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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 951 of 2012**

- Avinash Dubey S/o Late V.P. Dubey Aged About 56 Years R/o 18/1, Maharshi Devendra Road , 8 Th Floor , Kolkatta , (W.B.)

---- Petitioner**Versus**

1. Pushpa Devi And Ors. W/o Late Koteswar Dubey Aged About 77 Years R/o 16, Dharam Prakash Chaal, Near Shepherd School, Kududand Bilaspur, Distt. Bilaspur C.G.
2. Savita Dubey W/o Late Sutiksha Dubey Aged About 40 Years R/o 16, Dharam Prakash Chaal, Near Shepherd School, Kududand Bilaspur , Distt. Bilaspur C.G.
3. Kumari Suvigya Dubey D/o Late Sutiksha Dubey Aged About 16 Years R/o 16, Dharam Prakash Chaal, Near Shepherd School, Kududand Bilaspur , Distt. Bilaspur C.G.
4. Kumari Suvigya Dubey S/o Late Sutiksha Dubey Aged About 20 Years R/o 16, Dharam Prakash Chaal, Near Shepherd School, Kududand Bilaspur, Distt. Bilaspur C.G.
5. Kumari Sailja Dubey D/o Ravbi Batra Aged About 19 Years R/o 16, Dharam Prakash Chaal, Near Shepherd School, Kududand Bilaspur , Distt. Bilaspur C.G.
6. Smt. Suveksha D/o Late Koteswar Prasad Aged About 40 Years R/o C/2 Krishna Apartment Mova, Raipur, Distt. Raipur C.G.
7. Ram Khedia S/o Late Purushottam Das Khedia Aged About 44 Years R/o Rishabh Kunj Vikas Nagar, Bilaspur, P.S. Civil Lines Bilaspur C.G.
8. M/s K.D. Resources Private Limited Bilaspur Through - Director Kailash Khuslani, S/o Jeevan Ram Khuslani, R/o Sarkanda Bilaspur, Distt. Bilaspur C.G.
9. State Of Chhattisgarh Through - Collector Bilaspur C.G.

---- Respondents

For Petitioner	:	Shri Surfaraj Khan, Advocate.
For Respondents No.1 to 8		Shri Ratnesh Kumar Agrawal, Advocate.
For Respondent No.9/State	:	Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/09/2017

Heard.

1. Petition under Section 482 of Cr.P.C. has been brought with a prayer to quash the order passed by the Court below and for issuance of direction to investigate the matter.
2. It is submitted by learned counsel for the petitioner that the petitioner had been the holder of license for distributing of cinema/movies. The cinema hall named as 'Shyam Talkies' situated at Bilaspur was the venue where the exhibition of cinema/movies were made under that license. Petitioner is in possession of this theater on the basis of lease-deed executed by one Satyadev Dubey and respondent No.1, owner of the premises of Shyam Talkies, on rental basis. In the night intervening 12th & 13th February, 2010 respondents No.1 to 7 along with two other co-accused, entered the premises 'Shyam Talkies' and caused mischief by damaging the walls and other constructions. The valuable articles were either destroyed or removed without the permission of the petitioner. It is submitted that the respondents had committed breach of trust as petitioner was in possession of the said premises on the basis of lawful lease. Petitioner had invested in the premises of Shyam Talkies for exhibition of Cinema/movies which has been destroyed by the respondents and thus, petitioner has suffered a loss of Rs.32,70,100/-.
3. The petitioner filed a complaint before the Court of the Chief Judicial Magistrate, Bilaspur, which was also dismissed by the Chief Judicial Magistrate vide order dated 26.4.2011 against which a revision petition was preferred before the Sessions Court, which came to be registered as Criminal Revision No.162/2011. However, the said revision petition has also been dismissed by the First Additional Sessions Judge by order dated 19.9.2012. Hence this petition.
4. It is submitted that petitioner is holder of valid license for exhibition of Cinema shows, is an undisputed fact. The documents of lease-deed dated 29.1.2001, 25.01.2005 and 28.1.2006 are produced on record.

Although, there is no lease-deed to show further extension of lease period, but as per Section 116 of Transfer of Property Act, if a lessee of property remains in possession thereof after the determination of the lease granted to the lessee and the lessor or his legal representatives accepts rent, the lease is deemed to be renewed from year to year or month to month. In the present case also, since the date of execution of lease deed the petitioner is in continuous possession of the premises in question and is regularly paying rent to the lessor concerned and thus the lease stands renewed automatically from year to year or month to month by virtue of aforesaid deeming provision. Thus, it is clear that the petitioner was in lawful possession of the premises in question in which the respondents had trespassed and caused destruction and loss to the petitioner. The aforesaid act on the part of the respondents attracts the offence punishable under Sections 120-B 288, 395, 406, 453 & 458/34 of Indian Penal Code (for short 'IPC'). Hence, the orders passed by the Judicial Magistrate First Class, Bilaspur and the Additional Sessions Judge, Bilaspur are arbitrary and illegal and the same are liable to be set aside.

5. Learned counsel for the private respondents submits that in the order dated 26.4.2011 the Chief Judicial Magistrate, Bilaspur has recorded a categorical finding that on the relevant date the petitioner was not in possession of the disputed premises and as per admission made by witness examined by the complainant/petitioner himself, the possession was handed over to the Power of Attorney holder respondent No.7 in this petition. Hence, it is clear that the petitioner was not in possession of the premises in question. It was also held that the premises 'Shyam Talkies' had been transferred by the owners to one K.D. Resources i.e. respondent No.8 in this petition. Hence, a finding was given that no case is made out against the respondents. It is also submitted that petitioner has also filed a civil suit for declaration of possession over the disputed premises and the same is pending before the civil Court, therefore, this petition is not maintainable.
6. In reply, learned counsel for the petitioner has submitted that petitioner had been a tenant holding over the disputed premises and he denied all the statements and submissions made on behalf of the respondents that

the possession of the disputed premises has already been handed over to respondent No.7 herein before the date of incident.

7. Heard the parties and perused the material on record.
8. On perusal of all the documents on record, it appears that though the petitioner is a license holder for exhibition of Cinema shows but that by itself is not a proof of possession on the disputed premises. The proof of possession on the disputed premises can be ascertained only on the basis of the lease-deed executed between the landlord and the tenant i.e. petitioner herein. The last lease deed that was executed between landlord and the petitioner was dated 28.1.2006, according to which, the lease was extended upto 28.1.2007. No further document has been produced by the petitioner to show existence of any lease-deed subsequent to 28.1.2007. Further, there is statement in the form of admission given by witness namely Shri Sarad Kesar (Complainant Witness No.2) in the inquiry under Sections 200 & 202 of Cr.P.C. before the Court of Chief Judicial Magistrate, Bilaspur, that the possession of the premises was handed over to the respondents on 12.2.2010.
9. Be that as it may, the petitioner can be regarded as tenant holding over but the statement of his own witness places him at different position. After handing over of the possession of the disputed premises, it was the choice of the respondents to use and enjoy the premises in the manner as they desired and here in this case, they proceeded to demolish the premises. The claim regarding the loss caused to the petitioner on account of non-removal of his articles is separate, which can be claimed under the provision of law before the competent Civil Court having jurisdiction.
10. Petitioner has placed reliance on the judgment of this Court **Hariram Vs. Satish Pandey** in M.Cr.C. 29131 of 2005 in which it was held that Magistrate has to rely on the statement of the complainant and his witnesses and on the result of inquiry or investigation, if any, conducted under Section 202 of the Cr.P.C. and he is not empowered to look into any other material to pass any order of dismissal.
11. On perusal of the order passed by Chief Judicial Magistrate, it does not

appear that reliance has been placed on any other material than the statement given by the witnesses and the inquiry report submitted by the Police Station City Kotwali, Bilaspur. Hence, the petitioner does not get any benefit from the case cited by him.

12. In conclusion, after due consideration it is found that the order passed by the Court of Chief Judicial Magistrate, Bilaspur does not suffer from any infirmity and likewise, the order passed by the revisional Court also does not call for any interference by this Court in exercise of its extraordinary jurisdiction under Section 482 of CrPC.

13. For the foregoing reasons, this petition being devoid of merits is liable to be dismissed and it is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)

JUDGE