

IN THE COURT OF THE I ADDITIONAL SUBORDINATE JUDGE, ERODE.
PRESENT : THIRU. G. ASHOK PRASATH, B.A., B.L., M.S.E.N.,
I ADDITIONAL SUBORDINATE JUDGE, ERODE.

On Friday, the 17th day of October 2025

On Thiruvalluvar Varudam 2056, Tamil Visuvavasu Year, Puratasi Thingal 31st day

CNR.No.TNED02-001085-2024

E.P.No.17/2025

in

OS.No.630/2018

1. Sathyamoorthi(died)

2. Mallika

3. Hariharan

.. Petitioners/2, 3 Petitioners

1st petitioner/Legal heirs of
Plaintiff/Decree holder

/vs/

P.Thangavel

...Respondent/Defendant

This petition has come up on 15.10.2025 for final hearing before this court in the presence of Thiru.S.Duraisamy, learned advocate for the petitioners, Thiru.S.Velmurugan, learned advocate for Respondent, upon hearing both sides, on perusal of available materials on record and having stood over for consideration till this day, this court delivers the following:-

ORDER

This Petition has been filed Under Order 21 Rule 11(2) of CPC for arrest of JD.

2. The Brief Averments of the Petition are as follows.:-

3. It is stated that the decretal amount, along with interest and costs as reflected in Columns No 7 and 8 of this petition, for which notice is to be issued to the respondent for the realization of the decretal amount as mentioned supra failing which the respondent has to be arrested and sent to civil prison for the realization of the decretal amount which was mentioned above. Hence the Petition.

4. The Brief Averments of the counter filed by the Respondent are as follows:-

5. All the allegations stated in the Petition were denied as false, except that a few were admitted as true.

6. It is stated that the petitioner obtained the decree in OS.No:630/2018 on 8.2.2024. Based on the above decree, this petitioner filed this petition. It is further stated that the respondent preferred the Appeal against the above decree before the Honourable Principal District Court, Erode and the respondent was a pauper, for which a petition was also filed along with the Appeal because the respondent was unable to pay the court fee. The respondent also has a chance of success in the Appeal proceedings. The respondent stated that he didn't know the petitioner. This respondent and one Chandra Sekar had jointly done a business and thereby got a profit from the business, and that profit was divided equally between them. Furthermore, the said Chandra Sekar had opened the bank account in the name of his friend's address. This respondent frequently went away from his native place because of his business transactions. At that time, he made his signature on the blank cheques and the same was given to Chandra Sekar; moreover, there was a loss in the business, the said Chandra Sekar had filled up the above blank cheques and thereby he filled up the amount of Rs 4,50,000/- and filed the suit. This respondent has no way connected to the above suit. Further, the suit was filed by the 1st petitioner, and he died; then 2nd and 3rd petitioners were added as necessary parties in the suit. Therefore, this respondent didn't know the above petitioners and thereby the petitioners obtained the fabricated decree against the respondent.

7. It is further stated that the respondent didn't know SathyaMoorthy. The said Chandra Sekar and the 1st petitioner filled up the above-mentioned blank cheques, which were signed by the respondent and thereby with a bad intention that the petitioner filed this petition to collect the money from the respondent. The respondent has no sufficient means, which was the reason that he filed the Insolvency Petition before the IInd ASJ, Erode. The amounts mentioned in Columns 7 and 8 were falsely mentioned. It is therefore, the petitioner has no right to file this

petition against the respondent because the respondent filed the above insolvency petition. Hence, this Petition is liable to be dismissed with costs.

8. Heard Both sides, No oral and documentary evidence adduced on either side, whether the petition deserves to be allowable or not?

On Point:-

9. The petitioner side contended that the decretal amount, along with interest and costs as reflected in Columns No 7 and 8 of this petition, for which notice is to be issued to the respondent for the realization of the decretal amount as mentioned supra failing which the respondent has to be arrested and sent to civil prison for the realization of the decretal amount which was mentioned above. Whereas the other side contended that the petitioner obtained the decree in OS.No:630/2018 on 8.2.2024. Based on the above decree, this petitioner filed this petition. It is further stated that the respondent preferred the Appeal against the above decree before the Honourable Principal District Court, Erode and the respondent was a pauper, for which a petition was also filed along with the Appeal because the respondent was unable to pay the court fee. The respondent also has a chance of success in the Appeal proceedings. The respondent stated that he didn't know the petitioner. This respondent and one Chandra Sekar had jointly done a business and thereby got a profit from the business, and that profit was divided equally between them. Furthermore, the said Chandra Sekar had opened the bank account in the name of his friend's address. This respondent frequently went away from his native place because of his business transactions. Due to the above reasons, the respondent made his signature on the blank cheques and the same was given to Chandra Sekar; moreover, there was a loss in the business, the said Chandra Sekar had filled up the above blank cheques and thereby he filled up the amount of Rs 4,50,000/- and filed the suit. This respondent has no way connected to the above suit. Further, the suit was filed by the 1st petitioner, and he died; then 2nd and 3rd petitioners were added as necessary parties in the suit. Therefore, this respondent didn't know the above petitioners and thereby

the petitioners obtained the fabricated decree against the respondent. It is further contended that the respondent didn't know SathyaMoorthy. The said Chandra Sekar and the 1st petitioner filled up the above-mentioned blank cheques, which were signed by the respondent and thereby with a bad intention that the petitioner filed this petition to collect the money from the respondent. The respondent has no sufficient means, which was the reason that he filed the Insolvency Petition before the IInd ASJ, Erode, whereas the petitioner already sufficiently proved the means, which is enough to address the core issue of this petition. The amounts mentioned in Columns 7 and 8 were falsely mentioned. It is therefore, the petitioner has no right to file this petition against the respondent because the respondent filed the above insolvency petition.

10. At this juncture this court relied upon Periyammal (Dead) Through Lrs & Ors. Versus V. Rajamani & Anr. Etc. 2025 Live Law (SC)293, wherein our Honourable Apex Court held that "The seeker of justice many a time has to take long circuitous routes, both on account of hierarchy of courts and the procedural law. Such persons are and can be dragged till the last ladder of the said hierarchy for receiving justice but even here he only breathes fear of receiving the fruits of that justice for which he has been aspiring to receive. To reach this stage is in itself an achievement and satisfaction as he, by then has passed through a long arduous journey of the procedural law with many hurdles replica of mountain terrain with ridges and furrows. When he is ready to take the bite of that fruit, he has to pass through the same terrain of the procedural law in the execution proceedings, the morose is writ large on his face. What looked inevitable to him to receive it at his hands distance is deluded back into the horizon. The creation of the hierarchy of courts was for a reasonable objective for conferring greater satisfaction to the parties that errors, if any, by any of the lower courts under the scrutiny of a higher court be rectified and long procedural laws also with good intention to exclude and filter out all unwanted who may be the cause of obstruction to such seeker in his journey to justice. But this

obviously is one of the causes of delay in justice. Of course, under this pattern the party wrongfully gaining within permissible limits also stretches the litigation as much as possible. Thus, this has been the cause of anxiety and concern of various authorities, legislators and courts. How to eliminate such a long consuming justice? We must confess that we have still to go a long way before true satisfaction in this regard is received. Even after one reaches the stage of final decree, he has to undergo a long distance by passing through the ordained procedure in the execution proceedings before he receives the bowl of justice. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court, and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to. 26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence, which may be frivolous. This drags the execution proceedings indefinitely. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree. Execution proceedings should not be used to re-litigate issues already decided in the

suit. The executing court's role is limited to ensuring the decree is executed, not to question its validity. It reaffirms the principle that executing courts cannot go behind the decree or re-adjudicate issues already decided in the suit.

11. In light of the above aspect of grounds, the petitioner obtained the decree on 8.2.2024; thereafter, the respondent has not come forward to settle the decretal amount with subsequent interest and costs to the petitioner. So, the petitioner filed this petition only to execute the decree in respect of the realization of the amount as mentioned in columns 7 and 8 of this petition. Whereas the respondent side contended that the respondent preferred the Appeal against the decree in the above suit, but there were no particulars and details furnished by the respondent because the same was not reflected in the counter filed by the respondent. Furthermore, the respondent side stated that he didn't know one Chandra Sekar and the 1st petitioner. The respondent made his signatures on the blank cheque which was used and filled up by Chandra Sekar for an amount of Rs 4,50,000/- and then presented the above blank cheque in the name of the 1st respondent for collection which were all not entertained by this court because this court is execution court, therefore the execution court cannot travel beyond the decree or cannot go behind the decree, therefore the issues were settled at the trial proceedings, therefore the respondent cannot relitigate the matter before the execution court which cannot be entertained by this court because as per directions of the Honourable Apex Court. So, the respondent only has the chance to raise the issues as stated in the counter, only before the Appeal forum. Moreover, the respondent side stated once again that the insolvency petition filed by the respondent before the IInd ASJ, Erode, for which there are no particulars or details, was not given by the respondent, and the same was also not mentioned in the counter. Further, the respondent was a pauper, for which there is no proof of records and evidence established by the respondent's side, but the same was merely stated in the counter, which cannot be acceptable. Furthermore, the respondent failed to furnish the security in respect of the decretal amount as mentioned in the petition.

Therefore, the respondent is only to adopt the delay tactics and keep the matter pending forever without any kind of progress, which cannot be entertained because the fruits of the decree cannot be spoiled. It is therefore the respondent is directed to pay the decretal amount along with interest and costs as mentioned above, failing which the respondent has to be arrested and sent to civil prison for the realization of the decree. Arrest by 19/11/2025. Given the above aspect of the reasons, this Petition stands allowed with costs.

As a result, this Petition stands allowed with costs.

Dictated to the Steno-typist and typed by him directly in the computer, corrected and pronounced by me in open court, on this the 17th day of October 2025.

I Additional Subordinate Judge,
Erode.

Petitioner and Respondent side Witness and Documents:

-Nil-

I Additional Subordinate Judge,
Erode.

Draft/Fair Order

EP.No.17/2025 in

OS.No.630/2018

Dated.17.10.2025

I ASJC, Erode.