

IN THE COURT OF THE SUBORDINATE JUDGE OF TIRUR
Present: Smt. Vincy T.V, Subordinate Judge

Tuesday, the 26th day of August, 2025
the 4th day of Bhadra, 1947

EXECUTION PETITION No. 75/2023
(In O.S. No. 75/2021)

Between :

Alavikkutty, 67 years, S/o.Kunhimoideen,
Kothangath Parambil House, Pariyapuram amsom,
Panangattoor desom and Post, Tirur Taluk. } Petitioner
Decree Holder

And :

Abdurahiman, 43 years, S/o. Yahu,
Chenganakkattil Kunnasseri House,
Ponmundam amsom and P.O.,
Chilavil desom, Tirur Taluk. } Respondent
Judgement Debtor

This execution petition coming on the 23th day of August, 2025 for hearing before me in the presence of Sri. Gopi Kadavath, Advocate for the petitioner and of Sri. C.H.A. Shameem and Sri. K.H. Arshad Ayyoob, Advocates for the respondent and having stood over to this day for consideration, the Court passed the following:

ORDER

The EP is filed for realisation of a decree debt of ₹12,50,000/- with 6% interest awarded with cost of ₹1,95,214/-. The date of the decree is 30.06.2023.

The petition is filed under Order 21, Rule 38 of Civil Procedure Code, for arrest and detention of the respondent on the ground that the respondent has sufficient means to pay of the decree debt, but refuse to pay the same.

2. The respondent appeared after issuing Rule 37 notice. But did not file any counter when the case was posted for enquiry regarding the means of the respondent. The petitioner was examined as PW1, Exts.A1 and A2 documents were marked.

3. Heard both sides.

4. The point for consideration:-

1) Whether the respondent has neglected to pay the decree debt even if sufficient means to pay the same?

5. **The Point**:- The case of the petitioner is that respondent have sufficient means to pay the decree debt but he willfully neglected to pay the same. The petitioner was examined as PW1. He produced Ext.A1 in order to show that the decree holder purchased property by virtue of document No.1479/2004 of Kalpakachery SRO, on 06.05.2004 from one Mr.Nechikkat Aboobacker. Ext.A1 show that the property was purchased in the name of the respondent and his wife. Ext.A2 produced from the part of PW1 would show that the respondent purchased another property from Kunjumammed Haji by virtue of document No.2988/2005 of Kalpakanchery SRO.

6. In **Kuppuswamy v P. G. Menon (1992(2) KLT 203)** Hon'ble High Court held that though the initial burden of proof lies on the decree holder, strict proof of every details is not necessary. In that decision it has been observed in paragraph 6 as follows:- "It is true that the burden of proving the circumstances specified in S.51 CPC lies on the decree holder, strict proof of

every detail is not necessary. The decree holder should give some indication or details of the properties or assets of the judgment debtor. It is competent to the executing Court, on the materials placed before it, to draw an inference as regards the statutory finding required by S.51 of the CPC. The means to pay the amount of decree or substantial part thereof only mean that the judgment – debtor should have realisable assets from which necessary money can be raised or realised to pay up the decree amount.”

7. The requirement of S.51 CPC will be satisfied if the judgment debtors have means to pay the debt either from liquid resources or assets belonging to them which can reasonably furnish such resources. Here Exts.A1 and A2 documents are placed before this Court in order to draw inference as regards the statutory finding required by the section. Once the decree holder leads such an 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 exemption provided by the statute from arrest on a warrant for the default in discharging the decree debt is found in favour of the judgment debtor and he who claims that benefit must show to the satisfaction of the Court his incapacity and lack of means to discharge the decree debt. Here no rebuttal evidence has been adduced from the part of the respondent. Here it is pertinent to note that even after giving opportunity to cross-examine PW1, he did not avail that opportunity. Hence there is nothing to disbelieve and discredit the evidence adduced from the part of the PW1 as to the means of the judgment debtor.

8. Therefore, this Court is of the view that the petitioner has proved that the respondent has sufficient means to pay of the decree debt and he

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willfully neglected to pay the same. So the respondent is liable to be arrested and detained in Civil Prison for non payment of decree debt.

In the result,

- 1) The petition is allowed.
- 2) The respondent is to be detained in Civil Prison for a period of 1 month for his non payment of decree debt.
- 3) The petitioner shall deposit necessary batta within 7 days.

(Dictated to the confidential Assistant, transcribed by him, corrected and pronounced by me in open Court this the 26th day of August, 2025).

Sd/-
SUBORDINATE JUDGE

APPENDIX :

Witness examined on the side of petitioner :

PW1 : Alavikutty examined on 10.04.2025

Exhibits marked on the side of petitioner :

A1 : Certified true copy of Document No. 1479/2004 dated 06.05.2004

A2 : Certified true copy of Document No. 2988/2005 dated 29.09.2005

Witness and Exhibits for respondent : Nil

Sd/-
SUBORDINATE JUDGE

Typed by : Najuma C.M.

Compared by : a. Najuma C.M.

b. Anju P.

Order
in **E.P. 75/2023**
Dated 26.08.2025