

**Abdul Khader Vs. Sameer**

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**SooperKanoon Citation :** [sooperkanoon.com/903569](http://sooperkanoon.com/903569)

**Court :** Kerala

**Decided On :** Jul-08-2010

**Judge :** Thomas P. Joseph, J.

**Appeal No. :** W.P. (C) No. 21203 of 2010 (O)

**Appellant :** Abdul Khader

**Respondent :** Sameer

**Advocate for Def. :** No Appearance

**Advocate for Pet/Ap. :** C.A. Chacko, Adv.

**Judgement :**

**Thomas P. Joseph, J.**

1. Petitioner is the judgment debtor in E.P. No. 39 of 2010 in O.S. No. 280 of 2007 of the court of learned Munsiff, Mavelikkara. Respondent sought realisation of the amount due under the decree by personal execution against petitioner. Respondent proved means of petitioner. Executing court found that inspite of having means petitioner has neglected/refused to pay amount due under the decree and that was followed by an order for issue of warrant of arrest against petitioner and detention of petitioner for a period of three months. Learned counsel states that petitioner on account of financial difficulties is unable to pay the amount

in lump and requests for installment facility. It is stated that though in the counter, petitioner had expressed his inability to pay the amount in lump executing court has not considered the request for payment of the amount in installments.

2. Question whether petitioner can be permitted to pay the amount in installments is a matter which the executing court has to decide after hearing the respondent. I do not propose to take a decision in that matter in this proceeding. However I am inclined to give petitioner two months' time to pay amount due under the decree and in the meantime request the executing court to allow payment of the amount in installments.

Resultantly this Writ Petition is disposed of in the following lines:

i. It is directed that warrant of arrest and order for detention issued against petitioner will stand in abeyance for a period of two months from this day on condition that petitioner deposited in the executing court for payment to the respondent Rs. 10,000/- (Rupees Ten thousand only) within two weeks from this day.

ii. In case the deposit as above stated is not complied or the amount due under the decree is not paid within the said period of two months it will be open to the respondent to proceed with personal execution pursuant to the order under challenge.

iii. Request of petitioner for installment facility to pay the amount due under the decree is relegated to the executing court for a decision. That court shall consider the request and pass appropriate orders after hearing counsel for respondent as well notwithstanding the period of two months fixed by this Court for payment of the decree amount.

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