

the Managing Director should have been directed to the Nazim, while in fact it has been directed to the Deputy Commissioner or the District Magistrate, the fact being that what used to be called the Nazim in the Patiala State is now the Deputy Commissioner and the Collector of the district.

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Dulat, J.

Finally, Mr. Aggarwal pointed out that although the certificate directs the recovery of a specified sum mentioned in the certificate itself, the Deputy Commissioner is actually threatening to recover not only that amount but some future interest which is not mentioned in the certificate. It is stated on behalf of the respondents that nothing over and above the amount mentioned in the certificate can be recovered and we have been assured that nothing more will in fact be recovered.

Having considered the entire set of pleas on which the proceedings taken against the petitioners are attacked, I find no substance whatever in any of them and for the reasons already mentioned, we must, in my opinion, decline to interfere and dismiss the petitions with costs, and discharge the rule in each case.

BHANDARI, C.J.—I agree.

Bhandari, C. J.

B.R.T.

REVISIONAL CIVIL

Before Bishan Narain and S. B. Kapoor, JJ.

BRIJ MOHAN LAL,—*Petitioner.*

versus

RAJ KISHORE AND ANOTHER,—*Respondents.*

Civil Revision No. 413-D of 1956.

Code of Civil Procedure (Act V of 1908)—Order 41 Rules 4 and 33—Scope of—Whether enable the Court to pass orders in favour of a party to the suit though not a party to the appeal.

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Held, that Order 41, Rule 4 is an enabling provision and empowers courts to exercise discretion in favour of persons who have not appealed against the decree provided the decision proceeds on grounds common to the appellants and the non-appealing persons. This rule does not say that this power can be exercised only if the non-appealing persons are parties to the appeal. If Order 41, Rule 4 is read with Order 1, Rule 3, Civil Procedure Code and the word "respondent" is read for "defendant" in Order 1, Rule 3, then the respondent against whom the relief is sought would be a necessary party to the appeal. There is no provision which compels a party to implead persons against whom no relief is sought. Such persons may be proper parties to the suit or appeal but are not necessary parties. It is well established that the absence of the *pro forma* party against whom no relief is sought does not disentitle the plaintiff or the appellant to seek relief against the persons who have been impleaded nor is there any provision which prohibits a Court from deciding the matter on merits. Moreover, the order under Order 41, Rule 4 is to be made in favour of and not against the non-appealing person. Principles of natural justice require that no decision against a party should be made without affording him an opportunity to place his case before the deciding authority. It is, however not the principle of natural justice that no order can be passed in favour of a person who has not been heard. It, therefore, follows that non-impleading of a *pro-forma* party to whom a relief may be granted under Order 41, Rule 4 does not affect any principle of law or justice. In fact it is only just and proper that a person who has not appealed or who has not been impleaded as a *pro forma* respondent may be given relief by Courts on any ground common to all the plaintiffs or the defendants so that full effect may be given to the decision of the Court. Such an exercise of power under Order 41, Rule 33, Civil Procedure Code in favour of an absent party also would make the decision of the Court consistent. It is, however, always discretionary to exercise powers under Rules 4 and 33 of Order 41 in favour of an absent party and that discretion is to be exercised judicially.

Held, that Order 41, Rule 4 and also Order 41, Rule 33 empowers the Court to pass an order in favour of a party to the suit or application though not a party to the appeal.

Petition under Section 35 of Act 38 of 1952 Delhi Ajmer Marwara Rent Control Act for revision of the order of Shri

Basant Lal Aggarwal, P C. S., Senior Sub-Judge, Delhi, dated 16th August, 1956, reversing that of Shri G. H. Luthra, Sub-Judge, Ist Class, Delhi, dated 5th August, 1955, accepting the appeal and setting aside the ex-parte decree on payment of Rs. 82 as costs:

BHAGWAT DAYAL & YOGESWAR DAYAL, for Petitioner.

BISHAMBER DAYAL, IQBAL KRISHAN & KESHAV DAYAL, for Respondents.

JUDGMENT

BISHAN NARAIN, J.—Brij Mohan Lal obtained an *ex parte* decree on 22nd April, 1954 against his tenant Mannu Lal for ejection and for recovery of arrears of rent. Mannu Lal on 8th June, 1954 applied to get this *ex parte* decree set aside. During the pendency of this application Mannu Lal died and his three sons and the widow came on the record as his legal representatives. The trial Court on 5th August, 1955, dismissed this application. Against this decision Raj Kishore and Anand Kishore (two sons of Mannu Lal deceased) filed an appeal in the court of Senior Sub-Judge, Delhi. These appellants, however, did not implead their third brother Rup Kishore and their mother Shrimati Chand Rani as appellants or respondents. The Senior Sub-Judge accepted the appeal by order dated 16th August, 1955, and set aside the *ex parte* decree on payment of Rs 32 as costs. Against this order of Senior Sub-Judge the landlord Brij Mohan Lal filed revision petition in this Court. When the revision came before Mehar Singh, J., the learned counsel for the appellant urged that the appeal before the Senior Sub Judge was incompetent in the absence of all the legal representatives of Mannu Lal. Finding that there was a conflict in decisions on the point Mehar Singh, J., referred this matter to larger Bench and it has now come up before us for decision.

Bishan Narain,
J.

The question raised on behalf of the landlord petitioner is this. Under the *ex parte* decree for

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eviction, all the legal representatives of Mannu Lal are liable to be evicted. The application of Mannu Lal for setting aside *ex parte* decree was dismissed when his legal representatives were on the record. Therefore, on the date of that order they all became liable to be evicted. Only two of the legal representatives, however, filed the appeal without impleading the other two. The appeal was, therefore, not properly constituted and was incompetent. In any case the legal representatives not impleaded are now liable to eviction as the order refusing to set aside the *ex parte* decree has become final. In these circumstances it was urged that no useful purpose would be served by hearing the appeal because it must fail in the absence of the two legal representatives who were not before the appellate court. On the other hand the tenants' case is that the appeal by some of the applicants was competent and relief to the non-impleaded applicants could be granted under Order 41, Rules 4 and 33, Civil Procedure Code.

Now order 41 relates to proceedings to be taken in appeal. There is no express provision in Order 41 indicating parties that should be impleaded when filing an appeal. Order 1 deals with joinder of parties in a suit. Under Order 1, Rule 1, Civil procedure Code, all persons may join as plaintiffs who claim relief arising out of the same transaction and all persons under Order 1, Rule 3 may join as defendants against whom the relief is claimed.

In the present case it is not denied that all the four heirs of Mannu Lal deceased claimed relief against the landlord on a ground common to all of them. It is also obvious that the two appellants did not claim any relief against their brother and mother. They claimed relief only against the landlord who was duly impleaded as respondent. It

follows that if the other two heirs had been im-
 pleaded in the appeal as respondents then they
 would have been only *pro forma* respondent. There
 is no express provision in the Civil Procedure
 Code which lays down that an appeal filed without
 impleading *pro forma* respondents would be in-
 competent nor has any such provision been
 brought to our notice. In the absence of any
 such provision the appeal must be held to be com-
 petent and must be heard and decided.

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It now remains to be determined if in the ab-
 sence of the other heirs of Mannu Lal the appel-
 lants can or cannot be given any relief in the
 appeal. It has been urged on behalf of the land-
 lord that no relief claimed by the appellants can
 be granted without creating two conflicting
 orders. If in appeal the *ex parte* decree is set aside
 then the appellants will have a right to contest the
 suit while the other two heirs of Mannu Lal against
 whom the order refusing to set aside the decree
 had become final would not be able to contest the
 suit on merits and would be liable to eviction. It is
 urged that to avoid this anomalous position the
 only course open to the Court of appeal was to
 dismiss the appeal.

The tenants' case, however, is that it was open
 to the appellate Court to avoid this consequence
 of a conflicting decision by giving the required
 relief to the non-appealing tenants who are
 parties to the suit although they had not been im-
 pleaded in this appeal. For this purpose reliance
 has been placed on the provisions contained in
 Order 41, Rule 4 and Order 41, Rule 33, Civil Pro-
 cedure Code.

Order 41, Rules 4 and 33, Civil Procedure Code
 read :

- "4. Where there are more plaintiffs or
 more defendants than one in a suit, and

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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.

33. The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection:”

Now Order 41, Rule 4 is an enabling provision and empowers courts to exercise discretion in favour of persons who have not appealed against the decree provided the decision proceeds on grounds common to the appellants and the non-appealing persons. This rule does not say that this power can be exercised only if the non-appealing persons are parties to the appeal. If Order 41, Rule 4 is read with Order 1, Rule 3, Civil Procedure Code and the word “respondent” is read for “defendant” in Order 1, Rule 3, then the respondent against whom the relief is sought would be a necessary party to the appeal. There is no provision which compels a party to implead persons against whom no relief is sought. Such persons may be proper

parties to the suit or appeal but are not necessary parties. It is well established that the absence of the *pro forma* party against whom no relief is sought does not disentitle the plaintiff or the appellant to seek relief against the persons who have been impleaded nor is there any provisions which prohibits a Court from deciding the matter on merits. Moreover, the order under Order 41, Rule 4 is to be made in favour of and not against the non-appealing person. Principles of natural justice require that no decision against a party should be made without affording him an opportunity to place his case before the deciding authority. It is however not the principle of natural justice that no order can be passed in favour of a person who has not been heard. It, therefore, follows that non-impleading of a *pro forma* party to whom a relief may be granted under Order 41, Rule 4 does not affect any principle of law or justice. In fact it is only just and proper that a person who has not appealed or who has not been impleaded as a *pro forma* respondent may be given relief by Courts on any ground common to all the plaintiffs or the defendants so that full effect may be given to the decision of the Court. Such an exercise of power under Order 41, Rule 33, Civil Procedure Code in favour of an absent party also would make the decision of the Court consistent. It may, however, be pointed out at this stage that it is always discretionary to exercise powers under Rules 4 and 33 in favour of an absent party and that discretion is to be exercised judicially.

In 1922 the Legislature enacted Order 41, Rule 33 and it has been enacted to empower the Appellate Court to do complete justice between the parties. It is an enabling provision. *Vide Sir Hari Sankar Pal and another v. Anath Nath Mitter and others* (1). It empowers Courts to exercise power

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(1) A.I.R. 1949 F.C. 106

Brij Mohan Lal in favour of and not against "all or any of the respondents or parties". If Order 41, Rule 4 and Order 41, Rule 33 are read together then it becomes absolutely clear that this power can be exercised in favour of persons who have not been impleaded in an appeal.

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It was argued by Shri Bhagwat Dayal the learned counsel for the landlord that the words "all or any of the respondents or parties" occurring in Order 41, Rule 33 only mean respondents and that the word "parties" has been used merely as equivalent to "respondents" because a party to an appeal if not an appellant must be a respondent. If this construction is accepted then it follows that the words "or parties" are surplusage in Order 41, Rule 33. It is well established that no word in a section must be considered to be redundant and meaning should be given to it if possible. As discussed above I am of the opinion that the word "parties" as distinct from the word "respondents" only means parties to the suit and not necessarily parties to the appeal. This construction is in consonance with the decision in *Mt. Parwati Kuer and others v. Manna Lal Khetan and others* (1), with which I am in respectful agreement. This view has also been taken by the Calcutta High Court. *Vide Ambika Charan Chakrabarti and another v. Sasitara Debi and others* (2), *Bhutnath Deb and others v. Sashimukhi Brahmin* (3), and *Kamalakanta Debnath and others v. Tamijaddin and others* (4). The same view has been taken in *Rameshwar Prashad and others v. Satya Narain and others* (5) and in *Mukandi Ram Chuhar Mal*

(1) A.I.R. 1956 Patna 414 (F.B.)

(2) 30 I.C. 868

(3) A.I.R. 1926 Cal. 1042

(4) A.I.R., 1935 Cal. 24

(5) A.I.R. 1954 Allahabad 115

and others v. Asa Ram, Basant Singh and another Brij Mohan Lal
 (1), As observed in *Mukku Venkataramiah v.* v.
Mukku Chinnaiah and others (2), the illustration Raj Kishore
 to Order 41, Rule 33 is not exhaustive of the scope and another
 of the rule but is merely illustrative. Bishan Narain,
 J.

The learned counsel for the landlord, however, placed his reliance on various decisions of the Lahore High Court which in fact led Mehar Singh, J., to refer this question to Division Bench. The first case on this point is reported in *Saru Khan v. Jan Muhammad and others* (3). In that case the plaintiffs appellants before the High Court did not implead co-plaintiffs either as appellants or as respondents. Tek Chand, J., observed :

“Order 41, Rule 4 authorises one of the plaintiffs to an action in which other co-plaintiffs are also interested, to appeal for the benefit of the latter, only if they are made parties to the appeal. The proposition is too obvious to require discussion. Authority for it will be found in *Ambika Prasad v. Jhimull Singh* (4), *Balkaran Lal v. Malik Namdar* (5), *Jitendra Nath v. Jaku Mandar* (6), and *Haji Begum v. Shankar Rao* (7).”

In that case it was conceded by the learned counsel for the appellant that it was by his mistake that the co-plaintiffs were not impleaded as respondents. The High Court exercised its power under Order 41, Rule 20, Civil Procedure Code and impleaded them. It will, therefore, be seen that the learned counsel appearing for the appellant in that

(1) A.I.R. 1955 Pepsu 73
 (2) A.I.R. 1919 Mad. 196
 (3) A.I.R. 1928 Lah. 43
 (4) A.I.R. 1923 All. 211
 (5) A.I.R. 1924 All. 873
 (6) A.I.R. 1922 Pat. 4
 (7) 53 I.C. 534

Brij Mohan Lal case did not contest the point and obviously it was
 v. not argued fully before the Bench. The proposi-
 Raj Kishore tion was taken to be obvious on account of certain
 and another decisions of the Allahbad and Patna High Courts.
 Bishan Narain, Now *Ambika Prasad's case* (1), related to abate-
 J. ment and was over-ruled in *Mahadeo Singh and
 others v. Talib Ali and others* (2), The circum-
 stances of the present case occurred in *Balkaran
 Lal's case* (3), The matter, however, was not
 discussed in that case and the learned Single Judge
 merely followed *Ambika Prasad's case* (1). In the
 Patna case (*Jitendra Nath v. Juku Mandar*) (4),
 it was held that the suit against some of the tenants
 for rent for one holding would not be competent
 and therefore, an appeal without impleading all
 the tenants would be incompetent. This case is
 clearly distinguishable from the present one. The
 last case referred to by Tek Chand, J., is a Nagpur
 case. (*Haji Begum v. Shankar Rao Parbat Rao*)
 (5). It only lays down that a tenant's right under
 the Berar Land Revenue Code is heritable and
 transferable. It makes no reference to Order 41,
 Rule 4, Civil Procedure Code. It will, therefore,
 be clear that the point did not actually arise in
Saru Khan v. Jan Muhammad and others (6), be-
 cause of the concession by the appellant's counsel
 and because of the Court's deciding to implead the
 non-impleaded parties under Order 41, Rule 20,
 Civil Procedure Code. In my view the decision in
Saru Khan's case (6), cannot be said to have laid
 down affirmatively that the provisions of Order 41,
 Rules 4 and 33, apply only to persons who are be-
 fore the Court and not to parties who have not
 been impleaded.

(1) A.I.R. 1923 All. 211
 (2) A.I.R. 1928 All. 345 (F.B.)
 (3) A.I.R. 1924 All. 873
 (4) A.I.R. 1922 Pat. 4
 (5) 53 I.C. (Nagpur) 543
 (6) A.I.R. 1928 Lah. 43

The decision in *Saru Khan's case* (1), was followed by Bhido, J., in *Fazal Hussain Shah and others v. Ghulam Rasul and another* (2), and in *Kartar Singh and others v. Waryam Singh and others* (3), without any discussion. The matter again came up before a Full Bench in *Nanak, etc. v. Ahmad Ali and another* (4). In that case one of the appellants died and his legal representatives were not brought on the record. The Full Bench held that the interests of the two appellants who were co-owners were severable and therefore, the appeal did not abate in toto. Achhru Ram, J., who wrote the main Judgment in this case observed :

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“We did not consider it necessary to hear the parties at any length on the question as to the applicability of Order 41, Rule 4, Civil Procedure Code, or to examine the various conflicting decisions given by the different High Courts on this much vexed question. I wish, however, to observe that, without pronouncing any final opinion on the question whether the provisions of Order 41, Rule 4, Civil Procedure Code, should control those of Order 22, Rule 3, Civil Procedure Code, on which there is undoubtedly a conflict of opinion even in this Court, it would not be possible to apply Order 41, Rule 4 in the present case. Mr. Asa Ram Aggarwal, the learned counsel for the appellant, had to concede that according to the view consistently taken in this Court Rule 4 of Order 41, cannot be applied where the

(1) A.I.R. 1928 Lah. 43
(2) 110 I.C. 250
(3) 40 P.L.R. 6
(4) A.I.R. 1946 Lah. 399 (F.B.)

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non-appealing plaintiff or defendant, as the case may be, has not been impleaded in the appeal at all and is not before the appellate Court."

The learned Judge then discussed the various authorities of the Lahore High Court and concluded by holding that Order 41, Rule 4, Civil Procedure Code did not apply to the case. In my view the decision in *Nanak's case* (1), is not a decision on the point now under consideration in view of the specific observation of Achhru Ram, J., that the opinion expressed by him was not final. In fact in *Nanak's case* (1), full argument on this point were not allowed to be advanced by the counsel for the parties. I am, therefore, of the opinion that the decisions of the Lahore High Court and particularly the decision in *Saru Khan's case* (2), does not decide the question under consideration.

That being so I am of the opinion that Order 41, Rule 4, and also Order 41, Rule 33, empower the Court to pass an order in favour of a party to the suit or application though not a party to the appeal. This conclusion is in accordance with the decisions taken by the Calcutta, Patna, Allahabad, and Pepsu High Courts. No decision to the contrary excepting the decisions discussed above has been brought to our notice.

For these reasons, I would hold that the appeal before the learned Senior Sub-Judge was properly constituted. This point raised by Shri Bhagwat Dayal appearing for the landlord in the revision petition, therefore, fails and is overruled. The case must now be placed for hearing before the Single Bench for decision on merits.

Capoor, J.

CAPOOR, J.—I agree.

R. S.

(1) A.I.R. 1946 Lah. 399 (F.B.)

(2) A.I.R. 1928 Lah. 43