

SECOND DIVISION

[G.R. No. 146658, October 28, 2002]

**MANUEL D. MELOTINDOS, PETITIONER, VS. MELECIO TOBIAS,
REPRESENTED BY JOSEFINA PINEDA, RESPONDENT.**

DECISION

BELLOSILLO, J.:

EIGHTY-SEVEN - year old petitioner, Atty. Manuel D. Melotindos, was the lessee of the ground floor of a house at No. 577 Julio Nakpil Street in Malate, Manila. He had been renting the place since 1953 on a month-to-month basis from its owner, respondent Melecio Tobias, who was then residing in Canada.

Sometime in the last quarter of 1995, owing to his sickly mother who needed constant medical attention and filial care, respondent demanded from petitioner either to pay an increased rate of monthly rentals or else to vacate the place so he and his mother could use the house during her regular medical check-up in Manila. For two (2) years nothing came out of the demand to vacate, hence, in 1997 respondent insisted upon raising the rental fee once again.

On 1 June 1998 respondent asked petitioner to restore the premises to him for some essential repairs of its dilapidated structure. This time he did not offer petitioner anymore the option to pay higher rentals. The renovation of the house was commenced but had to stop midway because petitioner refused to vacate the portion he was occupying and worse he neglected to pay for the lease for four (4) months from May to August 1998. Hence for the second time, or on 19 October 1998, respondent demanded the payment of the rental arrears as well as the restoration of the house to him. On 3 February 1999, since petitioner was insisting on keeping possession of the house but did not pay the rental for January 1999, although he had settled the arrears of four (4) months, respondent was compelled to file a complaint for ejectment docketed as Civil Case No. 162325-CV.

The MeTC-Br. 28 of Manila decided the ejectment complaint in favor of respondent and ordered petitioner to vacate the leased premises and to pay rental arrears in the amount of P60,000.00 as of December 1998 and P6,000.00 for every month thereafter until he finally restored possession thereof to respondent plus attorney's fees of P15,000.00 and the costs of suit.^[1] In Civil Case No. 99-94798 the RTC-Br. 30 of Manila upheld *in toto* the MeTC *Decision* and denied the subsequent motion for reconsideration for failure to set the date of hearing thereof not later than ten (10) days from its filing.^[2] Petitioner's recourse to the Court of Appeals by petition for review docketed as CA-G.R. SP No. 58420 was also unsuccessful since the assailed *Decision* was affirmed in its entirety as the ensuing motion for reconsideration thereof was denied for late filing, i.e., the motion was filed only on 30 October 2000 beyond the fifteen (15) - day period from his receipt of the CA *Decision* on 9 October 2000 as shown by the registry return receipt.^[3]

Petitioner filed the instant petition for review asseverating that the order to eject him from the leased premises was illegal because he was always up to date in paying the rental fee; that it was the obligation of the trial court to extend his lease by five (5) more years citing Art. 1687 of *The Civil Code*; and that the filing of his motion for reconsideration was not late because his *actual* receipt of the assailed CA *Decision* was 16 October 2000 and not the date "9 October 2000" which appears on the registry return receipt.

On 22 August 2001, after respondent filed his *Comment*, we required petitioner to file his *Reply* thereto, but instead of filing the required pleading he moved for the issuance of a temporary restraining order to enjoin the enforcement of the MeTC *Decision* evicting him from the rented house. On 28 November 2001 we denied the motion for lack of merit and reiterated our resolution requiring him to file the *Reply*. On 1 April 2002, when it was evident that petitioner had no intention of filing the *Reply*, we required him to show cause why no disciplinary measure should be taken against him for failure to comply with the 22 August 2001 *Resolution* of this Court. On 27 May 2002 petitioner filed a *Manifestation* seeking compassion from this Court for his lapses and prayed that the instant petition be "*dismissed*" without further arguments since it was already moot and academic as a result of his alleged ejection from the house subject of this case.

To begin with, this Court cannot consider the instant petition for review a done proceeding simply because petitioner has asked for its denial allegedly for having become moot and academic. His present recourse is actually a withdrawal of the appeal which we stress does not happen as a matter of right after a responsive pleading has been filed. Whether an appeal should proceed or not is always a matter of discretion for this Court, and it is not until we have resolved to approve the withdrawal that an appellant is freed from our jurisdiction and excused from filing pleadings otherwise required by the Rules of Court or our resolutions.^[4] Hence, in this case, petitioner is in no position to determine for himself that the instant petition has become pointless and for this reason disregard on his own volition the previous resolutions of this Court requiring his *Reply* to respondent's *Comment*. If not for the old age and alleged state of ill health of petitioner, the defiant action exhibited by him would have meted a penalty for being outright contempt of court.

On the merits, we find the assailed *Decision* of the Court of Appeals already final and executory when it was sought to be reconsidered in the appellate court and when it was brought to our attention by means of the instant petition. The CA record clearly proves that petitioner received the CA *Decision* on 9 October 2000 as shown by the registry return receipt and that he filed his motion for reconsideration thereof only on 30 October 2000. The motion was obviously filed beyond the fifteen (15) - day reglementary period and did not toll the judgment from becoming final and executory.^[5] As such the assailed *Decision* is past appellate review and constitutes *res judicata* as to every matter offered and received in the proceedings below as well as to any other matter admissible therein and which might have been offered for that purpose.^[6]

Contrary to petitioner's argument, it was not necessary for the Court of Appeals to secure a certification from the postmaster stating with certainty the identity and authority of the person who claimed and received the CA *Decision* to determine the timeliness of the motion for reconsideration. Our rules of procedure clearly accept the efficacy of the return receipt as proof of service for practical purposes since it