

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Civil Revision No.8233 of 2018
Date of Decision:February 26, 2019.**

Shama Samant

.....PETITIONER(s).

VERSUS

Mast Ram and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Raman Mahajan, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

Petitioner Shama Samant filed petition under Section 13-B of East Punjab Urban Rent Restriction Act, 1949 (later referred to as the Rent Act) against Jai Chand seeking his ejectment from Shop in building No.37 khasra No.2167 Old (2343-New) situated in Abadi Gopal Nagar, Majitha Road, Amritsar. Jai Chand was proceeded ex parte and the petition filed by revision petitioner was allowed vide order dated 15.06.2011. Thereafter, she filed execution seeking possession of the disputed shop, wherein objector Mast Ram proprietor of M/s Golden Bakery, 37, Majitha Road, Amritsar filed objections claiming that he is in possession of the dispute shop as tenant. He alleged that revision petitioner-landlady had obtained ex parte ejectment order against Jai Chand fraudulently with mala fide intention to dispossess him. The objector alleged that he had taken the disputed shop on rent from Fakir Chand, attorney of Shama Samant in the

year 1970 at the monthly rent of ₹75/- and had been regularly paying the rent. The rent was paid to Fakir Chand, his son Sham Sunder and grand sons of Fakir Chand namely Sandeep Kalia and Deepak Kalia. The rent was last paid in January, 1993 as after the death of Fakir Chand, nobody came to the objector to realise the rent and it was stated to him that Shama Samant landlady is in UK. All the receipts of payment of rent were in his possession.

Revision petitioner-landlady contested the claim of objector with the plea that he has nothing to do with the shop in question. Sham Sunder had never received any rent nor he was having any authority to receive the same. These objections have been filed by the objector in connivance with Fakir Chand, Sandeep Kalia and Deepak Kalia. Only Jai Chand was inducted as tenant w.e.f. 01.01.1965 at the monthly rent of ₹60/- per month, against whom the ejectment order was passed on 15.06.2011.

On the objections, learned executing Court framed the issues as follows:-

- “1. Whether the objector is in possession of the suit property? OPO
2. Relief.”

The objector examined many official witnesses to prove that he is in possession of the demised premises and is running his business there under the name and style of “Golden Bakery”. The evidence produced by the objector as referred in the order passed by the executing Court, is reproduced as follows:-

“In this evidence, the objector examined PW1 Ram Murti, JA, MCA, who has brought the record regarding

licence bearing no.4897/19 dated 15.12.2012 in the name of Golden Bakery alongwith certified copy of payment of receipt of licence fee issued by their department as Ex.P1 and certificate regarding destroy (sic destroying) of old record as Ex.P2. PW2 Sushma Kumari, Sr. Tax Asstt. has brought the record regarding PNA no.AIFPR5833D in the name of Mast Ram for the assessment year 2007 to 2012, along with certified copies of income tax returns as Ex.P3 to Ex.P6, signed by concerned ITO copy of Saral Form as Ex.P7, acknowledgment receipt dated 22.4.2008 as Ex.P8. PW3 Nirmal Singh, Food Clerk office of Civil Surgeon produced the certified copy of affidavit given by Mast Ram at the time of taking up the registration number as Ex.P10 and voter card as Ex.P11. PW4 Rawan Kumar, Clerk District Industry produced on record the copy of original registration certificate as Ex.P12, copy of applications as Ex.P13 and Ex.P14. PW5 Hem Singh, ALM produced on record the copy of ledger of account no. PG 36/0284L as Ex.P15 and Ex.P16. Copy of account from 2012 to 2015 as Ex.P17 to P29, original bills as Ex.P30 to P44. Objector himself appeared as PW6 and deposed through affidavit Ex.PW6/A on the lines of objections already on record.”

To rebut the evidence produced by the objector, petitioner-landlady examined her special power of attorney Vinod Kumar as RW1.

On perusal of the documents produced by the objector, it is evident that he is running business under the name and style of “Golden Bakery” in the demised premises and petitioner-landlady could not rebut the documentary evidence produced by the objector to this effect. The attorney examined by the petitioner-landlady had no knowledge about the fact of the case and could not refute the plea of the objector that he is running business

in the demised premises. Learned executing Court had taken note of the documentary evidence which include licence/certificate, income tax returns and other documents produced by objector to prove that he is running the business in the demised premises since long. These documents find reference in the observations of the executing Court in para 9 of the order and the same is reproduced as follows:-

“The documentary evidence i.e. proved by PW1 Ram Murti, JA MCA, regarding licence bearing no.4897/19 dated 15.12.2012 in the name of Golden Bakery alongwith certified copy of payment of receipt of licence fee issued by their department as Ex.P1 and certificate regarding destroy (sic destroying) of old record as Ex.P2. PW2 Sushma Kumari, Sr. Tax Asstt. Proved the record regarding PNA no.AIFPR5833D in the name of Mast Ram for the assessment year 2007 to 2012, alongwith certified copies of income tax returns as Ex.P3 to Ex.P6, signed by concerned ITO copy of Saral Form as Ex.P7, acknowledgment receipt dated 22.4.2008 as Ex.P8. PW3 Nirmal Singh, Food Clerk office of Civil Surgeon proved the certified copy of affidavit given by Mast Ram at the time of taking up the registration number as Ex.P10 and voter card as Ex.P11. PW4 Rawan Kumar, Clerk District Industry proved on record the copy of original registration certificate as Ex.P12, copy of applications as Ex.P13 and Ex.P14. PW5 Hem Singh, ALM proved on record the copy of ledger of account no. PG 36/0284L as Ex.P15 and Ex.P16, copy of account from 2012 to 2015 as Ex.P17 to P29, original bills as Ex.P30 to P44. Even RW1 Vinod Sharma during cross-examination admitted that he never met Jai Chand till date.”

Learned counsel for the revision petitioner-landlady has argued

that the objector has not produced the persons, who issued the rent receipts to prove that they were authorised to issue the rent receipts.

The question in this case before the executing Court was as to whether respondent is in possession of the disputed shop and this fact was duly proved by producing the documentary evidence. The objector had obtained the licence/certificate for running business under the name and style of “Golden Bakery” in the shop in dispute. He had been filing his income tax returns. He also produced on file electricity bills, rent receipts, etc. The revision petitioner-landlady could not produce even a single document to prove that the person named Jai Chand exists, tenancy in his favour or examined him as witness. There is no evidence that Jai Chand was ever in possession of the disputed shop or had conducted business in it. The mere fact that an ex parte ejectment order was passed against Jai Chand is no reason to believe that he was a tenant in the demised premises. The finding of learned executing Court are based on unrebutted documentary evidence which call for no interference in this revision petition, which has no merits.

Dismissed.

February 26, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***