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relying upon the order dated 23/10/2018 passed by the learned Single Judge of this Court in W.P. No. 2790 of 2018. Without prejudice it is submitted that the averments in the petition have not been traversed parawise and as such must be taken to have been admitted. He contends that the observations in the impugned order that the petitioners acquiesced in the particular arrangement or mode of recording the evidence are erroneous since the petitioner is a body corporate and its such action of acquiescence or waiver must be with proper authorization only. Lastly it is pointed out that rule 5 of Public Premises (Eviction of unauthorized occupants) Rules, 1971 which regulate the procedure clearly stipulates that the Estate Officer has to record the summary of evidence tendered before him. Thus evidence has to be oral and short notes (summary) thereof forms part of the records and the Estate Officer can take note of whatever he finds relevant. In the present facts, affidavits on examination in chief have been accepted thereby the procedure has been violated. Learned counsel submits that the provisions of order 18 rule 4 of CPC are not applicable in the present matter.

3. Counsel for respondent authority states that the provisions of rule 5 of 1971 Rules (supra) are not violated because of

affidavit filed and the petitioner has been given opportunity to cross examine which rules out the possibility of any prejudice. He submits that all other objections are irrelevant looking to the nature of controversy.

4. Reliance upon the order of the learned single Judge dated 23/10/2018 in W.P. No. 2390 of 2018 by the petitioner is misconceived inasmuch as it does not lay down any precedent. At present there is no obligation upon the instrumentalities or agencies to attempt to settle such matter of present nature.

5. The facts show that the respondent has commenced the eviction proceedings in 2007. The affidavit evidence of first witness was tendered before January, 2008. The impugned order itself mentions that the admissibility of documents was also then considered in presence of the parties and their advocates and then the matter was adjourned for cross examination of PW No. 1 i.e. present respondent. The cross examination was to be conducted by present petitioner. Thus since 31/1/2008 the petitioners have been cross examining that witness.

6. The fact that the roznama dated 30/11/2017 and 31/01/2008 record the position as reflected in the impugned order is not in dispute. Thus at that stage the objection to filing

of affidavit was not taken and thereafter objection to admissibility of the documents and exercise undertaken as per provisions of CPC was also not raised. The impugned order finds that after completing this exercise, the matter was fixed for cross examination of the owner's witness i.e. witness of the present respondent. The impugned order again shows that after that order was passed on 18/11/2016, the matter was adjourned to 08/12/2016 for cross examination.

7. The procedure prescribed by rule 5 is for convenience and it does not oblige the estate officer to record ad verbatim whatever is deposed. The filing of entire examination in chief in writing in the shape of affidavit therefore does not cause any prejudice to the present petitioner. Petitioner has been given opportunity to cross examine that witness.

8. The other contentions like not filing of reply to all allegations in the petition or then inference to be drawn for want of such traversing therefore need not be gone into. The only controversy is about the mode and manner of recording the evidence and necessary material in that respect is already available on record.

9. We therefore, find that the petitioners have to proceed further to cross examine the witness and attempt to complete the

proceedings in accordance with law and no case is made out warranting interference in exercise of extra ordinary jurisdiction. Petition is dismissed. There shall be no orders as to costs.

(REVATI MOHITE DERE, J.)

(B.P. DHARMADHIKARI, J.)