

## Ramesh Kumar Vs Asha Marwah and others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** May 9, 1988

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 41 Rule 4

**Citation:** (1988) 2 RCR(Rent) 205

**Hon'ble Judges:** S.D. Bajaj, J

**Bench:** Single Bench

**Advocate:** B.R. Mahajan, for the Appellant; R.K. Battas, for the Respondent

### Judgement

S.D. Bajaj, J.

Ragunath Parshad father of respondent No. 2 and respondent Nos. 4 to 9 and husband of respondent No. 3 was tenant of

respondent No. 1 in her shop on the ground floor of building bearing Khana Sumari No. (sic) situated in the abadi of Durgiana temple, Amritsar.

After his death, the land-lady filed against the petitioner and respondent Nos. 2 to 9 ejectment petition No. 19 of 1982 on January 5, 1982.

Learned Rent Controller ordered their eviction from the tenancy premises on May 19, 1986.

2. An appeal against the aforesaid order of ejectment dated May 19, 1986 was filed before the learned Appellate Authority on June 12, 1986

purporting to be on behalf of the petitioners and respondent Nos. 2 to 9 but actually it was the petitioner before this Court who alone had

authorised the learned counsel to file it and there was no authority with the learned counsel for going so on behalf of respondent Nos. 2 to 9. For

curing this defect in the frame of the appeal, the present petitioner applied before the learned Appellate Authority that respondent Nos. 2 to 9

before this Court, who were appellants before it may be transplanted as respondents Nos. 2 to 9 in the appeal. Learned Appellate Authority vide

its assailed judgment dated June 11, 1987 declined the request and dismissed the appeal holding that one of the tenants alone could not come up in

appeal before it against the decision of the learned Rent Controller dated May 19, 1986, rendered jointly against the petitioner and respondents

No. 2 to 9. Present Civil Revision No. 2680 of 1987 is directed against this order of the learned Appellate Authority.

3. I have heard Shri B.R. Mahajan, Advocate, learned counsel for the petitioner, Shri R.K. Battas, learned counsel for respondent No. 1 and have

carefully gone through the assailed judgment of the learned Appellate Authority with them.

4. Learned counsel for the petitioner referred me to the provisions of Order 41 Rule 4 of the CPC and the observations made in Mahabir Prasad

Vs. Jage Ram and Others, , and Ram Chand and others v. Amar Singh, Advocate, Karnal 1973 R.L.R. 716 and urged that the learned Appellate

Authority erred in declining the prayer made to it for transplanting appellant Nos. 2 to 9 as respondent Nos. 2 to 9 because their learned counsel

did not have the requisite authority from them for filing the appeal on their behalf and more so when their interests in the tenancy premises were one

with the first appellant and the Appellate Authority was fully empowered to give appellant No. 1 the relief claimed by him in the appeal even in their

absence, from the array of parties, to the appeal.

5. Relevant provisions of Order 41 Rule 4 of the CPC reads, ""Where there are more plaintiffs or more defendants than one in a suit, and the

decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants

may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants,

as the case may be.

6. Interpreting the provisions of Order 41 Rule 4 of the Code of Civil Procedure, their lordships of the Supreme Court observed, ""Competence of

the appellate court to pass a decree appropriate to the nature of the dispute in an appeal filed by one of several persons against whom a decree is

made on a ground which is common to him and others is not lost merely because of the person who was jointly interested in the claim has been

made a party respondent and on his death his heirs have not been brought on the record. Power of the appellate court under Order 41 Rule 4 to

vary or modify the decree of a Subordinate Court arises when one of the persons out of many against whom a decree or an order had been made

on a ground which was common to him and others has appealed. That power may be exercised when other persons who were parties to the

proceedings before the subordinate court and against whom a decree proceeded on a ground which was common to the appellant and to those

other persons are either not impleaded as parties to the appeal or are impleaded as respondents.

7. In Ram Chander v. Amar Singh, Advocate 1973 R.L.R. 716, it was held by a Division Bench of this Court ""The present case is one in which

some of the interested persons have not been impleaded as parties at all. The power of the Court of appeal to give relief under Order 41 rule 4,

Civil Procedure Code, is there even when a party jointly interested has not been impleaded.

8. Learned counsel for the respondent has on the other hand urged that the East Punjab Urban Rent Restriction Act, 1969 is a complete Code by

itself, that the proceedings before the learned Appellate Authority had to be regulated strictly by its provisions and that learned Appellate Authority

having not extended the benefit of principles underlying the provisions of Order 41 Rule 4 of the CPC to the appellant, discretion exercised by it

cannot be interfered with in the present revision petition. Support for the argument is sought to be derived from the observations made in Jang Bir

v. Mst. Jamuna and another AIR 1932 Lah. 37 = (1932) 32 P.L.R. 798, Rameshwar Prasad and Others Vs. Shyam Beharilal Jagannath and

Others, , Daulat Ram and another v. Rama Kant and others (1971) 73 P.L.R. (S.N.) 10, and Dr. Chaman Lal v. Shri Harmohinder Singh and

another 1979 (1) P.L.R. 83. The argument is wholly bereft of any merit and the authorities cited do not support it. In first three out of the four

authorities, the interest of the persons sought to be got added as parties clashed with those of the dominus litus and, therefore, the court declined to

add them as parties to the proceedings in those case. As already stated, the interest of the appellant Nos. 2 to 9, who were sought to be got added

as respondent Nos. 2 to 9 for want of power with their lawyer to file and pursue the appeal on their behalf, were identical with those of appellant

No. 1 before the Appellate Authority and the petitioner in this Court. The fourth ruling cited pertains to leading of additional evidence and has no

bearing on the relevant point of addition of parties.

9. It is no doubt in the discretion of the Rent Controller and the Appellate Authority to implead or not to implead an applicant as party respondent

to an eviction application. But it is settled law that such a discretion has to be exercised in a judicial manner and while the provisions of the CPC

may not apply strictly, the principles underlying rule 10(2) of Order 1 of the CPC is an appropriate Code to be taken into consideration while

exercising discretion as to whether a person should or should not be added as a party. In the present case, since the relief claimed by appellant

No. 1 could be granted by the learned Appellate Authority even in the absence of appellant Nos. 2 to 9 before it; who were sought to be added as

respondent Nos. 2 to 9, it was but desirable to implead them as proforma respondents. At least learned Appellate Authority erred in dismissing

the appeal for want of their addition to the array of parties in the appeal before it. In result, the revision petition is accepted, assailed judgment

dated June 11, 1987 is set aside and the case is remitted back to the learned Appellate Authority for deciding the appeal afresh on merits. The

parties through their learned counsel have been directed to appear before the learned Appellate Authority on July 25, 1988. Respondent No. 1

shall pay to the petitioner, the costs of the present revision petition. Counsel fee assessed at Rs. 500/- only.