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SHUBH SHANTI SERVICES LTD.

v.

MANJULA S. AGARWALLA AND ORS

MAY 11, 2005

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[P. VENKATARAMA REDDI AND P.P. NAOLEKAR, JJ.]

Companies Act, 1956:

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Section 630—Scope and object of—Discussed.

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Section 630—Withholding of company's property by legal heirs of employee of company after his death—Action under section 630 by Company—Interim order in civil proceedings that heirs not to be dispossessed except by due process of law and proceedings under section 630 being penal in nature not under due process of law—Sustainability of—Held: Remedy is available to the Company to obtain possession of property under section 630—There is no necessity to approach civil court—Hence, order unsustainable.

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Sections 630 and 291—Withholding of company's property by legal heirs of employee of company after his death, despite notices—Plea that on basis of oral assurance by Chairman of Board of Directors heirs continuing in possession of flat until possession of another flat given—Held: No evidence that Chairman was authorized by Board of Directors to give such assurance for and on behalf of the Company—Further, act of Chairman not incidental to business of the Company nor a necessity—Assurance given was more of a gratuitous act—Hence, not binding and enforceable against Company—After

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service of notice, heirs wrongfully withheld property—Offence under section 630(1) attracted—Order of High Court in civil suit appointing Court Receiver, delivering him symbolic possession of property, and actual possession to heirs as agent of Receiver does not wipe out offence already committed—Fine of Rs1000-each imposed—Till order stands, no direction under section 630(2)

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for obtaining possession to be given

Board of Directors/Chairman—Power, scope of—Discussed.

Jurisprudence—'Due process of law'—Meaning of—Discussed—Words and Phrases.

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'A' managing director of the appellant company, was allotted property of the company-flat 'S' for residential purpose for himself and his family members while he was in service. After 'A's death, his wife and daughter, respondent nos. 1 and 2 continued to occupy the flat and notice to vacate the premises was served. Respondent no 1 informed the appellant-company by letter that on basis of assurance she continued in flat 'S' till possession of flat 'BH' was delivered to her regarding which her husband and the appellant-company had entered into sale agreement. Respondents filed suit for specific performance of contract for sale, transfer and handover of possession of flat 'BH' against appellant-company and that they not be disposed of flat 'S' until flat 'BH' is handed over to them. Appellant-company filed complaint under section 630 of the Companies Act, 1956 against respondents for wrongfully withholding the property of the Company. High Court passed interim order preventing respondents from being dispossessed from the premises except by due process of law and that proceeding under section 630 being penal in nature, cannot said to be proceedings under due process of law. Appellant-company also filed suit for possession of flat 'S'. High court by interim order appointed Court Receiver and gave him symbolic possession of flat 'S' and the respondents were given actual possession of flat as agents of Receiver, during pendency of suit. Thereafter, magistrate dismissed the complaint. Appellant-company filed an appeal which was also dismissed Hence the present appeal.

Partly allowing the appeal, the Court

HELD: 1.1. Section 630 of the Companies Act, 1956 does not only cover cases of the present employee or officer of the company and this provision strictly speaking is not penal in the sense as understood under penal law. 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 and 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 of the order of the Court regarding delivery or refund of the property of

A the company. [276-A, B, C]

1.2 Due process of law in the present context would ordinarily mean such an exercise of power by the parties as the settled principles of law permit and/or a course of legal proceedings, according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. In the instant case, when the High Court passed an order of injunction, it meant that the Company shall not take forcible possession of flat 'S' during the pendency of the suit and Company was given liberty to take steps for possession as permissible under law. The Company can prove unlawful possession of the property by the employee or his or her legal representative after the demise of the employee or an officer of the company. The Company has the remedy to initiate action under Section 630(1) and on conviction by the Competent Criminal Court it can approach the same Court for directing delivery of possession which Section 630(2) of the Act provides. It cannot be said that the Company has to necessarily approach the civil court only for obtaining possession of the flat 'S' and that the remedy available under the Companies Act cannot be resorted. The decision of the High Court that Section 630 of the Act being penal in nature, the proceeding thereunder cannot be construed to be a proceeding taken in due process of law, cannot be sustained. Filing of civil suit for possession by the Company does not deprive the Company of the right to institute prosecution under the Companies Act and incidentally get an order for delivery of possession.

Baldev Krishna Sahi v. Shipping Corporation of India Ltd., [1987] 4 SCC 361; *Amrit Lal Chum v. Devoprasad Dutta Roy*, [1988] 2 SCC 269; *Atul Mathur v. Atul Kalra*, [1989] 4 SCC 514; *Abhilash Vinodkumar Jain (Smt.) v. Cox and Kings, (India) Ltd. and Ors.*, [1995] 3 SCC 732 and *Lalita Jalan and Anr v. Bombay Gas Co. Ltd. and Ors.*, [2003] 6 S.C.C. 107, relied on.

2.1. In the matter of company affairs, Directors act as a body and collectively as a Board. Any Director acting individually has no power to act on behalf of the company in respect of any matter except to the extent to which any power or powers of the Board have been delegated to him by the Board within the limit permitted by the Companies Act or any other law. The position of the Chairman of the Board of Directors is not substantially different from an individual Director. Under the Companies Act, Chairman of the company does not have any special or extraordinary

rights to be exercised by him without being authorized by the Board of Directors. The Board of Directors have an authority to delegate the power or authority to act for and on behalf of the company to the Chairman of the Board of Directors. Section 291 of the Companies Act authorizes the Board of Directors of the Company to exercise such powers or of such acts or things as the company is authorized to exercise and do such acts or things, except in the matter where the power is to be exercised by the company in general meeting. Besides, the Board of Directors itself could exercise the powers in accordance with the memorandum of association or the articles of the company. Any power exercised beyond the memorandum or the articles of the company would not bind the company. Any assurance given by the Board of Directors either should be the authorised object of the company by the memorandum of association or articles of the company or its purpose should be reasonably ancillary or incidental to carrying on the company's business.

2.2. Respondents were holding possession of the company's flat S on the oral assurance given by Chairman of the Board of Directors that they could continue to reside in the said flat until the possession of the flat BH was given to them. It was for the respondents to show the authority of the Chairman to bind the company on the basis of the oral assurance given to them by him to retain the possession of the flat. There is no evidence nor any finding that the Board of Directors authorized the Chairman to give such an assurance for and on behalf of the company. In the absence of any authority to the Chairman by the Board of Directors to act for and on behalf of the company, the assurance given by him to the respondents would not bind the company, nor it will create a binding agreement between the respondents and the company to permit the respondents to remain in possession of flat 'S' even after the death of 'A'. Further, the evidence points out that the only consideration operating in the mind of Chairman was to console the widow and to permit her to live in the flat for some time. The assurance given to the respondents by the Chairman has more of a gratuitous and compassionate flavour and less to do with the interest of the company in mind. Moreover, it is difficult to comprehend how the chairman could promise on behalf of the Company when he himself was not sure of the time the Company would get the possession of the flat 'BH'. That apart, the act of the Chairman cannot be construed to be one done incidental to the business of the Company or as a matter of necessity.

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A **2.3. The Company did not authorize the respondents to remain in possession of flat 'S' after notice to vacate the premises was given. The possession of flat, after the service of notice was wrongful withholding of the property of the company and, as such the respondents have committed an offence. The interim order of High Court appointing the Court Receiver, delivering him symbolic possession, and actual possession as agent of receiver to respondent No.1, does not wipe out the offence committed for which complaint was filed. Subsequent to that order, possession may not be wrongful, but on the date of complaint and till the date of that order the respondents did wrongfully withhold that property, attracting the offence under Section 630(1). Thus, fine of Rs 1000/- each is imposed on respondents. So long as the aforesaid interim order of High Court stands, direction under Section 630(2) for delivery of actual possession of flat 'S' to the Company can not be passed.**

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 712 of 2005.

D From the Judgment and Order dated 8.4.2004 of the Bombay High Court in CrI. A. No. 48 of 2000.

Arun Jaitely, J.A. Rana, Levi Ruben and Madhup Singhal with him for the Appellant.

E Haresh M. Jagtiani, Bhargava V. Desai, Curush Bilimoria, Sanjeev Kumar Singh and Pradeep Kumar Malik with him for the Respondents.

The Judgment of the Court was delivered by

F **P.P. NAOLEKAR J.** Leave granted.

This appeal is directed against the judgment and order dated 8.4. 2004 passed by the High Court of Bombay in CrI. Appeal No. 48 of 2000 acquitting the respondents Mrs. Manjula S. Agarwalla, Respondent No.1 and Ms. Anisha S. Agarwalla, Respondent No.2 of the offence punishable under Section 630 of the Companies Act, 1956.

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The complainants, viz., Herdillia Chemicals Ltd., non-chemical business was de-merged and vested in Shubh Shanti Company Ltd., by a Scheme of arrangement, approved by the Bombay High Court. Hence,, M/s. Shubh Shanti Services Limited came to be substituted in place of M/s. Herdillia Chemicals

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Ltd. as appellants during the pendency of the appeal before High Court. A

Brief facts of the case are that the complaint was filed by the Company on 13.1.95 on the allegation that one Shri Suresh Chander Agawalla, husband of Respondent No.1 and father of respondent No.2 was employed with the appellant Co. since 1971 till his death on 2nd of November 1992. He was appointed Managing Director of the appellant Co. for a period of five years with effect from 15th of June 1988. Flat No.25 in a building called "Sonmarg" at 7B, Jagmohandas Marg, Mumbai, owned and possessed by the appellant-company was allotted to late Shri S.C. Agarwalla on 10th of March 1975 to be used for residential purpose for himself and members of his family during the period he was in service of the appellant. Board of Directors had extended the term of Shri S.C. Agarwalla as Managing Director of the Company upto 14th of June 1993. However, unfortunately, on 2nd of November 1992, Shri S.C. Agarwalla died when he was whole time Managing Director of the appellant-company. Respondents 1 and 2 were residing with him in Sonmarg flat being members of his family. Even after the death of Shri Agarwalla, they continued to occupy the said flat. It was alleged in the complaint that after the death of Shri Agarwalla, respondents were bound to vacate and handover the vacant possession of the said flat to the appellant-company but because of the critical health conditions of Respondent No.1, the appellant, on humanitarian grounds, did not take any step to get the flat vacated for some time. The appellant-company by its letter dated 28th of December 1993 demanded possession of the flat within 45 days of the receipt of the letter from the respondents. In response, Respondent No.1 by her letter dated 7th February 1994, addressed to the Secretary & Financial Controller of the appellant-company informed the appellant-company that she was staying in the flat because the Chairman had asked her to do so till the flat in another building was made available to her. B
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The respondent by a subsequent communication addressed to the Chairman, referred to the assurance given to her that she would not be called upon to vacate the Sonmarg flat till the sale of Blue Heaven flat is executed as per separate agreement dated 10th of February 1978, entered into between Shri S.C. Agarwalla and the Company for purchase of Blue Heaven flat and informed that her late husband had the right to purchase the Blue Heaven flat and that the assurance given by the Chairman should be adhered to, by the appellant, to permit her to remain in possession of the Sonmarg flat till the sale deed is executed in respect of Blue Heaven flat. G

A The appellant Co., thereafter, again by a registered letter dated 9th of
November 1994, addressed to both the respondents, called upon them to vacate
the flat and handover the possession. By this communication, the appellant
also specifically conveyed to the first respondent about its decision that Blue
Heaven flat cannot be sold and transferred. As the respondents did not comply
with the request made by the appellant, a complaint was filed in the Court
B of Addl. Chief Metropolitan Magistrate, 40th Court at Girgaum, Bombay
under Section 630 of the Companies Act, 1956 alleging that respondents
being the legal heirs of late Shri S.C. Agarwalla who was allotted the property
of the company for residential purpose for himself and members of his family
whilst he was in service of the said company, have wrongfully withheld and
C continued to withhold wrongfully by refusing to vacate and handover
possession thereof. Thus, they have committed an offence, punishable under
Section 630 of the Companies Act read with Section 109 of the Indian Penal
Code.

D From the case set up by the respondent and the evidence led, the case
of the respondents is that there were discussions between them and the
Chairman of the Board of Directors of the appellant and the Chairman, Board
of Directors has assured them to continue to stay in Sonmarg flat until such
time as the contract in respect of sale of Blue Heaven flat was implemented
and therefore the possession of the respondent of Sonmarg flat is not
E unauthorized or wrongful.

Before complaint was filed, a Civil Suit No.7 of 1995 was filed by
Respondents 1 and 2 against appellant company on 23.12.1994 in the High
Court for specific performance of the contract dated 10th of February 1978
for sale, transfer and to hand over possession of Flat No.33, 3rd Floor, Blue
F Heaven Cooperative Housing Society Ltd., Mount Pleasant Road, Bombay.
In the suit further relief claimed is that the defendants be ordered and decreed
not to dispossess or interfere with the occupation and residence of the 1st
plaintiff and her family in Sonmarg flat, Napean Sea Road, Bombay until
such time as the Defendant company transfer and handover vacant possession
of aforesaid Blue Heaven flat. In the said civil suit the High Court on 10th
G of January 1995 passed an interim order "counsel for the defendant has made
a statement that the plaintiff shall not be dispossessed from the premises in
question except by due process of law. The statement is accepted".

H Subsequent to the complaint filed under Section 630, appellant company
has also filed a suit in the High Court (Suit No. 2391 of 1997) for possession

of Sonmarg flat and other reliefs against the respondents. The High Court by its order on 16th of November 1998 passed an order for appointment of the Court Receiver for Flat No.67-B, 25 Sonmarg, Nepean Sea Road, Mumbai and Receiver was placed in possession of the flat. It was agreed between the parties that Respondent No.1 was in possession of the flat. The High Court directed that the Court Receiver shall take symbolic possession of the flat from Respondent No.1. The Court Receiver shall appoint Respondent No.1 as his agent to be in actual possession of the flat during the pendency of the suit. The Court Receiver shall fix the amount of royalty payable by Respondent No.1 for occupation of the flat. While fixing the royalty, the Court Receiver shall take into consideration of the contentions urged by both the parties. Pending fixation of the amount of royalty by the Court Receiver, an ad hoc amount of royalty is fixed at Rs.25,000 per month. The respondent shall deposit the arrears of royalty at the *ad hoc* rate from June 1997 to November 1998. By this order the possession of the Respondent No.1 was recognized of the Sonmarg flat and the Court Receiver was given symbolic possession of the flat and possession of the Respondent No.1 was to be treated as the agent of the Receiver to remain in actual possession of the flat during the pendency of the suit.

After issuance of summons both parties led evidence. The Magistrate dismissed the complaint holding that the respondents are in possession of Sonmarg flat as they have not been handed over possession of the Blue Heaven flat for which they were required to file a suit for specific performance. The respondents are under *bonafide* impression that they have right to continue in the said flat in Sonmarg till they get possession of the flat in Blue Heaven as per assurance given by Chairman of the Company and thus it cannot be said that they have wrongfully withheld the property of the company. It was further held that the matter is pending consideration before the civil court and, therefore, the Court cannot pass order of restoration of possession to the appellant Co. till rights of the parties are ascertained.

The appellant-company preferred an appeal before the High Court. The High Court dismissed the appeal holding that the respondents have made out a *bona fide*, probable and plausible defence that they were allowed to occupy the flat at Sonmarg by the Chairman of the Board of Directors till the flat in Blue Heaven is made available to them. Respondents shall ultimately succeed in the suit for specific performance or not is another matter. The respondents have made out a case that an assurance was so given and thus the appellant has failed to prove that the respondents are in wrongful possession of the flat

A in Sonmarg. Apart from this, the High Court has further held that a suit for recovery of the possession of the flat in Sonmarg filed by the appellant-company, a Court Receiver has been appointed and the respondent has been appointed as an agent of the Court Receiver and therefore also it cannot be held that the respondents are in wrongful possession of the premises nor can it be said that the respondent have no right to continue in occupation of the flat in Sonmarg. The High Court has said that in a suit for specific performance of the agreement filed by the respondents, the High Court has granted an injunction prevented the respondents from being dispossessed except by due process of law and Section 630 proceedings being, penal in nature, cannot be said to be the "due process of law". Any order in the proceedings initiated by the appellant-company for recovery of possession of the Sonmarg flat from the respondents would be in breach of express injunction order issued by the Court. The High Court has dismissed the appeal filed by the appellant company. Consequently complaint filed by the appellant stands dismissed.

D Learned counsel for the appellant-company has urged that the High Court has not properly understood the scope and ambit of Section 630 of the Companies Act and thereby committed an error in holding that the proceedings under Section 630 of the Companies Act could not be encompassed within its fold "due process of law" not being civil proceedings. The provision being penal in nature cannot be taken recourse to for possession of the flat when the matter relating to flats in question are pending in the Court.

E Before we embark upon the discussion, we may first notice the scope of language of Section 630 of the Companies Act.

The said Section reads as under:

F "S.630:- Penalty for wrongful withholding of property

(1) If any officer or employee of the Company -

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

G (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 authorized by this Act;

H 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”

From the bare reading of the Section, it is apparent that Sub-S.(1) is in two parts. Sub-s.(1) of clauses (a) and (b) creates 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 authorized 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 authorized by the Act. This Section does not make any difference between the movable and immovable property. The property in Section 630 includes both movable and immovable property. Sub-s.(2) of Section 630 authorizes the Court trying the offence, in its discretion to order any such officer or employee of the company which includes past or present, or his or her legal representative, to deliver, within a specified time, possession of such property which has been wrongfully obtained or wrongfully withheld or knowingly misapplied. In default, the Court may impose a punishment of imprisonment for a term which may extend to two years.

In the matter of *Baldev Krishna Sahi v. Shipping Corporation of India Ltd.*, [1987] 4 SCC 361 this Court resolved the conflict and has held that the expression ‘officer’ or ‘employee’ of the company applies not only to the existing officer or employee but also includes past officer or employee where such officer or employee either wrongfully obtained or wrongfully withheld or knowingly misapplied any property after the termination of his employment. This decision was approved by a Three Judge Bench of this Court in *Anrit Lal Chum v. Devoprasad Dutta Roy*, [1988] 2 SCC 269 where it is held that Section 630 of the Act makes it an offence if an officer or employee of the

A company who was permitted to use the property of the company during his employment wrongfully retains or occupies the same after the termination of his employment and that there is no warrant to give a restrictive meaning to the term "officer or employee" appearing in sub-s.(1) of Section 630 of the Act as meaning only an existing officer or an existing employee and not those whose employment had been terminated or had otherwise come to an end.

While interpreting and laying down the object of the provision of Section 630 of the Companies Act, this Court in the matter of *Atul Mathur v. Atul Kalra*, [1989] 4 SCC 514 has emphasized that the object of the provision of Section 630 of the Act is to retrieve the property of the company and that even though the provisions are penal in nature, the object of the provision is required to be given a purposive interpretation so as not to choke the beneficent provision.

In the matter of *Abhilash Vinodkumar Jain (Smt.) v. Cox & Kings (India) Ltd. and Ors.*, [1995] 3 SCC 732, a Division Bench of this Court explained the object of Section 630 of the Companies Act and said: (Para 15 at Page 740)

"Even though Section 630 of the Act falls in Part XIII of the Companies Act and provides for penal consequences for wrongful withholding of the property of the company, the provisions strictly speaking are not penal in the sense as understood under the penal law. The provisions are quasi-criminal. They have been enacted with the main object of providing speedy relief to a company when its property is wrongfully obtained or wrongfully withheld by an employee or officer or an ex-employee or ex-officer or anyone claiming under them."

The Court has explained and interpreted the term 'officer' or 'employee' of the Company in Section 630 of the Companies Act and said that it would include the legal heirs and representatives of the employee or the officer concerned, continuing in occupation of the property of the company after the death of the employee or the officer.

A Three Judge Bench of this Court in *Lalita Jalan and Anr. v. Bombay Gas Co. Ltd. and Ors.*, [2003] 6 SCC 107 has drawn a distinction between the provisions of the Statute which are purely of a penal nature and the Companies Act, particularly provisions of Section 628 to Section 631 of the

Companies Act and held: (Paragraphs 17 and 19)

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“The purpose of criminal justice is to award punishment. It is a method of protecting society by reducing the occurrence of criminal behaviour. It also acts as a deterrent. Where the punishment is disabling or preventive, its aim is to prevent a repetition of the offence by rendering the offender incapable of its commission. The Companies Act is entirely different from those statutes which basically deal with offences and punishment like the Indian Penal Code, the Terrorist and Disruptive Activities (Prevention) Act etc. It makes provision for incorporation of the companies, its share capital and debentures, management and administration, allotment of shares and debentures, constitution of Board of Directors, prevention of oppression and mismanagement, winding up of the company etc. The heading of Part XIII of the Companies Act is “General” and a few provisions therein, namely, Section 628 to 631 create offences and also prescribe penalty for the same. Having regard to the purpose for which Section 630 has been enacted viz. to retrieve the property of the company and the salient features of the statute (Companies Act) it is not possible to hold it as a penal provision as the normal attributes of crime and punishment are not present here. It cannot be said to be an offence against the society at large nor is the object of awarding sentence preventive or reformative. In such circumstances the principle of interpretation relating to criminal statutes that the same should be strictly construed will not be applicable”

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“Even otherwise as shown earlier, the wrongful withholding of property of the company has been made punishable with fine only. A substantive sentence or imprisonment can be awarded only where there is a non-compliance with the order of the court regarding delivery or refund of the property. Obviously, this order would be passed against a specific person or persons whether an employee, past employee or a legal heir or family member of such an employee and only if such named person does not comply with the order of the court, he would be liable to be sentenced which may extend to imprisonment for two years. At this stage, namely, where the court would award a substantive sentence of imprisonment for non-compliance with its order the question of enlarging or widening the language of the section cannot arise as the order would be directed against a specifically named person”

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- A** From above narration of authorities, it is absolutely clear that Section 630 of the Companies Act, does not only cover cases of the present employee or officer of the company and this provision strictly speaking is not penal in the sense as understood under penal law. 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
- B** 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 and 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
- C** to impose a sentence of imprisonment when there is non compliance of the order of the Court regarding delivery or refund of the property of the company.

- On 23.12.1994, Respondents 1 and 2 filed a civil suit No.7 of 1995 for specific performance of the contract for transfer of the flat at Blue Heaven Cooperative Housing Society. The High Court had passed an order with the consent of the parties that the plaintiff i.e. Respondent No.2 shall not be dispossessed from the premises i.e. flat at Sonmarg except with due process of law. The proceedings taken up by the appellant in the Court under Section 630 of the Companies Act were held not to be the proceedings under due process of law. We have already seen that Section 630 of the Companies Act provides for summary legal remedy for seeking possession of the property of the company. Due process of law in the present context would ordinarily mean such an exercise of power by the parties as the settled principles of law permit and/or a course of legal proceedings, according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. Due process of law would in short mean a procedure established by law, which is a procedure fixed or laid down in law. When the High Court has passed an order of injunction, in the aforesaid terms, what is meant by the High Court is, that the Company shall not take forcibly possession of Sonmarg flat during the pendency of the suit and Company was given liberty to take steps for possession as is permissible under law including the provisions of any Statute giving right to obtain possession to the company in the facts and circumstances of the case. The company can prove the unlawful possession of the property by the employee or his or her legal representative after the demise of the employee or an officer of the company. The company has the remedy to initiate action
- H** under Section 630(1) and on conviction by the Competent Criminal Court it

can approach the same Court for directing delivery of possession which sub-Section (2) of Section 630 of the Companies Act provides. The remedy is provided in the Statute itself and the High Court's order by no stretch of imagination can be read to mean that the Company has to necessarily approach the civil court only for obtaining possession of the Sonmarg flat and that the remedy available under the Companies Act cannot be resorted. In our opinion the decision of the High Court that Section 630 of the Companies Act being penal in nature, the proceeding thereunder cannot be construed to be a proceeding taken in due process of law, cannot be sustained. Filing of civil suit for possession by the Company does not deprive the Company of the right to institute prosecution under the Companies Act and incidentally get an order for delivery of possession. It is stated that the civil suit was filed by way of abundant caution as well as to obtain reliefs which cannot be granted by a Criminal Court trying an offence under Section 630.

The next important question is whether the possession of respondents of the property belonging to the company, namely, the Sonmarg flat, after the death of Shri S.C. Agarwalla, is unlawful and unauthorized and therefore wrongful. Both the Courts, namely, the Court of Magistrate and the High Court on appreciation of the material placed before them have clearly held that after the death of Shri Agarwalla, on the basis of assurance given by the Chairman of the Board of Directors of the appellant-company, Shri Goenka to Respondent No.1 the said flat is being occupied by the Respondents. We have summarized the High Court's ultimate finding on this issue on the question of assurance given by Chairman Shri Goenka to Respondent No.1. The learned counsel for the appellant took us through the judgment of High Court and the record in considerable detail for the purpose of disputing this finding. Counsel for the appellant could able to point to scarcely any error in this finding based on evidence on record. He, however, submitted, that, in relying on this finding, the Judge has drawn entirely wrong inference. The substance of his full and careful argument in this context may be summarized as follows:

It is urged by the learned senior counsel for the appellant that the High Court has failed to appreciate that the permission, if any, given to Respondent No.1 to live in Sonmarg flat till the possession of the flat at Blue Heaven was delivered to respondents, by the Chairman Shri Goenka, being without any authority of law and being outside the powers vested in the Chairman, would not be binding on or enforceable against the company. It is submitted that those powers could only be exercised by the Board of Directors or by Chairman

A only with specific authorization to that effect by the Board of Directors. Countering this argument, it is urged by the learned counsel for Respondents 1 and 2 that the findings arrived at by both the courts below that possession of Respondents 1 and 2 is permissible and not wrongful as the respondents have been assured by the Chairman of the Company to continue to live in the flat at Sonmarg till the possession of the flat at Blue Heaven is delivered to them is based on proper assessment of relevant material on record and does not warrant any interference by this Court. The respondents' possession of the flat being permissible cannot be held to be wrongful to attract the provisions of Section 630 of Companies Act.

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C The question really is whether the Chairman of the Board of Directors of the Company has the authority to give such an assurance to Respondents 1 and 2 when he met them at the condolence meeting after the demise of Shri S.C. Agarwalla, which could bind the company and thereby could it be taken as a permission given by the company to respondents 1 and 2 to reside in Sonmarg flat and thereby their possession could be said to be a lawful possession. In the matter of company affairs, Directors act as a body and collectively as a Board. Any Director acting individually has no power to act on behalf of the company in respect of any matter except to the extent to which any power or powers of the Board have been delegated to him by the Board within the limit permitted by the Companies Act or any other law. The position of the Chairman of the Board of Directors is not substantially different from an individual Director. Under the Companies Act, Chairman of the company does not have any special or extraordinary rights to be exercised by him without being authorized by the Board of Directors. The Board of Directors of course have an authority to delegate the power or authority to act for and on behalf of the company to the Chairman of the Board of Directors.

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F Section 291 of the Companies Act authorizes the Board of Directors of the Company to exercise such powers or of such acts or things as the company is authorized to exercise and do such acts or things, except in the matter where the power is to be exercised by the company in general meeting. The exercise of the powers by the Board shall be subject to the provisions contained in the Companies Act or any other Act or in the Memorandum or Articles of the company. Therefore, under Section 291 of the Companies Act, the action of the Board of Directors should be in conformity with the provisions of the Company Law or any other enactment or in conformity with the memorandum or articles of association of the company. It is the specific case of the respondents which has been found correct by the Courts that they are holding

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possession of the company's flat at Sonmarg on the oral assurance given by Shri Goenka, Chairman of the Board of Directors that they can continue to reside in the said flat until the possession of the flat at Blue Heaven Cooperative Society is given to them. Admittedly the flat at Sonmarg belongs to the Company. Shri S.C. Aggarwalla, husband of Respondent No.1 and father of Respondent No.2 was the ex employee of the Company. He expired when he was in the employment of the company and respondents 1 and 2 were residing in the flat after the demise of Shri Aggarwalla as his heirs. Thus it is for Respondents 1 and 2 to show the authority of Shri Goenka to bind the company on the basis of the oral assurance given to them by him to retain the possession of the flat. The High Court has not referred to any evidence to that effect led by the respondents, nor there is any finding that the Board of Directors have authorized the Chairman Shri Goenka to give such an assurance for and on behalf of the company.

On 28th of December 1993 a letter was sent by appellant requesting Respondent No.1 to vacate the premises and handover peaceful possession of the premises within 45 days of the receipt of the letter. The contents of the letter are that Shri S.C. Agarwalla was occupying the premises as a facility granted to him by the company until he was in the employment of the company. On account of the demise of Shri Agarwalla, the company deferred the request for vacation of the said premises; that more than a year has lapsed since the demise of Shri Agarwalla, it is essential for the company to take possession of the same. The correspondence placed on record by parties also does not indicate that the Chairman of the Company Mr. Goenka gave an assurance on the basis that he has been authorized to do so by the Board of Directors. In the absence of any authority to the Chairman by the Board of Directors to act for and on behalf of the company, the assurance given by him to the respondents would not bind the company, nor it will create a binding agreement between the parties, namely, Respondents 1 and 2 and the company to permit the respondents to remain in possession even after the death of Shri Agarwalla, of the flat in Sonmarg. Apart from this, the Board of Directors itself could exercise the powers in accordance with the memorandum of association or the articles of the company. Any power exercised beyond the memorandum or the articles of the company would not bind the company. Any assurance given by the Board of Directors either should be authorised object of the company by the memorandum of association or the articles of the company or its purpose should be reasonably ancillary or incidental to carrying on the company's business.

A Evidence produced on record indicates that agreement was entered into between the company and husband of the respondent No. 1 regarding Blue Heaven flat. Late Shri Agarwalla was old employee of the company since 1971. He expired on 2.11.1992 and assurance was given by the chairman to widow of ex employee with whom he had long standing relation, when he went to see her to console her on 4.11.92, barely two days after the death of

B Shri Agarwalla. Such evidence in our opinion irresistibly point, predominant, if not, the only consideration operating in the mind of chairman was to console the widow and to permit her to live in the flat for some time. The assurance given to respondents 1 and 2 by the chairman of the company has more of a gratuitous and compassionate flavour and less to do with the

C interest of the company in mind. Moreover, it is difficult to comprehend how the chairman could promise on behalf of the Company that the respondents will be permitted to remain in flat till delivery of flat of Blue Heaven, when he himself was not sure of the time the company would get the possession of the Blue Heaven flat. That apart, the act of the Chairman cannot be construed to be one done incidental to the business of the Company or as a

D matter of necessity.

After the death of Shri Agarwalla on 2.11.1992, the respondents 1 and 2 remained in possession of the company's Sonmarg flat. Admittedly they were not in employment of the company nor company has authorized them to remain in possession of the same particularly after notice dated 9.11.1994

E to vacate the premises and handover the possession to the company. The possession of the company's flat by the Respondents, after the service of notice to vacate the premises by the company, is wrongful withholding of the property of the company. The respondents by having wrongfully withheld the possession of the company's flat and not delivering the property to the

F company, have committed an offence. The interim order of the High Court dated 16.11.1998 in the civil suit filed by the appellant-Company does not wipe out the offence committed already for which criminal complaint was filed. Subsequent to that order, the possession may not be wrongful, but on the date of complaint and till the date of that order, the Respondents did

G wrongfully withhold that property, attracting the offence under Section 630(1). Having regard to the factual position of the case, we think that imposition of fine of Rupees One thousand each would be a proper punishment for wrongful withholding the Sonmarg flat. Accordingly, respondents 1 and 2 are sentenced to pay fine of Rupees one thousand each. We would like to make it clear that so long as order of the High Court dated 16.11.1998 in Civil Suit No.2391

H of 1997-M/s. Herdillia Chemicals Ltd. versus Smt. Manjula Agarwala and

others, appointing the Court Receiver and delivering him symbolic possession, and actual possession as agent of Receiver to Respondent No.1 stands, no direction can be given under Section 630(2) for delivery of actual possession of Sonmarg flat to appellant. It is of course open to the petitioner to approach the Civil Court for suitable orders. The High Court may dispose of both the suits viz., Suit No.7/95 and 2391/97 expeditiously, as far as possible within one year.

For the aforesaid reasons, the appeal is partly allowed. The judgment and order of the High Court and that of the Addl. Chief Metropolitan Magistrate, 40th Court at Girgaum, Bombay are set aside. However, in the facts and circumstances of the case, we direct the parties to bear their own costs.

N.J.

Appeal Partly allowed.