IN THE COURT OF MUNSIFF, THIRUVALLA

Present:-Sri. Aravind S.J, Munsiff.

Friday the 10th day of April 2026/ 20th day of Chaitra 1948 SE.

EP 21/2023

BETWEEN

Vadakkemuriyil Finance Com Ltd Rep By Managing Director Anu.T.George, Vadakemuriyil Veedu Thottappuzhassery Village Thiruvalla	Decree Holder

(Adv. Manoj Mathew)

AND

1. Leelamani, Kuzhivelil Veedu, Padimon P.O., Kottangal Village, Mallappally Taluk, Pathanamthitta District. 2. Sumesh Kumar P M, Melethu Kunnel Veedu, Pariyaram P.O., Mallappally Village, Mallappally Taluk.	Judgement Debtor

(Adv. L.Prameela for JD2)

This Execution Petition coming on for hearing on 10.04.2026 and on the same day the court passed the following:-

ORDER

The afore numbered execution petition is filed for realising an amount of Rs 2,33,939/- from the Judgment Debtors. Notice under Order 21 Rule 37 was issued to 2nd Judgment debtor alone as the 1st Judgment Debtor is a lady. The 2nd judgment debtor appeared. The 2nd Judgment Debtor had filed EA No. 2/2026 seeking permission of this court to pay the decree debt in instalments. As the Decree Holder was not amenable for the same, the said petition was dismissed by this Court.

2. The Decree holder was examined as PW1. No documentary evidence was adduced by the Decree Holder. No evidence was adduced by the 2nd Judgment Debtor

3. Heard.

4. I have gone through the materials on record and the evidence adduced. The decree passed would show that the Decree holder was allowed to realize a sum of Rs 1,77,990/- with interest @24% per annum from the date of suit till date of decree and thereafter @6% per annum till date of actual realization of the amount. The Decree Holder in the case was examined as PW1. He filed affidavit in lieu of Examination in Chief stating that the 2nd Judgement Debtor has sufficient means to pay the decretal amount. It is stated that the 2nd Judgment Debtor is doing timber business and he gets an income of at least Rs 50,000/- per month and that he is also an empanelled Driver of KSRTC and gets salary of not less than Rs 20,000/-.

5. The honourable High court of Kerala in **Rajendran v. Union Bank of India** (2023(5) KHC 598) held that "*The upshot of the discussion is that though it is permissible for the decree holder to assert the ability to pay or means to pay the decree amount either in whole or any substantial part of it by direct evidence or through document or by both, that does not mean that the initial burden would always be on the decree holder regarding the assets, movable or immovable, income held by the judgment-debtor so as to satisfy 'means to pay' or the contrary. <u>But it is solely on the judgment-debtor to prove and establish that he has no sufficient means to pay the decree amount in whole or any substantial part of it.</u> <u>But being the evidence adduced negative in nature, an assertion from the part of the judgment-debtor that he has no means to pay the decree amount would discharge the initial liability, but for that purpose, the judgment-debtor should mount on the box to give direct evidence and to testify the same by cross-examination.</u> The liability, which can be fastened against the decree holder is to give a precise details of income and assets held by the judgment-*

debtor. Necessarily, it should reflect in the cross-examination of the judgment-debtor by the decree holder so as to explain to the satisfaction of the court regarding availability or non-availability of any such asset or income and why it was not disclosed.”

6. The honourable High Court of Kerala in **Rajappan v. Shaju** (2009(4) KHC 602) had 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.”*

7. The honourable High Court of Kerala in **Kuppuswamy v. P.G Menon** (1992 (2) KLT 203) had held that “*It is true that the burden of proving the circumstances specified in S.51CPC 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 question whether there are circumstances justifying the order for arrest is one of fact. - See R.M. Jassawala v. Amulya Chandra (AIR 1940 Allahabad 494). I am of the view that the requirement of S.51 CPC will be satisfied if the judgment debtor has means to pay the debt either from liquid resources or assets belonging to him which can reasonably furnish such resources. It is open to the execution court on the materials placed before it, to draw an inference as regards the statutory findings required by the section. If there is prima facie material on record about the means of the judgment debtor, it is for the judgment debtor to rebut. He is in a better position to know of his assets”*.

8. It is with these principles in mind that the present petition is to be considered. Even though PW1 was offered for cross examination, the 2nd Judgment Debtor did not cross examine PW1. Thus, the oral evidence of PW1 remains

unchallenged. When the decree holder has stated the nature of business of the 2nd Judgment Debtor and his income, the burden is upon the 2nd Judgement debtor to mount the witness box and give evidence or produce any other sufficient material to prove his bona fides and good faith or inability to pay the decree amount. He has failed to discharge the said burden. Thus, this court is of the opinion that the 2nd Judgment debtor has sufficient means to discharge the decree debt and he has deliberately avoided payment of the decree amount from the date of decree till this date and have still the means to pay decree amount. In the light of the findings made above, the decree is liable to be executed by arrest and detention of the 2nd Judgment Debtor. The period of detention would be fixed after the arrest and production of the 2nd Judgment Debtor.

In the result, It is ordered that the decree in this case be executed against the 2nd Judgment Debtor by his arrest and detention in civil prison.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open Court, this the 10th day of April 2026.

Sd/-

ARAVIND S.J
MUNSIFF

APPENDIX

Witness examined:

PW1-Anu.T.George

Id/-

MUNSIFF

Fair/Copy of Order in
EP 21/2023
Dated 10.04.2026