

(1994) 03 GUJ CK 0028

In the Gujarat High Court

Case No : Company Application No's. 192 of 1988 and 8 of 1993 in Company
Petition No's. 33 of 1977 and 59 of 1983

Official Liquidator, Swashraya Benefit Pvt. Ltd.

APPELLANT

Vs

B.H. Talati and Others

RESPONDENT

Date of Decision : 16-03-1994

Acts Referred:

Companies Act, 1956 — Section 196, 454(5), 454(5A), 542, 543

Citation : (1996) 87 CompCas 197

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Advocate : G.N. Shah and J.B. Bhadari, for the Appellant; J.R. Nanavati, for
Vikram Trivedy and Ashwin L. Shah, for the Respondent

Judgement

S.D. Shah, J.—These two company applications filed u/s 543(1) of the Companies Act, 1956, raise interesting questions of interpretation of

the provisions of rules 260 and 261 of the Companies (Court) Rules, 1959, read in the context of Form No. 121 prescribed under rule 260 of the

said Rules.

2. Shortly stated the question raised before this court is as to whether a summons filed in the prescribed Form No. 121 u/s 543(1) which contains

only the form of declaration or order for which the application is made (without giving details of particulars and the ultimate relief sought) and which

fails to set out the grounds of the application or the grounds on which the declaration or order is sought, is legally competent or is liable to be

rejected as such as it fails to set out briefly the grounds on which the declaration or order is sought. The court is also required to consider in this

context the question as to whether the aforesaid omission would be fatal so as to

result in the rejection of the summons or whether under rule 261

by issuing directions, it is competent for the court to call upon the party to state the points of claim and, thereafter, to call upon the respondent to

state the defence of the points of claim.

3. In order to properly appreciate and answer the aforesaid questions, it is necessary to set out briefly the facts giving rise to these two company applications.

(i) Company Application No. 8 of 1983 is filed by the official liquidator of the company named Swashraya Benefit Pvt. Limited (In liquidation) u/s

543(1) of the Companies Act, 1956, (1) for a declaration that the respondents/directors of the company had misapplied, retained or become liable

and/or accountable for the money of the company and (2) for a declaration that the respondents/directors of the company, were guilty of

misfeasance, breach of trust, breach of duty, gross negligence in discharging their duties and conducting the business of the company in the manner

prejudicial to the interest of depositors as well as creditors of the company. In para 2 of the summons, order is sought for necessary enquiries to be

made and accounts taken for ascertaining what sums the respondents are liable to contribute to the company by way of compensation for such

misfeasance and breach of trust. By para 3 of the application it is, inter alia, prayed that the respondents/directors do jointly and severally

contribute to the assets of the said company and to pay to the official liquidator all such sums as may be found liable to be contributed to such

assets together with interest on such sums at the rate of 12 per cent. per annum or such rate as may be determined by the court.

(ii) It may be noted that in this case, the order of winding up of the company was passed on February 13, 1978, and the present application is filed

on January 25, 1983, i.e., within five years from the date of the order of winding up. It is also required to be stated in the application, which is filed

in the prescribed form as prescribed by Form No. 121, the applicant has simply reproduced the various clauses as provided in the prescribed form

and has not set out the grounds based on which the aforesaid reliefs/directions are prayed. The submission of learned counsel appearing for the

respondent, therefore, is that the application and/or judge's summons taken out is liable to be rejected, firstly, for the reason that it does not

disclose any ground as stipulated for issuing direction/order and, secondly, for the reasons that summons taken out by the applicant is absolutely

vague, ambiguous, or no summons at all in the eye of law. It is submitted that since the application/summons does not disclose any ground or

material facts for any of the reliefs under sections 543(1) of the said Act, the application is liable to be rejected in limine.

(iii) In Company Application No. 192 of 1988, the official liquidator has, inter alia, prayed (1) for a declaration that the respondents/directors of

Surat Dairy Co. Limited (in liquidation) had misapplied, retained and became liable and accountable for the money or properties of the company,

and (2) for a declaration that the respondents/directors of the company were guilty of misfeasance, breach of trust, breach of duty, gross

negligence in discharging their duties and managing the affairs of the company. Paragraphs 3 and 4 of the said application are verbatim taken from

Form No. 121 of the prescribed form under the Companies (Court) Rules, 1959. An identical objection is taken by learned counsel appearing for

the respondents as in this application also the applicant has omitted or failed to state the grounds and material facts based on which declaration

and/or direction as sought in the judge's summons are prayed for.

4. In the aforesaid fact situation, this court is called upon to decide the aforesaid legal submissions. It may be noted that the power of the court is

invoked by the official liquidator (applicant) u/s 543 of the Companies Act, 1956, which provided for power of the court to assess damages

against delinquent directors. u/s 543(1) if in the course of winding up a company it appears that any person, who has taken part in the promotion

or formation of the company or any past or present director, managing agent or secretary and treasurer, manager, liquidator or officer of the

company (a) misapplied or retained or become liable and/or accountable for any money or property of the company; or (b) has been guilty of any

misfeasance, breach of trust in relation to the company, the court may on the application of the official liquidator made within five years from the

date of the order for winding up or of the first appointment of the liquidator in the winding up, examine into the conduct of the persons, director,

managing agent, secretary and treasurer and compel him to repay or restore the money or property or any part thereof. This power of the court to

take action is notwithstanding the fact that for such conduct, the person concerned may be criminally liable. It is thus clear that the object of the section is to provide a summary remedy for enforcing the rights of the company vis-a-vis its past or present director, manager, liquidator or officer of the company, who has been guilty of misapplication of funds or who has retained or become liable or accountable for any money or property of the company, etc. For the acts of misfeasance enumerated in the section, loss cannot be permitted to be caused to the company and, therefore, a very convenient means of enforcing the rights of the company against such delinquent officer is provided by this section. The powers of the court under this section can be invoked by applications made by the official liquidator or any creditor or contributory. The court has no power suo motu to proceed against the delinquent directors.

5. In order to attract the provisions of section 543 the following conditions are required to be satisfied. The company must be (1) against whom proceedings for winding up are pending; (2) the person against whom directions/declaration/order is sought must fall within the categories of persons specified, namely, any person who has taken part in the promotion or formation of the company or any past or present director, managing agent, secretary, treasurer, manager, liquidator or officer of the company; (3) such person must have misapplied or retained or become liable or accountable for any money or property of the company or become guilty of any misfeasance or breach of trust in relation to the company.

6. Section 543 stipulates that an application is to be made by the official liquidator or any creditor or contributory. The Companies (Court) Rules, 1959, which are framed in exercise of the powers conferred by sub-sections (1) and (2) of section 643 of the Companies Act, 1956, inter alia, provide by rule 6 thereof as under :

6. Practice and procedure of the court and provisions of the Code to apply. - Save as provided by the Act or by these rules the practice and procedure of the court and the provisions of the Code so far as applicable, shall apply to all proceedings under the Act and these rules. The Registrar may decline to accept any document which is presented otherwise than in accordance with these rules or the practice and procedure of the court.

7. It is thus clear that the practice and procedure of the court and the provisions of the CPC so far as applicable shall apply to all proceedings

under the Rules. The discretion is given to the Registrar to decline to accept any documents which are not in accordance with the Rules. Under the

heading ""Application against delinquent directors/promoters and officers of the company"" rules 260, 261 and 262 are framed and rules 260 and

261 being material for the purposes of this judgment, they are reproduced hereunder :

260. Applications u/s 542 or 543. - An application under sub-section (1) of section 542 or under sub-section (1) of section 543, shall be made

by a summons returnable in the first instance in chambers. The summons shall state the nature of the declaration or order for which the application

is made, and the grounds of the application, and shall be served on every person against whom an order is sought not less than eight days before

the day named in the summons for the hearing of the application. It shall not be necessary to file any affidavit or report before the return of the

summons. The summons shall be in Form No. 120 or 121 with such variations as may be necessary.

261. Directions at preliminary hearing of summons. - On the return of the summons the court may give such directions as it shall think fit as to

whether points of claim and defence are to be delivered, as to the taking of evidence wholly or in part by affidavit or orally, as to the cross-

examination, before the judge on the hearing, either in court or in chambers, or any deponents to affidavits in support of or in opposition to the

application, as to any report it may require the liquidator to make, and generally as to the procedure on the summons and for the hearing thereof.

Points of claim to be delivered shall be in Form No. 122 or 123 with such variations as may be necessary.

8. From the aforesaid provisions of the rules, it becomes clear that an application to be filed by the official liquidator u/s 543(1) shall be by way of

summons. Such summons shall be in Form No. 121 with such variations as may be necessary. Such summons shall state the nature of the

declaration or order for which the application is made. Such summons shall state the grounds of the application, and shall be served on every

person against whom an order is sought not less than eight days before the day named in the summons. The aforesaid requirements of the

application and/or summons as stated in Form No. 120 are required to be appreciated in the context of Form No. 121 (being the form for an

application under rule 260 for summons u/s 543(1). The prescribed form of the summons u/s 543(1) reads as under :

Summons u/s 543(1)

Let all parties attend the sitting judge in chambers on..... day the..... day of..... 19..... at..... o'clock in the..... noon on the hearing of an application

u/s 543(1) on the part of the (official) liquidator of the company aforesaid (or A. B., a creditor/contributory of the above company) for -

1. A declaration that the respondents, the..... (promoters, directors, etc., as the case may be) of the above company had misapplied, retained or

become liable or accountable for the money or property of the company, or were guilty of misfeasance and breach of trust in relation to the said

company in (here set out briefly the ground on which the declaration is sought, e.g., paying to the shareholders dividend out of capital in respect of

the financial year..... or lending without consideration and without taking any security Rs. of the said company to on..... 19..... whereby the

same became wholly lost to the said company on the adjudication of the said..... as insolvent on..... 19..... (or, as the case may be).

2. An order that all necessary inquiries be made and accounts taken for ascertaining what sums the respondents are liable to contribute to the

assets of the said company by way of compensation for such misfeasance and breach or trust as aforesaid.

3. An order that the respondents do jointly and severally contribute to the assets of the said company and do pay to the (official) liquidator of the

said company all such sums as they may be found liable to contribute to such assets together with interest on such sums at the rate of..... per cent.

per annum as from the several dates when the said sums were respectively wrongfully paid away until the date of repayment.

4. An order that the said respondents do pay the costs of an incidental to this application.

5. Such other order as in the premises, the court shall think fit to make.

9. From the aforesaid form of the summons read with rule 260, it is submitted by the respondents before this court that the summons taken out by

the applicant is not only vague and ambiguous but is no summons at all as

grounds in support of the declaration or order sought are not stated.

Under rule 260, it is stipulated that the summons shall state that the nature of the declaration or order for which the application is made and the

grounds of the application. Since in the present case the grounds of the application are not stated whatsoever in the application filed by the official

liquidator, it is submitted before this court that summons taken out by the official liquidator is no summons at all as stipulated by the Rules as it does

not disclose any cause of action or grounds for the relief sought and, therefore, it is liable to be rejected. It is submitted that based on the

summons/application filed by the official liquidator, in which no grounds or reasons are disclosed, court is called upon to invoke its power u/s

543(1) and the court ought to have and must reject such summons as it fails to satisfy the court prima facie for taking any action against the

delinquent directors or officers of the company. Mr. G. N. Shah, learned counsel appearing for the official liquidator, has, however, very

strenuously urged before this court that the application is filed in the prescribed Form No. 121 stating the nature of the declaration or order for

which the application is made and it is served on every person against whom an order is sought. He submitted that an omission to state the grounds

in the application is merely procedural and cannot be fatal to an application. In his submission, rule 261 is very apposite which provides the power

of the court at the preliminary hearing of the summons. On the return of the summons the court has power to give directions, if it thinks fit, to call

upon the party to state the points of claim or to call upon the respondent delinquent officers to submit the statement of defence. He therefore,

submits that omission to state the grounds of the application in the prescribed form, should not result in the rejection of the application as the court

can always call upon the applicant to state the points of claim and can require the delinquent officers to state their defence to the points of claim.

He further submitted that such omission should not result in rejection of an application as the court has power to issue directions at the preliminary

hearing of summons and, therefore, an omission to state the grounds for passing any order u/s 543(1) should not result in rejection of the

application as such.

10. In this connection reference is required to be made to the decision of the

Supreme Court in the case of Official Liquidator v. Raghawa

Desikachar [1975] 45 Comp Cas 136. The proceedings before the Supreme Court had arisen out of misfeasance proceedings initiated u/s 196 of

the Indian Companies Act, 1913. The official liquidator preferred misfeasance charges against the directors of the company but solely relied upon

the public examination of directors u/s 196 of the Act and did not lead any new evidence. The charges were not specific and the District Judge

fixed the case for argument without giving an opportunity to the directors to lead any evidence. In this context, the Supreme Court made the

following observations (page 142) :

It may be mentioned that misfeasance action against the directors is a serious charge. It is a charge of misconduct or misappropriation or breach

of trust. For this reason the application should contain a detailed narration of the specific acts of commission and omission on the part of each

director quantifying the loss to the company arising out of such acts or omissions. The burden of proving misfeasance or non-feasance rests on the

official liquidator.

11. Based on the aforesaid observations of the Supreme Court, Mr. J. R. Nanavati and Mr. Ashwin L. Shah, learned counsel appearing for the

applicant, in each application submitted before this court that any application u/s 543(1) seeking any relief for charges or misfeasance itself should

contain detailed narration of the specific acts of commission and omission on the part of each director. In the absence of such details of the grounds

based on which order/declaration or direction is sought, the application is liable to be rejected as it is not valid summons in the eye of law. It is true

that ordinarily, an application or summons in the prescribed Form No. 121 should contain the grounds for declaration and/or direction or detailed

narration of the specific acts of omission or commission on the part of the delinquent director or officer. In fact, it is desirable that such details are

stated in the application itself. The question which is now raised before this court is as to whether failure to state such detailed narration of specific

acts of omission and commission or omission to state the grounds in support of the declaration/direction sought, would be fatal so as to result in

rejection of the application outright. In other words, whether the requirement of rule 260 requiring the applicant to state the grounds in support of

the declaration is to be read as mandatory or obligatory so as to result in rejection of an application for not containing the grounds in support of the relief or declaration prayed for. In fact, the Supreme Court was not concerned with this very question in the case of *Official Liquidator v. Raghawa Desikachar* [1975] 45 Comp Cas 136 and the observations made by the Supreme Court as extracted hereinabove shall have to be read as laying down that it is desirable that the applicant should state the grounds or detailed narrations of the specific acts of omission or commission on the part of the delinquent director or officer. The reason is that the nature of the proceeding is a misfeasance proceeding and, therefore, the charges levelled against the directors/officers, etc., are serious. Therefore, it is always advisable and desirable that as far as practicable, grounds for declaration/directions are stated in the application itself since the Supreme Court was not at all concerned with the situation which is faced more particularly in the context of pleadings under rules 260 and 261. The opinion of this court is that the aforesaid decision of the Supreme Court cannot be pressed into service to hold that an application made under rule 543 in the prescribed Form No. 121 shall have to be rejected if the applicant fails to state the grounds in support of declarations/direction as contemplated by rule 260 read with Form No. 121.

12. In the case of *Official Liquidator, Milan Chit Fund and Finance P. Ltd. Vs. Joginder Singh Kohli and Others*, an application for a misfeasance action against directors was filed u/s 543 of the Act based upon fraudulent conduct of business and misfeasance. However, for such conduct, the directors had been earlier exonerated from their criminal liability u/s 454(5) and (5A) and, therefore, it was urged before the court that proceedings u/s 543 were not competent as the bar of *res judicata* would operate. It was in this context that the learned single judge of the Delhi High Court observed as under (page 362) :

Section 543 of the Act, which is based on section 333 of the English Act of 1948, confers powers on the court to assess damages against delinquent directors and others and provides that where in the course of winding up it appears that where any person who has taken part in the formation and promotion of the company or any past or present director, liquidator or officer of the company has misapplied, or retained, or

become liable or accountable for, any money or property of the company, or has been guilty of any misfeasance or breach of trust in relation to the

company, the court may examine into the conduct of such person and compel him to repay or restore the money or property or any part thereof

respectively or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance

or breach of trust, as the court may think fit. The civil liability envisaged by the provision is independently of any criminal liability for the impeached

actions. Rules 260 and 261 of the Rules lay down the procedure for proceedings under this section. The summons in such proceedings has to be in

Form No. 121 which also envisages that particulars of the specified money or property must be set out. It has been held that misfeasance was a

serious charge and detailed narration of specific acts of omission and detailed commission must be set out in the application and the liability to

restore must be quantified. (Official Liquidator v. Raghawa Desikachar [1975] 45 Comp Cas 136 (SC).

Having so interpreted section 543 in the context of the observations made by the Supreme Court in the case of Raghawa Desikachar [1975] 45

Comp Cas 136, the learned single judge of the Delhi High Court proceeded to consider the objection taken by respondent No. 3, who remained

the director only for a period of seven months during which no business was transacted by the company. The learned single judge observed that, in

any event, the respondent having no control over the affairs of the company or of its accounts or records could not be held liable under the

aforsaid provisions. The question whether any business was conducted by the company during the period the third respondent was a director and

the extent to which the respondent was concerned with the conduct of the business of the company involved a controversy of facts which would

require evidence for decision. This matter cannot, therefore, be decided on a preliminary objection. Having so observed, the learned single judge

of the Delhi High Court proceeded to observe that in the application very vague allegations were made against all the directors and there was no

specific allegation against the third respondent. The court, therefore, held that it would be an abuse of the process of the court to proceed against

the third respondent in the absence of any specific allegations and, therefore, the application was dismissed.

13. Based on the aforesaid decision, it was strenuously urged before this court by Mr. J. R. Nanavati and Mr. Ashwin L. Shah that the application was liable to be rejected as in the application, no grounds were stated to take any misfeasance action against the respondent. In the opinion of this court, the aforesaid is not the ratio of the decision of the Delhi High Court in the case of Official Liquidator v. Joginder Singh Kohli [1978] 48 Comp Cas 357. The learned single judge of the Delhi High Court has not laid down the widest proposition to the effect that the omission to state the grounds in support of an action for misfeasance in an application u/s 543(1) read with rule 260 shall always be fatal so as to result in rejection of the application outright. In fact, on the finding reached by the court that the application did not contain any allegation whatsoever against respondent No. 3 and that it contained specific allegations against rest of the respondents, the court has dismissed the application against respondent No. 3. It would not be correct, therefore, to read, based on such a finding of fact reached by the court, as a principle of law that in every case where there is omission to mention the grounds based on which misfeasance action is moved, the same is liable to be rejected. In the opinion of this court such an approach fails to take into effect the provisions of rule 261 read with rule 6 of the Companies (Court) Rules. It also fails to take into account the fact that the court has power under rule 261 to call upon the applicant to state his claims. Stating the claim would include various specific claims against the respondent and the grounds or material based on which such claims are made so that such claims can be specifically made known to the respondent and the respondent can be called upon to meet such claims. It is true as stated earlier that it is desirable that grounds in support of the declaration/order/direction are state in the application itself. But to say that an omission to state such grounds must always of necessity result in rejection of the application is, in the opinion of this court stating law rather too broadly and such statement of law would be inconsistent with rule 261.

14. It may be stated that under rule 6 of the Companies (Court) Rules, 1959, the practice and procedure of the court and the provision of the CPC shall apply to all proceedings under the Act and the Rules so far as they are applicable. Under Order 7, rule 11 of the Code of Civil

Procedure, where the plaintiff does not disclose the cause of action, the same shall be rejected. It is submitted that consistent with such provision, there is power in the Registrar under rule 6 to decline to accept any application which is presented if it is not consistent with the procedure of the court. It is, therefore, submitted that the application which is filed which is in the prescribed form being Form No. 121 and since no grounds in support of the relief of declaration, order or direction are stated, the same is liable to be rejected. In my opinion, the aforesaid course of reasoning is fallacious and shall have to be avoided as an application under rule 260 read with section 543(1) is in the nature of a complaint or grievance made before the court by the official liquidator about serious acts of misfeasance committed by the directors or officers of the company. If the prayer and/or declaration and/or direction sought from the court in the prescribed form are of grave nature and consist of allegations of misfeasance, misapplication, breach of trust or breach of duty, the company court would not be justified in outright rejecting the application on the ground that grounds in support of the reliefs are not stated. The omission to state the grounds as contemplated by rule 260 read with requirement of prescribed Form No. 121 should not result in making the proceeding incompetent or rendering the summons ineffective and one which is liable to be rejected. In the case of *Official Liquidator v. Sardar J. S. Sawhney* [1977] 47 Comp Cas 219, a learned single judge of the Delhi High Court was called upon to decide the effect of non-compliance with the direction issued under rule 261 to the respondent to file a written statement or statement of defence. Since no written statement was filed by the respondent the proceedings were ordered to proceed ex parte against him. Thereafter, a company application was filed for setting aside the ex parte proceeding and it was in this context that the following observations are made by the learned single judge of the Delhi High Court (page 222) :

It is now necessary to turn to rule 260 which deals specifically with applications u/s 542 or 543 of the Act. This rule states that an application under these sections has to be moved by a judge's summons in Forms Nos. 120 and 121. An examination of Form No. 120 or 121 shows that it does not require the applicant to state the facts which are relied upon. Then rule 261 shows that after the summoned party has put in appearance,

the court can give directions as to the filing of points of claim and points of defence. The relevant forms appertaining to this stage of the

proceedings under sections 542 and 543 are respectively Form Nos. 122 and 123. These forms show that the material facts which are relied upon

have to be stated at this stage of the proceedings. It, therefore, seems to me, that the procedure to be adopted in cases under sections 542 and

543 is materially different from the procedure followed under the Code of Civil Procedure. It corresponds in fact to the procedure which is

generally followed in the courts in England. It may be recalled that there are two general methods to commence proceedings in the English High

Court : the proceedings can be commenced by a writ of summons or by writ of summons with the statement of claim endorsed. The rules of the

Supreme Court (English Supreme Court) specify which summons have to be endorsed to state the claim. In other cases the statement of claim is to

be presented to the party after the appearance of that party. It is open to an intending suitor to endorse his statement of claim even if he is not

required to do so by law. The English procedure has also been varied from time to time with the object of getting the party before the court first

and enabling the pleadings, etc., to be settled after appearance. This seems to be the procedure under sections 542 and 543 as envisaged by the

Companies (Court) Rules. I am, therefore, of the view that in this particular case the respondents were not required to file a written statement on

appearance because the provisions of Order 8, rule 1 of the Code, were not applicable in this particular case.

From the aforesaid observations made by the learned single judge of the Delhi High Court with which this court respectfully concurs, make it clear

that in the case of applications u/s 542 or 543 the procedure of the CPC is not to be followed. The procedure is prescribed by rules 260, 261 and

262. Therefore, after the other party appears, the material facts which are relied upon by the applicant can be stated at that stage of the

proceeding. Omission to state the material facts or the grounds as contemplated by Form No. 121 would not be fatal because the court has power

to call upon the party to state his claim and such statement of claim would include not only specific claims, but various allegations and grounds in

support of the claim, i.e., the effect of rule 261 and if such a power is denied to the court and the liberty to the applicant, rule 261 shall be rendered

otiose and nugatory.

15. Even otherwise, this court is of the opinion that the submission or contention raised by the respondent shall have to be rejected. The procedural

law must be regarded as such. The function of adjective law is to facilitate justice and further its ends. The rules of procedure are intended to be a

handmaid to the administration of justice and they must, therefore, be construed liberally and in such manner as to render the enforcement of

substantive rights effective. A hypertechnical view should not be adopted by the court in interpreting procedural laws. As observed by the

Supreme Court of India in the case of *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, , a party cannot be refused just

relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. Rules of pleadings are intended as

aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Beneath the words of a provision of

law, generally speaking there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it. The principle underlying

interpretation of procedural laws has been succinctly laid down by the Supreme Court in the case of *The State of Punjab and Another Vs. Shamlal*

Murari and Another, , wherein, Krishna Iyer J., speaking for the court, observed (page 1179) :

We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely

observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the

non-compliance, tho" procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the

breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant

desideratum. After all, courts are to do justice, not to wreck this end product on technicalities.

16. Keeping the aforesaid observations in mind in the opinion of this court the provisions of rules 260 and 261 are to be interpreted and applied

and consistent with the spirit of the said provisions as interpreted by the learned single judge of the Delhi High Court, this court is of the opinion

that omission to state the grounds in the judge's summons or application u/s 543(1) of the Companies Act, 1956, will not be fatal so as to result in rejection of the application.

17. The aforesaid was the only preliminary objection raised and since the said preliminary objection is rejected, for the reasons stated hereinabove,

I call upon the applicants in each application to file the statement of claim stating all claims specifically and stating various grounds in support of

such claim within three weeks from today and to serve copies thereof to the respondents. The respondents are thereafter directed to file their

statement of defence to the statement of claims within three weeks thereafter.

18. The company applications to be notified for further hearing on May 2, 1994.