



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 12.02.2026

Judgment pronounced on : 20.02.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.377 of 2026
& CMP.No.2150 of 2026

1.D.Kalpana
2.Sandhya

.. Petitioners

Vs.

R.M.Hemalatha

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the docket order passed in I.A.No.2 of 2025 in O.S.No.7497 of 2022 dated 08.12.2025 on the file of the XIX Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.A.Sundaravadhanan
for M/s.Karan & Uday

For Respondent : Mr.A.Umashankar

ORDER

The revision petition has been filed by the defendants to set aside the docket order dated 03.12.2025 in IA.No.2 of 2025 in OS.No. 7497 of 2022.



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2.At the time of moving the revision petition for admission, it was the case of the learned counsel for the petitioners, Mr.A.Sundaravadhanan, that the fair order has not even been uploaded and only in view of the urgency, the counsel was permitted to move the revision, based on the docket order passed in IA.No.2 of 2025. However, it is now fairly admitted by both the counsel that the detailed order has been uploaded and the same is available. Hence, I have proceeded to hear the learned counsel for the parties on the merits of the revision petition.

3.Mr.A.Sundaravadhanan, learned counsel for the petitioners would state that the suit has been filed by the respondent for recovery of possession and damages for use and occupation. An ex-parte decree was passed in the suit and in order to set aside the ex-parte decree, an application has been filed along with an application to condone the delay of 305 days in filing the application to set aside the ex-parte decree. The said application in IA.No.2 of 2025 has now been dismissed by the trial Court and it is challenging the said order dated 08.12.2025 that the present revision petition has been filed.

4.Mr.A.Sundaravadhanan, learned counsel for the revision petitioners would state that though pursuant to the decree, the Court Bailiff has also recorded delivery having been taken and handed over to the plaintiff, according



to the learned counsel, only paper delivery was effected and the petitioners continue to remain in physical possession. He would therefore state that a fair opportunity may be given to the petitioners to contest the decree on merits. He would further state that the petitioners had given satisfactory reasons, explaining the delay of 305 days and unfortunately, the trial Court, without considering the same and without adopting a liberal approach, has dismissed the condoned delay application on hyper-technical considerations. The learned counsel for the petitioners would further state that the petitioners would cooperate for expeditious disposal of the suit and the petitioners can also be put on terms as otherwise their valuable right to possession and interest in the immovable property would be lost forever.

5. Per contra, the learned counsel for the respondent / plaintiff, Mr.A.Umasankar, would state that the revision petition has become infructuous and even as early as on 07.01.2026, with the aid of police, the respondent/ plaintiff has taken possession through Court process and the same has also been recorded in the EP proceedings. He would further state that the petitioners have also suppressed the factum of a caveat having been filed while moving the above revision and suppressing the caveat, the petitioners have obtained an interim stay on 29.01.2026, as if the petitioners continue to be in physical possession, suppressing the factum of caveat as well.



6.The learned counsel for the respondent would further state that the respondent has been put in physical possession and the same is evidenced by Bailiff's reports dated 07.01.2026, which has also been recorded in the daily adjudications in E.P.No.1798 of 2024 on 02.02.2026. The learned counsel for the respondent would further state that the petitioners have not made out any cause, much less, sufficient cause and the trial Court has rightly dismissed the condone delay application by a well-considered order, which does not require any interference in revision.

7.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the impugned order, as well as the documents filed in support of the respective claims and contentions of both parties, by way of typed set of papers.

8.It is not in dispute that the petitioners suffered an ex-parte decree and they filed an application to set aside the ex-parte decree, along with an application under Section 5 of the Limitation Act, seeking condonation of 305 days in filing the application to set aside the ex-parte decree.

9.The case of the petitioners is that they were totally in dark and only when they received notice in the EP, they came to know about the ex-parte decree and they were not in a position to approach the advocate immediately to



file a set aside petition and hence, a delay of 305 days had occasioned. The application was resisted by the respondent by filing a detailed counter affidavit, stating that the petitioners had mortgaged the property. The property was mortgaged by one Manimaran, who failed to repay the mortgage money, which constrained the mortgagee to bring the property for sale through public auction, invoking Section 69 of the Transfer of Property Act.

10.Despite publication and notices sent to the petitioners, they did not come forward to clear their dues, excepting for filing a vexatious suit in OS.No.3852 of 2020 to stall the auction process. Pursuant to the auction, sale deed has also been registered in favour of the respondent and he has called upon the petitioners to vacate by issuing a notice on 24.03.2022. It is only thereafter that the suit has been filed for recovery of possession and damages.

11.It is the specific contention of the petitioners in their affidavit seeking condonation delay that the first petitioner suffered a stroke and therefore, she could not contact her counsel, when the suit was posted for cross examination on 06.08.2024 and subsequently, it resulted in the suit being decreed ex-parte on 19.09.2024. However, the petitioners have not produced any documents to substantiate the self-serving claim that the first petitioner suffered a stroke on the left side and was incapacitated from contacting the counsel.



12. In any event the second petitioner has not taken any diligent steps and though it is feebly claimed that the second petitioner was looking after the first petitioner and therefore both of them could not contact their counsel, the said version is clearly not believable. Even after the petitioners came to know of the ex-parte decree, having received notice in the execution petition also, they have been lethargic and have not contacted their counsel and they have approached the Court with a delay of 305 days. The trial Court has rightly found that the petitioners have not made out sufficient cause in explaining the delay of 305 days.

13. Further, it is not as if the petitioners were not even served with summons in the suit. They had engaged a counsel after having received summons and therefore, the petitioners had a duty to follow up the litigation slapped against them, especially the suit being one for recovery of possession from the petitioners. The petitioners have been casual and callous in their approach in defending the suit even before the trial Court, after having engaged a counsel and as already discussed, even after knowing about the ex-parte decree, even assuming that they did not know about it earlier, on receipt of notice in the execution petition also, they have not shown any due diligence in immediately filing the application to set aside the ex- parte decree. In view of the above, I do not find any merits in the revision. The trial Court has rightly



dismissed the application to condone the delay, the same does not want interference in the revision.

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14.In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

20.02.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

The XIX Additional Judge, City Civil Court, Chennai.



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P.B.BALAJI.J.

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Pre-delivery order made in
CRP.No.377 of 2026
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