

**IN THE COURT OF MS. CHARU ASIWAL,
CIVIL JUDGE-03, SOUTH EAST DISTRICT,
SAKET COURTS, NEW DELHI**

Suit No. 254/22

In the matter of:-

M/S GREAT BALAJI CHIT FUND PVT. LTD.

Through its Director Mr. Avneesh Gupta,

Having Corp. Office at:- 1634/14

Govind Puri, Kalkaji, New Delhi – 110019.

...Plaintiff

Vs.

PRIYA RANI

D/o Sh. Hari Narayan Singh,

1666/1, Second Floor, Govind Puri Extn.

Kalkaji, New Delhi – 110019.

Also at:

Ward No. 11, Thana Parisar,

Samasti Pur, Bihar – 84810.

...Defendant

Date of institution of Suit : 28.02.2022

Date on which Judgment was reserved : Not Reserved

Date of pronouncement of the Judgment : 23.08.2023

EX- PARTE JUDGEMENT

1. The plaintiff has instituted the present suit against the defendant for seeking relief of ejectment, permanent and mandatory injunction and for mesne profits.
2. The Plaintiff is a company duly incorporated under the Indian Companies Act 1956 and is conducting business of chit funds. It is averred that plaintiff company that through its Director purchased a property bearing municipal no. 1666/1, Second Floor, Govind Puri Extn., Kalkaji, New

Delhi – 110019(*hereinafter referred as suit property*) on 04.05.2019. Thereafter, plaintiff company decided to let out the above said property on rent.

3. Pleadings case of the plaintiff company is that in the month of March, 2021, defendant approached the plaintiff company to take the above said property on lease/rent for a period of 11 months at an amount of Rs. 15,000/- per month vide rent agreement dated 16.04.2021. It is further averred that defendant paid rent only for the month of April, 2021 apart from advance payment of Rs. 15,000 at the time of execution of rent agreement, however, thereafter defendant failed to pay even a single penny of rent on the pretext of Covid-19 induced lockdown and lack of funds. It is further averred that an amount of Rs. 1,20,000/- is due and outstanding against the defendant. Thereafter, the plaintiff company continuously and regularly demanded the outstanding dues from the defendant, however, the defendant avoided his liability on one pretext or another. That compelled by the behaviour of the defendant a legal notice dated 12.08.2021 was also sent to the defendant to pay of the outstanding. However, the said notice returned from the address of the rented premise with remarks “no such person” and from defendant’s permanent address the notice returned with remarks “left”. Thereafter, plaintiff company found that the defendant is still residing at the tenanted premises, thus the plaintiff company again sent a legal notice dated 24.01.2022 to the defendant, however, the same returned with remarks “no

such person found”. Thereafter, plaintiff company came to know that the defendant instead of vacating and handing the possession back to the plaintiff company, instead is trying to create third party interest in the suit property despite having no title over the same. Thereafter, plaintiff company through its Directors confronted the defendant w.r.t. ill intention to create third party interest in the suit property without any rights, however, the defendants threatened the director of plaintiff company with dire consequences. It is with these averments that the suit has been filed seeking following reliefs:-

- a) a decree of ejectment against the defendant and in the favour of the plaintiff, thereby directing the defendant to hand over the physical and vacant possession of the property bearing Municipal No. 1666/1, Second Floor, Govind Puri Extn. Kalka ji, New Delhi-11019, more particularly shown in red colour in the site plan and ;*
- b) Pass a decree for permanent injunction thereby restraining the defendant, her defendant, her agents, servant, representatives, friends, assigns, relation, successors, legal heirs etc. from creating any kind of third party interest in the suit property more particularly shown in red colour in the site plan and ;*
- c) Pass a decree for mandatory injunction thereby directing the defendant to remove her belongings from the suit property and handover the suit property in a same condition as it was at the time of letting out.*
- d) Pass a decree for mesne profit thereby directing the defendant to pay amount of Rs. 15000/- per month equivalent to the agreed rent amount from May 2021 to till the time of vacation.*

*e) Award the cost of the suit along with advocate fees,
f) Pass any further order(s) as the Hon'ble may deem fit
and proper in favour of the plaintiff and against the
defendant under the facts and circumstances stated herein
above and in the interest of justice.*

4. Summons of the suit were sent, which stood served upon the defendant by way of substituted service. Despite service, defendant failed to appear and contest the present suit. Accordingly, the proceedings against the defendant were set ex-parte vide order dated 12.01.2023.
5. Thereafter, ex-parte plaintiff's evidence was led.
6. To prove its case, plaintiff examined its AR as PW-1 as the sole witness who tendered his evidence by way of affidavit Ex.PW1/1 and relied upon the following documents: -
 - (i) Board Resolution dated 09.02.2022 is exhibited as **Ex.PW1/A**.
 - (ii) Registered Sale deed is exhibited as **Ex.PW1/B(OSR)**.
 - (iii) Copy of Rent agreement dated 16.04.2021 is now de-exhibited and marked as **Mark A**.
 - (iv) Site plan of suit property is exhibited as **Ex.PW1/D**.
 - (v) Legal notice alongwith postal receipt are exhibited as **Ex.PW1/E(Colly)**.
7. Thereafter, to prove its case, plaintiff again examined its AR as PW-1 as the sole witness who tendered his evidence by way of affidavit Ex.PW1/1 and relied upon agreement dated 16.04.2021, which was de-marked and exhibited as **Ex.PW1/C on 31.07.2023**.

8. Since none appeared for the defendant when the plaintiff was to be examined, the evidence was recorded ex-parte. Thereafter, plaintiff closed its ex-parte evidence on 10.03.2023, and the matter was posted for ex-parte final arguments.
9. During the course of final arguments, the Ld. counsel for plaintiff relied on the aforesaid exhibited documents and the unrebutted deposition of PW1 to pray for a decree of ejectment, permanent and mandatory injunction and for mense profit in the plaint as even written statement was not filed by the defendant.
10. Heard the ex-parte final arguments advanced by counsel for plaintiff. This court has carefully perused the evidence on record in light of the pleadings of the plaintiff and considered the oral submissions of Ld counsel for plaintiff.
11. In a suit for ejectment/possession from a tenant before a Civil Court following per-requisites needs to be brought forth, which are:-
 - a) Landlord/tenant relationship.
 - b) Termination of tenancy.
 - c) Non-application of Delhi Rent Control Act, 1958.
12. By way of instant suit, plaintiff is claiming itself to be the owner and landlord of the suit property and it is asserted that the tenant was inducted into the possession of the suit property in pursuance of rent agreement dated 16.04.2021

for a period of 11 months at a monthly rate of Rs. 15,000/- excluding water and electricity charges. To prove its case, plaintiff has relied on sale deed dated 04.05.2019 Ex.PW1/B(Colly.)(OSR), through which the plaintiff derives its ownership/title over the suit property. Further, plaintiff has also filed rent agreement dated 16.04.2021, which is Ex.PW1/C(OSR).

13. As stated above, defendant never appeared before this court, despite service of summons, therefore, the rent agreement Ex.PW1/C stands proved as admitted and accordingly, the relationship of landlord and tenant between the parties stands proved. To further fortify its claim, plaintiff has also relied on Ex.PW1/B(OSR), which is a sale deed registered in favour of the plaintiff, to show that plaintiff is not just the landlord but also the lawful owner of the suit property. Further, plaintiff has also relied on legal notice Ex.PW1/E, wherein the tenancy has been terminated by the plaintiff. However, it is an admitted position that the said notice was never served on the defendant, however, it is a now settled position of law that filing of the suit against the tenant would also amount to notice of termination of tenancy. The Hon'ble High Court of Delhi in ***Jeevan Desels and Electricals Ltd. Vs. Jasbir Singh Chadha (HUF), 183 (2011), DLT 712*** has observed that even assuming that notice of termination of tenancy was not served upon the other party, the tenancy would stand terminated on filing of suit against them. Therefore, it stands proved that tenancy has been effectively

terminated by the plaintiff. Further, since defendants failed to file their WS, the plea of bar of Delhi Rent Control Act has not been taken by the defendant, therefore, it is assumed that in the facts of the present case the said bar is not applicable. Furthermore, the rent in the present case is more than Rs. 3500/- and the suit property is not stated to be a scheduled property as per the DRC Act.

14. In addition, as discussed above, defendant has failed to file her WS, therefore, alternate version, if any, is not available. Furthermore, witness of the plaintiff was also not cross examined, therefore, it stands proved that whatever has been deposed by PW1 on oath is true and correct. There is nothing on record to disbelieve the version of the plaintiff. Reference can be placed upon the judgment of Hon'ble High Court of Delhi in ***M/s Eco Lab I.MC.N Vs. Eco Labs Limited, 2011 (185) DLT 664***, wherein it was held that if defendant has failed to cross examine the plaintiff, the evidence of plaintiff is to be presumed to be correct. In view of the fact that the version of the plaintiff has remained unrebutted, whatever he has produced on record is accepted as correct.
15. Therefore, it stands proved on preponderance of possibilities that defendant is the tenant of the plaintiff and said tenancy has also been effectively terminated. Therefore, plaintiff has proven itself to be entitled to the relief sought herein.

Relief

16. In view of the foregoing reasons, defendant is directed to hand over the vacant physical possession of the two room sets on the Second Floor of property bearing no. 1666/1, Govind Puri Extn. Kalkaji, New Delhi – 110019 (as shown in red colour in site plan).
17. Further, defendant/ agents/ representatives/ assignees/ successors/legal heirs are also enjoined from creating any third party interest in the suit property.
18. Since the plaintiff has proved on preponderance of possibilities that it is the owner/landlord of the suit property, therefore, I find merits in the prayer of mense profits and therefore, plaintiff is also awarded mense profits @ Rs. 15,000/- per month(equivalent to the agreed rent) from the date of filing of the suit till the actual vacancy of the suit property by the defendant.
19. Costs of the suit is also awarded in favour of the plaintiff.
20. Decree sheet be prepared accordingly.
21. File be consigned to Record-Room after due compliance.

**Pronounced in the open
Court on 23.08.2023**

**(Charu Asiwali)
Civil Judge-03, South East,
Saket Court, New Delhi.
23.08.2023**