

ORDER

The Execution Petition is filed for recovery of amount of Rs. 17,28,124.84/-. The learned counsel for the decree holder submits that cause notice to judgment debtors No.1 and 2 duly served, but they did not appear, hence, paid process to issue arrest notice to the judgment debtors No.1 and 2. She also paid process to issue arrest warrant to be issued against the judgment debtor No.3 submitting that inspite of service of arrest notice, he has not come before the court. The process taken by the learned counsel for the decree holder is opposed and counsel for the judgment debtor No.3 filed written objections. According to him, the present execution petition is filed in view of the judgment passed by the Hon'ble IV Addl. District and Sessions Judge, Coimbatore in O.S.48/2018. The judgment debtor No.3 is residing in Tamilnadu and not resident of jurisdiction of this court. Earlier the decree holder has taken steps to attach the property of the judgment debtors and the properties were already attached by the court. The decree holder while filing the petition has sought for the relief of attachment of movable and immovable of the judgment debtors and there is no relief or prayer in execution petition regarding the arrest of the judgment debtors. Insite of relief sought in the execution petition for the arrest of the judgment debtors, the arrest notice

issued by this court is not valid in law. As judgment debtor is residing outside the jurisdiction of this court and he is residing in Tamilnadu, this court has no jurisdiction to issue arrest warrant to the judgment debtor.

2. Heard both sides.

3. First of all, the present execution petition is not transferred matter from any other court, because the present petition is filed on 22.08.2023. This court ordered issue cause notice to the judgment debtors. The order sheet dated 15.06.2024 shows that hand summons served upon the judgment debtors. Thereafter vakalath of judgment debtors is filed by Sri. S.B.C. Advocate and he prays time for objection. He filed objection to the main petition. In the objection it is taken defence that the petition is filed as per the judgment and decree passed by the Hon'ble IV Additional District Judge, Coimbatore and the judgment debtors have filed petition to set aside the decree passed by that court. The said fact is very well known to the decree holder. However, this petition is came to be filed.

4. The decree holder has not furnished any document to show that the present decree is challenged before the IV Addl. District and Sessions Judge at Coimbatore, praying to set aside the decree. No such document has been placed till this

day. The vakalath of the judgment debtors No.1 to 3 filed by S.B.C. Advocate only after service of hand summons. It shows that judgment debtors No.1 to 3 know the pending of execution petition before this court. The counsel for the decree holder filed application under Order 21 Rule 54 of C.P.C., it was allowed and property of Sy.No.69/1, 69/2 and 69/3 were ordered to be attached, those properties were located at Nanjangud Taluk. Thereafter sale notice was issued. The said stage reached up to spot sale and court sale. Then K.N.M. Advocate filed vakalath and application under Order 21 Rule 97 of C.P.C. on behalf of the objectors No.1 to 6 to come on record to file their objections to the above Execution Petition, since the judgment debtors have no right of sale over the sale proclamation property as the said property belongs to the objectors. Thereafter the decree holder's counsel filed memo to withdraw the I.A.V filed under Order 21 Rule 64 of C.P.C. because this court ordered to attach the property of Sy.No.69/1, 69/2 and 69/3. Therefore, the application filed by the decree holder's counsel to attach the properties were withdrawn. The claim of the decree holder over the said property is extinguished. Subsequently the decree holder once again taken steps to arrest notice to judgment debtors No.1 to 3.

5. The learned counsel for the decree holder submitted today that already cause notice to judgment debtors No.1 to 3 already served and they

did not appear before the court. Thereafter arrest notice to the judgment debtor No.1 was served as per the reference in the order sheet dated 09.01.2026. Arrest notice was not served to judgment debtor No.1 and arrest notice issued to the judgment debtor No.2 has not been returned. Therefore, the court passed order to re-issue arrest notice to judgment debtor No.1 and await arrest notice of judgment debtor No.2. Due to oversight, the order was passed as to issue cause notice to judgment debtor No.1 and await notice to judgment debtor No.2. Indeed that should be arrest notice, but not cause notice, because cause notice was served earlier occasion. The counsel for the judgment debtors has no objection to issue arrest notice to judgment debtors No.1 and 2. Therefore, issue arrest notice to judgment debtors No.1 and 2, in this regard P.F. is paid.

6. However, the counsel for judgment debtor No.3 is objected to issue arrest notice to judgment debtor No.3 saying that this court has no jurisdiction. However, execution petition can be filed anywhere in the jurisdictional court, if such order is to be executed in the certain jurisdiction. The properties of the judgment debtors were located here, thereafter the said properties were sold by the judgment debtors. Therefore, I.A.V was withdrawn by the counsel for the decree holder saying that no properties available in the name of judgment debtors No.1 to 3 in the jurisdiction of this court.

Once again the counsel for the decree holder chosen the steps to issue arrest notice to the judgment debtor No.3, because he has to pay the claimed amount shown in the execution petition. Since there is no property is available in the name of judgment debtors No.1 to 3, no other step is available to the decree holder to recover the amount. The judgment debtor No.3 has not taken any order from the court regarding want of jurisdiction of this court. Suppose there is order by the court to decide the jurisdiction of this court, then the process taken by the decree holder would be called as irregular under law. However, the judgment debtor No.3 has not appeared on cause notice as well as arrest notice. The purpose of issuance of arrest notice in execution petition is a chance to judgment debtors to come before the concerned court and say his objection. Suppose such judgment debtor has not appeared on arrest notice, the next step is to issue arrest warrant against such judgment debtor if he remains absent. As mentioned above, the judgment debtor No.3 has not challenged the maintainability of the petition before this court on the question of jurisdiction. Secondly the cause notice as well as arrest notice duly served to the address of the judgment debtor No.3 as per the order sheet dated 09.01.2026. The decree holder's counsel already withdrawn the application filed to attach the property of the judgment debtors, because the judgment debtors have sold out the properties during the pendency of this petition. The purpose of

filing this petition is to recover the amount from the judgment debtors. The counsel for the judgment debtor No.3 has not explained the reason for non-appearance of the judgment debtor No.3 and what would be the adverse consequences against him if arrest warrant is issued against the judgment debtor No.3. Under such circumstances, process taken by the decree holder's counsel to issue arrest warrant against the judgment debtor No.3 is not illegal as per the procedure. Hence, the objection of the judgment debtor No.3 is hereby rejected. Issue arrest notice to the judgment debtors No.1 and 2 and arrest warrant to the judgment debtor No.3, if P.F. and custody charge paid. Call on 21.02.2026.

Senior C.J. & JMFC.,
Nanjangud.

31.01.2026