

IN THE COURT OF THE MUNSIFF OF KANNUR

Present: Smt.Sushama.P, Principal Munsiff, Kannur
Saturday, the 24th day of January, 2026 (4th Magha, 1947)

EP.No.64/2025 in ARC.No.1851/2020

Kuttiattoor Agriculturist & Labour Welfare Co-]
Operative Society Ltd., Chalod, Edayannur.P.O,] Petitioner
Rep.by its Secretary.]

Vs.

1. C.P.Sreeprasad, S/o.Shobha Nivas, aged 54]
years, Shobha Nivas, Koodali amsom,]
Muttannur desom, Kololam.P.O, Edayannur,]
Kannur, 670595.] Respondents
2. Sajeevan.M.K, S/o.Kunhambu, aged 47 years,]
Madathankandi, Koodali amosm, Muttannur]
desom, Kololam.P.O, Edayannur, Kannur,]
670595.]

This petition coming on this day for hearing before me in the presence of Sri.K.Shaju, Advocate for the petitioner; Sri.P.K.Sajeevan, Advocate for respondents and the court passed the following:-

ORDER

This petition is filed by the petitioner/deedee holder under Order 21 Rule 37 (1) and 38 of the CPC for execution of the deedee by arrest and detention of the respondents/judgment debtors in the civil prison for non compliance of a deedee for payment of money. This E.P was filed for realization of a total sum of Rs.6,05,419/-.

2. The respondents filed counter statement contending that the above petition is filed to realize the decree amount of Rs.6,05,419/- along with future interest from the respondents is not maintainable. The respondents never approached the petitioner for availing any financial facility. The respondents have no knowledge that any existing debt is due towards the petitioner bank. The respondents suspects that the petitioner has colluded with 3rd person to realize the existing liability of another person. The respondents have approached the competent authority to set aside the decree passed by the Assistant Registrar. The respondents have not received any summons from the arbitration proceedings. Since there was no opportunity given to the respondents to challenge the proceedings they are not liable to pay the decree amount. The respondents have no means to pay the decree amount. The respondents have no job or source of income. They are facing too difficulty to manage their day to day affairs and they are having various kinds of disease. They are unable to do any job due to their unhealthy condition. Hence the petition is to be dismissed.

3. On the side of the petitioner, PW1 was examined and Exts.A1 and A2 were marked.

4. The points to be considered are as follows:-

1. Are the respondents/judgment debtors having sufficient means to pay the decree debt in lump sum?

2. Reliefs and costs?

5. Heard both sides.

6. **Point No.1:-** The Secretary, Kuttiyattoor Agriculturist and Labour Welfare Co-operative Society was examined as PW1. The case of the petitioner is that an amount of Rs.4,17,636/- is to be paid by the respondents to the society. Since no amount is paid along with interest and cost of execution petition an amount of Rs.6,05,419/- is due to the petitioner which is to be realized from the respondents. The respondents have taken a contention that they have no means to pay of the decree amount. PW1 stated that the 1st respondent is in possession of landed property having an extent of 9 cents in R.S No.93/1 of Koodali amsom Muttannur desom as per document No.862/2007 of SRO, Irikkur and the 2nd respondent is in possession of landed property having an extent of 13³/₄ cents in R.S No.97 of Koodali amsom Muttannur desom as per document No.1973/2011 of SRO, Irikkur. Ext.A1 is the certified copy of jenn assignment deed No.862/2007 of SRO, Irikkur. Ext.A2 is the certified copy of settlement deed No.1973/2011 of SRO, Irikkur. According to PW1, the respondents have sufficient means to pay the decree debt. No evidence was adduced by the respondents so as to disprove the oral and documentary evidence tendered by PW1.

7. In **Rajendran R. v. Union Bank of India reported in 2023 ICO 1147** it is held that “to get exemption from arrest and detention, the judgment debtor has to satisfy firstly that he has not dishonestly transferred, concealed or removed any part of his property or committed any other act of bad faith in relation to his property after the institution of the suit, in which the decree was passed and secondly that he has no means to pay the

amount of the decree or any substantial part thereof since the date of decree, which mandates utmost good faith, and imposes and comprehensive liability on the judgment debtor to disclose everything attached to him regarding assets, income, transaction, means of livelihood, the details of dependency, source of income for maintenance of his family members , bank loan, bank accounts, chitty transaction, amount due from other persons, any assets held by other person for and on behalf of him, from the date of decree. The judgment debtor must give direct evidence or to adduce any other satisfactory evidence to show the mental constituent, the “utmost good faith” and merely a contention of ‘no means’ may not be sufficient”.

8. Once the decree holder leads evidence, the burden shifts to judgment debtor to show that he is not possessed of means and thus incapable of discharging the decree debt. The evidence given by PW1 that respondents have sufficient means to pay decree debt remains unchallenged. The petitioner has discharged the burden of proving means of respondents satisfactorily. The respondents did not adduce any evidence as the onus is shifted on them to prove that they have no means. In the judgment cited supra it is held that the exemption provided by the statute from arrest on a warrant for the default in discharging the decree debt is carved in favour of the judgment debtors and they claim that benefit must show to the satisfaction of the court there, incapacity and lack of means to discharge the decree debt. Hence I find that the petitioner has proved the means of the respondents. Hence the point is answered in favour of the petitioner/decree holder.

9. **Point No.2:-** In the result, the prayer of the decree holder/ petitioner for issuance of warrant to the respondents is allowed. The judgment debtors/ respondents shall be detained in Civil Prison for a period of 3 months subject to the provisions of Section 58 of Code of Civil Procedure. The decree holder/ petitioner shall take steps for issuing warrant to the judgment debtors /respondents. Call on 11.02.2026.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 24th day of January, 2026).

Sd/-

PRINCIPAL MUNSIFF

Petitioner's Witnesses:-

PW1 : Shalina.N.

Petitioner's Exhibits:-

A1 : 03.04.2007 : Certified copy of document No.862/2007 of SRO, Irikkur.

A2 : 27.07.2011 : Certified copy of document No.1973/2011 of SRO, Irikkur.

Respondent's Witnesses and Exhibits:- Nil.

Sd/-

PRINCIPAL MUNSIFF

// True Copy//

PRINCIPAL MUNSIFF

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Fair/ Spare Order in EP.64/2025 in
ARC.1851/2020, Dt: 24.01.2026.