

IN THE II ADDITIONAL CITY CIVIL COURT AT CHENNAI

Present: Tmt.Dr.R.Sathya.,

I Additional Judge

(FAC) II Additional City Civil Court, Chennai

Friday, the 24th day of July 2026

I.A.No. 1 of 2026

in

O.S.No. 1812 of 2025

(CNR NO. TNCH01-047704-2024)

1.Ms.Afrah Anjum, Daughter of Mr.M.D.Dastagir, No.589/6, 6th Street, ICF Colony, Chennai-600 038

2. Mrs.Nazira Karim B, No.589/6, 6th Street, ICF Colony, Chennai -600038.

3. Mr.Rajan K, S/o Kothandapani, No.286, Melpatty Ponnappan Street, Vyasarpadi, Chennai-600039.Petitioners/Defendants

/versus/

Union Bank of India, Rep by its Authorised Signatory, No.3, New Avadi Road, Villivakkam, Chennai-600 049.Respondent/Plaintiff

This petition having come up on 17.07.2026 for final hearing before this court in the presence of M/s. V.Tamilzhanban, M.Gopi and E.Ramya Shree, Counsel for petitioners/defendants, and of M/s. G.Lavanya, Counsels for the respondent/plaintiff and upon perusing the petition, counter and other connected records and after hearing arguments of both sides having stood over for consideration till this day, this court delivered the following:

ORDER

This petition is filed by the petitioner under Order IX Rule 7 of CPC to set aside the ex parte order passed against the petitioners/defendants on 28.08.2025 in O.S.No. 1812/2025.

2. The averments in the affidavit filed in support of the petition in short is as follows:

2.1.The Petitioners are the defendants in the above suit. The Respondent/Plaintiff has filed the suit for recovery of a sum of Rs.11,67,807.22/- with interest at the rate of 12% per annum, jointly and severally against the Petitioners. The 1st Petitioner had availed an educational loan of Rs.7,50,000/- from the Respondent Bank for pursuing a BDS course. The 2nd Petitioner, being the mother of the 1st Petitioner, joined as the co-applicant, and the 3rd Petitioner stood as guarantor for the said loan. Owing to financial difficulties, the loan instalments could not be paid regularly, and the loan account was classified as a NPA. Consequently, the Respondent instituted the above suit for recovery of the outstanding amount. At the time of availing the loan, the Petitioners were residing at ICF Colony, Chennai. Subsequently, after the retirement of the father of the 1st Petitioner from the ICF, the Petitioners shifted their residence to Kolathur, Chennai. Therefore, the summons issued to the ICF Colony address was returned with the endorsement "Left."

2.2.Thereafter, this Hon'ble Court ordered substituted service, and since the Petitioners had no knowledge of the suit proceedings, they were set ex parte on

28.08.2025. Subsequently, the 3rd Petitioner came to know about the pendency of the suit and informed the other Petitioners. On verification through the e-Courts portal, the Petitioners learnt that they had been set exparte on 28.08.2025 and that the suit was posted on 08.01.2026 for pronouncement of judgment.

2.3.The Petitioners submit that their non-appearance on 28.08.2025 was neither wilful nor wanton, but solely due to the change of residence and their lack of knowledge of the proceedings. The Petitioners have a bona fide defence to the suit and are ready to contest the matter on merits. No prejudice will be caused to the Respondent if the ex parte order is set aside. On the other hand, if the Petitioners are denied an opportunity to contest the suit, they will suffer irreparable loss and hardship. It is, therefore, prayed to set aside the exparte order dated 28.08.2025 and permit the Petitioners to contest the suit on merits.

3. The averments in the Counter filed by the respondent/plaintiff in short as follows:

3.1.The respondent is the plaintiff in the suit. The petitioners had admitted the availing of the loan and after having do so, it is their duty to repay the amount. Due to non payment of EMI the loan account had become NPA and the suit is filed for recovery of Rs.11,67,807.22/-. The Respondent Bank needs to be mentioned that that they have to intimate if there is any change of address and not having done so, they cannot now claim that the court notice was sent to "1CF Colony

address" and the substituted service was effected with the address. Since the summons was returned, this Hon'ble Court had directed the Respondent Bank to effect substituted service and on 23.08.2025 notice was published in "The Hindu Tamil" with this address. It is submitted that the said address is mentioned in the Agreement and as per the said agreement of Clause 10, it is the bounden duty of the Petitioners to update the records with the Bank if there is any change. The said Clause is extracted below:-

"The Borrower undertakes to keep the Bank informed about any change in his her address and in case of study abroad, the borrower shall also intimate the Bank about his/her visits to India temporarily before the course is completed and also about his/her ultimate return to India. The Borrower shall contact the Bank as soon as he/she returns to India and inform the Bank about the further programmes and the arrangements to repay the dues to the Bank".

Not having done so the Petitioners cannot now allege that they were not aware of the filing of this suit.

3.2.The 3rd Petitioner who informed the other Petitioners about the filing of the suit and that all of them were set exparte on 28.08.2025. The Respondent bank submits that the setaside petition had been filed after the proof affidavit was filed, documents marked and posted on 08.01.2026 for judgement. The Petitioners do not have any ground to contest the above suit since the loan is admitted. The above application is a frivolous one and is liable to be dismissed.

4. The point for consideration:-

1. Whether the exparte order passed against the petitioners/defendants is to be set aside or not?

5. POINT:-

Heard the petitioner and the respondent counsel. The petition has been filed by defendants in the suit to set aside the exparte order passed as against them on 28.08.2025 in O.S.No. 1812/2025. The contention of the petitioners is that after the retirement of the father of the 1st petitioner/defendant the petitioners had shifted their residence to Kolathur, Chennai and hence the summons issued to ICF Colony address was returned as “Left” and they have not been served with the suit summons and had no knowledge of the pending suit and they were later informed by the 3rd petitioner/defendant about the exparte order passed as against them and that the suit was posted on 08.01.2026 for pronouncement of judgment.

6. The contention of the respondent/plaintiff is that the suit summons to the defendants had been sent to the address which was mentioned in the agreement and as per Clause 10 of the agreement it is the duty of the petitioners/defendants to update in the bank records regarding the change of address and present petition is filed only to prolong the litigation.

7. The suit has been laid by the respondent bank for the relief of directing the defendants to jointly and severally pay a sum of Rs.11,67,807.22/- together with interest @ 12% p.a., from the date of plaint till the date of realization and for cost of

the suit. According to the respondent bank the 1st petitioner had availed educational loan and the 2nd petitioner being the mother and 3rd petitioner as stood as guarantor for the said loan and since the loan installments were not paid and the suit has been laid for recovery of the outstanding amount. The petitioners 1 and 2 had mentioned their present address at ICF Colony as the address for service but on perusal of the plaint the address for service on the petitioners 1 and 2 has been mentioned as No. 589/06, 6th Street, ICF Colony, Chennai-600 038 and also at Shop No. 19, LHB Division, ICF, Chennai-600 038. In the facts and circumstances of the case in order to afford the petitioners an opportunity to contest the suit on merits and exhaust the remedies available before the trial forum and in the interest of natural justice the petition is allowed.

In the result, this petition is allowed. No costs.

Dictated directly to the Steno-Typist, corrected and pronounced by me in Open Court this the 24th day of July 2026.

I Additional Judge.
(FAC) II Additional City Civil Court,
Chennai.

Petitioner side witness and Exhibits :-Nil
Respondent side witness and Exhibits:- Nil

I Additional Judge.
(FAC) II Additional City Civil Court,
Chennai.

Draft/Fair order
I.A.No.1/2026
in
O.S.No.1812/2025
Dated: 24.07.2026
II Additional Court.