mentioned a particular day for the deposit of the price. The phraseology of the Court left room for mis-apprehension:

Held further that when deposit was not made the Court ought not to have rejected the plaint immediately. The Court ought to have considered whether the circumstances were such as to justify an extension of time for the deposit of 1/5th of the price."

A Division Bench of the Lahore High Court in *Ram Rattan* v. *Rajaram* (3), was of the view :

"The phrase "his plaint shall be 'rejected' "read with the provision as to an extension of time means that the plaint shall be rejected if the Court should not deem it proper to allow further time and though the Court may not extend time *suo motu* it should, not all the same, act with such clerity in rejecting the plaint as not to allow the plaintiff even a moment for reflection or action."

(9) In view of what I have said above, both the appeals (S.A.Os Nos. 79 and 82 of 1968) fail and are dismissed. In the circumstances of this case, however, I leave the parties to bear their own costs in this Court.

K.S.K.

REVISIONAL CIVIL

Before Shamsher Bahadur and R. S. Narula, JJ.

Puran Chand ..... *Petitioner.*

Versus.

Mangal ..... *Respondent.*

Civil Revision No. 187 of 1968.

February 25, 1969.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 9 and 13(2) (i)—Proviso to section 13(2) (i)—Purpose of — Stated — Interest on arrears of rent payable by the tenant under the proviso — Whether to be calculated upto the date of the first hearing of the ejectment proceedings— Section 9 — Whether makes the payment of house-tax a liability of the tenant — Land-lord not exercising statutory option to increase rent by adding

(3) A.I.R. 1923 Lah. 643.

house-tax thereto—Arrears of rent payable by the tenant—Whether to include house-tax.

Held that the Legislature has envisaged the case of an evaricious landlord who might try to deprive a tenant of the statutory protection against eviction granted to him by the Rent Restriction Act by making himself scare for some time so as to make it impossible for a tenant even to tender rent to him during the period. To avoid the tenant of being deprived of the statutory protection against eviction in such a case, the proviso to clause (i) of sub-section (2) of section 13 of East Punjab Rent Restriction Act has been enacted. The effect of the proviso is that if the tenant is prepared to compensate the landlord for the loss suffered by him on account of the rent having been withheld by the tenant from the landlord, the tenant can still avail of the protection and the right accrued to the landlord under the purview of clause (i) of sub-section (2) of section 13 is taken away. The purpose of the proviso and the intention of the Legislature behind it is to ensure that the landlord is not harrased by a tenant and deprived of his lawful dues by not paying rent, till an action for eviction is brought and by saving himself from eviction by paying out the rent at the first hearing. (Para 10).

Held, that the scheme of section 13(2) (i) Proviso of the Act shows that in order to exonerate himself from liability for ejectment incurred under the purview of clause (i), the tenant must pay to the landlord not only the arrears of rent which were due at the time the action for eviction was brought, but also the costs of the landlord incurred subsequently (which have to be assessed by the Rent Controller) and interest on the amount of arrears. whereas the principal amount on which the interest has to be calculated has indeed to be the amount of rent which had fallen due up to the date of the application for eviction, the only way to compensate the landlord for the loss of interest on the amount which should have been in his hands under the contract much earlier is to pay him the interest up to the date when the amount is actually paid out. Any other construction of the provision for payment of interest would not be consistent with the scheme of the relevant provision and the intention of the Legislature behind it. Once in its wisdom the Legislature was making provision for payment of interest on overdue rent, there would be no meaning in stopping the interest to run at any time before the date on which the payment is actually made. Hence the interest on arrears of rent which the tenant must pay in order to exonerate himself from liability for ejectment under the Proviso must be calculated upto the date of actual deposit that is upto the date of first hearing. (Para 10).

Held, that section 9 of the Act does not make the payment of house-tax a liability of the tenant. It merely permits a lawful increase in the rent payable by a tenant if the landlord wishes to effect the increase. The operation of section 9(1) of the Act is not automatic. It is merely an enabling provision, and entitles the landlord to increase the rent of premises covered by the Act if a rate, cess or tax in respect of the building is levied after the commencement of the Act. Hence where the land-lord does not exercise his statutory option to increase the rent by adding thereto the amount of house-tax levied on him in respect of the rented premises, the rate at which the

tenant is liable to pay the arrears of rent cannot possibly include the amount of house-tax. (Para 6).

Petition under Section 15 of the East Punjab Urban Rent Restriction Act, 1949, for revision of the order of Shri Gurnam Singh, Appellate Authority (District and Sessions Judge), Ambala, dated the 23rd October, 1967, affirming that of Shri M. S. Nagra, Rent Controller, Jagadhri, District Ambala, dated 22nd February, 1967, rejecting the application.

R. N. MITTAL, ADVOCATE, for the Petitioner

M. P. MALERI, ADVOCATE, for the Respondent.

JUDGMENT.

NARULA, J.—Though this petition for revision of an order of the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act) (District Judge), Ambala, dated October 23, 1967, upholding the order of dismissal of the petitioner's application for eviction of the respondent, was admitted to a Division Bench on account of the conflict between two Single Bench decisions on the question whether a defaulting tenant is bound to pay interest on the arrears of rent due from him up to the date of the application or right up to the date of making deposit before the Rent Controller, in order to absolve himself of the liability for ejectment under the proviso to clause (i) of sub-section (2) of section 13 of the Act, another interesting question that has been raised by Mr. R. N. Mittal, learned counsel for the landlord-petitioner, relates to the interpretation of section 9 of the Act which permits a landlord to raise the rent of a tenant to the extent of any tax which may be levied in respect of the building or rented land after the commencement of the Act. These two questions have arisen in the following circumstances:—

(2) The petitioner, whom I will call the landlord in this judgment, filed an application for the eviction of the respondent, to whom I will hereinafter refer as the tenant, on January 4, 1966, on *inter alia* the ground that he had not paid or tendered the rent due from him in respect of the rented building, and had, therefore, incurred liability for ejectment under clause (i) of sub-section(2) of section 13 of the Act. One day before the filling of the application for eviction, i.e., on January 3, 1966, the tenant had deposited Rs. 126 on account of the arrears of rent under section 31 of the Punjab Relief of Indebtedness Act (7 of 1934) on the allegation that the landlord had refused to accept the tender of that amount. On the first date of hearing, i.e., on February 21, 1966; the tenant made a further deposit of Rs. 88 in the

court of the Rent Controller on the basis of the following calculation:—

		Rs.
(i)	Arrears of rent claimed by the landlord in paragraph 2 of his petition for eviction for the period April 1, 1964, to December 31, 1965 ...	189
(ii)	Interest on the abovementioned amount of arrears ...	10
(iii)	On account of costs ...	15
	Total ...	214

(3) Shri M. S. Nagra, Rent Collector, Jagadhri, by his order, dated February 22, 1967, rejected the application of the landlord for the ejectment of the tenant on the ground that the latter had exonerated himself of his liability to ejectment on the ground of non-payment of rent because by making the abovesaid deposit of Rs. 214 on or before the first date of hearing, he was entitled to take benefit of the relevant proviso which reads as follow:—

> "Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid."

(4) The landlord went in appeal against the decision of the Rent Controller. The question whether the arrears of rent had to be deposited up to December 31, 1965 (i.e. up to the end of the month before the filling of the application for eviction), or up to the date of the first hearing, (i.e., including the rent for the month of January, (1966), was decided by the Appellate Authority against the landlord following the judgment of this Court in *Lachhman Dass* v. *Shri Satya Pal* (1), That question has not been sought to be reopened before us on behalf of the landlord in view of the earlier two Division Bench judgments of this Courts in *Basant Ram* v. *Gurcharan Singh and others* (2), and *Isher Dass Tara Chand* v. *Harcharan Dass* (3).

(1) 1966 Cur. L.J. (Pb.) 530.
(2) I.L.R. 1959 Pb. 1887=1959 P.L.R. 591.
(3) I.L.R. (1961) 1 Pb. 315.

(5) In his appeal the landlord further contended before the District Judge, Ambala, who was the Appellate Authority under the Act that the tenant had not complied with the requirements of the above quoted proviso as the amoust of interest deposited by him was only up to the date of the application for eviction and not up to the date of actual deposit, i.e., up to February 21, 1966. The Appellate Authority was confronted on the above mentioned point with a short note of the judgment of J. N. Kaushal, J., (as he then was), dated May 27, 1966, in *Shri Sunder Singh* v. *Madusudan Singh and others* (4),holding that interest was payable up to the date of deposit on the one hand and the judgment of Mehar Singh, J. (as my Lord the Chief Justice then was), dated March 23, 1966, in *Lachhman Dass* v. *Shri Satya Pal* (1), on the other, it having been held in *Lachhman Dass's case* (1), that such interest was payable only up to the date of application for ejectment. The Appellate Authority observed that the judgment of the learned Single Judge in *Lachhman Dass's case* (1), which was earlier, did not appear to have been brought to the notice of the learned Judge who decided *Sunder Singh's case* (4), and in asmuch as the judgment of Mehar Singh, J., in *Lachhman Dass's case* (1) was also supported by the language of the proviso, the ratio of that judgment had to be followed. The claim of the landlord about the amount deposited by the tenant being less by Rs. 25 claimed to be due to the landlord in paragraph 2 of his application for eviction on account of house-tax which had been imposed in the locality in question from January 1, 1962, was repelled by the Appellate Authority on the ground that the landlord had never intimated his desire to increase the rent to the extent of the house-tax.

(6) In this petition for revision of the abovesaid order of the Appellate Authority, the same two contentions have been pressed again. It has firstly been argued that inasmuch as the tenant admittedly did not deposit the amount of house-tax, it should be held that he did not pay the arrears of rent due to the landlord. This claim is based on section 9 of the Act which is in the following language:—

> "(1) Notwithstanding anything contained in any other provision of this Act a landlord shall be entitled to increase the rent of a building or rented land if after the commencement of this Act a fresh rate, cases or tax is levied in respect of the building or rented land by any local authority, or if there is an increase in the amount of such a rate, cess or tax being levied at the commencement of the Act:

(4) 1967 P.L.R. Short Note 7.

Provided that the increase in rent shall not exceed the amount of any such rate, cess or tax or the amount of the increase in such rate, cess or tax, as the case may be.

(2) Notwithstanding anything contained in any law for the time being in force or any contract, no landlord shall recover from his tenant the amount of any tax or any portion thereof in respect of any building or rented land occupied by such tenant by any increase in the amount of the rent payable or otherwise, save as provided in sub-section (1)."

It is the admitted case of the landlord that though the house-tax had been imposed with effect from January 1, 1962, he had never claimed the same from the tenant at any time before the filing of the application for eviction and that the landlord had been accepting rent from the tenant at the stipulated rate without charging any house-tax up to the period ending March 31, 1964. Section 9 of the Act does not make the payment of house-tax a liability of the tenant. It merely permits a lawful increase in the rent payable by a tenant if the landlord wishes to effect the increase. The operation of section 9(1) of the Act is not automatic. It is merely an enabling provision, and entitles the landlord to increase the rent of premises covered by the Act if a rate, cess or tax in respect of the building is levied after the commencement of the Act. Rent can be increased either by mutual agreement or, if permitted by the law for the time being in force by serving a notice of increase on the tenant. The only other eventuality for increasing the stipulated rate of rent of certain rented premises which I can think of is by some statute providing an automatic increase. The present case does not fall in any of the three categories. There was admittedly no mutual agreement for increase of the rent to the extent of the house-tax. Landlord never served any notice of such increase on the tenant. It cannot, therefore, be held that the tenant was liable to pay the amount of the permitted increase which had never been effected. Mr. Mittal submitted that inasmuch as the landlord had claimed in paragraph 2 of his application for eviction that the tenant was liable to pay the amount of house-tax, the said claim should be deemed to be a claim for increase. This submission is, in our opinion, wholly misconceived. No claim could be made for something for payment of which liability had not been incurred before the making of the claim. A claim for increased rent could only

follow the effecting of the increase. Inasmuch as the landlord had never exercised his statutory option to increase the rent by adding thereto the amount of house-tax levied on him in respect of the rented premises, the rate at which the tenant was liable to pay the arrears of rent could not possibly include the amount of house-tax. No fault can, therefore, be found with the finding of the Appellate Authority in this respect which is hereby affirmed. In the view we have taken of this matter, we are also fortified by the judgment of a learned Single Judge of the Delhi High Court (S. N. Shanker, J.) in *Jaswant Ram* v. *B. D. Sharma* (5), wherein section 9 of the Act itself as applicable to the State of Himachal Pradesh, came up for interpretation before the learned Judge. Mehar Singh, C.J., also held in *Smt. Kirpal Kaur* v. *Bhagwant Rai* (6), that it is only when the landlord takes a step to increase the rent permitted by section 9 that the rent becomes increased to the extent of the house-tax, and that a landlord must demand the increased rent by serving a notice on the tenant, and there is no automatic increase of the rent immediately on the imposition of the house-tax. We are in respectful agreement with the ratio of the judgment of the learned Chief Justice in *Smt. Kirpal Kaur's case* (6), to the effect that it is the landlord's own act in exercising his right under the provisions of section 9 which increases the rent and the enhanced rent commences from the date of the notice of demand and not from any earlier date. The first contention of the learned counsel for the landlord, therefore, fails.

(7) I have already quoted the language of the proviso to clause (i) of sub-section (2) of section 13. The question which calls for decision, as already stated, is whether the interest on arrears of rent which a tenant must pay in order to exonerate himself from the liability for ejectment under the above-mentioned proviso, is the interest due at six per cent per annum up to the last date of the period in respect of which the arrears have to be paid or is it to be calculated up to the date of actual deposit, i.e., up to the date of first hearing. It is unnecessary to refer in any detail to the judgments of my Lord, the Chief Justice in *Dial Chand* v. *Mahant Kapoor Chand* (7), and in *Ram Singh* v. *Savitri Devi* (8), on which authorities reliance was placed by the learned counsel for the landlord to press the point that if the tenant had failed to deposit the entire amount

(5) 1968 P.L.R. (Delhi Section) 105.
(6) 1969 P.L.R. 238.
(7) I.L.R. (1967) 2 Pb. & Hry. 548=1967 P.L.R. 248.
(8) 1968 P.L.R. Short Note 9.

due under the proviso to section 13(2)(i), he cannot escape ejectment, as the said proposition is now well settled. So far as the merits of the point at issue are concerned, learned counsel for the parties have placed before us very fairly three previously decided cases. The earliest in order of time is the judgment of Mehar Singh, J., dated September 24, 1965, in *Gulshan Rai and others* v. *Devi Dayal* (9). The precise question whether interest was payable up to the date of application or up to the date of deposit does not appear to have arisen before the learned Chief Justice in the *case of Gulshan Rai and others* (9). The question of liability to pay interest was, however, one of the live issues in the case. Learned counsel for the landlord has relied in that connection on the following observations of Mehar Singh, J., in the *case of Gulshan Rai and others* (9):—

(i) (at page 670) "Interest on the arrears for the months of February and March was due between March 15 and April 15, *to the date of the deposit*, that is to say, April 19, 1961, whereafter, according to sub-section (3) of section 31 of Punjab Act 7 of 1934, interest ceased to run on that amount."

(ii) (Page 671) "This would have been correct if on the arrears for the months of February and March, the tenant had also deposited interest due at the rate of six per cent per annum *down to April* 19, 1961."

(iii) (Page 671) "If, therefore, the tenant had on April 19, 1961, along with the arrears for the months of February and March also deposited interest due on those arrears *to that date* the landlord would have had no justification for his application and on the date of the application he could not have said that there were any arrears on the basis of which he could claim eviction, ..."

Next in order of time is the judgment of the same learned Judge, dated March 23, 1966, in *Lachhman Dass's case* (1). The point now confronting us was disposed of against the landlord in the following language in that case:—

(Page 532) "There remains only one argument of the learned counsel for the landlord to consider and that is that while

(9) 1966 P.L.R. 668.

according to the decision in *Ishar Dass Tara Chand's case* (3), the arrears of rent are to be counted down to the date of the eviction application, but the interest on the arrears is to be counted not to that date and it has rather to be counted to a subsequent date which is the date on which the tender is made according to the proviso to clause (i) of sub-section (2) of section 13. The contention is so illogical that it is stated to be discarded straighaway. There is nothing in the proviso which justifies that arrears of rent are to be reckoned for the purposes of the proviso down to the date of eviction application, and the interest on those arrears is to be reckoned not to that date but a different date."

(8) It may be noticed that in the *case of Isher Dass-Tara Chand* (*supra*) (3), decided by Falshaw and Gurdev Singh, JJ., on August 30, 1960, the only question which came up for decision was whether arrears of rent were to be paid up to the date of application or up to the date of the first hearing in order to take benefit of the proviso to clause (i) of sub-section (2) of section 13. The question of the date up to which interest has to be paid under that proviso did not come up for consideration before the Division Bench in the *case of Isher Dass-Tara Chand* (3).

(9) The last judgment on the point to which reference has been made before us is that of J. N. Kaushal, J., in *Sunder Singh's case* (*supra*) (4). We have been taken through the whole of the judgment of the learned Judge. The relevant passage in the judgment of Kaushal, J., reads like this:—

"Mr. D. R. Manchanda, learned counsel for the petitioner, has contended in the first instance, that the amount of interest calculated by the appellate authority was not proper. According to him, the rent due was only Rs. 29/1/0 and since Rs. 44 were paid, there was no question of any shortfall. Mr. Rajinder Sachar for the other side argues that interest had to be paid on the arrears of rent till the date of payment, namely, the date of first hearing and if this contention of his is accepted then the calculation made by the learned appellate authority seems to be correct. I have no doubt in my mind that interest has to be *paid till the date of payment.* The principle that

arrears of rent having to be paid till the date of the application is not applicable with regard to the payment of interest. The underlying idea of paying the interest to the landlord is to compensate him for that period for which he was kept out by the tenant from realising the amount of rent. Therefore, there is no merit in the contention that the amount of interest paid was correct."

(10) After carefully considering the submissions made by the learned counsel, as well as the previous judgments on this point referred to above, as also the scheme of the Act and the obvious object behind the provision for compelling the tenant to pay interest on the amount of rent withheld by him from the landlord in order to exonerate himself of the liability for ejectment which is otherwise incurred in law by non-payment of rent, we are inclined to hold that the view on this subject expressed by Mehar Singh, J., in *Gulashan Rai and others* v. *Devi Dayal* (9) and by J. N. Kaushal, J., in *Shri Sunder Singh* v. *Madusudan Singh and others* (4), is correct, and that the view of the learned Single Judge of this Court in *Lachman Dass* v. *Shri Satya Pal* (1) is, with the greatest respect to the learned Judge, not quite consistent with the scheme and object of the Act, and with the learned Single Judge's own view expressed earlier in *Gulshan Rai and others* v. *Devi Dadal* (9). The reasons which have impelled us to construe the proviso to clause (i) of sub-section (2) of section 13 of the Act in this manner are more than one. The various provisions in the Rent Restriction Act aim at a compromise between the rights of the landlord and the difficulties of a tenant brought about in the urban area of the country due to shortage of accommodation consequent on the increasing trend towards urbanisation. Under the normal law, a lease of immovable property determines by forfeiture in case the lessee breaks an express condition which provides that on breach thereof, the lessor may re-enter. One of such normal conditions which is usually incorporated in rent deeds is of non-payment of rent. Reference may in this connection be had to clause (g) of section 111 of the Transfer of Property Act, 1882. When on the one side the Legislature has enacted in sub-section (1) of section 13 of the Act that a lease would not be forfeited in spite of the breach of an express condition of the contract of lease, it has been ensured that the landlord is not unjustly deprived of the main consideration for which he demised the property in favour of tenant by giving it on rent. Provision is

therefore, made in clause (i) of sub-section (2) of section 13 of the Act for the protection against eviction being taken away from a tenant, who has neither paid nor tendered the rent due by him within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord. Once again the Legislature has envisaged the case of an avaricious landlord, who might try to deprive a tenant of the statutory protection against eviction granted to him by the Rent Restriction Act by making himself scarce for some time so as to make it impossible for a tenant even to tender rent to him during the period. To avoid the tenant of being deprived of the statutory protection against eviction in such a case, the proviso to clause (i) of sub-section (2) of section 13 has been enacted. The effect of the proviso is that if the tenant is prepared to compensate the landlord for the loss suffered by him on account of the rent having been withheld by the tenant from the landlord, the tenant can still avail of the protection and the right accrued to the landlord under the purview of clause (i) of sub-section (2) of section 13 is taken away. The purpose of the proviso and the intention of the Legislature behind it is to ensure that the landlord is not harrased by a tenant and deprived of his lawful dues by not paying rent till an action for eviction is brought and by saving himself from eviction by paying out the rent at the first hearing. If it is for this purpose, and indeed I think it is for that purpose that the proviso has been enacted, the scheme of the provision shows that in order to exonerate himself from liability for ejectment incurred under the purview of clause (i), the tenant must pay to the landlord not only the arrears of rent which were due at the time the action for eviction was brought, but also the costs of the landlord incurred subsequently (which have to be assessed by the Rent Controller) and interest on the amount of arrears. Whereas the principal amount on which the interest has to be calculated has indeed to be the amount of rent which had fallen due up to the date of the application for eviction, the only way to compensate the landlord for the loss of interest on the amount which should have been in his hands under the contract much earlier, is to pay him the interest up to the date when the amount is actually paid out. Any other construction of the provision for payment of interest would not be consistent with the scheme of the relevant provision and the intention of the Legislature behind it. I am unable to see any inconsistency between the principal amount being the same for purposes of deposit as well as for purposes of calculating interest, but the period for which interest has to be paid being extended right up to the time when

the payment is actually made. In fact I feel that once in its wisdom the Legislature was making provision for payment of interest on overdue rent, there would be no meaning in stopping the interest to run at any time before the date on which the payment is actually made. Payment by deposit in Court is a recognised mode of payment to the party entitled thereto. The provisions of rules 1 and 3 of Order 24 of the Code of Civil Procedure further strengthen me in taking this view of the matter. Order 24 rule 1 provides that the defendant in any suit to recover money may deposit in Court such sum of money as he considers a satisfaction in full of the claim. Rule 3 of Order 24, states that no interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of the notice of deposit whether the sum deposited is in full payment of the claim or falls short thereof. Similarly section 31 of the Punjab Relief of Indebtedness Act (7 of 1934) enables a debtor to deposit in Court the sum of money admitted by him to be due to his creditor and interest ceases to run on the sum so deposited from the date of deposit. The bloodstream running through the veins of rules 1 and 3 of Order 24 of the Code of Civil Procedure, section 31 of the Punjab Relief of Indebetedness Act, and the proviso to clause (i) of sub-section (2) of section 13 of the Act appears to me to be the same. I am, therefore, in full agreement with the view expressed by J. N. Kaushal, J., in this respect in *Shri Sunder Singh* v. *Madhusudan Singh and others* (4) and the reasoning contained in the judgment of the learned Judge on which the said decision is based.

(11) In spite of our construing the provision for payment of interest on arrears of rent contained in section 13(2) (i) of the Act in favour of the landlord, we are unable to interfere with the decision of the Appellate Authority dismissing his application for eviction on the short ground that the landlord had himself claimed expressly and specifically in paragraph 2 of his application that the amount of interest payable by the tenant up to the date of the first hearing in order to exonerate himself from liability to eviction was Rs. 10 and the tenant did in fact, acting on the said representation, deposit nothing less than Rs. 10 as interest in the Court on the first date of hearing. The landlord cannot be allowed to approbate and reprobate even if on the basis of some calculation it can be found that the sum of Rs. 10 deposited by the tenant on account of interest in the abovesaid circumstances was deficient by some Paisas from the exact amount of interest which was payable (on the amount of arrears of rent) for the period ending February 21, 1966.

(12) No other point having been argued in this case, the revision petition fails and is dismissed. As, however, the landlord has succeeded on the question of interpretation of the provision of law on which there was a conflict of decisions on account of which this revision petition was admitted to a Division Bench, we leave the parties to bear their own costs of the proceedings in this Court.

SHAMSHER BAHADUR, J.—I agree.

K. S. K.

FULL BENCH

Before Mehar Singh, C. J., D. K. Mahajan and B. R. Tuli, JJ.,

LACHHMAN SINGH,—*Appellant.*

versus

PRITAM CHAND AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 532 of 1968.

December 22, 1969.

Punjab Pre-emption Act (I of 1913), — Section 15(1) (b) Fourthly — "Co-sharers"—Meaning of—Purchaser of specific killa numbers in specified rectangles out of joint land — Whether becomes a co-sharer with the other co-sharer of the land.

Held, that the word 'co-sharers' signifies persons owing a share or shares in the whole of the property or properties of which another share or other shares were the subject of sale. In Section 15(1) (b), Fourthly of Punjab Pre-emption Act, 1913, a co-sharer has a preferential right of pre-emption where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly. A sale, however, by a co-sharer of a specific piece or plot of land or property does not make the purchaser or the vendee a co-sharer with other co-sharers, but where such a purchaser or vendee takes, on sale, a fractional share of a co-sharer in the joint land or property, then he comes to hold the land along with the other co-sharers in the fractional proportion of the whole which he has purchased. Hence the purchaser from a co-sharer of specified killa numbers in specified rectangles only and not in the whole land of the co-sharers, does not become a co-sharer with the other co-sharers and has no preferential right of pre-emption under section 15(1) (b), Fourthly of the Act.

Paras 8 and 9).

Case referred to by the Hon'ble Mr. Justice D. K. Mahajan, on 5th August, 1969. to a Full Bench for decision of an important question of law involved in the case. The Full Bench consiting of Hon'ble the Chief Justice Mr. Mehar