

IN THE COURT OF THE MUNSIFF OF MANJERI**Present:- Sri. Vishnu Subhash, Munsiff****Thursday, the 18th day of September, 2025**27th day of Bhadra, 1947**EXECUTION PETITION No. 544/2022**in OS No. 325/2021**Between:-****Ernad Rural Co-operative Society Secretary,
Manjeri Amsom Desom, Manjeri P.O.**} **Petitioner****And:-**

1. **Abdul Asees**, 37 Years, S/o Alavi, Valapra House, Kalathumpadi, Pulpatta P.O.
2. **Ganesan**, 40 Years, S/o Sivalingam, Vellapparakunn House, Kalathumpadi, Majeri P.O.

} **Respondents**

This petition coming on this the 15th day of September, 2025 for hearing before me, in the presence of **Sri. P.E.Rajagopalan**, Advocate for the Petitioner, and of **Sri. K.Mammoker**, Advocate for the Respondents and having stood over to this day for consideration, the court passed the following:-

ORDER

Petition filed under Order 21 Rule 38 of the Code of Civil Procedure, 1908.

2. Petitioner's case, in brief, is as follows: -

The petitioner is the decree-holder. The petitioner obtained an award in ARC 325/2021 from the Manjeri Assistant Registrar of Co-operative Society. The Award amount with interest and cost is Rs.40,021/-. The judgment debtors have failed to pay the decree amount despite having sufficient means. The judgment debtors are to be arrested and detained in civil prison for execution of the decree. Hence, this petition.

3. The first and second judgment debtors entered an appearance and filed an objection. The objection, in brief, is as follows:-

The petition is not maintainable. The petition is without any bona fides. The ARC Award is an exparte order. The judgment debtors are taking steps to set aside the same. The first judgment debtor has paid some amount towards the loan. The same is

not adjusted. The first judgment debtor's wife was diagnosed with cancer and was under treatment. The interest and costs stated are very high. The judgment debtors are ready to pay the remaining amount. However, the amount stated is not entitled to the decree-holder. The petition is to be dismissed.

4. EP against the second judgment debtor was dismissed after the filing of an objection.

5. The following points were raised for consideration:-

1. *Whether the first judgment debtor has any means to pay the decree debt?*

2. *What shall be the order for arrest and detention?*

6. PW1 was examined from the part of the decree-holder.

7. Heard decree-holder and first judgment debtor's counsel.

8. Perused the affidavit and records.

9. **Point No.1:-** The decree-holder in this case is the Eranad Rural Co-operative Society, represented by its secretary. PW1, the Secretary of Eranad Rural Co-operative Society, filed a chief affidavit stating that judgment debtors have capacity, income and immovable properties. As per PW1's evidence, the amount is intentionally not paid.

10. The affidavit of PW1 is very brief. It does not contain the job or the income of the judgment debtors. Where their properties are situated is also not stated in the chief affidavit. PW1 was asked a question in cross-examination about whether there is any reason for the non-production of documents to show that the judgment debtor has immovable properties. PW1 did not answer the question, instead stating that the loan is granted not on the basis of documents but on the basis of personal sureties. There is no reason why the decree-holder did not produce any documents to show that the first judgment debtor has any property.

11. There must be some evidence to prove that the judgment debtor has or had income or means to pay the decree debt. That has to be brought to the notice of the court. Here, the affidavit of PW1 is very brief and does not contain any such details.

The Hon'ble High Court of Kerala in **Muthukrishna Reddiar v The Canara Bank Ltd Alleppy (1967 KLT 392)** has held as follows:

“In a matter like this the onus is on the decree-holder. Here, apart from the affidavit, no evidence was adduced by the decree-holder. Even in the affidavit he has not pointed out any circumstance to enable the Court to order warrant. In para 3 of the affidavit he has however stated that by selling the defendant's factory and accessories he has come by Rs. 37000/-in cash, but he has not stated when the factory was sold. For personal execution to follow one of the points to be established is that since the passing of the decree the judgment-debtor has had the means to pay the decree amount or a substantial part thereof. There is no evidence on this aspect of the matter....”

12. Section 51 of the Code of Civil Procedure, 1908, is extracted below:

51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-

- (a) by delivery of any property specifically decreed;*
- (b) by attachment and sale or by sale without attachment of any property;*
- (c) by arrest and detention in prison;*
- (d) by appointing a receiver; or*
- (e) in such other manner as the nature of the relief granted may require.*

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree-*
 - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or*
 - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or*
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some*

substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.-In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

13. The Hon'ble High Court of Kerala in **Francis, Ors v Central Bank, Ors (1990 (2) KLT 983)** has held as follows:

“The three clauses of the proviso to S.51 contemplate situations which either go far beyond or are different from mere inability to fulfil a contractual obligation. Clause (a) deals with case where judgment-debtor is guilty of contumacious conduct. Equally so is the case of clause (b). Clause (c) deals not with the conduct of judgment-debtor after decree but the special position he occupied viz a viz the decree-holder with reference to the subject matter of the dispute. The three situations contemplated under the proviso are not so much defences for the judgment-debtors as they are restrictions on the power of the court to order detention.”

14. A person cannot be committed to civil prison unless there is adequate proof that he has the means or income to discharge the decree. In the present case, there is no satisfactory evidence brought on record to establish that the first judgment debtor has such means. Hence, an order of arrest cannot be issued. Accordingly, point 1 is answered against the petitioner.

15. **Point no.2:-** In the result,

The petition is dismissed.

(Dictated to the Confidential Assistant, corrected and pronounced by me in the Open Court, this the 18th day of September, 2025).

**Sd/-
Munsiff**

Appendix :**Witness examined from the side of Petitioner :****PW1 : 01-07-2025 : Sindhu P.****Witness examined from the side of Respondents : Nil****Exhibits marked from the side of Petitioner : Nil****Exhibits marked from the side of Respondents : Nil**

**Sd/-
Munsiff**

Typed by : Deepa

Compared by:

1. Arun

2. Deepa

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Fair/Copy of Order in EP 544/2022
Dated: 18-09-2025

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