

(2008) 04 BOM CK 0130

In the Bombay High Court

Case No : Criminal Revision Application No. 128 of 2008

Gopika Chandrabhushan Saran and Another

APPELLANT

Vs

XLO India, Limited and Another

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Companies Act, 1956 — Section 630

Citation : (2009) 2 CompLJ 15

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : A.P. Mundargi, M.K. Kocharekar, for the Appellant; Shirish Gupte , A.M. Chumulkar, Advocate, with him, for Respondent 1 and MS. M.H. Mhatre, Assistant Public Prosecutor for the State, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—Heard. Perused record.

2. The present revision application arises from the complaint made by Respondent No. 1-XLO India Ltd., Mumbai against the applicants accused u/s 630 of the Companies Act, 1956 ("Act" for short).

3. The subject matter of the present revision application is the third floor residential premises of the building known as "Devonshire House", Westfield Estate, at Bhulabhai Desai Road, Mumbai (hereinafter referred to as "said premises") held by the Respondent No. 1 company on tenancy/licence basis since 1968.

The Facts

4. The facts in brief are that the complaint u/s 630 of the Companies Act (the "Act" for short) was filed by one Mr. Gul Motumal Krishnachandani, a whole time director of Respondent No. 1 company against the accused, i.e., (i) Smt. Meenal w/o Chandra Bhushan Saran; (ii) Ms. Gopika d/o Chandra Bhushan Saran; and

Mr. Kunal Gautam Thakkar.

5. The factual matrix surfaced on record during the course of hearing is that Mr. Chandra Bhushan Saran (since deceased) ("deceased C.B. Saran" for short) was allotted the aforesaid premises since he was appointed as a director and technical advisor of one Automobile Products of India Limited ("API Ltd" for short) until 31 December 1979. Thereafter, he was appointed as vice-chairman, managing director and president of API Ltd., subject to the approval of the Central Government.

6. It appears that C.B. Saran resigned as managing director on 7 December 1974 and later on as director of API Ltd. However, he continued to occupy the said premises in Devonshire House while holding office of API Ltd. as its licensee on nominal licence fee.

7. Mr. C.B. Saran was later or appointed as the managing director of Ex-Cell-O Ltd. He made a representation to the then chairman of the API Ltd. and claimed that as managing director of the Ex-Cell-O Ltd. he would be entitled to get rent free accommodation from Ex-Cell-O Ltd. and for the sake of convenience the API Ltd. should execute a licence agreement in respect of the said premises located in Devonshire House in favour of Ex-Cell-O Ltd., who in turn may permit him to occupy the said premises free of any licence fees or charges. It appears that meeting of the board of directors of the API Ltd. was held on 12 June 1968, at which, Mr. CB. Saran being one of the directors was also present. Item No. 32(vi) on the agenda of the said meeting was a request of Mr. CB. Saran, to permit him to use and occupy the said premises located in Devonshire House. His request was considered favourably, which is clear from the extract of the proceedings of the said board meeting of the API Ltd. held on 12 June 1968 which reads as under:

Copy of company's letter REF.SEC dated 6 June 1968, addressed to Ex-Cell-O India Limited, Worli, and letter dated 6 June 1968, addressed to the company by Shri CB. Saran were placed on the table and perused.

Resolved that consent be and is hereby accorded to the company for granting on a month to month basis the use and occupation of the 2nd and 3rd floors of Devonshire House to Ex-Cell-O India Limited and for using and occupying 1st floor flat at Krishnabad, Bhulabhai Desai Road, Bombay 26 on the terms and conditions stipulated in the said letters dated 6 June, 1968.

8. The necessary agreements drawn between API Ltd. and Ex-Cell-O India Ltd. and late Mr. CB. Saran were also recorded on 14 June 1968 in the register of contracts maintained API Ltd. under the Companies Act, 1956 duly signed by all the directors of the API Ltd. including Mr. CB. Saran at the next meeting held on 23 August 1968. That is how Mr. CB. Saran appears to have continued to occupy the said premises of Devonshire House as managing director of the Ex-Cell-O India Ltd. with his family consisting of his wife, son and daughter. (These facts are taken from the plaint in Suit No. L.C. Suit No. 206/519 of 1976 filed in Small

Cause Court at Mumbai, the certified copy which was produced by Mr. Mundargi during the course of hearing)

9. Mr. CB. Saran expired in Germany on 16 June 1980. On his demise, his son Mr. Sanjay C 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 said premises were allotted to him.

10. The Petitioner herein accused No. 2, daughter of late CB. Saran and sister of Mr. Sanjay Saran continued to stay in the said premises as a family member of Mr. Sanjay Saran. Accused No. 3 is the son of accused No. 2. Accused No. 1 since deceased was mother of Sanjay Saran. That is how all the accused occupied the premises as the family members of Mr. Sanjay Saran, the employee and managing director of Ex-Cell-O India Ltd.

11. The Respondent No. 1 company was in need of the premises, consequently, requested Mr. Sanjay Saran to vacate part of the premises occupied by him. Mr. Sanjay Saran by letter dated 20 March 2002 agreed to vacate the 3rd floor of the Devonshire House. He surrendered possession of the said premises to Respondent No. 1-company. However, the applicants accused continued to withhold the possession of the said premises on 3rd floor and refused to hand it over to the company. Consequently, vide notice dated 27 May 2003, accused were finally called upon to hand over possession of the said premises.

12. The accused replied to the said notice and challenged the right of Respondent No. 1 complainant to demand possession of the premises occupied by them. Consequently, complaint was filed by Respondent No. 1 u/s 630 of the Act against the original applicants accused.

13. The learned Additional Chief-Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, vide his order dated 26 June 2007 issued process against the accused u/s 630 of the Act. On receiving summons, accused appeared and pleaded not guilty of the offence and claimed to be tried.

14. The complainant examined PW1, Mr. Gul Motumal Kishinchandani, director of the complainant and PW-2 Mr. Sanjay Saran. The accused examined accused No. 1 Smt. Gopika Saran, widow of deceased C.B. Saran and mother of Mr. Sanjay Saran.

15. The learned magistrate after full trial held that the offence against the accused was proved. The learned magistrate convicted the accused vide order dated 26 June 2007 and granted them time to vacate.

16. Being aggrieved by the aforesaid order of the learned metropolitan magistrate, appeal was carried to the sessions court at Bombay registered as Criminal Appeal No. 390/2007. The said appeal came to be dismissed as abated against the Appellant No. 1 in view of her death during the pendency of the appeal on 29 November 2007. It was dismissed on merits against Appellant Nos. 2 and 3 (the present applicants accused) vide order dated 3 March 2008 and the

accused were directed to hand over the possession to the complainant within four weeks from the date of the order.

17. Being aggrieved by the aforesaid order, revisional jurisdiction of this Court is invoked by the applicants-accused.

18. Mr. Mundargi, learned senior counsel appearing with Mr. Kocharekar, Advocate argued for the applicants, whereas Mr. Gupte, learned senior counsel appearing with Mr. Chimalkar, Advocate resisted this revision on behalf of Respondent No. 1 complainant. Ms. Mhatre, learned A.P.P. appeared for the State. All were heard at length.

Submissions

19. Having heard parties in extenso, the substantive submissions orally advanced by learned Counsel for the applicants as well as forming part of the written submissions are that the complaint made u/s 630 of the Act is not maintainable for want of ingredients which are necessary to attract provision of Section 630 of the Act.

20. The second contention is that after death of late CB. Saran his son Mr. Sanjay Saran became managing director of Respondent No. 1 company. By resolution dated 18 February 1981 the said premises were allotted to him as such, according to the applicants, in absence of misleading Mr. Sanjay Saran as accused the complaint lodged by Respondent No. 1 u/s 630 of the Act is not maintainable.

21. Mr. Mundargi submits that withholding of the premises as contemplated u/s 630 of the Act is not by the family members of the employee but the employee himself. He, thus, submits that unless the employee is joined/impleaded as party/accused, the complaint is not maintainable. The written submission goes on to contend that factually Mr. Sanjay Saran was in actual possession of third floor along with his family members as such the stand taken by Respondents No. 1 that no proceedings could have been initiated against Mr. Sanjay Saran on the ground that he has surrendered third floor is unsustainable. The written submission further goes on to contend that handing over possession u/s 630 contemplates physical and actual handing over of the possession of the premises and not mere formal surrender on paper. Mr. Mundargi in support of his submission placed reliance on the judgments of this Court in the case of Damodar Das Jain Vs. Krishna Charan Chakraborti and another, , Vishanjee Dungarmal Futnani v. Krishna M. Futnani (1997) 5 Comp LJ 551 (Bom) : (1990) 69 Comp Cas 585 (Bom), and of Madras High Court in the case of G. Rangaswamy Vs. Coimbatore Pioneer Mills, .

22. Per contra, Mr. Gupta, learned senior counsel, appearing for Respondent No. 1 complainant strongly refuted the above submissions made on behalf of the applicants-accused. Mr. Gupte submits that the court cannot ignore the factual reality that the legal heirs and family members of the employee/officer obtain

right only through the employee concerned and not on any other basis. He, thus, submits that if the applicants claim to be in possession as legal heirs of late Mr. C.B. Saran, then with the death of late CB. Saran their right to occupy the premises came to an end and they are under obligation to hand over the premises to the company. He further submits that if the applicants are claiming their right to occupy the premises through Mr. Sanjay Saran even then Sanjay Saran having surrendered possession of the third floor premises in favour of the complainant-company they have no right to obstruct the company from taking over possession of the premises. Since the company cannot take law in its hands, it had no option but to initiate proceedings under Section, 630 of the Act. Mr. Gupte, thus, submits that the employee or the officer of the company to whom the property of the company is allotted or anyone claiming through him as family member or heir are well within the sweep of Section 630 of the Act and they are bound to vacate the premises of the company. He placed reliance on the judgment of the apex court in the case of Smt. Abhilash Vinodkumar Jain Vs. Cox and Kings (India) Ltd. and others, and Lalita Jalan and Another Vs. Bombay Gas Co. Ltd. and Others, . lie, thus, prayed for dismissal of the revision application in limine. The Issue

23. Having heard above strongly two canvassed views, running counter to each other, the only issue for consideration is whether the applicants have any right to withhold possession of the said premises projecting it as civil dispute as such complaint filed u/s 630 of the Act is not maintainable against the present applicants-accused.

Consideration

24. At the outset, concurrent findings of fact recorded by both the courts below are that Respondent No. 1, Ex-Cell-O India Ltd., had, initially, allotted the said premises of "Devonshire House" to late Mr. C.B. Saran to occupy it on licence basis and later on, after his death, his son Mr. Sanjay Saran was permitted to occupy the same being employee of the Respondent No. 1 company. It is also not in dispute that the present applicants occupied the premises initially as family members of late Mr. C.B. Saran and, thereafter that of Mr. Sanjay Saran. Mr. C.B. Saran expired on 16 August 1980. With the result, right to occupy premises of persons, who were residing with him as his family members also came to an end. Subsequent use and occupation of the premises by the applicants was as family members of Mr. Sanjay Saran. Mr. Sanjay Saran having surrendered the premises of third floor of Devonshire House his family members cannot have any right to withhold possession of the premises of the company. In the wake of these concurrent findings of fact, this Court has to consider the rival contentions raised by the parties.

25. The attempt sought to be made by learned senior counsel for the applicants that there is civil dispute involved in the present case relating to the premises in dispute has no substance. It is not in dispute that the premises came to be occupied by late Mr. C.B. Saran and, thereafter, by Mr. Sanjay Saran under the

specific permission granted by the complainant-company. Therefore, entry of the present applicants in the premises is as family members of late C.B. Saran and, thereafter, that of Mr. Sanjay Saran.

26. At this juncture, it will be profitable to successive decisions of the apex court on the subject. The two decisions of the apex court leading to interpretation of Section 630 of the Act in the *Abhilash Vinodkumar Jain v. Cox and Kings (India) Ltd.* (1995) 2 Comp LJ 193 (SC), and *J.K. (Bombay) Ltd. v. Bharti Matha Mishra* (2001) 1 Comp LJ 376 (SC) : (2001) 2 SCC 700 were not consistent with each other. In the former case the expression "officer or employee" used in Section 630 of the Act was given a broad coverage so as not to defeat the beneficent provision of Section 630 and not to ignore, the factual realities that the legal heirs or family members of an officer/employee obtained the right of occupancy of the company property only through the "officer" or "employee" concerned and on no other basis. As such they are not to be excluded from the scope of the decision. As against this, in a subsequent decision, in the case of *J.K. (Bombay) Ltd. v. Bharti Matha Mishra* (2001) 1 Comp LJ 376 (SC), the court ruled that the provision cannot be liberally construed so as to rope in family members other than legal heirs/representatives of the former officer/employee. Both these views were running counter to each other.

27. In the case of *Lalita Jalan and Another Vs. Bombay Gas Co. Ltd. and Others*, , a three-member bench of the Supreme Court has resolved the controversy as to whether the terms "officer" and "employee" appearing in Section 630(1) of the Act need to be given restricted meanings or wider (liberal) meanings. It held, in case where employee himself is not in occupation of premises either due to death or living elsewhere, all those who have come in possession of premises with express or implied consent of the employee and have not vacated the premises, would be withholding delivery of property to company and; therefore, liable to be prosecuted u/s 630 of the Act.

28. The law is now well settled and now the family members are covered u/s 630 of the Act. As such the ratio of the above judgment would be applicable where the service of any employee or officer has been terminated and the premises continue to be in possession of persons who have come in such possession through him, even though the employee or officer concerned does not himself occupy the premises, as such applicants herein are well within the sweep of Section 630 of the Act.

29. In view of the above settled legal scenario, if 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 have to vacate the premises of the company and if not vacated then it would amount to withholding the delivery of the property to the company and liable to face prosecution u/s 630 of the Act. Thus, as per the ratio of the judgment of three judge bench of the apex court in the case of *Lalita Jalan and*

Another Vs. Bombay Gas Co. Ltd. and Others, , the present applicants have no right to withhold the property of Respondent No. 1 company. The revision petition, thus, being devoid of any substance is liable to be dismissed in limine.

30. At this stage, learned Counsel for the applicants prayed for stay of this order for a period of eight weeks from today to approach the higher court. Learned Counsels for the Respondents have no objection for grant of time. Accordingly, applicants are granted eight weeks time to vacate the said premises, i.e., third floor of Devonshire House, subject to their furnishing, under taking to this Court within two weeks from today, to the effect that in the event of their failing before the higher court, they shall vacate and hand over vacant and peaceful possession of the said premises to Respondent No. 1 without any obstruction and that they shall neither part with possession of the premises nor shall create any third party interest therein in any manner whatsoever. Undertaking should be signed by all the adult members of the family occupying the said premises within stipulated period.

31. In the result, revision application is dismissed in limine in terms of this order with no order as to costs.