

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
Execution Petition No.107 of 2019 in CCP No.059 of 2019**

K. Deepa
(PoA) M. Kumar ...COMPLAINANT

Vs.

M/s. Akshaya Pvt. Ltd.
Rep. by MD, Chitti Babu ...RESPONDENT

Complainant : Ms. Ramya, Advocate
Respondent : Mr. Manisundar Gopal, Advocate

**Heard on : 03.03.2020
Delivered on : 10.03.2020**

**ORDER FOR RECOVERY UNDER SECTION 40(1) OF THE RERA ACT FOR
NON-COMPLIANCE OF THE ORDER IN THE ABOVE CCP DATED
17.09.2019**

The above complainant filed the petition for execution on the ground that the respondent has not complied with the order passed in the CCP filed by her.

2. The respondent filed counter specifically mentioning that counter affidavit is filed for deciding the maintainability of the execution petition as a preliminary issue. The respondent contended that the order passed in the CCP is one which is contemplated under section 40(1) of the RERA Act and the amount is to be recovered as arrears of land revenue in the manner prescribed and Rule 26 of the TNRERA rule prescribes a method of recovering the amounts and both the provisions are different from section 40(2) of the RERA Act read with Rule 27 of the TNRERA rules which mandates enforcement of the orders under section 40(2) as a decree of civil court and the word "execution" also finds place only in

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Rule 27 and not in Rule No.26 and the present execution petition is not maintainable.

3. Heard both sides. The learned counsel for the petitioner submitted that the respondent has not complied with the order of this Forum within the time limit prescribed under the order towards making payment of the amounts and the petition filed under section 40(1) of the RERA Act read with Rule 26 of the TNRERA Rules is well maintainable and unless this Forum issues order by allowing the petition, the petitioner will not be able to recover the amounts.

4. However, the learned counsel for the respondent contended that the present execution petition is not able to maintainable in law as per the provisions of the RERA Act and Rules and is liable to be dismissed as not maintainable and the Rule 27 mandates enforcement of orders under section 40(2) as a decree of civil court and since the word execution also finds place in that Rule, the natural corollary would be that an execution petition is maintainable only for orders passed under sub clause 2 of section 40 of the RERA Act, and not for orders passed under sub-clause 1 of Section 40 of the RERA Act.

5. The learned counsel also relied the decision of the Hon'ble Supreme Court in A.R. Antulay v. Ramdas Srinivas Nayak (1984(2) SCC 500) wherein it was held that when the Statute requires to do a certain thing in a certain way, the thing must be done in that way are not at all and other methods of performance are necessarily forbidden and also the decision of the Hon'ble Madras High Court in Saroj Goenka v.Nariman Point Building services & Trading Private Ltd. (1993 SCC OnLine Mad 382) wherein it was held that the question as to maintainability of petition or the lack of jurisdiction of the Court, if it involves pure question in law, as per the proviso is contained in O.16 R.2 of the Code of Civil Procedure shall have to be tried as a preliminary issue and if it involves mixed question of law and fact, it would again depend upon the facts and circumstances of each case

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and further the decision in Ramesh Chandra Sankala v. Vikram Cement reported in (2008) 14 SCC 58) wherein the Hon'ble Supreme Court held that if the jurisdictional fact does not exist, the court or tribunal cannot act.

6. It is not in dispute that the amount due under the order in CCP was not settled by the respondent to the complainant. The complainant filed this execution petition for the execution of the order passed in the above CCP. The word "execution" means the act of carrying out or putting in to effect (Black's Law Dictionary, 7th edition, page 589). As per Wharton's Law Lexicon, 16th Edition "execution" means as the process for enforcing or giving effect to the judgment of the court. (Overseas Aviation Engg.(GB) Ltd. in re, 1963 ch24(1962) 3 All ER 112-(1962) 3 WLR 594 CCA).

7. The section 40 of the Act which has 2 sub-sections deals with the recovery of interest or penalty or compensation and enforcement of order. Merely because Rule 27 of the TNRERA Rules alone has the word execute, it cannot be said that Rule 26 has nothing to do with execution or enforcement of the order. No hyper technical approach can be made while interpreting the sub section 1 of section 40 of the Act read with Rule 26 of the TNRERA Rules.

8. In this regard, it is relevant note that in Administrator, Municipal Corporation, Bilaspur v. Dattatraya Dahankar And Another, AIR 1992 SC 1846; 1992 (1) SCC 361 the Hon'ble Supreme Court held that the mechanical approach to construction is altogether out of step and modern positive approach is to have a purposeful construction that is to effectuate the object and purpose of the Act. Section 40 provides for enforcement, i.e., execution of order for recovery of compensation. Therefore, the contentions of the learned counsel for the respondent are not at all acceptable.

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