

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 27/2009**

Reserved on: 28th October, 2009

Date of Decision: 23rd December, 2009

DUNLOP INDIA LIMITED

..... Appellant

Through: Mr. C. Mukund, Mr. Pankaj Jain &
Mr. Ashok Jain, Advocates.

versus

BANK OF BARODA AND ANOTHER

..... Respondents

Through: Mr. Pallav Saxena, Advocate.

% **CORAM:**

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present Letters Patent Appeal is being preferred by the appellant against judgment and order dated 7th January, 2009 passed by the learned Single Judge of this Court in Writ Petition (Civil) No. 2659/2008, whereby the learned Single Judge dismissed the writ petition preferred by the appellant seeking quashing of the orders dated 12th January, 2008 and 15th March, 2008 passed in Eviction Petition No. 1/2006 by the Estate Officer, Bank of Baroda, New Delhi appointed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'the Act').

2. The facts as are necessary for adjudication of the present appeal are adumbrated as follows:

- (i) By a lease dated 30th August, 1977 the appellant took on lease from respondent No.1, all that portion admeasuring 1382.26 sq. ft. or thereabout of the 7th floor of the building known as "Bank of Baroda Building", 16 Parliament Street, New Delhi for a period of 10 years with effect from 1st June, 1971, on a monthly rent of Rs.3,995.42 inclusive of all current taxes and Rs.400/- per month for duly marked fixed car parking space for two motorcars in the basement.
- (ii) The lease entered into between the parties was thereafter extended by a registered lease deed in the year 1982 till 1987 and thereafter again extended till 1992, which was further renewed up to 1997. At the time when the lease was extended in the year 1992, the appellant was paying a monthly rent of Rs.22,952.34 and service charges of Rs.13,016.94, the same of which was regularly and continuously paid till the year 1997.
- (iii) On or around 14th January, 1998, a reference was made to the Board for Industrial and Financial Reconstruction constituted under the Sick Industrial Companies (Special Provisions) Act, 1985 qua the sickness of the appellant-company. Despite the reference being made in January, 1998, rent was continuously paid to respondent no.1 without fail till June 1998. On or around 22nd June, 1998 the appellant-company was declared as a sick company.

(iv) Thereafter, it seems that the appellant was in arrears of rent and service charges. Therefore, vide notice dated 23rd May, 2006 the respondent-Bank terminated the lease and demanded arrears of rent and service charges and also called upon the appellant to vacate the aforesaid premises. After some correspondence, the respondent no.1 invoked the provisions of the Act by filing a petition under Section 4 and 5 of the said Act against the appellant before the Estate Officer i.e. respondent no.2. The substantial reliefs prayed for in that petition were the following:

- “i) direct the respondent to forthwith evict and vacate the property in question i.e. 7th Floor, Bank of Baroda Building, 16, Parliament Street, New Delhi admeasuring 1382.26 sq. ft. (approx.) and deliver the actual, physical, vacant and peaceful possession of the premises to the petitioner in the same state in which it was let out;
- ii) direct the respondent to pay forthwith a sum of Rs.22,14,535.68 being the arrears in respect of rent and pay forthwith a sum of Rs.12,49626.00 being the arrears in respect of service charges aggregating to Rs.39,64,161.58 with interest thereon @ 18% p.a. till actual realization thereof in the hands of the petitioner;”

(v) Before the Estate Officer the appellant moved two interim applications being IA Nos. 14 & 15 of 2008. IA No. 14 of 2008 was preferred by the appellant for the relief of striking out prayer clause no. (ii) in the petition filed under Section 4 and 5 of the Act. IA No. 15 of 2008 was preferred by the Petitioner on the premise that the Estate Officer had no jurisdiction to adjudicate upon the prayer made in clause no. (ii) of the petition, as the proceedings before him were only under Section 4 and 5 of the Act and no show cause notice had been issued under Section 7 of

the Act.

- (vi) The Estate Officer, by his order dated 12th January, 2008, impugned in the writ petition, rejected both these contentions of the appellant. It was held by the Estate Officer that though the petition had been captioned as being under Section 4 and 5 of the Act, prayer clause no.(ii) was in the nature of a consequential relief and that the omission to mention Section 7 of the Act in the title of the petition or in the prayer clause of the petition would not entail fatal consequences. It was observed by the Estate Officer that this technical objection was raised by the appellant for the first time in the application when no such objection was taken in the written statement filed by the appellant. Even more importantly it was observed by the Estate Officer that, although, the respondent no.1 had preferred another application under Section 7 of the Act for the recovery of liquidated and unliquidated damages along with application under Section 4 and 5 of the Act, that petition under Section 7 of the Act had remained unrebutted. It was held by the Estate Officer that the objection regarding maintainability of the prayer clauses made in the petition could be decided after comprehensive appraisal of pleadings, documents and evidence by the parties. The Estate Officer rejected the submission of the appellant that no show cause notice under Section 7 of the Act had been issued as prescribed under the Act. In this behalf it was observed that the appellant had chosen not

to respond to the application preferred by the respondent for liquidated and unliquidated damages. It was further observed that the appellant was aware of the pendency of the said petition throughout and, therefore, appellant could not claim to have been prejudiced by non-service of notice in the prescribed form. The Estate Officer held that this objection was raised belatedly and, although, the appellant had repeatedly taken adjournments, no such objection had earlier been raised by it. It was also held that apparently the appellant desired to delay the proceedings which required summary disposal.

(vii) The appellant had also filed another application being IA No. 21 of 2008 before the Estate Officer praying therein that the prayer no. (ii) in the petition seeking relief of arrears of rent and service charges be struck down and proceedings under Section 7 of the Act be permanently stayed.

(viii) By the impugned order dated 15th March, 2008 the Estate Officer held that issues could not be adjudicated upon in piecemeal and that all these issues arising in view of the amended written statement would be determined after appreciation of pleadings, evidence led by the parties and the propositions of law applicable thereto. The Estate Officer further reiterated that the proceedings before the Estate Officer under the Act are summary in nature and all that is required is that the principles of natural justice should be complied with. In the opinion of the Estate

Officer, the appellant had been afforded sufficient opportunity to plead and prove his defence in reply to all the claims of respondent no.1 and, therefore, no prejudice would be caused to the appellant if the application moved by the respondent no.1 under Section 7 of the Act is adjudicated upon along with the petition under Section 4 and 5 of the Act. The Estate Officer also held that there was no provision in the Act under which he was bound to proceed according to the procedure suggested by the appellant.

- (ix) Having heard the submissions of the parties, the learned Single Judge expressed the view that there was no merit in the petition and that the same deserved to be dismissed.
- (x) Aggrieved by the order dated 7th January, 2009 the appellant has preferred the present appeal.

3. The principal contention of the appellant is that proceedings under Section 4 and 5 of the Act and Section 7 of the Act cannot go on simultaneously. It is also urged on behalf of the appellant that the notice under Section 7 is mandatory and has to be in the form prescribed under the Act. It was further urged on behalf of the appellant that the appellant had never been served with the copy of the petition under Section 7 of the Act, whereby the respondent no.1 claimed liquidated and unliquidated damages from the appellant on the premise that the appellant was an unauthorized occupant of the premises in question, prior to 29th January, 2008.

4. Per contra, on behalf of the respondent it is contended that the present Letters Patent Appeal is not maintainable on the ground that

it is a species of the Court's revisional jurisdiction that was invoked by the appellant by preferring the writ petition and that the order of the learned Single Judge exercising such revisional jurisdiction was not amenable to an intra-court appeal.

5. Therefore, the first issue that arises for consideration is qua the maintainability of the present appeal.

6. On the question of maintainability of the present appeal the appellant relied upon the decision of the Supreme Court in ***Umaji Keshao Meshram vs. Radhikabai, 1986 (Supp) SCC 401***. In this case the Supreme Court was considering whether the judgment of Single Judge of the Bombay High Court can be assailed in an intra-court appeal before the Division Bench under the Letters Patent of Bombay High Court. The Supreme Court, while holding that if the judgment appealed against is under Article 226 it is maintainable, whereas if it is under Article 227 it is barred and that if it is under both it ought to be treated as one under Article 226 so as not to deprive the appellant of his valuable right of appeal, observed as follows:

"100. According to the Full Bench even were Clause 15 to apply, an appeal would be barred by the express words of Clause 15 because the nature of the jurisdiction under Articles 226 and 227 is the same inasmuch as it consists of granting the same relief, namely, scrutiny of records and control of subordinate courts and tribunals and, therefore, the exercise of jurisdiction under these articles would be covered by the expression "revisional jurisdiction" and "power of superintendence". We are afraid, the Full Bench has misunderstood the scope and effect of the powers conferred by these articles. These two articles stand on an entirely different footing. As made abundantly clear in the earlier part of this judgment, their source and origin are different and the models upon which they are patterned are also different. Under Article 226 the High Courts have power to issue directions, orders and writs to any

person or authority including any government. Under Article 227 every High Court has power of superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction. The power to issue writs is not the same as the power of superintendence. By no stretch of imagination can a writ in the nature of habeas corpus or mandamus or quo warranto or prohibition or certiorari be equated with the power of superintendence. These are writs which are directed against persons, authorities and the State. The power of superintendence conferred upon every high Court by Article 227 is a supervisory jurisdiction intended to ensure that subordinate courts and tribunals act within the limits of their authority and according to law (see *State of Gujarat v. Vakhatsinghji Vajesinghji Vaghela*, AIR 1968 SC 1481 and *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*, Air 1972 SC 1598). The orders, directions and writs under Article 26 are not intended for this purpose and the power of superintendence conferred upon the High Courts by Article 227 is in addition to that conferred upon the High Courts by Article 226. Though at the first blush it may seem that a writ of certiorari or a writ of prohibition partakes of the nature of superintendence inasmuch as at times the end result is the same, the nature of the power to issue these writs is different from the supervisory or superintending power under Article 227. The powers conferred by Articles 226 and 227 are separate and distinct and operate in different fields. The fact that the same result can at times be achieved by two different processes does not mean that these two processes are the same."

7. The appellant next relied on the decision of the Supreme Court in ***Shahu Shikshan Prasarak Mandal and Another vs. Lata P. Kore and Others*** reported as ***(2008) 13 Supreme Court Cases 525***. The challenge in that matter was to the order of a Division Bench of the Bombay High Court dismissing the Letters Patent Appeal filed by the appellant on the ground that the same was not maintainable. After referring to the decision of the Supreme Court in ***Umaji Keshao Meshram(Supra)***, the Supreme Court allowed the appeal holding "*the contentions raised and the facts stated in the writ petition justify the appellant to file an application both under Article 226 and 227 of the Constitution of India. Apart from the fact that the petition is labelled under*

Article 226 of the Constitution of India, it is clear that the grounds raised in the petition suggest that the petition is not only under Article 227 but also under Article 226 of the Constitution. It is specifically suggested that the order passed by the Tribunal was arbitrary, unreasonable, unjust and perverse. The further complaint made against the Tribunal's orders pertains to failure on the part of the Tribunal to appreciate certain facts and eventualities, thereby, complaining non-application of mind on the part of the Tribunal. Complaint has also been made against the approach of the Tribunal and it is suggested that the said approach was perverse." The Supreme Court, therefore, remitted the matter back to the High Court to consider the issues in the light of the cited cases and applicable provisions.

8. On the other hand on behalf of respondent no.1 reliance was placed on the following judgments:

In ***Chandra Kanta Sinha vs. Oriental Insurance Co. Ltd. and Others, (2001) 6 SCC 158***, while considering the maintainability of a Letters Patent Appeal against judgment or order passed by a Single Judge of the Patna High Court in first appeal against order of the trial court under Section 140 of the Motor Vehicles Act, 1988, the Supreme Court held that the appeal was maintainable and observed as under:

"11. Clause 10 of the Letters Patent of the Patna High Court has been the subject-matter of consideration of a two-Judge Bench of this Court (of which I was a member) in a recent case - *Central Mine Planning and Design Institute Ltd. v. Union of India, (2001)2 SCC 588*. After noticing that clause 15 of the Letters Patent of Calcutta, Bombay and Madras in *iisdem terminis* clause 10 of the Letters Patent of Allahabad, Patna, Punjab and Haryana and Madhya Pradesh, the Court laid down as follows :

"10. The above analysis of Clause 15 of the Letters Patent will equally apply to Clause 10 of

the Letters Patent of Patna. It follows that an appeal shall lie to a larger Bench of the High Court of Judicature at Patna from a judgment of one Judge of the said High Court or one Judge of any Division Court pursuant to Article 225 of the Constitution of India. **The following categories of judgment are excluded from the appealable judgments under the first limb of clause 10 of the Letters Patent:**

(i) a judgment passed in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a court subject to superintendence of the said High Court; in other words, no letters patent appeal lies to the High court from a judgment of one Judge of the High Court passed in second appeal;

(ii) **an order made by one Judge of the High Court in exercise of revisional jurisdiction; and**

(iii).....”

The respondent no.1 next relied on the decision of the Supreme Court in *Surya Dev Rai vs. Ram Chander Rai and Others, (2003) 6 SCC 675*, where the question that arose was whether an aggrieved person is completely deprived of the remedy of judicial review, if he has lost at the hands of the original court and the appellate court, though a case of gross failure of justice having been occasioned can be made out? The Supreme Court while allowing the appeal summed up its conclusion and stated the same as here under:

“38.....

(1).....

(2).....

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant

disregard of law or the rules or procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6).....”

The respondent no.1 next relied on the decision dated 19th January, 2007 of a Division Bench of this court in ***Pragati Construction Company*** vs. ***D.D.A.*** in ***LPA No. 2101/2006***. This Court was concerned in that appeal directed against the order dated 1st August, 2006 passed by the learned Single Judge in a petition filed under Section 227 of the Constitution of India against a civil appeal, which in turn was directed against a restraint order passed in an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure in a civil suit. Relying on the decision of the Supreme Court in the case of ***Chandra Kanta Sinha (Supra)***, the Division Bench held that an appeal was not maintainable against an order passed by learned Single

Judge of this Court under Article 227 of the Constitution of India and dismissed it accordingly.

9. Predicated on the judgments relied upon as above the respondent no.1 submits that certiorari jurisdiction under Article 226 and visitatorial jurisdiction under Article 227 are both species of constitutional revisional jurisdiction, therefore, it is only the constitutional revisional jurisdiction under Article 226 and 227 which can be taken recourse to in matters involving interlocutory orders issued by tribunals/statutory authorities. The submission made is, therefore, that an order made by a Single Judge of the High Court in exercise of revisional jurisdiction cannot be challenged in appeal before the Division Bench under the Letters Patent.

10. However, it is observed in the present appeal that the writ petition preferred by the appellant before the learned Single Judge was under Article 226 of the Constitution of India. It is manifestly clear from a plain reading of the writ petition and the grounds raised therein that the petition is only under Article 226 of the Constitution of India. Further, it was specifically against orders passed by the Estate Officer appointed under the provisions of the Act, which Estate Officer is neither a court, nor a tribunal, against whom, High Court, can exercise superintendence as envisaged under Article 227(1) of the Constitution of India. As observed by the Supreme Court in ***Shahu Shikshan Prasarak Mandal (Supra)*** and ***Umaji Keshao Meshram (Supra)***, petitions are at times filed both under Articles 226 and 227 of the Constitution of India. Therefore, when a party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of

appeal, the court ought to treat the application as being made under Article 226 of the Constitution of India and if in deciding the matter, in the final order, the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 10 of the Letters Patent Act, where the substantial part of the order sought to be appealed against is under Article 226. It is further observed that the orders, directions and writs under Article 226 are not intended for the exercise of supervisory jurisdiction, though at the first blush it may seem that a writ of certiorari partakes of the nature of superintendence, inasmuch as at times the end result is the same. It is, however, seen that the nature of the power to issue these writs is different from the supervisory or superintending power under Article 227. The powers conferred by Article 226 and 227 are separate and distinct and operate in different fields. The fact that the same result at times be achieved by two different processes, does not mean that these processes are the same.

11. As a result, it is opined that the facts of the instant case unequivocally show that the present Letters Patent Appeal arises out of impugned judgment and order which was evidently passed under Article 226 of the Constitution of India, and the contrary argument made on behalf of the respondent no.1 is specious. The submission made on behalf of the respondent no.1 that the impugned order is in exercise of revisional jurisdiction is patently without merit. This is also so since the Estate Officer appointed under the Act is neither a court or tribunal subject to the supervisory jurisdiction of this Court. Consequently, the present appeal as filed is maintainable.

12. The principal contention of the appellant is that only after eviction proceedings initiated under Section 4 and 5 are finally concluded and the Estate Officer returns the findings that the occupant is an unauthorized occupant, that the Estate Officer gets jurisdiction to proceed to issue notice under Section 7(2) of the Act, to determine the liability of the occupant to pay damages under Section 7(3) of the Act. In support of this submission, the appellant relies upon the language used in the provisions of Section 4 and Section 7 and upon the language in the forms under the Act and the Rules. In this respect the respondent invited our attention to the decision of the Supreme Court in *New India Assurance Company Ltd. vs. Nusli Neville Wadia and Another* reported as **(2008) 3 SCC 279**. In this case the Supreme Court whilst dealing with the procedure to be followed in relation to adduction of evidence in an eviction proceeding under the Act observed as follows:

"29. Furthermore a proceeding may be initiated under Section 4 simpliciter. **A composite proceedings may also be initiated both under Sections 4 and 7 of the Act.** In the latter category of cases the landlord would be required to establish not only the bona fide need on its part but also quantum of damages to which it may held to be entitled to, in the event that an order is passed in favour of the establishment."

13. In this regard, the learned Single Judge held that the law permits a party to unite in the same proceeding several causes of action against the same defendant in order to prevent multiplicity of proceedings and also to save parties from suffering multiple set of costs and avoid unnecessary delays. He further held that though these provisions of the Civil Procedure Code do not strictly apply to the

proceedings before the Estate Officer, the underlying principle would still be applicable. It was also observed that when simultaneous petitions are preferred under Sections 4, 5 and 7 of the Act, the Estate Officer would first determine the preliminary issue as to whether the occupant is an unauthorized occupant or not and only thereafter would he proceed to consider the issue as to whether occupant is liable to pay damages or not, and if so, at what rate and for what period. Accordingly, the learned Single Judge rejected the submissions of the appellant that the proceedings under Section 7 could not have been initiated or proceeded with simultaneously with the proceedings under Sections 4 and 5 of the Act.

14. With regard to this contention we observe that, in the event of a composite proceedings being initiated under Sections 4, 5 and 7 of the Act, the Estate Officer would first be obliged to determine the status of the occupant as to whether he is an unauthorized occupant or not, and if so, from which date. It is only upon arriving at a finding that the occupant is an unauthorized occupant would the Estate Officer proceed to determine the liability of the occupant, if any, towards damages for the period of his unauthorized occupation. Therefore, the Estate Officer would first have to determine the preliminary issue as to whether the occupant is an unauthorized occupant or not and only thereafter would the Estate Officer proceed to consider the issue as to whether the occupant is liable to pay damages or not, and if so, at what rate and for what period. If the Estate Officer were to come to the conclusion that the occupant was not an unauthorized one, in that event not only would he reject the petition under Section 4 and 5 of the Act but also the petition under

Section 7 of the Act, since the necessary concomitants for determination and levy of damages both liquidated and unliquidated would be rendered infructuous. However, if the Estate Officer were to come to the conclusion that the occupant is an unauthorized occupant he would proceed to determine the date on and from which the occupant became unauthorized occupant and would hold the occupant liable to pay damages from the date that he is adjudged to be an unauthorized occupant. There is, therefore, no substance in the submission made on behalf of the appellant that only because two separate and distinct issues are to be determined it would render the simultaneous proceedings under Sections 4 and 5 and Section 7 of the Act mutually exclusive.

15. Further, it is relevant to note that the Supreme Court in the decision of *New India Assurance Company Ltd. (Supra)*, observed that a composite proceeding may be initiated both under Sections 4 and 7 of the Act. Also we are conscious of the circumstance that in this category of cases the landlord would be required to establish by leading evidence simultaneously of not only the *bona fide* need on its part, but also quantum of damages to which it may be held to be entitled to, in the event that an order is passed in favour of the establishment. Therefore, since the proceedings under the Act are contemplated to be in the nature of summary proceedings, it would be in the fitness of things to enable the landlord to lead his evidence on both these issues simultaneously in order to eschew delay. The issues cannot be adjudicated upon in piecemeal. Even otherwise, the provisions of the Act do not permit us to read the provisions and the procedure prescribed therein in the manner as is suggested by the

appellant. Consequently, there is no merit in the contention made on behalf of the appellant that the proceedings under Section 7 of the Act cannot proceed simultaneously along with proceedings under Sections 4 and 5 of the Act.

16. Coming to the submission made on behalf of the appellant that the notice under Section 7 is mandatory and has to be in the form prescribed under the Act, it is observed that a plain reading of the provision makes it clear that an order under this provision may not be made against any person until after a notice is issued to such person calling upon him to show cause why such an order ought not to be made and after affording him a reasonable opportunity to make objections and produce evidence in support thereof. In this behalf it would be relevant to extract the notice issued to the appellant by the Estate Officer:

“Whereas the undersigned being the Estate officer Designated By the Central Government Under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to “Act”)

Whereas the petitioner moved petitions u/s 4, 5 & 7 of the Act along with an application for stay

And Whereas after hearing the arguments advanced by Mr. Arun Aggarwal, Counsel for the petitioner, I am satisfied that the petitioner had made out a Prima facie case

And Whereas I am inclined to hear the respondent also and in the meanwhile, in the interest of justice I had directed both the petitioner and the respondent to maintain status quo as it exists this day by Order dt. 1.7.06

Notice is hereby issued to the respondents along with copy of Order dated 01.07.2006, copies of the above petitions and application for stay.

You the respondent is hereby directed to appear before me on 10.07.06 at 4.00pm in person or through duly constituted attorney and make

submissions/pleadings after Serving the copies of pleadings to the petitioner in advance.”

17. In this regard it is noticed that although the notice issued to the appellant by the Estate Officer was not strictly worded in accordance with the Form-F as provided under the Act and the Rules, it clearly put the appellant to notice that relief under Section 7 was also claimed against the appellant by the respondent no.1. Also, the composite notice issued to the appellant was accompanied by the petitions filed by the respondent both under Sections 4 and 5 and Section 7 of the Act before the Estate Officer. The appellant was evidently put to notice with regard to the quantum of the claim made by the respondent towards damages, apart from the claim made towards arrears of rent. The appellant was further given the opportunity to appear before the Estate Officer and to make his submissions and pleadings thereon. This constituted ample opportunity to the appellant to show cause against, *inter alia*, the imposition of damages claimed in the petition under Section 7 along with the rate of interest claimed thereon. It is also noticed that the learned Single Judge came to the considered view therefor that there was substantial compliance of Form-F when the composite notice dated 1st July, 2006 was issued to the appellant along with copies of the requisite petitions. We find ourselves in agreement with the view expressed in the impugned order in this respect. Therefore, all the essential ingredients of Section 7 and Form-F were contained in the notice issued to the appellant and it cannot be said that there was any non-compliance in this behalf of any essential condition whilst issuing the notice.

18. Lastly, we come to the submission made on behalf of the appellant that he had never been served with the copy of the petition under Section 7 of the Act, whereby the respondent no.1 claimed liquidated and unliquidated damages from the appellant. In this respect it is seen that a perusal of the order dated 1st July, 2006 clearly demonstrated that the Estate Officer while passing the said order had before him not only the petition under Sections 4 and 5 *“for recovery of arrears of rent and eviction of respondent”* but also *“a petition under Section 7 for recovery of liquidated and unliquidated damages”*. In the said order dated 1st July, 2006 the learned Estate Officer in the penultimate paragraph observed:- *“I issue notice in the above petitions and application for stay to the respondent returnable on 10.07.2006. The notices be served by registered AD post, dasti, failing which by affixation”*. The composite notice dated 1st July, 2006 issued to the petitioner also clearly stated *“Whereas the petitioner moved petitions under Sections 4, 5 & 7 of the Act along with the application for stay”*. It further stated *“Notice is hereby issued to the respondent along with copy of order dated 01.07.2006, copies of the above petitions and the application for stay”*. In view of this the learned Single Judge observed:

“12. As aforesaid, both the order dated 01.07.2006, and the notice dated 01.07.2006 issued by the Estate Officer, which were admittedly served upon the petitioner, categorically made reference to *“petitions”* and not *“a petition”*; *“copies”* of the *“petitions”*, and not *“copy”* of *“a petition”*, and; also *“a petition under Section 7 for recovery of liquidated and unliquidated damages”* and not just to *“A petition under Sections 4 & 5 for recovery of arrears of rent and eviction”*. In fact, in the petition under Sections 4 & 5 of the Act, the respondent had not expressly invoked Section 7 of the Act. Therefore, there would have been no occasion for the Estate Officer to have made reference to Section 7 of the

Act either in the Order, or the notice dated 01.07.2006, had he not been presented with a separate petition under Section 7 of the Act claiming liquidated and unliquidated damages. There can be no manner of doubt that the Estate Officer was not only presented with a petition under Section 7 of the Act to claim liquidated and unliquidated damages, but he dealt with it and issued notice thereof to the petitioner. The respondent bank has tendered in Court a copy of the affidavit of service filed before the Estate Officer in respect of the notices issued to the petitioner. The affidavit of service of one Tika Ram, an employee of the respondent bank records that he has dispatched the notice returnable on 10.07.2006 along with copy of the order dated 01.07.2006 to the petitioner herein by Registered A.D. Post. Copies of the three postal receipts bearing nos. 3709, 3710 and 3711 were enclosed. It was, inter alia, stated that he had dispatched the notice and the order to the Branch Office of the respondent at Kolkata for effecting service on the petitioner herein "dasti". Along with the affidavit, three copies of notices served on three offices of the petitioner in Kolkata bearing the endorsement of receipt with the seal of the petitioner showing receipt on 03.07.2006 have also been annexed to the affidavit of service. From the aforesaid, it is evident that the petitioner was served with the order and notices dated 01.07.2006. The order and notices dated 01.07.2006 clearly refer to „copies“ of the „petitions“. They also made reference to the "petitions u/s 4, 5 and 7 of the Act". In case the petitioner was not served with the petition under Section 7, as claimed by it, it would have been natural for the petitioner to enquire from the respondent bank, or from the Estate Officer as to which are the „petitions“ referred to in the order/notices dated 01.07.2006 and to have demanded copies of the petitions. The fact that the petitioner did not consider it necessary to make any enquiry in this regard clearly shows that the petitioner was duly served with the requisite notice/petitions.

13. If the petitioner failed to take notice of the filing of the separate petition under Section 7 of the Act despite the clear language used in the order dated 01.07.2006 as well as the notice issued to the petitioner, which admittedly was received by the petitioner, the petitioner has only itself to blame."

19. From the above observations and findings of the learned Single Judge, it leaves no manner of doubt that the appellant was aware of the fact that the respondent no.1 had not only filed a petition under

Sections 4 and 5 of the Act (wherein apart from eviction the respondent had also sought payment of arrears of rents and service charges), but had filed another distinct petition under Section 7 of the Act claiming liquidated and unliquidated damages. We are in agreement with the findings arrived at by the learned Single Judge in this respect.

20. In the result, we do not find any cause to warrant interference with the impugned order dated 7th January, 2009. Consequently, the present appeal is dismissed as being without any merit.

SIDDHARTH MRIDUL, J.

A.K. SIKRI, J.

DECEMBER 23, 2009

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