

**IN THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THIRUVALLUR @ POONAMALLEE**

**Present : Tmt. G. Bhuvanewari, B.L.,
II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

On this Friday, the 31st day of October 2025

E.P. No.21 of 2020 in Arbitration Case No.489 of 2019

M/s. Shriram Transport Finance Co. Ltd.,
represented by its authorised representative

Mr. Raveendran,

Having its office at 3rd Floor, No.4, Lady Desika Road,

Mookambika Complex, Mylapore,

Chennai – 600 004.

.. Petitioner /Award/ Decree Holder

- Vs -

1. Mr. N. Arul Jothi,

O.No.10, N.No.2,

Mullath Thottam 4th Street,

Poonamallee, Chennai – 600 056.

2. Mr. N. Ashok Kumar,

O.No.10, N.No.2,

Mullath Thottam 4th Street,

Poonamallee, Chennai – 600 056.

.. Respondents / Judgment Debtors

This petition was coming up for final hearing before me on 10.10.2025 in the presence of Mr.S.Jayaprakash, Mr. V. Nirmalraj and S. Mahabu, learned counsel for Petitioner/Decree Holder and M/s. V. Saravanan, J. Manobalaji and

M. Ramya learned counsel for 1st Respondent/Judgment Debtor-1 and 2nd Respondent/Judgment Debtor-2 called absent and set exparte and on perusal of entire materials records and upon hearing the arguments on Petitioner's side and having stood over till this day for consideration this Court passed the following :

ORDER

This petition filed by the Petitioner/Decree Holder under order 21 Rule 37 and 38 of CPC for realisation of the amount of Rs.12,24,481/- as per the Decree passed in Arbitration Case No.489 of 2019 dated 28.09.2019 and sought arrest and detention of the Judgment Debtor-1 and Judgment Debtor-2 in the Civil Prison.

2. In spite of notice returned as vacated, paper publication effected against the 2nd Respondent/Judgment Debtor-2, he did not appear before this court and he was set exparte. The 1st Respondent / Judgement Debtor -1 appeared through his counsel and filed his counter as follows :

3. **The brief facts of the Counter filed by the 1st Respondent / Judgement Debtor -1 :**

The judgment debtor denies all the allegations contained in the Arbitration Award and Execution Petition except those that are specifically admitted. He states that he has been running a transport business under the name and style

of Drowpathy Amman Transport for the past 30 years. In 2009, he approached the decree holder for a vehicle loan. The decree holder showed him a second-hand vehicle bearing Registration No.TN30Y-3736 and entered into a Loan-cum-Hypothecation Agreement on 31.07.2009 for the purchase of a TATA LPT 2515 TURBO FBT vehicle for a total loan amount of Rs.4,00,000/-. The said amount was paid by the decree holder directly to the previous owner, Mr. A. S. Krishnamoorthy. After purchasing the vehicle, the judgment debtor regularly paid the monthly loan instalments till September 2011. During that period, he repeatedly requested the decree holder to hand over the vehicle's original RC book. However, due to non-availability of the RC book, he was unable to use the vehicle on highways or even locally. As the decree holder failed to provide the RC book despite repeated requests, he stopped using the vehicle from September 2011 onwards.

He further states that he has already paid more than Rs.3,86,650/- towards EMI to the decree holder's finance company. In 2018, a field officer from the decree holder's company met him and requested him to settle the dues under an OTS scheme for Rs.1,60,000/-. The judgment debtor expressed his willingness to pay Rs.1,00,000/- as full and final settlement, but his proposal was not accepted. Subsequently, the decree holder's company, by suppressing these facts, filed the Arbitration O.P. and obtained an ex parte order from the Hon'ble Sole Arbitrator.

Based on that *ex parte* award, the decree holder filed the present Execution Petition and obtained an *ex parte* arrest order on 16.03.2023, without ever serving notice on the judgment debtor. He came to know of this only after the issuance of the arrest warrant, upon verification of the court records through his counsel. He submits that his absence in the proceedings was neither willful nor wanton but due to the reasons stated above.

He asserts that he has a valid and bona fide defence on merits in the case and was not given any opportunity to present his case during the arbitration proceedings. The judgment debtor is still willing to settle the dues amicably, as he has suffered considerable losses in his business. The 1st judgment debtor prays to grant him an opportunity and time to settle the dues amicably.

4. On the side of the Decree Holder/Plaintiff and the 1st Respondent side, no witnesses were examined and no documents were marked. Arguments heard on the side of the Petitioner and 1st Respondent.

5. Now, the point for consideration before this court is whether the order for arrest should be issued against Judgment Debtor No.1 and Judgment Debtor No.2 or not ?

6. The petitioner filed the main Execution petition under Order 21 Rule 37 and 38 of CPC for realisation of the amount of Rs.12,24,481/- as per the Decree passed in Arbitration Case No.489 of 2019 dated 28.09.2019 and sought arrest

and detention of the Judgment Debtor-1 and Judgment Debtor-2 in the Civil Prison. Although notice was served to 2nd Respondent/Judgment Debtor-2, he did not come forward to contest the main execution petition, and it was set exparte against him on 15.07.2022. Now, it has to consider the relief sought by the petitioner under Order 21, Rules 37 and 38, as well as Sections 51 and 58 of the CPC Order 21 rule 37 reads as follows :

Order 21 rule 37. Discretionary power to permit judgment-debtor to show cause against detention in prison.—

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall , instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison :

[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.

(2)Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

7. In compliance with the above provision, this court issued notice to Judgment Debtor-2, but he did not appear before this court to put forth their contentions.

8. In these circumstances, the Hon'ble High Court, in the following case, directed the EP court that before issuing orders for the arrest of the Judgment Debtor, it is necessary to inquire into the means of the Judgment Debtor to

realize the decree amount.

Ganesh v. Sankaran and another reported in 2006 (3) CTC 546

The Executing Court must interfere and ordering arrest of judgment-debtor, the Executing Court also shall hold an enquiry and give finding as to current means of judgment-debtor to discharge decree before the order of arrest and the Execution Court should follow the procedure laid down under Order 21 Rules 37 and 38.

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9. In compliance with the above provision, that the Judgment Debtor-1 and Judgment Debtor-2 has sufficient means to fulfill the decree amount. The Judgment Debtor-1 and Judgment Debtor-2 are doing business and each earning a sum of Rs.60,000/- per month and they are also having cash in hand Rs.9,50,000/-. The Respondents/Judgment Debtor-1 and Judgment Debtor-2 are having sufficient means to satisfy the decree amount but they are evading paying the decree amount. On considering the above, this court concluded that Judgment Debtor-1 and Judgment Debtor-2 has sufficient means to fulfill the decree amount and it appears that Judgment Debtor-2 he did not appear before this court in order to evade the execution of the decree. The averments stated in the Counter of Judgment Debtor – 1 is not satisfactory since no documents were produced to prove his contents.

10. The Section 58 of the CPC prescribes various modes of executing a decree, and the choice of mode is at the discretion of the Decree Holder. In this regard the Hon'ble Madras High court in the following case hold that

**Indian Kanoon - <http://indiankanoon.org/doc/104213146/>
T.Dharmalingam vs K.P.Bharathi on 6 February, 2017**

A.Chetty v. A.Rangan reported in 2002 (1) MLJ 546, it is held that the decree holder is at liberty to seek for any mode of relief which is easier for him to recover the decree amount. The same was already considered by the Hon'ble Supreme Court in a case of State Bank of India v. Messers Indexport Registered and others reported in AIR 1992 SC 1740, it is held that it is the right of decree holder to proceed with it in a way he likes.

11. In light of the above principle, the present Decree Holder has chosen the mode of arrest of Judgment Debtor -1 and Judgment Debtor - 2 are not affected by any provisions.

12. Therefore, in the aforementioned circumstances, after complying with the provisions of Order 21, Rule 39, and Section 57, and after paying the necessary fees, Judgment Debtor-1 and Judgment Debtor-2 ordered to be arrested.

In the result, Judgment Debtor No.1 and Judgment Debtor No.2 are ordered to arrest on payment of batta. Call on 19.12.2025.

This order is dictated to steno-typist, directly typed by her in computer, after making necessary corrections and pronounced by me in the Open court, today this the 31st day of October 2025.

**II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

Witnesses and Exhibits on both sides : Nil.

**II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

Draft/ Fair Order
E.P. No.21 of 2020
in Arb. No.489 of 2019
Date : 31.10.2025
II A.D.S.C., Poonamallee.