

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

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

On this Tuesday, the 20th day of January 2026

E.P. No.37 of 2016 in C.S No.92 of 1998

M/s. Industrial Venture Capital Limited,
rep by its Law Officer A. Hema Jothi,
'Vairama' 112, Thyagaraya Road,
T-Nagar, Chennai - 600 017.

Having its registered office currently at

No : 10, R-Block, II Floor,
Prem Nagar Colony,
South Boag Road,
T- Nagar, Chennai -600 017.

.. Decree Holder / Plaintiff

- Vs -

1. Maruthi Textiles Limited,
Railway station road, Keelapattu,
Nagari-517 590,
Chittoor District,
Andhra Pradesh.

2. Aditya Mundra,
S/o.Mr. B.Mundra, aged about 56 Years
S-52, 20th Street, Anna Nagar (West)
Chennai-600 040.

Presently Residing at:
No: 135, Vasantha Street,
Golden George Nagar,
Mugappair,
Chennai - 600 037.

.. Judgment Debtors / Defendants

This petition was coming up for final hearing before me on 06.01.2026 in the presence of M/s. M. Rajesh, P. Karunakaran, P. Dinesh Kumar and M. Jayaseelan, learned counsel for Decree Holder / Plaintiff and M/s. P.K. Srinivasan, K. Venkateswaran and B. Aravindan, learned counsel for 2nd Judgment Debtors / 2nd Defendants and 1st Judgment Debtors / 1st Defendant 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 Decree Holder / Plaintiff under order 21 Rule 10 and 11 of CPC for realisation of the amount of Rs.37,82,892.67/- as per the Decree passed in C.S. No.92 of 1998 dated 13.06.2008 and sought arrest and detention of the Judgment Debtor-2 in the Civil Prison.

2. In spite of notice received, the Judgement Debtor -1 did not appear before this court and he was set exparte. The Judgement Debtor -2 appeared through his counsel and filed his counter as follows :

3. The brief facts of the Counter filed by the 2nd Judgement Debtor / 2nd Defendant are as follows :

The respondent denies all averments except those expressly admitted and contends that the execution petition is unenforceable in law due to subsequent events. The decree relied upon is an ex parte money decree arising out of transactions with Judgment Debtor-1, Maruthi Textiles Ltd., which has since gone into liquidation. Despite being aware of the insolvency proceedings, the decree holder has continued the execution and sought civil arrest of the respondent without proving that he has sufficient means to satisfy the decree, rendering the means affidavit untenable.

It is stated that insolvency proceedings were initiated against Judgment Debtor-1, before the National Company Law Tribunal, and a public announcement was issued calling upon creditors to submit their claims before the Interim Resolution Professional by 21.02.2019. In view of this development, the decree holder is required to work out his remedy only by filing a claim before the Interim Resolution Professional and cannot proceed with the present execution.

The respondent further states that the loan was availed for running the textile company, which subsequently suffered heavy losses due to industry downturn and non-payment by purchasers, leading to the company being declared sick and failing revival efforts. These facts were known to the decree holder but were suppressed, and the execution proceedings are alleged to be a misuse and abuse of the process of court, filed with an intention to harass the respondent. In view of the insolvency and liquidation proceedings and the suppression of material facts, the execution petition is stated to be devoid of merits and liable to be dismissed.

4. On the side of the Decree Holder/Plaintiff and the 2nd Judgment Debtor/ 2nd Defendant side, no witnesses were examined and no documents were marked. Arguments heard on the side of the Decree Holder/Plaintiff and the 2nd Judgment Debtor/2nd Defendant.

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 10 and 11 of CPC for realisation of the amount of Rs.37,82,892.67/- as per the Decree passed in C.S. No.92 of 1998 dated 13.06.2008 and sought arrest and detention of the Judgment Debtor-2 in the Civil Prison. Although notice was

served to 1st Judgment Debtor / 1st Defendant, he did not come forward to contest the main execution petition, and it was set exparte against him on 23.07.2019. Now, it has to consider the relief sought by the petitioner under Order 21, Rules 10 and 11, 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-1, 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-2 has sufficient means to fulfill the decree amount. The Judgment Debtor-2 is well placed and own several immovable properties. Apart from the Judgment Debtor-2 has valuable movable assets worth of several lakhs. The Judgment Debtor-2 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-2 has sufficient means to fulfill the decree amount and it appears that Judgment Debtor-1 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 – 2 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 - 2 are not affected by any provisions.

12. Therefore, in the aforementioned circumstances, after complying with the provisions of Order 21, Rule 10 and 11 and after paying the necessary fees, Judgment Debtor-2 ordered to be arrested.

In the result, Judgment Debtor No.2 is ordered to arrest on payment of batta in 7 days. Call on 06.03.2026.

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 20th day of January 2026.

**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.37 of 2016

in C.S. No.92 of 2018

Date : 20.01.2026

II A.D.S.C., Poonamallee.