

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

**THE HON'BLE MR. JUSTICE R.PONGIAPPAN**

Civil Revision Petition (NPD) No.4874 of 2014  
and  
M.P.No.1 of 2014

K. Syed Salig

Petitioner

Vs

M. Palanisamy

Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreeal order dated 07.10.2014 passed in I.A No.591 of 2013 in O.S.No.194 of 2011, on the file of II Additional District Court, Tiruppur.

For Petitioner : Mr.K.Ramu

For Respondent : Mr.V.V.Sathya  
for Mr.M.V.Venkateshan

**ORDER**

The petitioner/defendant has filed the present Civil Revision Petition as against the order dated 07.10.2014 passed in I.A No.591 of 2013 in O.S.No.194 of 2011, by the learned II Additional District Judge, Tiruppur.

2. The trial Court while dismissing the petition in I.A No.591 of 2013 in O.S.No.194 of 2011 has observed that the petitioner had not watched the trial proceedings properly with utmost care and the reason for delay of 343 days has not been properly explained with sufficient cause.

3. Being dissatisfied with the order passed by the trial Court in I.A No.591 of 2013 in O.S.No.194 of 2011 in dismissing the application praying to condone the delay of 343 days in filing the application to set aside the exparte decree, the petitioner/defendant has filed the present Civil Revision Petition before this Court.

4. According to the learned counsel for the revision petitioner, the order dated 07.10.2014 passed by the learned II Additional District Judge, Tiruppur is against the law, weightage of evidence and all probabilities of the case. It is the contention of the learned counsel for the petitioner/defendant that the trial Court has failed to appreciate the important fact that the transfer of case from the District Court, Coimbatore to the District Court, Tiruppur has not been intimated to the concerned parties. Further, only after receiving notice from the execution proceedings filed by the respondent/plaintiff in EP.No.26 of 2012, he came to know about the transfer of OS No.194 of 2011.

5. The learned counsel for the petitioner/defendant further submits that he has filed the suit as against the respondents/plaintiffs for the relief of specific performance and after the exparte decree, the portion of sale consideration was deposited in the trial Court.

6. The main contention of the learned counsel for the respondent is that subsequent to the constitution of the District Court, Tiruppur, the details of transfer of cases are published through Notice Board kept in the court, in which the suit was filed and thereafter the case was transferred to the District Court, Tiruppur. So, without care and vigil, the petitioner all along kept quite and only after filing the execution proceedings, he has filed an application before the trial Court to set aside the exparte decree. In this aspect, order passed by the learned II Additional District Judge, Tiruppur is well considered one and the petitioner has not projected any sufficient cause for condoning the delay.

7. On going through the affidavit filed by the petitioner along with the petition filed in IA.No.591 of 2013, he has stated that he has not aware of the details of transfer of the suit from District Court, Coimbatore to District Court, Tiruppur. As per his Advocate's advice, the petitioner was waiting to receive the intimation about the transfer of the above case from his counsel. But no such intimation was received from the Advocate. But, later, he was served with notice sent in EP.No.26 of 2012, which was filed

based on the decree passed in OS No. 194 of 2011. On receipt of such notice only, he came to know about the details of transfer of suit. Though the petitioner has stated the reason for delay as above, he has not produced any relevant documents to show his bonafideness. As per the averment made in the affidavit, he was very well aware that the suit instituted before the District Court, Coimbatore has to be transferred to the District Court, Tiruppur, after constitution of the District Court at Tiruppur. In this occasion, it is to be noted that after celebrating the inaugural function, the II Additional District Court, Tiruppur was constituted. So the reason stated by the petitioner cannot be accepted as the petitioner has approached the trial Court with genuine reason.

8. However, considering the other facts and circumstances of the case, it is to be noted that the petitioner has filed the suit for the relief of specific performance. In the plaint, he alternatively prayed for the relief of refund of advance amount. According to him, at the time of entering into the sale agreement, on 08.05.2019, he has paid Rs.15,00,000/- as advance amount. Only based on the said sale agreement, he has filed the suit for specific performance. In the said circumstances, if the order passed in IA No.591 of 2013 in OS No.194 of 2011 by the II Additional District Court is confirmed, the petitioner losses his right to recover Rs.15,00,000/-, which was paid to the respondent at the time of sale agreement. For considering these aspects, it is necessary to conduct

elaborate trial. But the learned Judge while at the time of deciding the issue, merely observed that the petitioner was not careful and vigil and the delay required to be condoned is not reasonable and ultimately dismissed the application. Taking into consideration of the above facts and circumstances of the case, it is crystal clear that the II Additional District Judge has not exercised his judicial discretion in dismissing the application. In this occasion, it is useful and necessary to see the judgment of our Honourable Apex Court reported in 2019 (7) SCC 359, wherein it was held as follows:-

*“Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits”.*

Hence, applying the said principle in the case in our hand, this Court is inclined to condone the delay of 343 days in filing the application to set aside the exparte decree. However for the lapse committed by the petitioner, it is necessary to impose some cost on the petitioner. Hence, the petitioner is directed to pay a cost of Rs.10,000/- to “Adyar Cancer Institute, Gandhi Nagar, Adyar, Chennai”, within two weeks from the date of receipt of copy of this order.

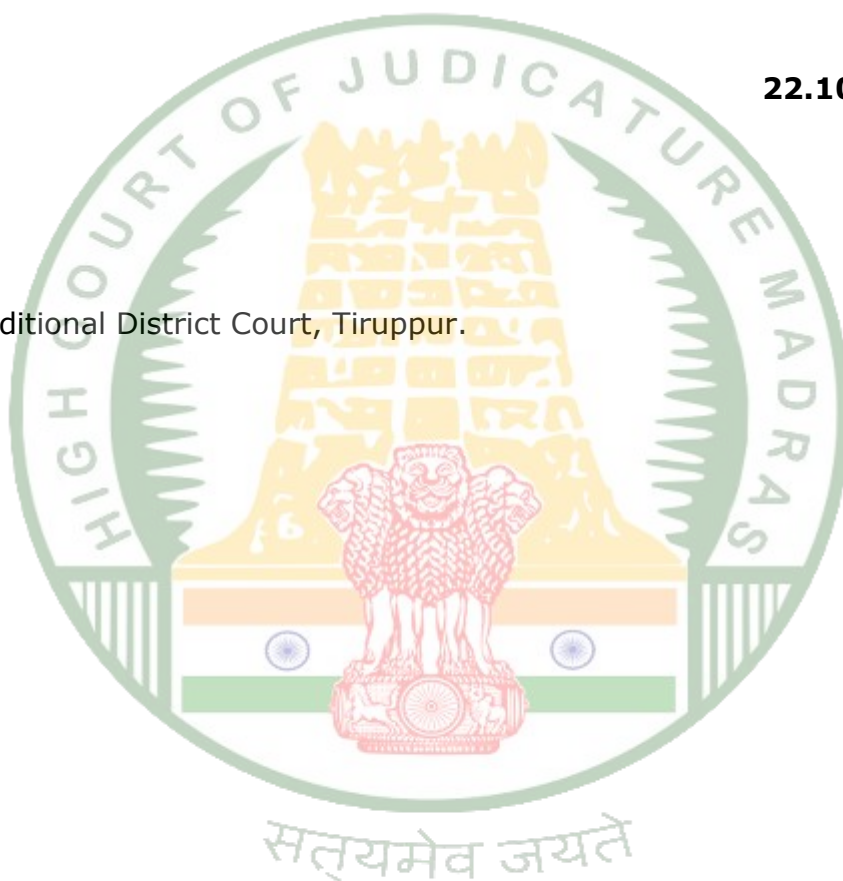
9. Accordingly, the Civil Revision Petition is allowed. Cost of Rs.10,000/- imposed on the petitioner. Consequently, connected miscellaneous petition is closed.

**22.10.2019**

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**To**

The II Additional District Court, Tiruppur.



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**R.PONGIAPPAN, J.,**

vrn



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