

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge,
Madurantakam.**

**Monday, this 30th day of March, 2026
E.P No. 45/2025
in
I.A No. 1/2020
in
H.M.O.P No. 33/2017
(CNR.No.TNCG13 – 000578-2025)**

Banupriya

...Petitioner/Decree Holder

// Vs //

Thiyagu

...Respondent/Judgment Debtor

This petition coming before me on 18.02.2026 for final hearing in the presence of Mr.V.Agoram, Counsel for the Petitioner/Decree Holder and M/s.E.Sivalingam and S.Jayaraj, counsel for Respondent/Judgment Debtor and Respondent/Judgment Debtor was called absent and set ex-parte and upon hearing arguments on the side of the Decree Holder and having stood over for consideration till this day, this court delivers the following:-

ORDER

The petitioner has filed this petition under Order XXI Rule 37 and 38 of the Civil Procedure Code praying for an order to arrest the Respondent/Judgment Debtor for non-complying the order passed by the court.

2. Petition in brief:

Hon'ble court has ordered to pay maintenance of sum of Rs. 5000.00 per month to the petitioner by the respondent by its order dated 13.07.2023. In spite the respondent failed to oblige the same. Hence this petition.

3. Counter of respondent in brief:

The respondent denies all the allegations set out in the affidavit. The respondent/Judgment Debtor is working as an operator of an overhead water tank in Villipakkam Village, derive a monthly salary of Rs. 5,280/- (Rupees Five Thousand Two Hundred and Eighty only), which amounts to an annual income of Rs. 63,360/- (Rupees Sixty-Three Thousand Three Hundred and Sixty only). On the other hand, the petitioner is earning more than Rs. 30,000/- per month from a private employment. Despite being fully aware that the respondent/Judgment Debtor has very limited income, the petitioner has filed the present petition. The respondent/Judgment Debtor is residing in a house belonging to a joint family property and has no independent source of income other than the monthly salary of Rs. 5,280/-. Apart from this, he has no other means of income. Respondent/Judgment Debtor is not in a position to pay the amount of Rs.3,36,020/- as mentioned in the execution petition at present through this Court. Hence, the respondent prays that this Court to grant reasonable time to pay the said amount. Petitioner/Decree Holder has also filed incorrect calculations in the petition. Respondent has annexed along with this counter a copy of the expenditure statement for the month of January 2026 dated 02.01.2026, along with a recommendation certificate obtained from the Panchayat where he is employed. Hence this petition is liable to be dismissed.

4. No oral or documentary evidence adduced by both parties.
5. Heard both sides. Perused the records carefully.

6. Point:***Whether this application can be allowed or not?***

The Petitioner/Decree Holder has filed the present Execution Petition under Order XXI Rules 37 and 38 of the Code of Civil Procedure seeking arrest of the Respondent/Judgment Debtor for non-payment of the maintenance amount as ordered by this court.

The Respondent/Judgment Debtor, defends that he is having very limited income and is working as an overhead water tank operator earning a sum of Rs.5,280/- per month and that he has no other source of income and hence he is not in a position to pay the decree amount at present and prays for grant of time.

The rival contentions thus raise the main issue for consideration: (i) whether the respondent has, despite having sufficient means, willfully neglected to pay the decree debt so as to warrant an order of arrest under Order XXI Rule 37 and 38 CPC.

The court has carefully considered the prayer, the pleadings and the submissions of both parties. The existence of a valid order dated 13.07.2023 in favour of the petitioner directing the respondent to pay a sum of Rs.3,36,020/- is not in dispute. The respondent has not denied the order but has taken a defence that he is not having sufficient means to discharge the decree amount.

It is the specific case of the respondent that he is earning only a meagre sum of Rs.5,280/- per month and has no other independent source of income and is residing in a joint family property. However, except making such averments and filing certain documents, the respondent has not produced sufficient materials to conclusively establish that he has no means whatsoever to pay the decree amount. At the same time, there is also no convincing material placed by the petitioner to show that the respondent is having sufficient means and is willfully evading payment.

Respondent herein admitted that he was employed and derive monthly income. Though he produced documents to show that he earned a sum of Rs. 5280.00 per month. But those documents not exhibited by way of evidence. Apart from that the

said documents issued by the president of the said village, who was not examined before the court to prove the same. But it shows that the respondent was an employee in a concern. This would pellucid that the respondent had sufficient means. Order of the court was passed in the year 2023. But even after passing of 3 years, the respondent fails to oblige the order. Defence that the respondent was not in position to pay the interim maintenance cannot be countenanced, as this court cannot go behind the order passed by this court. So, the defence of the respondent cannot be taken at this stage. No materials placed to show that the order of the court was stayed or varied. So, there is no bar to allow this petition.

In summation of above said discussions, there is no doubt that the respondent himself admitted that he is an employee in a concern. There is no records placed to show that the respondent had no means. Hence the petition is liable to be allowed as the respondent inspite of order of court, failed to pay the maintenance amount and this point is decided accordingly.

7. Result:-

In the result, this petition is allowed with costs. Arrest the respondent/judgment debtor. Call on 21.04.2026. Batta in 3 days.

Dictated by me to the Steno-Typist, typed by him in the computer directly, corrected and pronounced by me in the open court, this the 30th day of March, 2026.

Subordinate Judge
Madurantakam.

Both sides Witnesses and Documents:- - Nil -

Subordinate Judge
Madurantakam.

TNCG130005782025



FAIR/DRAFT ORDER

E.P. No. 45/2025

in

I.A No. 1/2020

in

H.M.O.P No. 33/2017

D.O.D. 30.03.2026

SUB JUDGE,

MADURANTAKAM