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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Order pronounced on 18.11.2022*

+ CRL.REV.P. 83/2022, CRL.M.(BAIL) 336/2022, 337/2022 &
CRL.M.A. 5562/2022

SATPAL SINGH

..... Petitioner

Through: Ms. Priya Gaur, Advocate.

versus

MOTHER DAIRY FRUIT AND VEGETABLE PVT. LTD. & ORS.

..... Respondents

Through: Mr. Vivek Sood, Sr. Advocate & Mr.
Firoz Khan, Advocate.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The petitioner has filed this revision petition against judgement dated 17.12.2021 passed by learned ASJ in Criminal Appeal No.75/2020 wherein Judgement of conviction dated 18.01.2020 and order on sentence dated 31.01.2020 in Complaint Case No.2928/2017 passed by learned Additional Chief Metropolitan Magistrate was affirmed. The learned Trial Court was pleased to convict the accused/petitioner under Section 452 r/w 435 of the Companies Act, 2013 on 18.01.2020, and thereafter, vide order on sentence dated 31.01.2020, learned Trial Court was pleased to sentence the accused/petitioner herein by imposing fine of Rs.2.00 lacs and in default, he was ordered to suffer Simple Imprisonment for 6 months.

1.1 Furthermore, the accused/petitioner herein was directed to vacate Flat No. F-3, Mother Dairy Staff Quarters, Mother Dairy, Patparganj, Delhi-92 and handover the peaceful and vacant possession of the said flat to the

complainant company on or before 01.04.2020 and in default, he was held liable for Simple Imprisonment of 6 months.

2. In brief facts, it is mentioned that the petitioner was a permanent employee of respondent/Mother Dairy since 1996. The flat in question was allotted to him in the year 2007. An eviction notice dated 05.12.2015 was issued by the respondent to the petitioner, ordering to vacate the flat. The petitioner filed a civil suit against the respondents, being Civil Suit No.05/2016.

2.1 The case of the petitioner is that the flat in question is covered under the definition of Section 2 (3) (ii) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as the land was allotted by DDA on perpetual lease. The power of the respondent/Mother Dairy to issue the eviction order was challenged. After hearing the interim application for stay, the learned Trial Court restrained the respondents from acting upon notice dated 05.12.2015 for getting the flat in question vacated during the pendency of the suit, without due process of law.

2.2 Respondent no.1 had filed a civil suit for possession and recovery of damages being suit No.3228/2016, based upon a letter/notice dated 05.12.2015. The petitioner filed written statement in the said suit. The respondents moved an application under Order XII Rule 6 CPC, which was replied to by the present petitioner. On 27.01.2020, the order on this application under Order XII Rule 6 CPC was passed, mentioning therein that the relationship of Licensor and Licensee was admitted by the present petitioner and the said license was revoked by the present respondents, so no trial was required and the respondents were held to be entitled to a decree for possession and the matter was further adjourned for leading evidence

regarding quantum of damages.

2.3 Time was granted to the petitioner to vacate the premises by 30.11.2020. The petitioner preferred an appeal against the decree for eviction passed on the application under Order XII Rule 6 CPC and the said appeal is pending adjudication before this Court as RFA No.41/2021. Vide order dated 24.05.2021, the respondents were directed to not to execute the decree under challenge and to take a date before the Executing Court beyond the date fixed by this Court during the pendency of the said appeal.

2.4 It is further mentioned by the petitioner that his services were terminated w.e.f. 02.05.2016 by the respondents and the said termination has been challenged by the petitioner, which is pending before the Central Government Industrial Tribunal (CGIT). A restrain order dated 05.07.2019 was passed by the CGIT, wherein the respondents were restrained from evicting the petitioner, except through due process of law. The respondents challenged the said order dated 05.07.2019 by filing Writ Petition No.9431/2019 before this Court.

2.5 Vide order dated 28.08.2019, the Hon'ble High Court clarified that in case, the injunction operating in favour of the petitioner herein in Civil Suit No.05/2016 is vacated by the learned Civil Court, the respondent herein will be entitled to take action in accordance with law to evict the respondent/petitioner herein.

2.6 The respondent herein filed a criminal complaint under Section 452 of the Companies Act, 2013 on 30.08.2016 to evict the present petitioner. The eviction notice dated 05.12.2015 was relied upon by the respondents in the aforesaid proceedings in spite of the restrain order passed by the Civil Court. The present petitioner was summoned in the criminal complaint filed by the

respondent/Mother Dairy. He entered appearance and filed a criminal revision against the summoning order dated 16.03.2017. The said criminal revision was dismissed by the learned ASJ on 31.03.2017.

2.7 It was held that both the proceedings, i.e., civil and criminal can be filed simultaneously pertaining to the same subject matter.

3. Notice was framed against the present petitioner by the learned Trial Court on 03.05.2017, to which he pleaded not guilty and claimed trial. The restrain order passed by the Civil Court was brought to the notice of the learned Trial Judge in criminal complaint case. The Court of learned ACMM dismissed the said application. After completion of evidence of the complainant, statement of the present petitioner/accused was recorded under Section 313 read with Section 281 Cr.P.C. on 17.08.2019.

3.1 The accused wanted to summon witnesses in defence, so he moved a revision petition, which was dismissed. On 18.01.2020, the accused/petitioner was convicted by the learned Trial Court/learned ACMM. On 31.01.2020, the learned ACMM held that the accused/petitioner was occupying the flat in question illegally and unauthorisedly and thus, he is liable to be punished. So, the petitioner was held liable to pay a fine of Rs.2.00 lacs and in default, Simple Imprisonment for 3 months was awarded. He was further directed to vacate the flat in question on or before 01.04.2020 and in default, to suffer Simple Imprisonment for 6 months.

3.2 The present petitioner preferred an appeal against the above judgements. The said appeal was dismissed on 17.12.2021 holding that appellant/petitioner herein was a licensee over the property in question, having no right, title or interest in the same and once his services stood terminated, he was liable to hand over the physical and vacant possession of

the premises to the complainant company and failure on his part establishes the offence under Section 452 of the Act against him as he was wrongly withholding the property belonging to the company. Three weeks' time was granted to the appellant/petitioner to vacate the premises.

3.3 The petitioner has filed the present petition challenging the said judgement. The grounds on which the impugned order has been challenged are that:

- (a) The complaint so filed by the present respondent is nothing but an abuse of process of law and a civil dispute has been converted into criminal dispute only with a view to harass the accused/petitioner.
- (b) The judgement of conviction and order on sentence are contrary to the material available on record.
- (c) The impugned judgement and order are against the facts of the case and against the law of the land.
- (d) The complainant has failed to prove any legal enforceable ownership rights on the property.
- (e) The complaint was filed without any legal authority, i.e., resolution of Board of Directors or any registered power of attorney.
- (f) The Courts below have ignored the fact that the present petitioner is not an unauthorised occupant of the flat as there was an interim injunction in his favour.
- (g) It has been ignored that the respondent has asked for the same relief in the complaint case as well as in the civil suit filed by it and the dispossession of the petitioner was stayed by the learned Civil Judge.
- (h) The CGIT had restrained the respondents from dispossessing the accused/petitioner without following the due process of law.

- (i) There has been a procedural lapse on the part of the Courts below while dealing with the matter.
- (j) Respondent no.1 was not a party in the lease deed and respondent no.1 is a different entity from the original allottee.
- (k) The Courts below have ignored the memorandum of arguments and the Government land record.
- (l) The necessary ingredients under Section 452 of the Companies Act, 2013 have not been proved. Moreover, no opportunity was granted to the defendant to lead the evidence.

3.4 On these grounds, it has been prayed that the impugned order may be set aside.

4. Although, the present petition was filed under Section 482 Cr.P.C., however, on the first date, i.e., on 04.02.2022 itself, the same was ordered to be treated as a revision petition and it was accordingly ordered to be numbered.

5. Notice was issued. Arguments on the maintainability of the petition have been heard. My considered view is as under:

5.1 The impugned judgement of the learned Sessions Judge dated 17.12.2021 is under challenge. The said appeal was filed against the judgement of conviction dated 18.01.2020 and order on sentence dated 31.01.2020. The present petitioner was the appellant before the learned Sessions Court. After hearing both the parties, learned Sessions Court has held as under:

“21. It is now a settled proposition of law as reiterated by Hon'ble the Supreme Court of India in **Gopika Chandrabhushan Saran & Anr. v. XLO India Ltd. & Anr.** 2009 Law Suit (SC) 235 that the main purpose of the provision 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 unlawfully retained. The relevant portion from the judgment is reproduced here under:-

"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 subsection (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 sec 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)"

22. Prior to filing of the complaint under Section 432 of the Act against the appellant, appellant has initiated civil litigation against dispossession and also raised industrial dispute challenging the termination order. During the pendency of the proceedings before the Ld. Trial Court the appellant sought dismissal of the complaint on the ground of pendency of the civil litigation, industrial dispute and interim directions thereunder. It emerges that vide order dated 28~ 10.2017 passed by the Court of Sh. Munish Garg, Ld. Civil Judge, East, the complainant company was restrained acting upon letter dated 05.12.2015 and from getting the property in question vacated during the pendency of the suit without due process of law. In the course of

the proceedings before the Ld. Labour Court, one application for stay in respect of Flat No.3, Mother Dairy flats, Patparganj, Delhi allotted to the appellant came up for consideration and directions were passed against the management restraining the management from evicting the complainant except with due process of law vide order dated 05.07.2019. This order was challenged by the complainant company in Writ Petition (C) No. 9341/2019 before Hon'ble the High Court of Delhi and following directions were passed on 28.08.2019:-

"It is, therefore, clarified that in case the injunction operation in favour of the respondent in CS No.512016 is vacated by the learned Civil Court, the petitioner will be entitled to take action in accordance with law to evict the respondent."

Clarification was sought by the complainant company/management and accordingly vide order dated 22.10.2019 it was clarified as follows:-

"It is clarified that the order passed by this Court will have no effect on any of the pending proceedings between the parties and therefore, it will be open for the learned ACMM to proceed with the complaint in accordance with law."

23. Section 452 of the Act envisages summary procedure for eviction of an unauthorized occupant over property of the company. Pendency of civil proceedings in respect of the company's property in question in itself has no bearing upon the proceedings initiated under Section 452 of the Act or its final outcome. It is only in such cases where a bona fide civil dispute is raised or is involved pertaining to the property in question which is not capable of being determined by way of summary procedure that the proceedings under Section 452 of the Act may not be considered as appropriate remedy. It is only where there is serious title dispute involving complex issue of fact and law that the remedy under Section 452 of the Act by way of summary proceedings for eviction may not be the desirable course of actions such title dispute are not amenable to adjudication by

way of summary proceedings. Hon'ble the Supreme Court of India in the matter reported as Atul Mathur v. Atul Kalra, 1989 SCC (Cri) 761 has held as follows:-

"Merely because respondent no. 1 has 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 S. 630. If a view is mechanically taken that whenever a suit has been filed before a complaint is laid under S. 630, the criminal court should not proceed with the complaint, it would not only led to miscarriage of justice but also render ineffective the salutary provisions of S. 630.

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19. Therefore what has to be seen in a complaint under S. 630 is whether there is "no dispute or no bona fide dispute" regarding a property claimed by the company between the company and its employee or employee. It is needless to say that every dispute would not become a bona fide dispute merely because the company's claim to possession is refuted by an employee or ex-employee of the company. As to when a dispute would amount to a bona fide dispute would depend upon the facts of each case. In the present case the High Court has realised this position and observed that "while considering whether the plea of tenancy is bona fide plea, it is always necessary to examine and consider the transaction on the basis of which the plea is based."

24. No such dispute, civil in nature impinging upon, pertaining to title or any right or interest in the premises in question is thrown up for adjudication in the course of the present proceedings under Section 452 of the Act. The appellant was inducted as Junior Assistant-IV at the Mother Dairy, Patparganj unit of the complainant company vide appointment letter ExCW1/17 dated 31.07.1996 and was allotted staff Quarter F-3, Mother Dairy Staff Quarter, Patparganj, Delhi on license basis by virtue of his

employment at the Mother Dairy Patparganj unit of the complainant Company, he was receiving salary from the complainant company, his services were terminated vide termination letter dated 02.05.2016 calling upon him to hand over vacant physical possession of the premises and prior thereto the the license was revoked vide letter dated 05.12.2016 invoking Clause 16 of the License Deed, the licensee was given two months notice to hand over vacant physical possession of the premises. The appellant raised an Industrial dispute challenging his termination as unlawful which is pending adjudication and there is no stay in operation in favour of the appellant so far as the termination from services is concerned. The appellant disputed the ownership of the complainant company without any basis and pertinently nowhere claimed the vesting of any right, title or interest in respect of the property in question in himself.

25. That the appellant was a licensee over the property in question having no right, title or interest in the same emerges as the established/settled position and once his services stood terminated the appellant was liable to hand over physical and vacant possession of the premises to the complainant company and the failure on his part establishes the offence under Section 452 of the Act against him that he was wrongfully withholding the property belonging to the company. The reliance placed upon the decree dated 27.01.2020 passed by the Court of Ld. Additional District Judge, South District, Saket in Suit no. 3228/2016 whereby the suit for possession of the complainant company was decreed under Order 12 Rule 6 CPC, in support of the contention that the occupation of the appellant over the premises in question was rightful all along is misplaced, for the decree in the eviction suit is against the appellant and not in favour of the appellant.

26. As a consequence of the discussion above, **the judgment of convictic;m dated 18.01.2020 with the order on sentence dated 31.01.2020 passed by the Court of Sh. Viplav Dabas, Ld. ACMM, (Special Acts), Central Distric.t, Tis Hazari Courts, Delhi in C. C. No.2928/2017 are upheld and the appeal accordingly dismissed, three week's time, however, is being granted to the appellant to vacate the premises in**

question.”

5.1 The following facts name emerged from the above judgement:

- (i) The petitioner was an employee of respondent no.1, Mother Dairy Fruit and Vegetable Pvt. Ltd., which is a successor of Mother Dairy, Delhi, so the ground that the criminal complaint was not filed by a competent person is without any basis.
- (ii) The petitioner himself has been proved to be an employee of Mother Dairy Fruit and Vegetable Pvt. Ltd. vide his appointment letter Ex CW1/7. He was allotted the flat in question vide license dated Ex CW1/3 and allotment letter Ex CW1/18. He was terminated vide termination letter Ex CW1/18.
- (iii) There is no rebuttal evidence on record of the learned ACMM.
- (iv) Certain complaints were received against the present petitioner regarding sexual harassment of the daughter-in-law of a fellow employee and he had quarrelled with the neighbour and hence, he violated Clause 15A (i) of the License Deed and Clause 15 (B) gives power to the General Manager to revoke the license on breach of condition of the license.
- (v) Accordingly, the eviction notice dated 05.12.2015 was issued by the General Manager of the respondent no.1 company, revoking the license deed and calling upon the present petitioner to vacate the flat within two months.
- (vi) On the complaint of the victim, an FIR was also registered on 24.02.2016 against the present petitioner.
- (vii) The appellant was charge-sheeted for misconduct and disobedience and an inquiry was conducted, and thereafter, he was terminated from service and was again asked to vacate the staff flat but the petitioner refused

to do the same.

(viii) Since, the appellant did not vacate the flat after service of eviction notice dated 05.12.2015, and thereafter, when his services were terminated on 02.05.2016, apparently, he had committed the offence of wrongfully withholding the said property and this act on behalf of the petitioner is duly covered under Section 452 of the Companies Act.

(ix) The *ad interim* injunction order dated 28.10.2017 in Civil Suit No.05/2016 states that no eviction can take place without due process of law. The order passed against the petitioner by the learned ACMM is by following due process of law.

(x) Moreover, the Hon'ble High Court in its order dated 12.10.2019 in W.P.(C) No.9341/2019 had allowed the learned ACMM to proceed with the complaint in accordance with law.

6. The petitioner has dragged this matter for the last more than 6.5 years. The license was revoked by respondent no.1 on 05.12.2015 and he was granted time till 05.02.2016 to vacate the said flat. Moreover, his services were terminated on 02.05.2016. Even if it is presumed that the initial eviction order dated 05.12.2015 was not proper but once his services were terminated on 02.05.2016, the petitioner has no legal right title or interest to remain in possession of the flat in question merely on the strength of an order passed by learned Civil Judge, wherein the letter dated 05.12.2015 was challenged, to the effect that the petitioner be not evicted without following the due process of law.

6.1 The petitioner has been able to misuse the law of the land and has harassed respondent no.1 by filing one petition or the other only with a view to retain his illegal possession over the flat.

7. In my view, the judgement dated 17.12.2021 passed by the learned Learned Additional Sessions Judge (ASJ) does not suffer from any illegality, infirmity or irregularity of process and the learned ASJ has rightly dismissed the appeal filed by the petitioner.

7.1 In view of the above, the revision petition preferred by the petitioner is hereby dismissed with a cost of Rs.1.00 lac to be paid to respondent no.1, apart from the user charges to be decided in the case filed by respondent no.1 before the Court of learned Additional District Judge.

8. The petitioner is directed to hand over the possession of Flat No. F-3, Mother Dairy Staff Quarters, Mother Dairy, Patparganj, Delhi-92 to the authorised representative of respondent no.1 within six weeks from today.

TALWANT SINGH, J

NOVEMBER 18, 2022/pa

Click here to check corrigendum, if any