

IN THE COURT OF THE MUNSIF OF KANNUR

Present: Sri.Manikandan.C.K., Principal Munsiff, Kannur,
Tuesday, the 2nd day of June, 2026 (12th Jyaishta, 1948)

EP.No.365/2025 in ARC.No.3633/2018

Mowanchery Co.operative Rural Bank]
Ltd. No.F.1279, P.O.Mowanchery,]
Kannur, Represented by its Secretary]
Ramesh Babu.C.P., S/o.Kunhiraman] Petitioner/
Nambiar, aged 56 years, Raganisha,] Decree Holder
Paleri, Mamba.P.O., Kannur Taluk,]
Kannur District.]

V/s.

1. Ahammed Tharal, S/o.Kadar,]
aged 36 years, Kadheeja Cottage,]
Munderi P H C Road, P.O.Munderi,]
Munderi amsom desom.]
2. Pocker Kunnumbrath, S/o.Abdu,] Respondents/
aged 42 years, Puthiya Purayil House,] Judgment Debtors
P.O.Muderer, Munderi amsom desom.]
3. Rafeek Puthan Purayil, S/o.Khalid,]
aged 45 years, Seenath Manzil,]
Ituvankai, P.O.Munderi,]
Munderi amsom desom.]

This petition coming on the 22nd day of May, 2026 for final hearing before me in the presence of Sri.Roopesh.K and Smt.Jisha.M.K., Advocates for the petitioner; Santhosh.M., Advocate for the 1st respondent; Sri.Deepak.C and Smt.Lisha Deepak, Advocates for the 3rd respondent; 2nd respondent reported died; and having stood over for consideration till this day the court delivered the following:

ORDER

This is an EP filed under Order XXI, Rule 37 and 38 of CPC for recovery of decree debt by arrest and detention in Civil prison.

2. This is an execution petition originated in respect of an order passed in ARC 3633/2018 and the said ARC was ordered on 18.09.2018. The contention of the petitioner is that the respondents are jointly and severally liable to pay an amount of Rs.94,720/- to the petitioner bank.

3. Respondent Nos.1 and 3 entered into appearance through counsel and filed their counter. The contention of the respondents 1 and 3 is that they have no job, employment or other source of income. Respondent No.3 contended that he is suffering from many diseases. Respondent Nos.1 and 3 contended that they have no means to pay the decree amount. Notice issued to respondent No.2 returned stating that respondent No.2 died and therefore, EP against respondent No.2 already closed.

4. It is not in dispute that the award in ARC No.3633/2018 was passed against the judgment debtors herein. It is pertinent to note that the decree holder doesn't have a case that the respondents herein have means to pay the decree amount and they neglected to pay the same to the decree holder bank. Now the respondents 1 and 3 took a contention that they have no means to pay the amount and they have no job or income. Respondents 1 and 3 filed their

counter before this court on 16.03.2026. When the judgment debtors 1 and 3 took a contention that they have no means to pay the decree amount, then the decree holder has to prove that the judgment debtors 1 and 3 have means to pay the same and they willfully not paying the same. If no means is pleaded or not, the court has to conduct an enquiry, in which the decree holder should adduce evidence to establish that judgment debtors 1 and 3 have means to pay the debt.

5. Since the judgment debtors 1 and 3 had taken a plea of no means, this court directed the decree holder to file application under section Order XXI, Rule 41(2) of CPC and case was posted to 23.03.2026 as per order dated 16.03.2026. On 23.03.2026, no application filed by the decree holder under Order XXI, Rule 41(2) of CPC and therefore the case was posted to 27.03.2026 by giving direction to the decree holder to take steps to prove the means of judgment debtors 1 and 3. On 27.03.2026, learned counsel for the petitioner requested time to take steps to prove means of judgment debtors 1 and 3, time granted by this court and case was posted to 04.04.2026. On 04.04.2026, there was no sitting in this court and hence, the case was notified on 22.05.2026. On 22.05.2026, no steps taken by the decree holder to prove the means of judgment debtors 1 and 3. Anyhow, the enquiry contemplated under Order

XXI, Rule 40(1) of CPC is mandatory one. Because of the absence of the decree holder and non production of document, this court is not in a position to conduct enquiry under Rule 40 of CPC. This Execution Petition filed in the year 2025. Moreover that the Apex Court had emphasize expeditious disposal of execution matters. In **Periyammal and Others Vs. Rajamani and Another reported in (2025 (9) SCC 568)**, it was held that *“the execution petition shall be decided and disposed off within a period of 6 months without fail”*. Under the above discussion, I am of the view that keeping this file further and granting further time to the decree holder will not serve any purpose. Hence, I am of the view that the Execution Petition can be dismissed for default. The dismissal of this Execution Petition will not preclude a decree holder in filing another Execution Petition with same or another mode subject to the limitation. Hence, this application is liable to be dismissed.

In the result,

Execution Petition is dismissed for default.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 2nd day of June, 2026)

Sd/-
Principal Munsiff

Fair/Spare Order in
EP.365/2025 in ARC.3633/2018
Dated: 02.06.2026.