

SUPREME COURT OF INDIA

Gopika Chandrabhushan Saran

Vs.

M/s. XLO India Ltd.

CrI.A.NO.295 OF 2009 arising out of SLP (CrI.) No. 4685 of 2008

(S.B. Sinha and Dr. Mukundakam Sharma)

13/02/2009

JUDGMENT

DR. MUKUNDAKAM SHARMA, J.

1. Leave Granted.

2. The issue that arises for our consideration in the present appeal is with regard to the scope of and ambit of the provisions of Section 630 of the Companies Act, 1956 (hereinafter referred to as the "Act"), more specifically, as to whether the proceedings under the said provision would cover within its purview only the employee of the company or also the persons claiming a right through him or under him.

3. In order to answer the aforesaid issue it would be necessary to set out the facts leading to filing of the case in which the aforesaid issue was raised and came to be considered: Mr. Chandra Bhushan

Saran (since deceased) father of appellant no. 1 and maternal grandfather of appellant no. 2 was allotted third floor residential premises of the building "Devenshire House", Westfield Estate, at Bhulabhia Desai Road, Mumbai (hereinafter referred to as "suit premises") since he was appointed as a Director and Technical Advisor of one M/s Automobile Products of India Ltd. (for short "API Ltd."). Subsequently he was appointed as Managing Director of the said company. The suit premises was owned by Her Highness Vijaya Raje Scindia Maharani of Gwalior and was taken on lease by the API Ltd. For the residential needs of its employee.

However, Mr. C. B. Saran resigned as Managing Director and later on also as its Director. Subsequent to his resignation as Managing Director, he was appointed as the Managing Director of Ex-Cello Ltd., respondent No. 1 herein. Mr. C. B. Saran made a representation to the then Chairman of the API Ltd., that as a Managing Director of the respondent No. 1 company he was entitled to rent free accommodation and for the sake of convenience the API Ltd. may execute a licence agreement in respect of the suit premises in favour of respondent no. 1, who in turn may permit him to occupy the suit premises.

The request of Mr. C.B. Saran was considered favourably in the Board Meeting dated 12.06.1968 in which Mr. Saran was also present as a Director. Accordingly, Mr. C. B. Saran along with his family, which consisted of his wife, son and daughter, continued to occupy the said premises.

Mr. C. B. Saran expired in Germany on 16.07.1980 and on his demise his son Mr. Sanjay Saran, who was Joint Managing Director became the Managing Director of the respondent no. 1 company. By virtue of his employment with respondent No. 1 the suit premises was allotted in his favour and the appellant no. 1 being sister of Mr. Sanjay Saran and appellant no. 2 being his nephew continued to stay in the suit premises.

4. It is pertinent to mention here that in the year 1976 API Ltd. filed a suit before Ld. Small Causes Court against the respondent no. 1 and Mr. C. B. Saran being suit no. 206/519 of 1976 disputing the tenancy right in relation to the suit property. After the demise of Mr. C. B. Saran his legal heirs, including the appellant No. 1, were substituted in the said suit.

5. On 20.03.2002 the respondent no. 1 also issued a letter to Mr. Sanjay Saran stating that they are in need of the premises and the suit premises should be vacated. In terms of the said letter Mr. Sanjay Saran vacated the premises but however the appellants continued to hold the possession of the said premises and refused to surrender the possession. On the other hand, the present appellants along with Smt. Minal Saran (since deceased), mother of appellant No.1 and Mr. Sanjay Saran challenged the right of respondent No. 1 - company to demand possession of the suit premises.

6. The appellants also filed a suit before the Small Causes Court being R.A.D Suit No. 502/2004. Another suit was filed by the appellants before the Small Causes Court being R.A.D. Suit No. 1495/2007 against API Ltd. and Her Highness Vijaya Raje Scindia, Maharani of Gwalior, alleging that Mr. C. B. Saran had executed a sub-tenancy in favour of her mother and Mr. C. B. Saran was inducted in the suit premises as a tenant by API Ltd. in or about June, 1968 on a monthly rental of Rs. 1400/-. In the later suit status quo order was passed which was extended subsequently.

7. The respondent no. 1 instituted a proceeding on 04.03.2004 under section 630 of the Act which was numbered as CC No. 74/SS/2005 against the present appellants and mother of appellant no. 1. The Additional Chief Metropolitan Magistrate vide order dated 26.06.2007 found the appellants guilty under Section 630 of the Act and a sentence of Rs. 5,000/- was imposed on each of the accused- appellant with default stipulation of simple imprisonment for 15 days. The appellants were directed to vacate the suit premises within 4 months from the date of said order and in default to suffer simple imprisonment for 4 months.

8. Being aggrieved by the said order the appellants filed a criminal appeal before the Sessions Judge which was dismissed. As the mother of appellant No.1 died on 29.11.2007 her appeal stood abated. Against the said dismissal the two appellants preferred a criminal revision application before the High Court of Bombay. The learned Single Judge heard the parties on merits and dismissed the appeal. The learned Single Judge while upholding the order of the courts below held that the appellants were liable to be convicted under Section 630 of the Act as they withheld the delivery of the property of respondent No.1-company. In terms of the prayer made by the learned counsel appearing for the appellants, the learned Single Judge granted stay of eight weeks to approach the higher court, subject to an undertaking that in the event of their failing before the higher court, they shall vacate and hand over vacant and peaceful possession of the suit premises to respondent no. 1.

9. It is against the said order that the appellants have approached this Court. We have heard the learned senior counsel appearing for the parties and also scrutinised the documents on record.

10. Mr. Colin Gonsalves, learned senior counsel appearing for the appellants mainly contented before us that no proceeding could have been initiated under section 630 of the Act, as the provision of the said section is applicable only to the employee or officer of the company and no action could have been initiated under said section against any other person other than the said employee or officer. He, however, also made an averment to the effect that the mother of the appellant No. 1 was a sub-tenant in the suit premises, in respect to which a suit is pending before the Small Causes Court in which status quo order has been granted, and therefore, this Court should await the decision in the aforesaid suit pending before the Small Causes Court.

11. Mr. Dushyant Dave, learned senior counsel appearing for the respondent company on the other hand submitted that the judgments passed by the courts below need no interference. He strenuously

relied on the decision of this court in *Lalita Jalan and Another v. Bombay Gas Co. Ltd. and others* reported in (2003) 6 SCC 107. He also submitted that the appellants illegally continued to occupy the said premises, and therefore, they are liable to vacate the suit premises immediately.

12. In order to examine the contentions raised by learned counsel for the parties, it will be convenient to set out the provisions of Section 630 of the Companies Act, 1956, which read as under:

"630. Penalty for wrongful withholding of property.--

(1) If any officer or employee of a company ❖

(a) Wrongfully obtains possession of any property of a company; or

(b) Having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act; he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to ten thousand rupees.

(2) The court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years."

13. The main purpose to make action an offence under Section 630 is to provide a speedy and summary procedure for retrieving the property of the company where it has been wrongly obtained by the employee or officer of the company or where the property has been lawfully obtained but unlawfully retained after termination of the employment of the employee or the officer. From the bare reading of the section, it is apparent that sub-section (1) is in two parts. Clauses (a) and (b) of sub-section (1) create two different and separate offences. Clause (a) contemplates a situation wherein an officer or employee of the company wrongfully obtains possession of any property of the company during the course of his employment to which he is not entitled whereas clause (b) contemplates a case where an officer or employee of the company having any property of the company in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the company. Under this provision, it may be that an officer or an employee may have lawfully obtained possession of any property

during the course of his employment, still it is an offence if he wrongfully withholds it after the termination of his employment. Clause (b) also makes it an offence, if any officer or employee of the company having any property of the company in his possession knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the Act. In terms of sub-section (2) the court is empowered to impose a fine on the officer or employee of the company if found in breach of the provision of Section 630 of the Companies Act and further to issue direction if the court feels it just and appropriate for delivery of the possession of the property of the company and to impose a sentence of imprisonment when there is non-compliance with the order of the court regarding delivery or refund of the property of the company.

14. In *Abhilash Vinodkumar Jain v. Cox & Kings (India) Ltd.*, (1995) 3 SCC 732 this Court had occasion to deal with scope and ambit of the provisions of Section 630 of the Act. This Court analyzed Section 630 and drew a logical deduction in para 13, which is as follows:

"13. The logical deduction of the analysis of Section 630 of the Act in the light of the law laid down by this Court is that:

(i) Clause (a) of the section is self-contained and independent of clause (b) with the capacity of creating penal liability embracing the case of an existing employee or an officer of the company and includes a past officer or a past employee of the company;

(ii) Clause (b) is equally independent and distinct from clause (a) as regards penal consequences and it squarely applies to the cases of past employees or officers;

(iii) the entitlement of the officer or employee to the allotted property of the company is contingent upon the right and capacity of the officer or the employee by virtue of his employment to continue in possession of the property belonging to the company, under authority of the company and the duration of such right is coterminous with his/her employment. In para 14 this Court further laid down the Scope and ambit of Section 630:

14. Thus, inescapably it follows that the capacity, right to possession and the duration of occupation are all features which are integrally blended with the employment, and the capacity and the corresponding rights are extinguished with the cessation of employment and an obligation arises to hand over the allotted property back to the company. Where the property of the company is held back whether by the employee, past employee or anyone claiming under them, the retained possession would amount to wrongful withholding of the property of the company actionable under Section 630 of the Act. The argument of the learned counsel for the appellants that since the provisions of Section 630 of the Act are penal in nature the same must be strictly construed and, the

parties which have not been expressly included by the legislature in Section 630(1) of the Act, cannot by any interpretative extension be included in the said provision, ignores the situation that by a deeming fiction, the legal representatives or heirs of a past employee or officer, in occupation of the property of the company, would continue to enjoy the personality and status of the employee or the officer only. An argument quite similar in nature was raised in Baldev Krishna Sahi case (1987) 4 SCC 361 also while resisting the extension of the provisions of Section 630 of the Act to the past employee or past officer and rejecting the same, this Court opined: (SCC pp. 365- 66, para 6)

"The first and foremost argument of learned counsel for the petitioner is that the provision contained in Section 630 of the Act is a penal provision and therefore must be subject to a strict construction and there is no room for intendment. It is submitted that on a true construction, the scope and effect of the section was limited to such property of the company which was wrongfully obtained by an officer or employee of the company. Emphasis was placed upon the words 'any such property' in clause (b) of sub- section (1) for the contention that clause (b) does not stand by itself but is interconnected with clause (a) (sic) and therefore both clauses (a) and (b) must be read together. In essence, the submission is that sub- section (1) of Section 630 of the Act makes it an offence where any officer or employee of a company wrongfully withholds possession of such property of the company. Secondly, it is contended that the legislature never intended to include past officers and employees of a company within the ambit of Section 630 of the Act which provides for prosecution of an officer or employee of a company for wrongfully withholding the property of the company inasmuch as it has used different languages where it was so intended, namely, in Sections 538 and 545. The entire argument of the learned counsel is based upon the judgment of the High Court of Calcutta in Amritlal Chum case [(1987) 61 Comp Cas 211 (Cal)]. We are afraid, we find it difficult to subscribe to the narrow construction placed by the High Court of Calcutta on the provision contained in sub-section (1) of Section 630 of the Act which defeats the very purpose and object with which it had been introduced."

We are in respectful agreement with the above view and are of the opinion that the legal representatives or the heirs of the deceased employee or officer would squarely fall within the ambit of Section 630 of the Act. To exclude them by giving a restrictive interpretation to the provisions would defeat the very object of the provision which declares the wrongful withholding of the property of the company to be an offence. It is immaterial whether the wrongful withholding is done by the employee or the officer or the past employee or the past officer or the heirs of the deceased employee or the officer or anyone claiming their right of occupancy under such an employee or an officer. It cannot be ignored that the legal heirs or representatives in possession of the property had acquired the right of occupancy in the property of the company, by virtue of being family members of the employee or the officer during the employment of the officer or the employee and not on any independent account. They, therefore, derive their colour and content from the employee or the officer only and have no independent or personal right to hold on to the property of the company. Once the right of the employee or the officer to retain the possession of the property, either on account of termination of services, retirement, resignation or death, gets extinguished, they (persons in occupation) are under an obligation to return the property back to the company and on their failure to do so, they render themselves liable to be dealt with under Section 630 of the Act for retrieval of the possession of the property.

15. The ratio of Abhilash Vinodkumar Jain (supra) was reiterated by another larger bench in Lalita Jalan (supra), wherein it laid down the main ingredients of Section 630 in para 6 and 7, the same are extracted hereunder:

"6. The question which requires consideration is whether the appellants, having not vacated the flat after the death of Shri N.K. Jalan to whom it was allotted in his capacity as director of the company, come within the ambit of Section 630 of the Act. The main ingredient of the section is wrongful withholding of the property of the company or knowingly applying it to purposes other than those expressed or directed in the articles and authorised by the Act. The dictionary meaning of the word "withholding" is to hold back; to keep back; to restrain or decline to grant. The holding back or keeping back is not an isolated act but is a continuous process by which the property is not returned or restored to the company and the company is deprived of its possession. If the officer or employee of the company does any such act by which the property given to him is wrongfully withheld and is not restored back to the company, it will clearly amount to an offence within the meaning of Section 630 of the Act. The object of enacting the section is that the property of the company is preserved and is not used for purposes other than those expressed or directed in the articles of association of the company or as authorised by the provisions of the Act. On a literal interpretation of Section 630 of the Act the wrongful withholding of the property of the company by a person who has ceased to be an officer or employee thereof may not come within the ambit of the provision as he is no longer an officer or employee of the company. In *Baldev Krishna Sahi v. Shipping Corpn. of India Ltd.* (1987) 4 SCC 361 the Court was called upon to consider the question whether the words

"officer or employee" existing in sub-section (1) of Section 630 should be interpreted to mean not only the present officers and employees of the company but also to include past officers and employees of the company. It was held that a narrow construction should not be placed upon sub-section (1) of Section 630, which would defeat the very purpose and object with which it had been introduced but should be so construed so as to make it effective and operative. The Court held as under in para 7 of the Report: (SCC p. 366)

"7. The beneficent provision contained in Section 630 no doubt penal, has been purposely enacted by the legislature with the object of providing a summary procedure for retrieving the property of the company (a) where an officer or employee of a company wrongfully obtains possession of property of the company, or (b) where having been placed in possession of any such property during the course of his employment, wrongfully withholds possession of it after the termination of his employment. It is the duty of the court to place a broad and liberal construction on the provision in furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy."

7. The Court went on to observe that it is only the present officers and employees who can secure possession of any property of a company and it is possible for such an officer or employee to

wrongfully take away possession of any such property after termination of his employment. Therefore, the function of clause (a) though it primarily refers to the existing officers and employees, is to take within its fold an officer or employee who may have wrongfully obtained possession of any such property during the course of his employment, but wrongfully withholds it after the termination of his employment. It was further held that Section 630 plainly makes it an offence if an officer or employee of the company who was permitted to use any property of the company during his employment, wrongfully retains or occupies the same after the termination of his employment and that it is the wrongful withholding of the property of the company after the termination of the employment, which is an offence under Section 630(1)(b) of the Act".

This Court further laid down in paras 22 and 23 as follows:

"22. The view expressed in J.K. (Bombay) Ltd. (2001) 2 SCC 700 runs counter to the view expressed in Abhilash Vinodkumar Jain (1995) 3 SCC 732 wherein it has been clearly held that the object of Section 630 of the Act is to retrieve the property of the company where wrongful holding of the property is done by an employee, present or past, or heirs of the deceased employee or officer or anyone claiming the occupancy through such employee or officer. The view expressed in Abhilash Vinodkumar Jain (1995) 3 SCC 732 clearly subserves the object of the Act which is to the effect of recovering the possession of the property belonging to the company. If it is held that other members of the family of the employee or officer or any person not connected with the family who came into possession through such employee would not be covered by Section 630 of the Act, such a view will defeat the quick and expeditious remedy provided therein. The basic objection to this view is that the aforesaid provision contained in Section 630 of the Act is penal in nature and must be strictly construed and therefore the actual words used should not be given any expansive meaning. A provision of this nature is for the purpose of recovery of the property and if, in spite of demand or subsequent order of the court, the possession of the property is not returned to the company, the question of imposing penalty will arise. Similar provisions are available even under the Code of Civil Procedure. In execution of a decree for recovery of money or enforcement of an injunction, the judgment-debtor can be committed to a prison. Such a provision by itself will not convert the civil proceeding into a criminal one. Even assuming that the said provision is criminal in nature, the penalty will be attracted in the event of not complying with the demand of the recovery of the possession or pursuant to an order made thereof. The possession of the property by an employee or anyone claiming through him of such property is unlawful and recovery of the same on the pain of being committed to a prison or payment of fine cannot be stated to be unreasonable or irrational or unfair so as to attract the rigour of Article 21 of the Constitution. If the object of the provision of Section 630 of the Act is borne in mind, the expansive meaning given to the expression "employee or anyone claiming through him" will not be unrelated to the object of the provision nor is it so far fetched as to become unconstitutional. Therefore, with profound respects the view expressed in J.K. (Bombay) Ltd. (2001) 2 SCC 700 in our opinion is not correct and the view expressed in Abhilash Vinodkumar Jain (1995) 3 SCC 732 is justified and should be accepted in interpreting the provision of Section 630 of the Act.

23. If an erstwhile or former employee is prosecuted under Section 630 of the Act on account of the

fact that he has not vacated the premises and continues to remain in occupation of the same even after termination of his employment, in normal circumstances it may not be very proper to prosecute his wife and dependent children also as they are bound to stay with him in the same premises. The position will be different where the erstwhile or former employee is himself not in occupation of the premises either on account of the fact that he is dead or he is living elsewhere. In such cases all those who have come in possession of the premises with the express or implied consent of the employee and have not vacated the premises would be withholding the delivery of the property to the company and, therefore, they are liable to be prosecuted under Section 630 of the Act. This will include anyone else who has been inducted in possession of the property by such persons who continue to withhold the possession of the premises as such person is equally responsible for withholding and non-delivery of the property of the company".

16. The capacity, right to possession and the duration of occupation are all features which are integrally blended with the employment. Once the right of the employee or the officer to retain the possession of the property, either on account of termination of services, retirement, resignation or death, gets extinguished, they (persons in occupation) are under an obligation to return the property back to the company and on their failure to do so, they render themselves liable to be dealt with under Section 630 of the Act for retrieval of the possession of the property.

17. The ratio laid down in the above said two cases makes it explicitly clear that Section 630 of the Act will cover within its ambit not only the employee or officer but also the past employee or the past officer or the heirs of the deceased employee or anyone claiming under them in possession of the property. The legal heirs or representatives in possession of the property acquire the right of occupancy in the property of the company, by virtue of being family members of the employee or the officer during the employment of the employee or the officer and not on any independent account. They, therefore, derive their colour and content from the employee or the officer only and have no independent or personal right to hold on to the property of the company.

18. The case in hand is the one which falls under the first part of clause (b) of sub-section (1) of Section 630. The suit premises was allotted to Mr. C. B. Saran, the predecessor-in-interest of the appellants, in his capacity as a Managing Director of the respondent company. The appellants herein had no direct relationship with the respondent company. Both of them came in possession of the suit premises through the original allottee of the said premises, namely, Mr. C. B. Saran, who has since died. The company has every right and jurisdiction to preserve its property and to see that the same is not used for purposes other than the one expressed or directed in the articles of association of the company. On a careful reading of the ratio of the decisions in *Abhilash Vinodkumar Jain (supra)* and *Lalita Jalan (supra)*, it is explicitly clear that they are squarely applicable to facts of the present case. When the legal representatives of the original allottee withhold the property wrongfully the company is entitled to invoke the provisions of Section 630 of the Act so as to retrieve the property being withheld wrongfully. The above quoted decisions have also laid down that all those who have come in possession of the premises with the express or implied consent of the employee and have not vacated the premises would be withholding the delivery of the property to the company and, therefore, they are liable to be prosecuted under Section 630 of the Act as is done in the present

case.

19. We may also mention that the averment of the learned senior counsel appearing for the appellants that the proceedings under Section 630 should have been stayed as the civil suit was pending, is without any merit in the light of the decision of this Court in *Atul Mathur v. Atul Kalra*, reported in (1989) 4 SCC 514, wherein it was held that stay of proceedings by the criminal court under Section 630 of the Act, whenever a suit has been filed would not only lead to miscarriage of justice but also render ineffective the salutary provisions of Section 630. the said observations are extracted herein below:

"16.....Merely because Respondent 1 had schemingly filed a suit before tendering his resignation, it can never be said that the civil court was in seisin of a bona fide dispute between the parties and as such the criminal court should have stayed its hands when the company filed a complaint under Section 630. If a view is mechanically taken that whenever a suit has been filed before a complaint is laid under Section 630, the criminal court should not proceed with the complaint, it would not only lead to miscarriage of justice but also render ineffective the salutary provisions of Section 630."

20. Considering the facts and circumstances of the present case, we hold that the respondent company was within its jurisdiction to get the suit premises vacated under the provisions of Section 630 of the Act. We also hold that the learned courts below were justified in arriving at a finding that the provisions of Section 630 of the Act are applicable to the facts and circumstances of the present case. Consequently the courts below also acted within their power and jurisdiction in directing for vacation of the suit premises by the appellants. While upholding the said order of the courts below, we however observe that the proceedings were initiated in the Small Causes Court by filing a suit which is pending as of now. There was an interim order passed in the said suit directing for maintenance of status quo. Since we have held that the provisions of Section 630 of the Act are applicable to the present case, we hold that the directions of the court below in this case would be implemented subject to the condition that if the aforesaid suit is decided in favour of the appellants, the appellants shall be entitled to a order of restitution, if so directed, in accordance with law and that such an order shall be given effect to in accordance with law.

21. In terms of the aforesaid observations and directions, the present appeal is dismissed.