BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.06.2026**

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(MD)No.787 of 2026

and

C.M.P.(MD)No.3631 of 2026

Sellammal (died)

Easuthasan (died)

1.Selvi

2.Annam

3.Mani

4.Thangam

5.Santhi

6.Muthukumar

7.Dinesh

8.Anisha ... Petitioners

vs.

Easuthasan ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 09.12.2025 passed by the learned Sub Court, Valliyur in I.A.No.2 of 2023 in O.S.No.4 of 2019, by allowing this Civil Revision Petition.

For Petitioners : Mr.K.Abiya

For Respondent : Mr.Selvin Abish
For Mr.S.Palani Velayutham

O R D E R

Heard Ms.K.Abiya for the Civil Revision Petitioners and Mr.Selvin Abish representing Mr.S.Palani Velayutham for the Respondents.

2. The Civil Revision Petitioners are the defendants in the suit. The Respondent is the plaintiff.

3. For the sake of convenience, the parties shall be referred to as per their ranks in the plaint.

4. It is the case of the plaintiff that one Muthu Pandi secured a loan for a sum of Rs.3,00,000/-and had executed a mortgage as security for the said transaction. The mortgage had been registered on 05.10.2009. As there were defaults in payment of mortgage, he is entitled to recover the principal amount of Rs.3,00,000/- together with interest at the rate of 18% per annum from 05.10.2009 till 06.01.2019, that is the date of presentation of the plaint. Seeking this relief, O.S.No.4 of 2019 came to be filed.

5. The defendants are the legal heirs of the mortgagor. They were served with the summons. The 5th defendant filed a detailed written statement. For the sake of understanding the scope of litigation, I am merely setting forth the stand of the defendants. According to them, Muthu Pandi, the mortgagor was regular in the payment of interest and so were the defendants. They pleaded that the entire interest and mortgage had been discharged. Yet, the mortgagee did not come forward to cancel the mortgage deed. It is the further case of the defendants that they approached the mortgagee/plaintiff to withdraw the suit and he also agreed to give appropriate instructions to the counsel. Consequently, they did not contest the suit further. This resulted in an ex-parte decree on 17.11.2021.

6. The defendants pleaded that they came to know that the plaintiff had pulled the wool over their eyes only when they were served with the petition for passing a final decree. Immediately thereafter, they engaged another counsel and filed an application to condone the delay of 362 days in filing the application to set aside the ex parte decree dated 17.11.2021. This application was numbered as I.A.No.2 of 2023.

7. The application was stoutly opposed by the plaintiff pleading that the reasons given forth in the affidavit are entirely false. He pleaded that there had been no such agreement between the parties to withdraw the suit. He also urged that it is an attempt to drag on the proceedings from 2009. The learned Trial Judge by the impugned order, dismissed the application. Hence, this revision.

8. Even when the revision came up for admission, I granted stay on the condition that the defendants deposit the principal amount of Rs.3,00,000/- to the credit of O.S.No.4 of 2019 on the file of the Subordinate Court, Valliyoor. I listed the matter for hearing on 21.04.2026. On that day, Ms.Abiya reported that a sum of Rs.3,00,000/- had been deposited. Recording compliance with the interim order, I granted stay of further proceedings. I then listed the matter today for final disposal.

9. I have carefully considered the submissions of both sides. I have gone through the records.

10. The narration of the dates shows that the ex-parte decree was passed on 17.11.2021. An application was filed to condone the

delay in filing an application to set aside the ex-parte decree on 15.11.2022. The learned Judge has calculated the delay from the date of the decree till the date of filing of the application. Consequently, he came to a conclusion that there is a delay of 362 days. Unfortunately, the learned Judge did not take note of the order passed by the Supreme Court in ***In re:Cognizance for extension of limitation, 2022 SCC Online SC 27*** By virtue of the said order, the Supreme Court, taking into consideration the onslaught faced by the country on account of the COVID-19 pandemic, suspended the operation of the Limitation Act from 15.03.2020 to 28.02.2022. The Court further directed that a party would be entitled to file an application within three months thereafter, without attracting the bar of limitation. If the aforesaid judgment is applied to the facts of the present case, the entire period from 17.11.2021 to 28.02.2022 should not have been taken into consideration by the Court. This is because, the operation of the Limitation Act itself stood suspended throughout the country during that period.

11. Apart from this, the plea of the defendants is that the 2nd defendant had passed away. When one loses a parent, a court cannot expect them not to suffer the sudden loss, but to rush to the court

and defend the mortgage suit which had been presented against them. This is apart from the plea of the defendants that they and the plaintiff had arrived at a compromise. Mr.Selvin Abish, appearing for the plaintiff, submits that no such compromise was ever arrived at between the parties.

12. In the light of the Limitation Act having been suspended and on account of the death of the defendants' mother, I am inclined to consider the revision.

13. The plea of Mr.Selvin Abish, appearing for the plaintiff, that the amounts had been advanced in the year 2019 and that he is still litigating for recovery of the same, is taken note of. The fact that the defendants had filed a written statement shows that it is not their intention to drag on the matter.

14. The principal amount to which the plaintiff is entitled has already been secured by virtue of the interim order. All that remains to be paid, if at all, in the event of a decree in the suit, is the interest. Calculated from the date of presentation of the plaint till today, the interest would be approximately Rs.1,26,000/-. In order to condone

the delay and set aside the ex parte decree, I am of the view that imposing a further condition of deposit would be in the interests of justice and would balance the interests of both parties.

15. In the light of the above discussions, the Civil Revision petition stands **allowed** on the following terms:

(i) The order passed in I.A.No.2 of 2023 in O.S.No.4 of 2019, dated 09.12.2025 is set aside on the condition that the defendants will deposit a further sum of **Rs.1,00,000/- (Rs.One Lakh only) within a period of four weeks** from the date of receipt of a copy of this order.

(ii) On the confirmation of payment of Rs.1,00,000/-, the learned Trial Judge shall set aside the ex-parte decree and take up the suit for final disposal.

(iii) Being a mortgage suit of the year 2019 and the scope of inquiry being limited, the learned Judge is requested to dispose of the suit within a period of **six months** from the date the ex-parte decree is set aside.

(iv) In default of compliance of clause (i) of the aforesaid condition, this Civil Revision Petition will stand dismissed without further notice to this Court.

(v) The learned Judge, on the deposit being made, shall keep both the initial amount of Rs.3,00,000/- as well as the sum of Rs. 1,00,000/- in an interest bearing account.

Consequently, the connected miscellaneous petition stands closed.

08.06.2026

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
Nsr

To:

The Sub Court, Valliyur.

V.LAKSHMINARAYANAN, J.

Nsr

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