

**IN THE COURT OF THE SUB JUDGE, CHERTHALA**

**Present: Ms. Lakshmy.S, Sub Judge**

**Friday, the 27<sup>th</sup> March 2026/ 6<sup>th</sup> Chaithra 1948**

**OP (Insolvency) 02/2023**

(Filed on 07.10.2023)

- Petitioner: S. Retnakar, aged 60 years S/o. Sreedhara Pai,  
residing at Saraswathy Nivas, CMC-27, Cherthala P.O.,  
Pin : 688 524, Cherthala North Village,  
Alappuzha District
- By Adv. Thomas Joseph
- Respondents:
1. Muttom Service Co-Operative Bank Ltd No. 1165,  
represented by its Secretary
  2. Cherthala Taluk Agricultural Credit Co-Operative  
Society Ltd. No. H.W.11, represented by its Secretary
  3. Cherthala Co-Operative Agricultural Rural Development  
Bank Ltd. No. A327 (CARD BANK), represented by its  
Secretary
  4. Kerala State Co-Operative Bank Ltd, Cherthala Main  
Branch, represented by its Branch Manager
  5. Vijayakumar, aged about 52 years, S/o. Bhaskaran Nair,  
Nedungad House, Thammanam P.O., Chakkaraparambu,  
Ernakulam
  6. Maharaja Paints and Hardwares, Ashokapuram, Aluva,  
represented by its Proprietor
  7. The State of Kerala, represented by District Collector,  
Alappuzha
- R1 By Adv. Joji. K. Antony  
R2 By Adv. T. Jayakrishnan & Adv. Hormis Abraham  
R3 By Adv. N. Sivadasan  
R4 By Adv. R. Pramod

This petition coming on for final hearing on 25.03.2026 and the court on 27.03.2026 delivered the following:

### **ORDER**

The present petition is filed by the debtor under S.7 of the Insolvency Act, 1955 to be adjudged as insolvent, as the petitioner is unable to pay his debts to the tune of **Rs.20,71,860/-** as mentioned in A schedule.

2. The petitioner in consequence of the order of arrest warrant, Order 21 Rule 37 of Code of Civil Procedure issued by the Munsiff's Court, Cherthala in EP.No.352/2019 in ARC.No. 2381/2016 in EP.No.353/2019 in ARC No. 2382/2016 in EP.No.363/2019 in ARC.No.2338/2016 in EP.No.364/2019 in ARC No.2339/2016 and in EP No.365/2019 in ARC No.2384/2016 initiated by the first respondent herein etc being unable to pay off the debts scheduled in this petition, prays to be adjudged as an Insolvent. The petitioner was a business man and he availed loans from the various financial institutions as principal debtor along with his brothers S.Dinesh and S.Retnakar as Co-Sureties. There are also loans in which the petitioner is surety along with the said brothers being the principal debtors. The business of the petitioner met with unforeseen setback and his main business in the name and Style of Saroj Traders was forced to be closed. Now the petitioner earns the bread as an auto-rickshaw driver. He has no immovable properties in his name and in his custody. He further affirms that he has not disposed of any assets during the previous two years, not entered in to any agreement for any such sale. The petitioner has not moved any petition to be

adjudged as insolvent on any previous occasion. He is unable to pay his debts and hence the petition.

3. The 1<sup>st</sup> respondent alone filed objections as follows:

The petitioner in this case and his brothers Muralidhar and S. Dinesh colluded with each other to extort money from the bank and received a huge amount of money from each other's collateral from the loans related to the above case. Most of the amount was invested by S.Muralidhar in an institution called Mazhuvakkad Agencies run by his father-in-law and he is earning lakhs by doing business as a benami on behalf of his father-in-law. Out of the loans described in Schedule A, the petitioner has taken only the loan mentioned as serial No.7 as the principal debtor. In other loans, the loan amount has been taken from the 1<sup>st</sup> respondent bank as the guarantor on mutual collateral. The petition has been filed without disclosing the assets of the petitioner. The petitioner, his brothers S.Dinesh and S. Muralidhar, have taken a loan from the 1<sup>st</sup> respondent institution on the pretext of business needs. Saroj Traders is a company created only on paper by the petitioner and his brothers to defraud the bank. The petitioner rides his own autorickshaw and works as a real estate broker. He has invested the loan amount received by him along with his brother, Muralidhar in the company of Muralidhar's father-in-law called Mazhuvakkat Agencies, which sells building materials, asbestos sheets, tiles, cement, wires, etc. wholesale and retail, and the petitioner is receiving the profit from it. That is, the income is more than one lakh rupees per month. The petitioner owns a lot of property. The petitioner has no right or authority to be declared insolvent by the court. Hence, the petition is liable to be dismissed with costs.

4. The petition was posted for evidence. The petitioner was examined as PW1. Exts.B1 and B2 were marked from the side of respondents.

5. Heard the learned counsel for both sides.

6. On the basis of the rival contentions, the following points arise for consideration:

(i) *Whether the petitioner has committed an act of insolvency?*

(ii) *Is there any ground to pass an order adjudging the petitioner as insolvent?*

(iii) *Is the petition allowable?*

(iv) *Order as to costs?*

7. **Points No.1 and 2:-** These points are considered together for convenience and brevity. The petitioner has contended that he has a total liability of Rs.20,71,860/- and he is unable to clear off the debt as he has no assets or sufficient income. The petitioner has mentioned the debts in the A schedule attached to the petition. A schedule shows that he owes several amounts to respondents. The petitioner has declared that he has no assets either movable or immovable in his name.

8. The petitioner who got himself examined as PW1 deposed that he was running a business and it went into loss. Thereafter he is earning his livelihood as an autorickshaw driver. PW1 further deposed that he has no income or assets to clear off the debts scheduled as A in the petition.

9. The respondents have challenged the contentions of the petitioner and have contended that the petitioner has income of his own and undivided share over larger extent of land. Ext.B1 and B2 were produced to show that the

petitioner has undivided share of a larger extent of land which belonged to his grand father.

10. The petitioner's liability as shown in A schedule is admitted. Eventhough, the respondents cross examined PW1 to prove that his contentions are false, nothing was brought out to show that the petitioner has assets in his name or that he has sufficient income of his own. The only suggestion was that petitioner has an autorickshaw in his name and a gold stud as ornament. Those are not at all a sufficient asset to clear A schedule debts. Moreover, the right of the petitioner in the decree schedule property is not seen declared in Ext.B1 preliminary decree produced by the respondents. Ext.B1 and B2 records are not sufficient to find that the petitioner has assets or income to pay off his debts.

11. The respondents took a contention that the petition is barred by limitation as the Execution Petitions were filed as early as on 2019. Relying on the decision of the Hon'ble High Court of Madras in **Chellathurai Nadar v. Ramaswami Pillai and others; 1996 KHC 2369**, the learned counsel for the respondents argued that petition filed beyond three months of alleged act of insolvency would be barred by limitation. However, the said decision is based on the petition filed by creditor u/S.9 of the Provincial Insolvency Act, 1920. The statute applicable here is Insolvency Act, 1955 where S.10 deals with the conditions for a debtor to file the petition. Unlike a creditor, who must act within three months of an act of insolvency, a debtor can file petition at any time if he meets the conditions u/S.10 of the Act.

12. S.6 of the Insolvency Act, 1955 deals with the acts committed by a debtor which would constitute an act of insolvency. For quick reference the provision is reproduced as follows:

*S.6: A debtor commits an act of insolvency in each of the following cases, namely:*

- (a) if he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;*
- (b) if he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;*
- (c) if he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as fraudulent preference if he were adjudged an insolvent;*
- (d) if, with intent to defeat or delay his creditors-*
  - (i) he departs or remains out of the State;*
  - (ii) he departs from his dwelling house or usual place of business or otherwise absents himself;*
  - (iii) he secludes himself so as to deprive his creditors of the means of communicating with him;*
- (e) if any of his property has been sold in execution of the decree of any court for the payment of money;*
- (f) if he petitions to be adjudged an insolvent under the provisions of this Act;*
- (g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts; or*
- (h) if he is imprisoned in execution of the decree of any court for the payment of money.*

13. The jurisdiction of Insolvency Court commences when the debtor commits any of the acts of insolvency mentioned above. When the debtor petitions against himself to be declared as an insolvent, the same itself would constitute an act of insolvency which would show that the petitioner has no other remedy than to approach the Court. S.10 of the Act provides that a debtor shall not be entitled to present the petition unless he is unable to pay his debts and his

debts amount to Rs.500/-. Admittedly petitioner is under the order of arrest in execution proceedings pursuant to which this petition was filed. The conditions are satisfied by the petitioner in this case.

14. In **Parthan v. Radhakrishnan Nair; 1981 KHC 676 and Marikar Motors v. Kumaran Nair; 1992 KHC 66**, the Hon'ble High Court has held that the enquiry contemplated u/S.24 of the Act is summary in nature and the scope is only prima facie grounds to believe that the debtor is unable to pay his debt. In the case on hand, the petitioner has proved his liability as well as inability to pay his debt and the statutory requirements are complied with. The petitioner who has committed the act of insolvency as provided u/S.6(f) has established sufficient grounds to adjudge himself as insolvent. The points are found in favour of the petitioner.

15. **Point No.3 and 4:** In view of the findings on point No.1 and 2, the petition is to be allowed, without costs.

**In the result, OP is allowed as follows:**

**(a) The petitioner is adjudged as an insolvent.**

**(b) The Official Receiver is directed to take charge of the assets, if any, including any undivided share, if any, under Ext.B1, of the petitioner, forthwith and shall file report, periodically.**

**(c) Application for discharge, if any, shall be filed within a period of one year.**

**(d) There is no order as to costs.**

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 27<sup>th</sup> day of March, 2026.

*Sd/-*  
LAKSHMY.S,  
SUB JUDGE

Appendix

Witness for petitioner

PW1 - 23.03.2026 - S. Rathnakar

Exhibits for respondent

B1 - 25.08.2014 - Copy of Preliminary Decree

B2 - 24.09.2014 - Copy of Final Decree Application

*Id/-*  
SUB JUDGE