

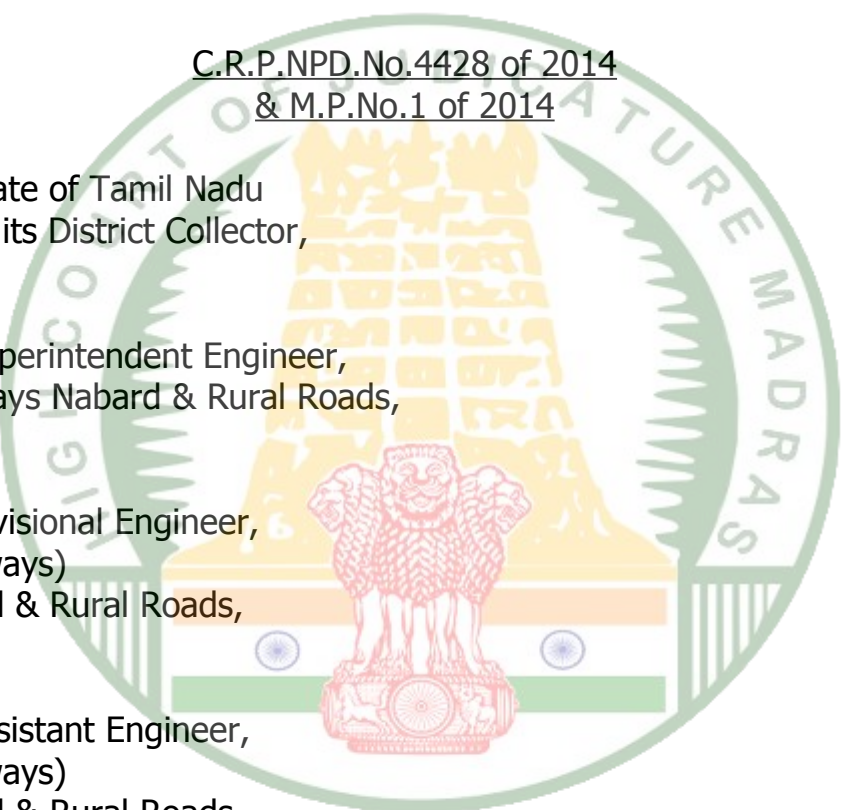
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.4428 of 2014  
& M.P.No.1 of 2014

- 
1. The State of Tamil Nadu  
rep by its District Collector,  
Salem.
2. The Superintendent Engineer,  
Highways Nabard & Rural Roads,  
Salem.
3. The Divisional Engineer,  
(Highways)  
Nabard & Rural Roads,  
Salem.
4. The Assistant Engineer,  
(Highways)  
Nabard & Rural Roads,  
Sankari.
- सत्यमेव जयते .... Petitioners  
Vs

1. Lakshmi (Died)  
2. Dhomadaran  
3. Sridaran  
4. Chandra  
5. Vijaya

.... Respondents

**PRAYER:** Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 28.04.2014 made in

I.A.No.27 of 2013 in unnumbered A.S. on the file of the Sub Court, Sankari, which filed against the judgment and decree dated 23.02.2012, passed in O.S.No.156 of 2007 on the file of the District Munsif Court, Sankari.

For Petitioners : Mr.N.Manikandan  
Government Advocate (CS)  
For Respondents  
For R1 : Died  
For R2 to R5 : Mr.P.Jagadeesan

**ORDER**

Aggrieved over the order dated 28.04.2014 passed in I.A.No.27 of 2013 in unnumbered A.S. filed on the file of the Subordinate Court, Sankari, which preferred as against the judgment dated 23.02.2012, made in O.S.No.156 of 2007 on the file of the District Munsif Court, Sankari, the petitioners, who are the defendants in the above referred suit filed the present Civil Revision Petition.

2. Before the trial Court, the respondents in this revision petition as the plaintiffs, filed a suit in O.S.No.156 of 2007 as against the revision petitioners and sought for the relief of mandatory injunction restoring the suit property in its original position by the petitioners at their costs. By the judgment and decree dated 23.02.2012, the learned District Munsif, Sankari, allowed the said suit in favour of the

respondents and decreed the suit as prayed for. Challenging the same, the petitioners herein did not file an appeal within the time stipulated under the Limitation Act. However, they wanted to challenge the said findings, for which, they have filed an application in I.A.No.27 of 2013, under Section 5 of Limitation Act and prayed to condone the delay of 388 days in filing an appeal suit as against the decree and judgment passed in O.S.No.156 of 2007.

3. In the affidavit filed in support of the application in I.A.No.27 of 2013, the petitioners have stated that their Advocate filed copy application for getting decree and judgment on 05.11.2012 and it was ready only on 17.11.2012 and thereafter delivered on 19.11.2012. Further stated that the appellants/petitioners, due to the heavy works in their office in implementing the State Government rural roads works in their block, they did not met and entrust the above matter to the Government Pleader attached with the Sub Court, Sankari, immediately, for filing an appeal.

4. The learned Subordinate Judge, Sankari, after affording an opportunity to either side, by an order dated 28.04.2014, dismissed the

application filed by the petitioners by stating that the petitioners have not projected sufficient cause for condoning the delay. In the impugned order, the learned Judge, specifically observed that the delay for each and every days, was not properly explained by the petitioners. Aggrieved over the said findings, the petitioners are before this Court with the present Civil Revision Petition.

5. Today when this petition is taken up for hearing, the learned counsels appearing on either side are present and made their respective submissions.

6. The learned Government Advocate appearing on behalf of the petitioners would contend that since the petitioners are the Government officials, they have heavy works to implement welfare measure of the public, and therefore they could not contact the Government Advocate attached with the Subordinate Court, Sankari, and give instructions for filing the appeal. He has further contended that originally, the suit has been filed in respect of the land in Survey No.420/1A to the extent of 0.07.5 hect. Subsequently, in the said Survey number, a part of the land measuring 0.0.03 hect, was acquired for laying road, in which

award has also been passed on 31.07.2017, and for the land acquired, the petitioners have paid the compensation fixed by the authority. In the said circumstances, challenging the judgment and decree dated 23.02.2012 passed in O.S.No.156 of 2007 is very much essential, since the above decree passed in favour of the respondents cannot be executed.

7. Per contra, the learned counsel appearing for the respondents would contend that in the affidavit filed by the petitioners before the Court below, it has been clearly stated that the copy application for getting judgment in O.S.No.156 of 2007 was filed with the delay of nine months. It shows that the petitioner acted with negligent manner in filing an appeal and thereby the reasons stated by the petitioners to condone the delay, cannot be entertained. He has relied upon our Hon'ble Apex Court judgment reported in **2012(2) CTC 240** in the case of **Office of the Chief Post Master General & others Vs. Living Media India Ltd., & another** and also made a submission that only because of the reason that the parties are government officials, no leniency has been shown towards them.

8. The submissions made by the learned counsels on either side are considered.

9. In the judgement reported in **2012(2) CTC 240** in the case of **Office of the Chief Post Master General & others Vs. Living Media India Ltd., & another**, relied upon by the learned counsel appearing for the respondents, our Hon'ble Apex Court held as follows:-

*"13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no*

*proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."*

10. Applying the said principles with the case in our hands, it is true that in the affidavit filed by the petitioners, they have not stated any cogent reasons for condoning the delay. Whatever may be the works, since the petitioners are parties in the lower Court proceedings, it is their duty to watch the proceedings then and there and they are also having duty to file an appeal immediately, if any order is passed adversely against them. But the petitioners are acting in a lethargic manner in filing copy application as well as in filing the appeal.

11. In this case, the delay has been occurred due to the reason in filing copy application for getting the judgement alone. Further on going through the factual aspect of the case, the specific case of the petitioners is that after granting decree in favour of the respondents, a portion of the property, which is the subject matter of the suit, has been acquired by the Government as per the Land Acquisition Act.

According to them, for the land acquired, an award has been passed and also the amount fixed as compensation has also been deposited before the Tribunal. But the present suit has been filed for the entire extend of the land in Survey No.420/1A, situated at Avani Porur West village, Edappadi Taluk, Salem District. So in the said circumstances, it could not be possible for the Government to comply the order passed by the trial Court. On considering the subsequent events, it is necessary to file an appeal against the degree stands in favour of the respondents, for which the condonation of delay is very much necessary. However, since the petitioners have approached the appellate Court with a long delay, I am of the considered opinion that the said delay has to be compensated by way of imposing costs.

12. Accordingly, this Court is inclined to pass the following orders:-

(i) The order dated 28.04.2014 passed in I.A.No.27 of 2013 in unnumbered A.S., by the learned Subordinate Court, Sankari, is set aside, on condition that the petitioners shall pay a sum of Rs.5,000/- (Rupees five thousand only) as costs, to the respondents within a period of two weeks from the date of receipt of copy of this Order.

(ii) If the above said conditional order is complied by the petitioners, the learned Subordinate Judge, Sankari, is directed to number the appeal filed by the petitioners, if it is otherwise in order, as early as possible preferably within a period of one week from the date on which the cost was paid by the petitioners and dispose of the same in accordance with law.

13. With the above directions, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

03.10.2019

Internet : Yes / No  
Index : Yes / No  
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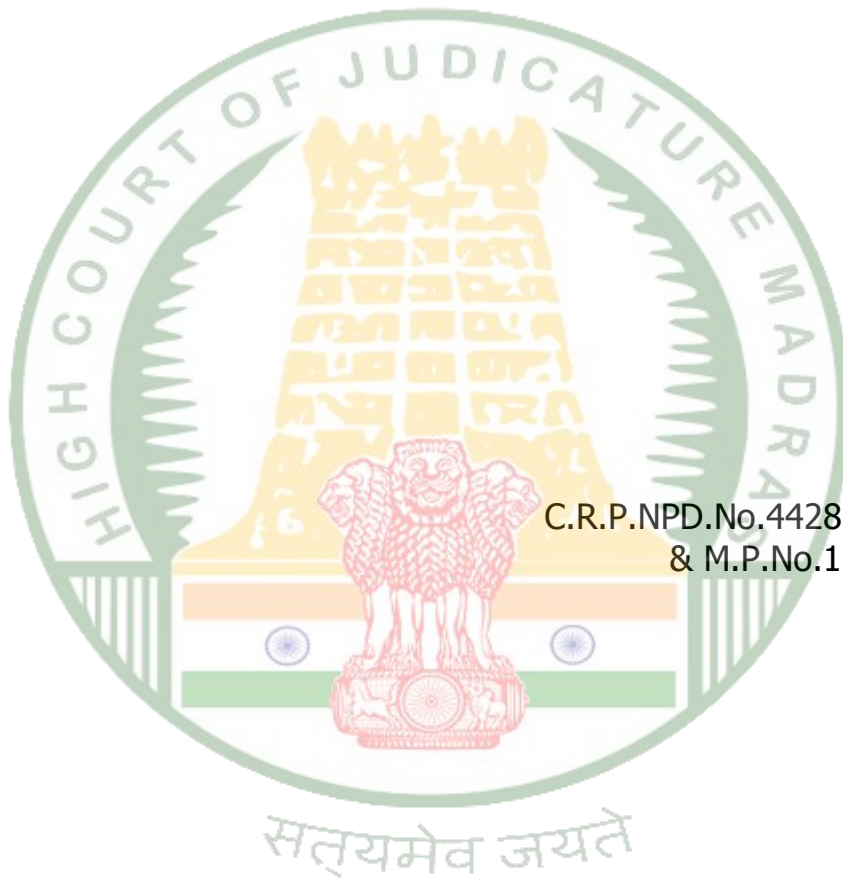
To

1. The Subordinate Court, Sankari.
2. The District Munsif Court, Sankari.

C.R.P.NPD.No.4428 of 2014

**R.PONGIAPPAN, J.**

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