BOC and OSG fail to appear, the court may be constrained to dismiss the abovementioned cases of the BOC for failure to prosecute.[17] Meanwhile, counsels for defendants Chiat Sing, Filstar, and third-party defendants Faustino T. Chingkoe and Gloria C. Chingkoe, who were all present during the pre-trial, moved for the dismissal of the case on the

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[12] RULES OF COURT, Rule 18, Sec. 2(a).
[13] *Rollo*, p. 167.
[14] Id. at 168.
[15] Id. at 169-170.
[16] Id. at 171-172.
[17] Id. at 181.

ground of respondent's failure to prosecute. The trial court judge issued an Order[18] resetting the pre-trial to July 14, 2006.

At the hearing conducted on July 14, 2006, the respective counsels of the defendants were present. Notwithstanding the warning of the judge given during the previous hearing, that their failure to appear will result in the dismissal of the cases, neither the OSG nor the BOC attended the hearing. Thus, as moved anew by the respective counsels of the three defendants, the trial court issued an Order[19] dismissing the case, which reads:

> As prayed for, the charge of the Republic of the Philippines against Chiat Sing Cardboard Incorporation and the Third Party complaint of Chiat Sing Cardboard Inc., against Textile Industrial Corporation, Faustino Chingkoe and Gloria Chingkoe in Civil Case No. 02-102612 and the charge of the Republic of the Philippines against Filstar Industrial Corporation, Faustino Chingkoe and Gloria Chingkoe in Civil Case No. 02-102634 are hereby dismissed.[20]

The motion for reconsideration of the July 14, 2006 Order was likewise denied by the RTC on August 31, 2007.[21] As recourse, respondents filed a Petition for Certiorari under Rule 65 before the CA, alleging that the trial court judge acted with grave abuse of discretion in dismissing the two cases.

In its Decision dated April 30, 2008, the CA granted the petition and remanded the case to the RTC for further proceedings. In reversing the RTC Order, the CA ruled that the case, being a collection case involving a huge amount of tax collectibles, should not be taken lightly. It also stated that it would be the height of injustice if the Republic is deprived of due process and fair play. Finally, it took "judicial notice of the fact that the collection of customs duties and taxes is a matter imbued with public interest, taxes being the lifeblood of the government and what we pay for civilized society."[22] The CA said:

> We view that the swiftness employed by the Court *a quo* in dismissing the case without first taking a thoughtful and judicious look into whether or not there is good reason to delve into the merits of the instant case by giving the parties an equal opportunity to be hard and submit evidence [in] support of their respective claims, was a display of grave abuse of discretion in a manner that is capricious, arbitrary and in a whimsical exercise of power – the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions, thus *certiorari* is necessarily warranted under the premises.[23]

The CA, thus, disposed of the case in this manner:

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[18] Id. at 180.
[19] Id. at 47.
[20] Records, Vol. 3, p. 277.
[21] *Rollo*, p. 49.
[22] Id. at 31.
[23] Id. at 32.

> **WHEREFORE**, premises considered, the instant petition is **GRANTED.** The Court *a quo*'s Orders dated 14 July 2006 and 31 August 2007, are hereby REVOKED and SET ASIDE and a new one rendered ordering the **REMAND** of this case to the Court *a quo* for further proceedings. The Bureau of Customs, through the Office of the Solicitor General (OSG), is hereby directed to give this case its **utmost and preferential attention**.[24]

In a Resolution dated June 27, 2008, the CA denied the separate motions for reconsideration filed by private respondents Faustino T. Chingkoe and Gloria Chingkoe as well as Filstar Textile Industrial Corporation.

Thus, the present recourse.

Issues

Petitioners posit:

> Whether the Honorable Court of Appeals committed a reversible error when it granted the petition for certiorari and revoked and set aside the order of dismissal of the RTC considering that:
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> 1. The extraordinary writ of certiorari is not available in the instant case as an appeal from the order of dismissal as a plain, speedy and adequate remedy available to the respondent;
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> 2. The dismissal of the complaints below for the repeated failure of the respondent to appear during the pre-trial and for its failure to prosecute for an unreasonable length of time despite the stern warning of the RTC is not a dismissal on mere technical grounds; and
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> 3. The dismissal of the cases with prejudice was not attended with grave abuse of discretion on the part of the RTC.

Petitioners argue that the CA committed reversible error in granting the Petition for Certiorari, because such extraordinary writ is unavailing in this case. They posit that contrary to the position of respondent, an ordinary appeal from the order of dismissal is the proper remedy that it should have taken. Since the dismissal is due to the failure of respondent to appear at the pre-trial hearing, petitioners add, the dismissal should be deemed an adjudication on the merits, unless otherwise stated in the order.[25]

Second, petitioner argue that the trial court properly dismissed the cases for the failure of the plaintiff *a quo*, respondent herein, to attend the pre-trial.

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[24] Id. at 33.
[25] Id. at 9-10.

The Court's Ruling

The petition is meritorious.

The remedy of certiorari does not lie to question the RTC Order of dismissal

Respondent's Petition for Certiorari filed before the CA was not the proper remedy against the assailed Order of the RTC. Pursuant to Rule 65 of the Rules of Court, a special civil action for certiorari could only be availed of when a tribunal "acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of [its] judgment as to be said to be equivalent to lack of jurisdiction"[26] or when it acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law.[27]

It is settled that the Rules precludes recourse to the special civil action of certiorari if appeal by way of a Petition for Review is available, as the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[28]

Here, respondent cannot plausibly claim that there is no plain, speedy, and adequate remedy available to it to question the dismissal Order of the trial court. The RTC Order does not fall into any of the exceptions under Section 1, Rule 41, where appeal is not available as a remedy. It is clear from the tenor of the RTC's July 14, 2006 Order that it partakes of the nature of a final adjudication, as it fully disposed of the cases by dismissing them. In fine, there remains no other issue for the trial court to decide anent the said cases. The proper remedy, therefore, would have been the filing of a Notice of Appeal under Rule 41 of the Rules of Court. Such remedy is the plain, speedy, and adequate recourse under the law, and not a Petition for Certiorari under Rule 65, as respondent here filed before the CA.

A petition for certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. When an appeal is available, certiorari will not prosper, even if the basis is grave abuse of discretion.[29] The RTC Order subject of the petition was a final judgment which disposed of the case on the merits; hence, an ordinary appeal was the proper remedy.

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[26] *Nepomuceno v. Court of Appeals*, G.R. No. 126405, February 25, 1999, 303 SCRA 679, 682; citations omitted.

[27] *Equitable PCI Bank, Inc. v. DNG Realty and Development Corporation*, G.R. No. 168672, August 9, 2010, 627 SCRA 125, 135.

[28] *Rigor v. Tenth Division of the Court of Appeals*, G.R. No. 167400, June 30, 2006, 494 SCRA 375, 381-382.

[29] *Catly v. Navarro*, G.R. No. 167239, May 5, 2010, 620 SCRA 151, 193.

In any case, the rule is settled in *Mondonedo v. Court of Appeals*,[30] where We said:

> The Court finds no reversible error in the said Resolutions of the Court of Appeals. Well-settled is the rule that a dismissal for failure to appear at the pre-trial hearing is deemed an adjudication on the merits, unless otherwise stated in the order.
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> For nonappearance at the pre-trial, a plaintiff may be non-suited and a dismissal of the complaint for failure to prosecute has the effect of an adjudication upon the merits unless otherwise provided by the trial court.
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> And the remedy of a plaintiff declared non-suited is to appeal from the order of dismissal, the same being a final resolution of the case (Regalado, *Remedial Law Compendium*, 1988 ed., p. 185). Further, if a motion for reconsideration had been filed by the plaintiff but was denied, appeal lies from both orders (*ibid*.). And where appeal is the proper remedy, *certiorari* will not lie. (Citations omitted.)

Respondent laments that the questioned RTC Order did not specify whether the dismissal is with prejudice or not, putting it in a precarious situation of what legal actions to take upon its receipt. This misgiving, however, stems from a misreading of the Rules. Rule 18, Sec. 5 of the Rules of Court clearly states:

> Sec. 5. *Effect of failure to appear.* – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. **The dismissal shall be with prejudice, unless otherwise ordered by the court**. x x x (Emphasis supplied.)

The rule is clear enough that an order of dismissal based on failure to appear at pre-trial is with prejudice, unless the order itself states otherwise. The questioned Order of the trial court did not specify that the dismissal is without prejudice. There should be no cause for confusion, and the trial court is not required to explicitly state that the dismissal is with prejudice. The respondent is not then left without a remedy, since the Rules itself construes the dismissal to be with prejudice. It should be considered as adjudication on the merits of the case, where the proper remedy is an appeal under Rule 41. Regrettably, the respondent chose the wrong mode of judicial review. In not dismissing the petition for certiorari outright, and in not ruling that such remedy is the wrong mode of judicial review, the CA committed grave and reversible error.

Neither is this issue a novel one. In *Corpuz v. Citibank, N.A.*,[31] this Court had already ruled that the proper remedy for an order of dismissal under the aforequoted Sec. 5, Rule 18 of the Rules of Court is to file an appeal. As in the case at bar, the plaintiffs in that case filed a petition for

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[30] G.R. No. 113349, January 18, 1996, 252 SCRA 28, 30.
[31] G.R. Nos. 175677 & 177133, July 31, 2009, 594 SCRA 632, 640.

certiorari assailing the order of dismissal. Ruling that it is not the proper remedy, this Court said:

> Section 5, of Rule 18 provides that the dismissal of an action due to the plaintiff's failure to appear at the pre-trial shall be with prejudice, unless otherwise ordered by the court. In this case, the trial court deemed the plaintiffs-herein spouses as non-suited and ordered the dismissal of their Complaint. As the dismissal was a final order, the proper remedy was to file an ordinary appeal and not a petition for certiorari. The spouses' petition for certiorari was thus properly dismissed by the appellate court.

The OSG should have known better, and filed a Notice of Appeal under Rule 41, instead of a petition for certiorari under Rule 65. Its failure to file the proper recourse renders its petition dismissible, as it fails to allege sufficient grounds for the granting of a writ of certiorari. The fact that the CA overlooked this constitutes a reversible error on its part.

That the case involves the issuance of allegedly fraudulently secured tax credit certificates, and not an ordinary action for collection of money, is of no moment. This fact alone does not exempt respondent from complying with the rules of procedure, including the rules on appeal. Neither can respondent invoke the rule on technicalities yielding to the paramount interest of the nation, as the facts and circumstances of this case do not warrant such relaxation.

Dismissal due to the fault of respondent

Even going into the merits of the case, however, We find the trial court's dismissal of the case to be in order. As it were, the trial court amply gave respondent sufficient notice and opportunity to attend the pre-trial conference, but despite this, it neglected its duty to prosecute its case and attend the scheduled pre-trial hearings. Hence, the trial court cannot be faulted for dismissing the case.

This Court finds that the dismissal of the case by the trial court was due to the fault and negligence of respondent. There is clear negligence and laxity on the part of both the BOC and OSG in handling this case on behalf of the Republic. Despite several re-settings of the hearing, either or both counsels failed to attend the pre-trial conference, without giving a justifiably acceptable explanation of their absence. This utter neglect of its duty to attend the scheduled hearings is what led the trial court to ultimately dismiss the cases. In finding that the dismissal by the trial court is tainted with grave abuse of discretion, the CA committed reversible error.

The records bear out that the pre-trial conference has been reset for six times, for various reasons. It was initially set on February 16, 2006, but due to the PMC Report that the mediation proceedings are still continuing, the hearing was canceled.[32] In this first setting, neither BOC nor the OSG was

[32] Records, Vol. 2, p. 232.

present. The case was then set for hearing on March 17, 2006. However, the scheduled pre-trial conference again did not push through, due to the motion of the counsel for Filstar praying for time to submit his motion/manifestation regarding the Republic's pre-trial brief.[33] Again, during this setting, neither the BOC nor the OSG was present.

The pre-trial conference was reset for a third time to April 19, 2006. During this setting, pre-trial again did not push through, because of a pending Motion to Dismiss due to failure to prosecute filed by Filstar.[34] For the third time, there was no appearance on behalf of the Republic. The pre-trial conference was then reset to May 9, 2006. The hearing did not push through, however, because the presiding judge was on leave at the time.[35] Hence, the setting was transferred to June 30, 2006.

Come June 30, 2006, an unprepared Atty. Corpin, Jr. appeared on behalf of the BOC, and he had no necessary authority from BOC to represent it as its counsel. He manifested that they failed to receive the notice of hearing on time, and moved for another chance, "on the condition that if they will not be appearing, either or both lawyers from the Bureau of Customs or Office of the Solicitor General, the court [may be] constrained to dismiss all the above cases of the Bureau of Customs for failure to prosecute for an unreasonable length of time."[36] On the other hand, the BOC again failed to send a representative. The court again had to cancel the hearing and reset it, this time to July 14, 2006.

During the July 14, 2006 hearing, the counsels for the defendants were present. They were asked by the court to wait for the OSG until 9:45 a.m., considering that the OSG had already received the notice of hearing. However, neither the BOC nor the OSG arrived. The counsels for the defendants reiterated their motion, citing the warning of the trial court during the June 30, 2006 hearing that if no representative will appear on behalf of the Republic, all the cases will be dismissed. It was due to this repeated absence on the part of the BOC and the OSG that the trial court issued the Order dated July 14, 2006 dismissing the cases filed by the Republic.

It is fairly obvious that the trial court gave the Republic, through the OSG and the BOC, every opportunity to be present during the pre-trial conference. The hearings had to be reset six times due to various reasons, but not once was the OSG and BOC properly represented. Too, not once did the OSG and BOC offer a reasonable explanation for their absence during the hearings. Despite the express warning by the trial court during the penultimate setting on June 30, 2006, the OSG and BOC still failed to attend the next scheduled setting.

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[33] Id. at 237-238.
[34] Id. at 244.
[35] Id. at 245.
[36] Id. at 269-270, RTC Order dated June 30, 2006.

Despite the leeway and opportunity given by the trial court, it seemed that the OSG and BOC did not accord proper importance to the pre-trial conference. Pre-trial, to stress, is way more than simple marking of evidence. Hence, it should not be ignored or neglected, as the counsels for respondent had. In *Tolentino v. Laurel*,[37] this Court has this to say on the matter of importance of pre-trial:

> In *The Philippine American Life & General Insurance Company v. Enario,* the Court held that pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. The Court said that:
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> > The importance of pre-trial in civil actions cannot be overemphasized. In *Balatico v. Rodriguez*, the Court, citing *Tiu v. Middleton*, delved on the significance of pre-trial, thus:
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> > Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century," pre-trial seeks to achieve the following:
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> > (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
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> > (b) The simplification of the issues;
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> > (c) The necessity or desirability of amendments to the pleadings;
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> > (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
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> > (e) The limitation of the number of witnesses;
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> > (f) The advisability of a preliminary reference of issues to a commissioner;
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> > (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
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> > (h) The advisability or necessity of suspending the proceedings; and
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> > (i) Such other matters as may aid in the prompt disposition of the action.
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> Petitioners' repeated failure to appear at the pre-trial amounted to a failure to comply with the Rules and their non-presentation of evidence before the trial court was essentially due to their fault. (Citations omitted.)

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[37] G.R. No. 181368, February 22, 2012, 666 SCRA 561, 570-571.

The inevitable conclusion in this case is that the trial court was merely following the letter of Sec. 5, Rule 18 of the Rules of Court in dismissing the case. Thus, the CA committed grave and reversible error in nullifying the Order of dismissal. The trial court had every reason to dismiss the case, not only due to the Motion to Dismiss filed by the defendants, but because the Rules of Court itself says so.

In view, however, of the huge amount of tax collectibles involved, and considering that taxes are the "lifeblood of the government," the dismissal of the case should be without prejudice.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The April 30, 2008 Decision and June 27, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 101394 are hereby **REVERSED** and **SET ASIDE**. The July 14, 2006 Order of the RTC, Branch 34 in Manila, in Civil Case Nos. 02-102612 and 02-102634, is hereby **REINSTATED** with the **MODIFICATION** that the dismissal of the two civil cases shall be **WITHOUT PREJUDICE**.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice