

## Rajan Sharma and Others Vs Labh Singh and Others

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

**Date of Decision:** May 6, 2011

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 35 Rule 3, Order 35 Rule 5  
East Punjab Urban Rent Restriction Act, 1949 – Section 13

**Citation:** (2011) 163 PLR 351

**Hon'ble Judges:** Sabina, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Sabina, J.

Labh Singh and Hukam Kaur, respondents No.1 and 2, filed a petition u/s 13 of the East Punjab Urban Rent Restriction Act,

1949 for ejectment of the present petitioners from the shop in dispute. Vide the impugned order dated 28.11.2009, the application moved by the

petitioners under Order 35 Rule 3 of the CPC (CPC for short) for staying the further proceedings in the ejectment petition was dismissed. Hence,

the present petition by the petitioners.

2. Learned counsel for the petitioners has submitted that initially Ishar Singh was the owner of the shop in dispute. After his death, the heirs of Ishar

Singh had filed ejectment petitions against the tenants. The petitioners had filed an interpleader suit under Order 35 Rule 5 CPC to determine the

rights in tenancy premises. Till the decision of the interpleader suit, the proceedings in the ejectment petition filed by respondents No.1 and 2 were

liable to be stayed. In support of his arguments, learned counsel has placed reliance on Prem Lata v. Bhupinder Singh 2000 (2) RCR 461,

wherein, in Para 8, it was held as under:

Order 35, Rule 5 CPC clearly spells out that the tenant has a right to file a suit against all those persons who claim their ownership/relationship of

landlord or tenant through the landlord. In these circumstances, the suit of the respondent was legally maintainable and he had the cause of action

to file the suit. The judgment relied upon by the counsel for the petitioner is not applicable in the facts in hand. In this case, the suit was instituted

against a person who was entitled to receive the rent. In these circumstances, it was observed that such a tenant cannot file a suit against his

landlord. It may also be pointed out here that the definition of landlord as given in the East Punjab Rent Restriction Act, 1949 is much wider and it

has to be understood differently from the concept of ownership.

3. Learned counsel has further placed reliance on *Om Parkash Kapoor v. Nirmala Devi and others* (1988-2) PLR 148 wherein, in Para 7, it was

held as under:

A plain reading of the provisions of Rule 3 of Order 35 of the CPC would show that once the court before which the suit against the plaintiff is

pending, is informed of the institution of the inter pleader suit, it is clearly incumbent upon that court to stay the proceedings against such plaintiff.

Stay of ejectment proceedings against the petitioner before the rent controller was thus rendered obligatory by the filing of the inter pleader suit by

the petitioner- Om Parkash.

4. Learned counsel for respondents No.1 and 2, on the other hand, has submitted that the interpleader suit filed by the petitioners was not

maintainable. The petitioners were depositing the rent in the Court and hence, they could not take up the plea that they did not know as to with

whom the rent should be deposited by them. Moreover, respondents No.1 and 2 had filed the petition for ejectment on the ground of personal

necessity. Respondents No.1 and 2 had no objection if the petitioners continued depositing rent in the Court In support of his arguments, learned

counsel has placed reliance on *Raj Kumari alias Raj Rani Vs. Surjit Singh alias Bilu and Others*, wherein, in Para 4, it was held as under:

After hearing the counsel for the parties and going through the record, I am of the view that there is no merit in the appeals. Order 35, Rule 5 of the

Code of Civil Procedure, prohibits the tenant to bring a suit against his landlord for the purpose of compelling him to interplead with any person

other than the person making claim through such landlord. In the case before me, after the death of Rajbans Kaur and Bhagwan Kaur the tenant

started paying rent to M.S. Judge and at no stage Surjit Singh claimed himself to be landlord of the property qua the plaintiff. In fact, no evidence

has been brought on record by the tenant to show that Surjit Singh initiated any proceedings either in regard to ejectment of plaintiff or recovery of

rent from the plaintiff. In this situation, interpleader suit by the tenant denying the title of his landlord was not maintainable. This Court in *Jagdish*

*Rai's* (1993-2)104 PLR 202 and *Smt. Mohani Devi Vs. Sh. Gokal Chand and Another*, has held that an interpleader suit on behalf of tenant

against the landlord is not maintainable. In Om Parkash Kapoor's case (1988-2) 94 PLR 148 (supra), interpleader suit on behalf of tenant was

held to be maintainable because on the death of original landlord, two sets of persons sought ejectment claiming themselves to be landlords. As

seen, in the present case, on behalf of Surjit Singh, defendant, there had been no proceedings against the plaintiff for his ejectment or for recovery

of rent.

5. Order 35 Rule 5 CPC reads as under:

Agents and tenants may not institute interpleader suits.-Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to

sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or

landlords.

6. In the present case, admittedly, Ishar Singh was the owner and landlord of the demised premises. The petitioners were the tenants under Ishar

Singh. Respondents No.1 and 2 have filed a petition seeking ejectment of the petitioners on the ground of personal necessity and arrears of rent

Iqbal Kaur and Sarabjit Kaur have also filed an ejectment petition against the petitioners on the ground of arrears of rent. The petitioners preferred

an interpleader suit. It was prayed in the said suit that the petitioners be discharged from all the liabilities and they were prepared to deposit the rent

in the Court. Admittedly, the petitioners are depositing rent in the Court. In these circumstances, the obligation of the petitioners qua deposit of rent

is over. In fact, the parties could move an application to get both the ejectment petitions clubbed so that they can be decided by a common order

to avoid any conflicting judgments. However, it would not be appropriate to stay the proceedings in the ejectment petition filed by respondents

No.1 and 2. Moreover, the interest of the petitioners stands safeguarded as they are depositing rent in the Court. The judgments relied upon by the

learned counsel for the petitioners fail to advance the case of the petitioners as these are based on different facts. No ground for interference in the

impugned order by this Court is made out.

Dismissed.