

IN THE COURT OF THE MUNSIFF OF HOSDURG
Present : Smt. Aiswarya Ravikumar, Civil Judge (Junior Division)
 Thursday, the 12th day of February, 2026/ 23rd Magha, 1947.

Execution Petition No.138 OF 2024
in OS No.39/2020

Between:-

Kerala Gramin Bank, Narkilakad Branch, represented by its
 Manager, having its Office at Narkilakad West Eleri Village,
 Vellarikundu Taluk, P.O.Kottamala

} Petitioner/DH

And

1. Jomin Joseph, aged 30 years,
 Son of Joseph Kanhirathum mootil House, Adukalampany,
 West Eleri Village, P.O. Elerithattu.
2. Joseph.K.G, aged 56 years,
 Son of George Kanhirathum mootil House, Adukalampany,
 West Eleri Village, P.O. Elerithattu.

} Respondents/
 JD1 & JD2

Execution petition filed by the petitioner to issue notice to the respondent under Order XXI Rule 22 and 37 of C.P.C and unless they pay the amount due to the petitioner bank, they may be ordered to be arrested and committed to Civil Prison under Order XXI Rules 38 and 40 of C.P.C and the amount if any realized may be ordered to be paid over to the petitioner under Order XXI Rules 1 and 2 of C.P Code in the interest of justice.

Petition presented on : 31.05.2024
 Court fee paid : ₹5.00

This Petition coming on this day for hearing before me in the presence of Sri.Kodoth Narayanan, Advocate for Petitioner; of Sri.A.Manikandan, Advocate for respondents and the court passed the following:-

ORDER

This inquiry is conducted under Order 21 Rule 40.

2. The execution petition is filed by the petitioner to execute the decree passed in OS.39/2020. As per the decree, the defendants were directed to pay a sum of ₹4,49,237/- to the plaintiff with interest at the rate of 12% per annum from the date of suit till date of decree and thereafter at the rate of 6% per annum until realisation. As per the decree, the judgment debtors 1 and 2 herein, who are

defendants 1 and 2 in the suit were found liable to pay the aforesaid sum. Decree holder has filed this execution petition for a sum of ₹6,51,395/- including the interest and cost.

3. Judgment debtors have filed counter pleading that they have no means to satisfy the decree debt.

4. Thereafter, the matter was posted for enquiry and decree holder produced Ext.A1 to indicate that judgment debtor has title over 2.50 acres of land in RS No.19/1 of West Eleri Village of Hosdurg Taluk. Judgment debtor No.2 entered the box and was examined as RW1.

5. In **Kallankod Co-operative Bank Vs. Philip Joseph 2014 (3) KLT 66** Hon'ble High Court of Kerala has held that expression means employed in clause b of the proviso 2 section 51 of the CPC includes saleable right or interest over any property. Put it differently the expression means encompasses saleability of the property also. It cannot be confined to income from yieldings of the property only. If the judgment debtor has saleable movable or immovable property from which sufficient amount can be raised to satisfy the decree debt by sale of the same save as mentioned under proviso 2 Section 60 of CPC, it can be held that he has means to pay the debt.

6. In the instant case, decree holder has produced Ext.A1 to indicate that judgment debtor No.2 has saleable interest over the property covered under Ext.A1. RW1 while he was examined had stated that the property covered under Ext.A1 is pledged before Axis Bank. No material is produced to indicate that the same is true. Hence, the available material that is furnished in evidence before this court is Ext.A1 which reflects that judgment debtor No.2 has saleable interest in the property covered under Ext.A1. It is pertinent to note that the affidavit filed by decree holder does not state that judgment debtor No.1 has any means to pay the decree debt. No other material is furnished to establish that judgment debtor No.1 has sufficient means to satisfy the decree debt.

7. Hon'ble High Court of Kerala in **Rajappan v Shaju 2009 4 KHC 602** has held that "the burden cast on the decree holder is only to show that the judgment debtor is possessed of means to discharge the decree debt and he cannot be expected to prove the means of the judgment debtor with documentary evidence. Once the decree holder leads such evidence the burden shifts to the judgment debtor to show that he is not possessed of means and thus incapable of discharging the decree debt". Although petitioner has led the evidence, respondent No.2 has not satisfactorily discharged such burden upon him. The petitioner has not led any evidence with respect to respondent No.2.

8. Hence, the aforesaid discussion leads to the irresistible conclusion that judgment debtor No.2 has sufficient means to satisfy the decree debt. Since the decree holder has not led any evidence with respect to respondent No.1, it cannot be concluded that respondent No.1 has sufficient income to satisfy the decree debt.

In the result,

- 1) Judgment debtor No.2 is found to have sufficient means to satisfy the decree debt.
- 2) EP stands dismissed against judgment debtor No.1 as petitioner has failed to establish that judgment debtor No.1 has sufficient means to satisfy the decree debt.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open Court, this the 12th day of February, 2026.

Sd/-
CIVIL JUDGE(JUNIOR DIVISION)
HOSDURG.

APPENDIX OF EVIDENCE:-

Exhibits marked for Plaintiff:-

A1 26.05.1988 Copy of Registered gift deed.(No. 1399/20188)

Exhibits marked for Defendant:- Nil

Witnesses examined for Plaintiff:

PW1. : Premaja.K(through affidavit)

Witnesses examined for Defendants:-

RW1 : Joseph K G (through affidavit)

Sd/-

CIVIL JUDGE(JUNIOR DIVISION)

Typed by : Geethanjali.B
Compared by : Kamalakshan V K

Fair/Copy of Order in
EP No.138/2024 in
O.S.No.39/2020

Dated: 12.02.2026