

IN THE COURT OF THE MUNSIFF-MAGISTRATE, PATTAMBI

Present:- Smt.Neema Noor Mohamed, Munsiff-Magistrate

Tuesday, the 03rd day of March, 2026/ 12th Phalguna, 1947 S.E.

E.P.No.46/2023 IN

O.S. 229/2019

Between:-

Sukapuram Kurees Pvt.Ltd.

Reptd.by Managing Director,

K. Radhakrishnan,

Nannammukku Village,

Mookkuthala Desom, Ponnani Taluk.

: Decree Holder

Petitioner

And:-

1. Shamsudheen, Aged-38 years,
S/o.Abubacker Sidhique,
Pokkalathil House, Ongallur Village,
Kondurkkara Desom,
Pattambi Taluk.

: Judgment Debtors

Respondents

2. Fasal Rahman, Aged-39 years,
S/o. Veliyath Veettil Muhammed,
Ongallur Karakkad Desom,
Pattambi Taluk, Palakkad District.

3. Faisal, Aged-41 years,
S/o.Elayarthody Veettil Hamsa,
Ongallur Maruthur Desom,
Pattambi Taluk, Palakkad District.

This petition coming on this day for final hearing before me in the presence of Sri.Prasad.K and Greeshma Gopal, Advocates for the petitioner and of Sri.T.Ramanunni, Advocate for R1 and R3 , R2 not appeared either in person or by counsel and this court on the same day passed the following.

ORDER

This Execution Petition is filed under Order XXI Rule 37 of the Code of Civil Procedure seeking arrest and detention of the judgment debtor in civil prison for realization of the decree debt. Notice was ordered and served on the judgment debtor. On appearance, the judgment debtor filed objection contending that he has no means to discharge the decree debt.

2. In view of the plea of want of means, this Court conducted an enquiry as contemplated under Order XXI Rule 40 CPC. The necessity of such enquiry when the judgment debtor disputes his means has been reiterated by the Hon'ble High Court of Kerala in ***Dileepkumar v. Sriram Transport Finance Co. Ltd & Ors*** 2022 LiveLaw (Ker) 41.

3. During enquiry, the decree holder filed affidavit stating that the judgment debtor is engaged in business activities and has sufficient means to discharge the decree debt. The decree holder also produced Exts. A1 and A2 to substantiate his contention regarding the financial capacity of the judgment debtor. Exts. A1 and A2 are documents evidencing proceedings initiated by the judgment debtor in cheque dishonour cases, wherein amounts are allegedly due to him from the accused/chit company. According to the decree holder, the said proceedings show that the judgment debtor is entitled to receive substantial amounts and, therefore, cannot plead total absence of means.

4. The decree holder was cross-examined. The judgment debtor was thereafter examined. He denied having sufficient means and contended that the alleged income is irregular. However, he admitted that he is engaged in scrap business and earns income whenever such work is available. He has not produced any material to establish that he is wholly incapable of discharging the decree debt. Significantly, he has not disputed the pendency of proceedings reflected in Exts. A1 and A2, nor has he established that the amounts claimed therein are illusory or irrecoverable.

5. The legal position governing burden of proof has been laid down by the Hon'ble High Court in ***Rajappan v. Shaju, 2009 (4) KHC 602*** wherein it has been 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 such means with documentary evidence in all cases. Once the decree holder adduces evidence indicating the existence of means, the burden shifts to the judgment debtor to establish his incapacity and lack of means to the

satisfaction of the Court. The statutory exemption from arrest is carved out in favour of the judgment debtor, and he who claims such benefit must prove his inability.

6. In the present case, apart from the oral evidence regarding business activities, Exts. A1 and A2 disclose that the judgment debtor has enforceable monetary claims against third parties. The existence of such receivables is a relevant circumstance in assessing his financial capacity. The judgment debtor has not adduced convincing evidence to show that the amounts covered by Exts. A1 and A2 are not recoverable or that he is otherwise incapable of satisfying the decree. His admission regarding engagement in scrap business further weakens the plea of total absence of means.

7. On an overall appreciation of the evidence, this Court is satisfied that the decree holder has discharged the initial burden of showing that the judgment debtor is possessed of means. The judgment debtor has failed to establish, to the satisfaction of this Court, that he is incapable of discharging the decree debt. The requirements under Section 51 CPC read with Order XXI Rule 40 CPC are therefore satisfied.

In the result

It is found that the judgment debtor has means to discharge the decree debt and has failed to prove his incapacity. Issue warrant of arrest under Order XXI Rule 40 CPC.

Pronounced by me in open court, this the 03rd day of March, 2026.

Sd/-
Munsiff

Witness examined & Exhibits marked on both sides : Nil

Sd/-
Munsiff

Copied by : Sulochana.M
Compared by : Sivadasan.M.V. (True copy)

Munsiff

Fair/Copy of Order
in E.P. No.46/2023
in O.S.229/2019
Dated: 03.03.2026.