

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

+ **W.P.(C) 2659/2008**

Judgment reserved on: 10.07.2008

% **Judgment delivered on: 07.01.2009**

DUNLOP INDIA LTD.

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

versus

BANK OF BARODA & ANR.

..... Respondent
Through: Mr. Arun Aggarwal, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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

VIPIN SANGHI, J.

1. In this petition under Article 226 of the Constitution of India, the petitioner seeks a writ for quashing the orders dated 12.1.2008 and 15.3.2008 passed in Eviction Petition No.1/2006 by the Estate Officer, Bank of Baroda, Zonal Branch, New Delhi appointed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short 'the Act'), with a further direction that the Estate Officer should proceed only with the proceedings under Sections 4 and 5 of

the Act and not with the proceedings under Section 7 of the Act. The petitioner also seeks a direction for removal of the Estate Officer and for appointment of another Estate Officer as this Court may deem fit and proper.

2. By lease dated 30.8.1977, the petitioner took on lease from respondent no.1, premises admeasuring 1382.26 sq.ft on the 7th floor of the building known as Bank of Baroda Building, 16 Parliament Street, New Delhi for a period of ten years w.e.f. 1.6.1971 on a monthly rent of Rs.3885.42 inclusive of current taxes and Rs. 400/- per month for car parking space for two motor cars in the basement. The lease was extended for a period of five years on the same terms and conditions. It was further extended with enhancement of monthly rent and service charges. During the currency of the lease, the petitioner was declared a sick company under the Sick Industrial Companies(Special Provisions) Act, 1985 by the Board for Industrial and Financial Reconstruction on 22.6.1988.

3. It appears that the petitioner went into arrears of rent and service charges. Vide notice dated 23.5.2006, the respondent bank terminated the lease and demanded arrears of rent and service charges and also called upon the petitioner to vacate the aforesaid premises. After some correspondence, the respondent no.1 invoked the provisions of the Act by filing a petition under Sections 4 and 5 of the said Act against the petitioner 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.12,49,626.00 being the arrears in respect of service charges aggregating to Rs.39,64,161.68 with interest thereon @ 18% p.a till actual realization thereof in the hands of the petitioner;"

4. Before the Estate Officer, the petitioner moved two interim applications, being I.A. Nos. 14 & 15 of 2008. I.A 14 of 2008 was preferred by the petitioner for the relief of striking out prayer clause no(ii) in the petition filed under Sections 4 and 5 of the Act. Though it was not so specifically stated in the application, learned counsel for the petitioner submits that the basis of this application was that the said relief could only be claimed under Section 7 of the Act, which had not been invoked by the respondent. I.A.15/2008 was preferred by the petitioner on the premise that the Estate Officer had no jurisdiction to adjudicate upon the prayer made in clause (ii) of the petition, as the proceedings before him were only under Sections 4 and 5 of the Act and no show cause notice had been issued under Section 7(2), 7(2A) and 7(3) of the Act.

5. The Estate Officer, by his impugned order dated 12.1.2008 rejected both these contentions of the petitioner. He held that though the petition had been captioned as being 4 and 5 of the Act, prayer(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 cannot entail fatal consequences. He also observed that this technical objection was raised for the first time in the application. However, no such objection was taken in the written statement. Even more importantly, he also observed that the respondent no.1 had preferred another application under Section 7 of the Act for recovery of liquidated and un-liquidated damages along with the application under Sections 4 and 5 of the Act, and that the petition under Section 7 of the Act had remained unrebutted. He further held 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. He also rejected the submission of the petitioner that no show cause notice under Section 7 of the Act had been issued as prescribed under the Act. He observed that the petitioner had chosen not to respond to the application preferred by the respondent for liquidated and unliquidated damages. The petitioner was aware of the pendency of the said petition throughout and, therefore, the petitioner could not claim to have been prejudiced by non-service of notice in the prescribed form. He held that the objection was raised belatedly. The petitioner had repeatedly taken adjournments and

no such objection had earlier been raised by it. He also held that apparently the petitioner wishes to delay the proceedings which require summary disposal.

6. The categorical case of the petitioner is that the petitioner was never served with the petition under Section 7 of the Act whereby the respondent claimed liquidated and unliquidated damages from the petitioner on the premise that the petitioner is an unauthorized occupant of the premises in question prior to 29.01.2008. Learned counsel for the petitioner states that even though the notice issued to the petitioner made a reference to Section 4, 5 & 7 of the Act, the reference to Section 7 of the Act was on account of the fact that the respondent had claimed arrears in respect of rent and arrears in respect of service charges. The petitioner learnt of the filing of a separate petition under Section 7 only on 29.1.2008 which led to the filing of the aforesaid two applications being IA Nos.14 and 15 before the Estate Officer.

7. Respondent No.1 Bank of Baroda has filed its counter affidavit in opposition to the writ petition. The respondent has vehemently argued that the petitioner has falsely claimed that the petitioner was not served with a copy of the petition under Section 7 of the Act prior to 29.1.2008 and that it learnt about the same at an advanced stage of the proceedings before the Estate Officer. Learned counsel for the respondent submits that, as a matter of fact, the petitioner was served with not only the composite notice under Sections 4, 5 & 7 of the Act, and the order passed by the

Estate Officer on 01.07.2006 but also the two petitions, one filed under Sections 4 & 5 of the Act and the other under Section 7 of the Act, claiming liquidated and unliquidated damages. He makes reference to the averment of the petitioner itself in the earlier writ petition being W.P.(C) No.10936/2006, filed by it, wherein the petitioner had, in Para (XVI), stated *"The respondent was also purportedly filed a petition under Section 7 of the Act of 1971 for recovery of liquidated and unliquidated damages"*.

8. Learned counsel for the respondent also relies on the order dated 01.07.2006 passed by the Estate Officer as also to the composite notice issued to the petitioner by the Estate Officer in pursuance of that order. Copies of both these documents have been handed over in Court and taken on record. A perusal of the order dated 01.07.2006 shows that the Estate Officer while passing the said order had before him not only the petition under Sections 4 & 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 01.07.2006, 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"* (emphasis supplied). The composite notice dated 01.07.2006 issued to the petitioner also clearly stated *"Whereas the petitioner moved **petitions** u/s 4, 5 & 7 of Act alongwith application for stay"*. It further stated *"Notice is hereby issued to the respondents along*

*with copy of Order dated 01.07.2006, **copies** of the above **petitions** and the application for stay”(emphasis supplied).*

9. To meet the aforesaid submission of the respondent, learned counsel for the petitioner states that, in fact, when the earlier writ petition being W.P.(C) No.10639 of 2006 had been filed, the petitioner was not possessed any of the petitions-neither the one under Sections 4 & 5, nor the one under Section 7 of the Act and this is clear from the averment made in paragraph (xvii) of that petition and the petitioner’s communication dated 03.07.2006, filed as Annexure P-13 to the petition. In Para (xvii) the petitioner had, inter alia, stated *“The respondents were also requested for a copy of the eviction petition filed under Sections 4,5 & 7 of the said Act of 1971, filed by the Respondent No. 3, so that appropriate steps may be taken by the petitioner for protection of their interest in the matter. Hereto annexed and marked as ANNEXURE **“P-13”** is a copy of the said representation dated 03.07.2006 addressed by the Petitioner Company to the respondents.”*

10. The petitioner, in the earlier writ petition made a categorical statement in Para (xv) that *“at around 12.15 p.m. an order dated 01.07.2006 was received by the Petitioner Company at its Calcutta Office, which order directed the parties to maintain status-quo qua the suit premises, as it existed on the said date, till further directions. Upon scrutiny of the said order, the Petitioner Company realized that the said order has been passed by the Zonal Manager of Respondent No. 3 (respondent No. 2 herein), purportedly acting as Estate Officer under the said Act of 1971.”*

11. From the aforesaid, it becomes clear that the petitioner was conscious of the fact apart from a petition under Sections 4 & 5, (wherein apart from eviction, the respondent had sought the payment of arrears of rent and service charges), another petition under Section 7 of the Act for claiming liquidated and unliquidated damages, had been filed by the respondent.

12. It, therefore, cannot be accepted that the petitioner was reeling under the impression that there was only one petition filed by the respondent before the Estate Officer under Sections 4 & 5 of the Act, and that the petitioner had understood the reference to Section 7 of the Act in the Order dated 01.07.2006, and the notice of the same date issued by the Estate Officer, as being with reference to the claim for arrears of rent and service charges. 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.

14. The primary contention of the petitioner is that only after the eviction proceedings initiated under Section 4 of the Act are finally adjudicated and the Estate Officer has returned the finding that the occupant is an authorized occupant, does the Estate Officer get jurisdiction to proceed to issue notice under Section 7(2) to determine the liability of the occupant to pay damages under Section 7(3) of the Act. He submits that only upon it being finally determined that the occupant is an unauthorized occupant, the question of levy of damages can possibly arise. For this he relies upon the language used by the legislature in Section 4 of the Act on the one hand and that used in Section 7 on the other hand. He points out that Section 4 permits the Estate Officer to proceed for eviction on the basis of an **“opinion”** that the occupier is in unauthorized occupation, whereas for the purpose of initiating proceedings under Section 7 of the Act for realization of damages, the Estate Officer has to be **“satisfied”** that the occupier is an unauthorized occupant. He also relies upon the language used in

Form-`A' under the Act and the Rules in which a notice under Section 4 is issued and compares the same with the Forms `B', `F' and `G' prescribed under the Act and the Rules which relate to Sections 5(1), 7(3) and 7(2) and 7(2A) of the Act respectively, where, once again the same distinction has been drawn. It is also the submission of the petitioner that the forms under the Act in which notices/orders are required to be issued are statutory in character and are mandatory and that unless the notices/orders are issued in the prescribed forms the same cannot be acted upon.

15. Learned counsel for the respondent bank, on the other hand submits in respect of forms A, B, D, F and G prescribed under the Act, that it would suffice if there is substantial compliance of the same. The proceedings do not get vitiated merely because of lack of strict compliance with the language employed in the said forms at the time of issuance of requisite notice/order to the occupant, when there is substantial compliance of the same.

16. Having heard the submissions of the parties I am of the view that there is no merit in this petition and the same deserves to be dismissed.

17. As I have already noticed hereinabove, the petitioner was served with the composite notice and the two petitions under Sections 4 & 5 and Section 7 of the Act for claiming liquidated and un-liquidated damages against the petitioner.

18. The Form in which the notice was issued to the petitioner by the Estate Officer reads as follows: -

“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.”

19. The Form prescribed under the Act and the Rules framed thereunder, in which the notice is required to be issued to the noticee/unauthorized occupant for claiming damages under Section 7(3) of the Act as set out in Form F reads as follows:

“FORM F

**Form of notice under sub-section (3) of Section
7 of the Public Premises (Eviction of
Unauthorised Occupants) Act, 1971**

To

Shri/Smt./Km.....

Whereas I, the undersigned, am satisfied that you are/were in unauthorized occupation of the public premises mentioned in the Schedule I below:

And whereas, in exercise of the powers conferred on me by sub-section (2) of section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I consider the damages, amounting to Rs..... (Rupees) are due for the period(s) and at the rate(s) sown in Schedule II below on account of unauthorized use and occupation of the said premises;

And, whereas, in exercise of the powers conferred on me sub-section (2A) of section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I consider that you are also liable to pay simple interest to the Government/Statutory Authority on the said arrears at the rate determined by the undersigned till its final payment.

Now, therefore, under the provisions of sub-section (3) of section 7 of the Act, I hereby call upon you to show cause on or before why an order requiring you to pay the said damages together with interest should not be made.”

20. Section 7(2), (2A) and (3) of the Act are relevant and they read as follows:

“7(1)

(2)Where any person is, or has at any time been, in unauthorized occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

[2A] While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rent or interest within the meaning of the Interest Act, 1978 [14 of 1978.]

(3)No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.”

21. By virtue of Section 7(2) the Estate Officer is empowered to assess the damages on account of the use and occupation of the public premises by having regard to such principles of assessment of damages as may be prescribed, and is entitled by an order to require the person to pay the damages within such time and in such instalments as may be specified in that order. Section 7(2A) entitles the Estate Officer to direct payment of interest on arrears of rent or damages, as the case may be, at a rate not exceeding the current rate of interest within the meaning of the Interest Act. Section 7(3), which is the substantive provision laying down the

procedure to be adopted for determination of arrears of rent/damages, states that no order under Sections 7(1) or 7(2) shall be made against any person, until after issuance of a notice in writing to the person calling upon him to show cause within such time as may be specified, as to why such order should not be made, and until his objection, if any, and the evidence that may be produced in support of the same have been considered by the Estate Officer. The requirement of the substantive provision is, therefore, that the Estate Officer shall issue a notice in writing to the person to grant him an opportunity to show cause against the making of an order, inter alia, under Section 7(2) i.e. for claiming damages and to provide him an opportunity to file his objections and lead evidence in the matter. The Estate Officer is required to consider the objections and the evidence, if any, led by the noticee before issuance an order, inter alia, for imposing damages upon the noticee.

22. The composite notice issued to the petitioner was accompanied by the petitions filed by the respondent under Sections 4 and 5 and Section 7 of the Act before the Estate Officer. The petitioner was, therefore, put to notice with regard to the quantum of the claim made by the respondent towards damages, apart from the claim toward arrears of rent, which was already incorporated as the second relief in the petition under Sections 4 & 5 of the Act preferred before the Estate Officer. The notice issued to the petitioner though not strictly worded in Form-F aforesaid,

nevertheless put the petitioner to notice that damages were claimed by the respondent against the petitioner at the specified rate and for the specified period. The rate of interest claimed by the respondent was also clearly set out in the petition under Section 7 of the Act. The substantive relief prayed for by the respondent in the petition under Section 7 of the Act reads as follows:

- “(i) direct the respondent to forthwith pay a sum of Rs.5.00 lacs towards liquidated damages alongwith interest thereon w.e.f. 23.05.2006 @ 18% per annum till actual realization thereof in the hands of the petitioner;
- (ii) direct the respondent to forthwith pay a sum of Rs.10.00 lacs towards unliquidated/notional damages alongwith interest thereon w.e.f. 23.05.2006 @ 18% per annum till actual realization thereof in the hands of the petitioner;”

23. The petitioner was given the opportunity *“to appear before me on 10.07.2006 at 04:00 p.m. in person or through duly constituted attorney and to make submissions/pleadings after serving the copies of pleadings to the petitioner in advance”*. The notice also stated that the respondent had moved petitions under Sections 4, 5 & 7 of the Act. After hearing the arguments of the counsel for the respondent herein, the Estate Officer recorded that he was satisfied that the respondent has made out a prima facie case and that he was inclined to hear the petitioner herein. It is, therefore, clear that the Estate Officer issued notice to the petitioner herein after due application of mind and for the purpose

of granting an opportunity to the petitioner to show cause against, inter alia, the imposition of damages quantified in the petition under Section 7 along with the rate of interest claimed in the said petition. In my view, therefore, there was substantial compliance of Form F when the composite notice dated 01.07.2006 was issued to the petitioner along with copies of the requisite petitions. The purpose of issuing the said notice was to provide a fair opportunity to the petitioner to defend itself, in compliance of the principles of natural justice. The substantive requirement of the law under Section 7(3) was fully met with the issuance of the notice, as aforesaid.

24. In my view, substantial compliance of the requirements of Form F, which has been framed in the light of Section 7(3) of the Act is all that is essential, and it is not necessary that the notice to be issued to the noticee should strictly comply with the statutory Form F. So long as there is substantial compliance, in my view, the notice issued by the Estate Officer cannot be questioned as being defective and, therefore, inoperable. In ***The Megna Mills Company Limited v. Ashoka Marketing Co.*** (1970) 3 SCC 168, the Supreme Court while dealing with a form of a contract held that literal compliance with the prescribed form may not be essential. However, if the contract does not contain all the terms and conditions set out in the form, the contract will be void. For this the Court referred to the provisions of the relevant bye laws. As aforesaid in the present case, in my view, all the essential ingredients of Section 7(3) and Form F are contained in the

composite notice as issued to the petitioner and it cannot be said that there is non-compliance of any essential condition while issuing the notice. The form in which notice under Section 7(3) is required to be issued to the occupant, as prescribed in form F is a matter of procedure. Ordinarily, the procedural requirements are not mandatory even if the word 'shall' is employed in respect thereof, unless non-compliance thereof would cause prejudice to a party is caused [see ***Dove Investments Pvt. Ltd. v. Gujarat Industrial Investment Corporation*** (2006) 2 SCC 619, which in turn makes reference to ***P.T. Rajan v. T.P.M. Sahir*** (2003) 8 SCC 498]. In ***Dove Investments*** (supra) the Supreme Court set out para 271 of Crawford on Statutory Construction at page 539, which reads as follows:

271. Miscellaneous implied exceptions from the requirements of mandatory statutes, in general. - Even where a statute is clearly mandatory or prohibitory, yet, in many instances, the courts will regard certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their jurisdiction in considerations of justice. It is a well-known fact that often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient calibre to excuse or justify a technical violation of the law."

25. The objection raised by the petitioner with regard to non-compliance of Form F has also to be viewed in the light of the fact that the notice was served on the petitioner on 03.07.2006,

whereas the said objection was for the first time raised only in January, 2008 vide I.A. No.15/2008 i.e. after the passage of nearly 1½ years. If the petitioner was seriously prejudiced by the non-compliance of Form F, the petitioner ought to have raised the issue contemporaneously i.e. soon after the notice dated 01.07.2006 was served upon it. By allowing the said period of 1½ years to elapse and by keeping quiet and not raising the aforesaid objection and raising the same only now, the petitioner is seeking to put the clock back and to relegate the respondent to a fresh proceeding under Section 7 at this stage. Such a course of action cannot be permitted. Reference, in this regard may be made to ***Associated Journals Limited v. Mysore Paper Mills Ltd.*** (2006) 6 SCC 197. In this case it was alleged that there was non-compliance of Form 3 of the Companies (Court) Rules 1959, which contained form of the affidavit required to be filed for verifying the company petition. The said requirement was prescribed by Rules 18 & 21 of the Companies (Court) Rules. Repelling the argument that there should be strict compliance with the said form, the Court held that substantial compliance of the Rule. Paragraph 22 and 23 of the aforesaid decision read as follows:-

“22. This Court has in catena of decisions held that substantial compliance is enough. Rules are undoubtedly statutory and the forms are to be adopted wherever they are applicable. The Rules relating to the affidavit and the verification cannot be ordinarily brushed aside, but then what is required to be seen is whether the petition substantially complies with the requirements and, secondly, even when there is some breach or omission, whether it can be fatal to the petition. In the instant case, both

the learned Company Judge and also the Division Bench were of the opinion that there is substantial compliance of Rule 21. In *Khaitan Overseas & Finance Ltd. v. Dhandhanias Bros. P. Ltd.*, a petition was filed by the Chairman-cum-Director of the company. He annexed with the petition a resolution of the Board of Directors permitting him to execute necessary petitions, documents, applications, affidavits and to lodge a suit to recover dues from the debtor company. This was held to include the authority to file a winding-up Petition also. The affidavit accompanying the petition was signed, sworn and affirmed on oath in the prescribed manner. The court said that the affidavit conformed with the requirements of law.

23. We are of the opinion that the Rules of procedure cannot be a tool to circumvent the justice. In fact, the Rules are laid to help for speedy disposal of justice. The learned Judges of the Division Bench has appreciated that the technical plea raised by the appellant (sic respondent) regarding defective affidavit was raised after seven years of filing the petition. The learned Counsel submitted that the appellant is raising the defence of technical plea to protect himself from the consequence of his default and this plea cannot be considered effective enough to review the order of advertisement. Assuming without admitting that the affidavit was not verified as per the Company Rules, the learned Counsel has correctly submitted that if this objection was taken earlier the respondent would have cured the defect."

26. In ***J.P. Srivastava and sons (P) Ltd. & Ors. v. Gwalior Sugal Company Ltd. & Ors.*** (2005) 1 SCC 172, the Supreme Court in the context of a petition under Section 397 & 398 of the Companies Act held that ".....*there are some rules which are vital and go to the root of the matter which cannot be broken. There are others where non-compliance may be condoned or dispensed with. In the latter case, the rule is merely directory provided there is substantial compliance with the rules read as a whole and no prejudice is caused.*"

27. Now, I proceed to deal with the submission of learned counsel for the petitioner that proceedings under Section 7 of the Act cannot simultaneously be initiated along with the proceedings under Sections 4 and 5 of the Act and only after the proceedings under Sections 4 & 5 are concluded, leading to the passing of an eviction order upon recording of his satisfaction by the Estate Officer that the occupant is an unauthorized occupant, the proceedings under Section 7 for claiming damages could have been initiated against the occupant.

28. The law permits the plaintiff to unite in the same suit several causes of action against the same defendant (see order II Rule 3 C.P.C). This rule is designed to prevent multiplicity of proceedings and also to save the parties from suffering multiple sets of costs and avoid unnecessary delays. Order II Rule 4 C.P.C specifically permits the plaintiff, who is seeking recovery of immovable property to claim, in the same suit, mesne profits or arrears of rent in respect of the property claimed or any part thereof. Though the provisions of the Civil procedure Code do not strictly apply to proceedings before the Estate Officer the underlying principle would still be applicable since the real purpose behind Order II Rule 3 and Rule 4 is to prevent multiplicity of proceedings and achieve expeditious disposal of the lis between the same set of parties.

29. When simultaneous petitions are preferred under Sections 4, 5 & 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 the occupant is liable to pay damages or not, and if so, at what rate and for what period. In case the Estate Officer were to conclude that the occupant is not an unauthorized occupant, not only would he dismiss the petition under Sections 4 & 5, but also the petition under Section 7 of the Act, since the necessary ingredient for determination and levy of damages, viz. the status of the occupant as an unauthorized occupant would be missing. However, if he finds that the occupant is an unauthorized occupant, he would determine the date on and from which the occupant becomes an unauthorized occupant and from that date onwards by operation of law, the occupant would become liable to pay damages. The Estate Officer would then determine the rate at which the damages are payable for the period of unauthorized occupation, if any. Merely because these two separate and distinct issues arise to be determined and the decision on the subsequent issue, namely, the assessment of damages, if any, is dependent on the determination of the first issue with regard to the status of the occupant (i.e. whether he is an authorized occupant or an unauthorized occupant), it does not mean that the Estate Officer cannot proceed to issue notice on the proceedings under Section 7 simultaneously with the issuance of the notice under Sections 4 & 5 of the Act. It also does not mean that the Estate Officer cannot record comprehensive evidence on both the issues at the same time. The Estate Officer would, however, proceed to determine the issue of damages, if any, only after he has recorded his satisfaction

to the effect that the occupant is an unauthorized occupant. The Act has been enacted to provide a speedy remedy in respect of public premises. The provisions of the Act should be interpreted keeping in view this objective. It does not stand to reason that the Claimant should first be expected to await a finding of unauthorized occupation, in a proceeding under Sections 4 & 5 of the Act, before even initiating a proceeding under Section 7 to claim damages for the period the occupant is claimed to be an unauthorized occupant.

30. I, therefore, reject the submission of the petitioner that the proceedings under Section 7 could not have been initiated or proceeded with simultaneously with the proceedings under Sections 4 & 5 of the Act, and that the petitioner could not have been required to lead its evidence on the respondents claim for damages under Section 7 simultaneously with the evidence on the aspect whether the petitioner is an unauthorized occupant or not. I also reject the petitioner's submission that the Estate Officer has no jurisdiction to proceed with the proceedings under Section 7 of the Act unless and until the proceeding under Sections 4 & 5 culminate with a finding of unauthorized occupation of the occupant concerned. He may proceed with the said proceedings, however, before deciding on the issues arising in those proceedings, he must decide on the status of the occupant.

31. Learned counsel for the petitioner has relied upon the following three decisions in support of his submissions:

1. ***Smt. Chander Kali Bai & Ors. v. Jagdish Singh Thakur & Anr.***

(1997) 4 SCC 402

2. ***Shangrila Food Products Ltd. & Anr. Vs. Life Insurance Corporation of India***

(1996) 5 SCC 54

3. ***Mine Manager, Mangnese Ore (India) Ltd. & Anr. v. Shyam s/o Kunji Lal Yadav***

(2002) 3 Bom. Law Reporter 874

32. I have examined the aforesaid decisions and in my view neither of them advance the case of the petitioner. In ***Smt. Chander Kali Bai*** (supra) the Supreme Court held that no damages could have been awarded for the period prior to the date of eviction decree. ***Smt. Chander Kali Bai*** (supra) was a case under the Madhya Pradesh Accommodation Control Act, 1955. The definition of the term 'tenant' in Section 2(i) as well as provisions of 13(1) of the Act showed that a tenant even after the termination of the contractual tenancy did not become an unauthorized occupant, but continued to be a statutory tenant. It is on that basis that the Court held that prior to the date of passing of the decree for eviction, the tenant did not become an unauthorized occupant and was not liable to pay damages. That is certainly not the case in hand. Under the Act, an occupant would be liable to pay damages from the date that he becomes an unauthorized occupant and the declaration of his status as an unauthorized occupant on a subsequent date by the Estate Officer would not be determinative of the date from which damages for unauthorized occupation would be suffered.

33. In ***Shangrila Food Products Ltd.*** (supra) the Supreme Court

held that unless the occupant is first adjudged as an unauthorized occupant, his liability to pay damages does not arise. If the occupant is an authorized occupant he may be required to pay rent, but not damages. The quality of occupation and the quality of recompense for the use and occupation of the public premises go hand in hand and are interdependent. This is the scheme of the Act. I do not appreciate how the aforesaid proposition aids the case of the petitioner. As I have already observed earlier, the Estate Officer would be obliged to first determine the status of the petitioner - as to whether the petitioner is an unauthorized occupant, and if so from which date. Only upon arriving at the finding that the petitioner is an unauthorized occupant would the Estate Officer proceed to determine the liability of the petitioner, if any, towards damages for the period of unauthorized occupation. It is not that the petitioner would become an unauthorized occupant only from the date that an order under Sections 4 & 5 of the Act allowing the petition, if any, is passed. If such an order is passed, the same would merely declare the status of the occupant as an unauthorized occupant from the relevant date. The determination of liability to pay damages would, therefore, have to be founded upon an earlier determination of the issue whether the occupant is an authorized or an unauthorized occupant. The same does not mean that the two proceedings under Sections 4 & 5 on the one hand and under Section 7 for claiming damages cannot simultaneously be launched or proceeded with.

34. ***Mine Manager, Mangnese Ore (India) Ltd.*** (supra) also

does not appear to be a relevant decision and does not support the petitioner's case. In this case, the notice under Section 4 (1) of the Act issued to the respondent was on the basis that he was an employee of the petitioner and that he had ceased to be in the employment of the petitioner. As a matter of fact, the respondent was not an employee of the petitioner and there was no question of his ceasing to be in employment. The case of the respondent was that his ancestors had resided since about 100 years in the premises in question. Neither he, nor his predecessors were employed with the petitioner company, or its predecessor in interest. The Court examined the eviction order passed against the respondent, which was upset in appeal on the ground of adverse possession and held that the basis on which the eviction proceedings were initiated could not be sustained as the respondent was not an employee/ex-employee of the petitioner. At the same time, the Court set aside the finding of adverse possession in favour of the respondent. This decision was rendered on merits, in the particular facts of the case. It has no bearing on the issues raised in the present petition.

35. For the aforesaid reasons, I see no merit in this petition and I am inclined to dismiss the same. However, in the interest of justice, subject to the petitioner paying costs to the respondent bank of Rs.30,000/- within two weeks, the petitioner is permitted to file its reply to the petition under Section 7 of the Act within four weeks from today. In case the petitioner complies with this direction, the Estate Officer shall also grant to the petitioner one and only one

opportunity to file its affidavit by way of evidence in support of its defence within two weeks from the date the time is granted. It is necessary to bind the petitioner down in terms of the time that the petitioner may be granted for filling the affidavit by way of evidence, considering the fact that the proceedings before the Estate Officer have been pending since July, 2006, and I cannot but help notice that the endeavour of the petitioner in raising the objections that it did by moving I.A. Nos.14 & 15 of 2008 appears to have been only to delay the conclusion of the proceedings before the Estate Officer. No observation made in this judgment shall have any bearing on the merits of the respective cases of the parties.

36. With the aforesaid directions, the petition stands dismissed.

(VIPIN SANGHI)
JUDGE

JANUARY 07, 2009
as/rsk/dp