

IN THE COURT OF THE MUNSIFF OF KUTHUPARAMBA

Present:- Smt. Athira Nair., Munsiff.

Saturday, the 1st day of November, 2025/ 10th Karthika, 1947.

EP No.706/2023 IN OS. 249 OF 2020.

Kerala Gramin Bank, HO Malappuram, Branch Champad, Represented by Branch Manager & Principal Officer, Champad, Kannur District.	]]]]	Petitioner
Vs.		
Premachandran.T.K, S/o. Gopalan, Aged 59 years, Business, Thattankandiyil House, Koorara, (PO) Koorara, Mokeri Amsom and Desom, Thalassery Taluk, Kannur District. Pin: 670694.	]]]]]	Respondent

This petition coming on the 23rd day of October, 2025 for hearing before me in the presence of Sri. Raghavan Kootteri, Advocate for the Petitioner ; of Smt. Hitha. P. K, Advocate for the Respondent and having stood over for consideration till this day; the court passed the following:

ORDER

This Execution Petition (EP) is filed for the realisation of ₹.6,78,298/- (Rupees Six Lakh Seventy Eight Thousand Two Hundred and Ninety Eight only) along with interest, by arrest and detention of the respondent in civil prison. During the pendency of the EP, the respondent remitted ₹.13,000/- (Rupees Thirteen Thousand only). No further payments were made thereafter. Consequently, an enquiry was conducted.

2. From the petitioner's side, PW1 was examined and Exhibit A1, the Partition Deed bearing No. 1138/2001 of SRO, Panoor was

marked. The petitioner contends that the respondent has sufficient means to discharge the decree debt. PW1 deposed that the respondent owns 32½ Cents of land as per Exhibit A1. Though PW1 was subjected to cross-examination, the ownership and extent of the property attributed to the respondent were not disputed. From the respondent's side, RW1 was examined.

3. Heard both sides.

4. Points for consideration:

1. Whether the petition is allowable?
2. Reliefs and costs?

5. **Point Nos. 1 and 2:-** The EP is filed under Order XXI Rule 37 of the Code of Civil Procedure for arrest and detention of the judgment debtor. The petitioner has discharged the initial burden by producing Exhibit A1 and examining PW1, thereby establishing that the respondent owns 32½ Cents of land. However, no material was brought forth to rebut the petitioner's claim regarding the respondent's means. It is pertinent to note that there is no evidence of any improvements or income-generating activity on the said property. Nonetheless, mere absence of income from the property does not ipso facto establish lack of means, especially when ownership of substantial land is admitted. The respondent has failed to rebut the presumption of means. In the absence of any satisfactory explanation for non-payment of the decree debt, and considering the partial payment of ₹.13,000/- (Rupees Thirteen Thousand only), it is evident that the respondent is willfully withholding payment.

6. In **Jolly George Varghese v. Bank of Cochin (AIR 1980 SC 470: 1980 KLT 375)**, it was held that "There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasizes the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree." Therefore, I am of the view that respondent has sufficient means to pay the decree debt and has willfully abstained from paying it. These points are answered in favour of the petitioner.

In the result, the Execution Petition is allowed. Issue warrant of arrest against the respondent for realisation of the balance decree debt. The petitioner is entitled to costs.

(Dictated to Adalat-A1, arranged in proper form by Confidential Assistant, corrected and pronounced by me in open court on this day, the 1st day of November 2025).

Sd/-
M U N S I F F

Appendix:-

Petitioner's Witnesses:-

PW1 : Smt. Thushara. M.P. Bank Manager.

Plaintiff's Exhibits:-

A1.	14-09-2001	Copy of Document No. 1138/2001 of SRO, Panoor.
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Respondent's Witnesses:-

RW1 : Sri. Premachandran. T.K.

Respondent's Exhibits:- Nil.

Court Exhibits:- Nil.

Sd/-
M U N S I F F

Fair/Copy of Order in
EP No.706/2013 in
ARC.249/2020

Dated: 01-11-2025.