

**IN THE COURT OF THE SUB JUDGE OF MANJERI**

Present:- Smt. Beena Gopal, Sub Judge.

Saturday, the 22<sup>nd</sup> day of November 2025**EXECUTION PETITION No.25/2024****in ARC No. 251/2017****Between:-**

P No.534, Perinthalmanna Service Co-operative Bank  
represented by its Secretary, Perinthalmanna amsom ,  
desom and P.O., Perinthalmanna Taluk. PIN 679322. } Petitioner/  
Decree Holder

**And:-**

Shamsudheen M.P., 40 years, S/o Muhammad M.P.,  
Mathari Panankavil House, Panthallur amsom desom  
and P.O., Ernad Taluk. } Respondent  
Judgment Debtor

This petition coming on this day for hearing before me in the presence of Sri. Anil Thomas K, Smt. Susan Anil Thomas, Advocates for the petitioner and the respondent is called absent set exparte and the court passed the following:-

**ORDER**

As per the Award passed by the Malappuram Cooperative Society Joint Registrar (General) under the Cooperative Societies Act 1969, the judgment debtors were directed to pay ₹11,05,861/- with interest to the decree holder. Citing non-payment, the present execution petition was filed. The prayer in the petition is to detain the judgment debtor/ respondent in the civil prison for non-payment of the decree debt.

2. Initially notice under Order 21, Rule 37 of C.P.C. was issued to the judgment debtor calling upon the judgment debtor to answer the claim. Judgment debtor did not appear hence set exparte. The case was decreed in the year 2017

and the decree debt is more than Rs.11 lakhs. Hence, this EP.

3. The Judgment Debtor in this case was arrested and produced before the court on 01.08.2025 in pursuance of Order XXI Rule 37 notice and after recording his statement he was released on kichits. Thereafter, EP was posted for evidence on means meanwhile JD informed that he was not financially sound enough to engage a lawyer. Accordingly legal aid was provided to him. JD filed objection along with affidavit under Order XXI Rule 41. In the affidavit, it is stated that his family is now residing in a rental house and he has no bank accounts, share accounts, life insurance policy, house property, other movable property and he does not owe any security from others.

4. Heard both sides.

5. Points that arise for consideration are as follows:-

1. Whether the Decree Holder has succeeded in proving that judgment debtor has got sufficient means to satisfy the decree as prayed for?

2. What is the order to be passed?

6. **Points No.1&2.**

Decree holder was examined in chief on 06.08.2025 and he was cross examined on 3.11.2025 as PW1. Ext. A1 marked. Ext.A1 is the Cash Credit Application Form submitted by the respondent in decree holder bank. Judgement debtor has not adduced any evidence.

7. The Decree Holder gave evidence that the JD is running vehicle business in Mumbai accordingly he is getting ₹ 1,00,000/- per month. Except the property which was under mortgage, the judgement debtor is having other properties also. But when tested in cross-examination, the decree holder admitted that he had not produced any documents to prove the business as well as the property of JD.

8. In *Rajappan v. Shaju* (2009(4) KHC 602) it was 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.”*

9. By applying the dictum in the above decision in the case on hand, it could be seen that the decree holder has discharged his initial burden on him as mandated by Section 51 of the Code of Civil Procedure. He has given evidence as to the enquiry conducted by him regarding the means of judgment debtor. The judgment debtor on the other hand has not given any evidence and not even stepped into the box to give evidence to disprove the same.

10. In this juncture, it is beneficial to consider the decision of the Hon’ble Supreme Court of India in '**Vidhyadhar Vs.Manikrao & Ors**' ('AIR 1999 SC 1441'). It is held by the Hon’ble Supreme Court of India in the aforesaid decision that “ *16. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct* “ The Allahabad High Court in **Arjun Singh v. Virender Nath and Anr.** (AIR 1971 All 29) held that “*if a party abstains from entering the witness box, it would give rise to an inference adverse against him.*” Similarly, a Division Bench of the Punjab & Haryana High Court in **Bhagwan Dass v. Bhishan Chand and Ors.**(AIR 1974 P&H 7), drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.

11. It was held in **Rajendran v. Union Bank of India, 2023 (5) KLT 199** a mere contention of no means without specifying the details and without disclosing the assets and details of income and livelihood is fatal to the judgment debtor.

12. In the circumstances, it can only be held that the decree holder has established that the judgment debtor has sufficient means to discharge the decree debt and has wilfully refused to do so. The unchallenged testimony of PW1 goes to show that the judgment debtor has sufficient means to pay the decree debt and

has deliberately neglected to pay the decretal amount. Hence, it is found that the decree holder has come out successful in proving the means of the judgment debtor in the case on hand. Issue warrant of arrest against judgment debtor. Take steps, and for return of arrest warrant.

*(Dictated to the Confidential Assistant, typed by him, corrected and pronounced by me in open court, this, the 22<sup>nd</sup> day of November, 2025.)*

Sd/-  
Sub Judge

**APPENDIX**

**Witness examined for the Petitioner:-**

PW1          06.08.2025          Jamal Abdul Nasar

**Witness examined for the Defendant :- Nil**

**Exhibits marked for the Plaintiff:-**

A1          15.01.2015          Cash Credit Application Form

**Exhibits marked for the Respondent:- Nil**

Sd/-  
Sub Judge

Typed by: Sheeja T.P.  
Compared by: 1. Sheeja  
                  2. Shaini T.T.

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Copy of E.P. No. 25/24 in ARC 251/17  
Dtd : 22.11.2025.  
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