



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO No. 149 of 2013

Reserved on: 07.03.2026

Date of decision: 24.03.2026

Shiv Charan

...Appellant

Versus

State of HP & another

...Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ *Whether approved for reporting?*

For the appellant:

Mr. Mohinder Verma, Advocate.

For the respondents:

Mr. Ankush Thakur, Deputy Advocate
General.

Sushil Kukreja, Judge

This appeal is directed against the order dated 14.01.2013, passed by the learned District Judge, Kangra at Dharamshala, HP, whereby application under Order 41, Rule 21, read with Section 151 of CPC filed by the applicant (appellant herein) for restoration of the appeal, has been dismissed.

2. Brief facts of the case are that the appellant had filed a suit being Civil Suit No.121/91, before the Court of learned Sub Judge, 1st Class-II, Palampur District Kangra, HP for declaration and permanent injunction against the respondents/ State, which

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*



was partly decreed, vide judgment and decree dated 17.05.1999 and the plaintiff-appellant was held entitled for the relief of injunction and the defendants were restrained from interfering in the suit land until and unless ejected in due process of law. Feeling aggrieved and dissatisfied against the aforesaid judgment and decree dated 17.05.1999, the respondents-State had filed an appeal before the learned District Judge, Kangra at Dharamshala and the same was allowed, vide judgment and decree dated 22.08.2000 and the impugned judgment and decree dated 17.05.1999, passed by the learned Trial Court was set-aside.

3. Against the judgment and decree dated 22.08.2000, passed by the learned District Judge, the present appellant had filed an appeal, being RSA No.556 of 2000, which was later on withdrawn on 24.04.2001, on the ground that the same was not maintainable. Thereafter, the appellant filed an application under Order 9, Rule 13, CPC, which was dismissed on 02.12.2012 and against the said order, the appellant had filed an appeal being FAO No.39 of 2003 and during the course of arguments in the said FAO, the appellant opted to avail remedy under Order 41, Rule 21, CPC instead of filing application under Order 9, Rule 13, CPC and, therefore, FAO No.39 of 2003 was withdrawn by the



appellant on 26.04.2007, with liberty to file appropriate application before the learned District Judge.

4. Thereafter, the appellant filed an application under Order 41, Rule 21, CPC on 22.05.2007, however, the said application was dismissed by the learned District Judge, Kangra at Dharamshala, vide the impugned order dated 14.01.2013. It is this order dated 14.01.2013, passed by the learned District Judge on the application filed by the appellant under Order 41, Rule 21, CPC, against which the present appeal has been filed.

5. Learned counsel for the appellant contended that on 22.08.2000, neither the appellant, nor his counsel was present and, therefore, the appeal could not have been decided in the absence of the appellant. He further contended that even if it is assumed that since appellant was not present on 22.08.2000 and that his counsel was also not present, even then, the judgment and decree dated 22.08.2000 has to be *ex-parte* and, therefore, keeping in view the facts and circumstances of the case, there were sufficient and good grounds for allowing the application filed by the appellant to afford opportunity of hearing to him under Order 41, Rule 21, CPC.

6. On the other hand, learned Deputy Advocate General



has supported the findings recorded by the learned First Appellate Court. He contended that the learned First Appellate Court has rightly dismissed the application filed by the plaintiff under Order 41, Rule 21, read with Section 151 of CPC for restoration of the appeal.

7. I have heard the Mr. Mohinder Verma, learned counsel for the appellant and Mr. Ankush Thakur, learned Deputy Advocate General and also gone through the entire record carefully.

8. Perusal of the material on record reveals that while deciding the appeal on 22.08.2000, the learned District Judge, in para-6 of the judgment, observed as under:-

“Notice of the appeal was issued to the respondent. I have heard Shri N.K.Sharma, learned District Attorney for the State/appellants and no arguments were advanced by counsel for the respondent, since the advocates were on strike for the last so many days. I have also gone through the grounds of appeal and record of the case.”

9. Thus, from the perusal of judgment and decree dated 22.08.2000, it is apparent that on the relevant date, the Advocates were on strike and no arguments were advanced by the learned counsel for the respondent and the learned First Appellate Court had proceeded to decide the appeal on merits, without hearing the learned counsel for the respondent. In other



words, no opportunity of being heard was given to the present appellant at the time of decision of the appeal on merits and the judgment and decree dated 17.05.1999, passed by the learned Sub Judge, First Class-II, Palampur, District Kangar, HP was set-aside.

10. Needless to state that right to fair hearing is a guaranteed right and in any case, it is one of the fundamental principles of natural justice that no person can be condemned unheard. It was the duty of the learned First Appellate Court to provide the respondent (appellant herein) an effective opportunity to address arguments. The impugned order was, thus, passed in violation of the principles of natural justice in the absence of any effective/reasonable opportunity of hearing provided to the present appellant. From the perusal of the record, it is clear that the learned First Appellate Court in a hurriedly manner and without affording opportunity of hearing to the respondent had passed impugned judgment and decree by violating principle of *audi alteram partem*. In view of above factual position, the learned First Appellate Court has committed a gross error in not providing any effective/reasonable opportunity of being heard to the respondent (appellant herein) before passing the impugned



judgment and decree dated 22.08.2000.

11. In view of the above discussion, the application filed by the applicant (appellant herein) under Order 41, Rule 21, read with Section 151 of CPC is allowed and the order dated 14.01.2013 is set-aside. Consequently, the impugned judgment and decree dated 22.08.2000, passed by the learned District Judge, Kangra at Dharamshala, in Civil Appeal No.144-D/XIII-1999, are set-aside and the learned First Appellate Court is directed to decide the appeal afresh on merits in accordance with law, after giving reasonable opportunity of being heard to both the parties. Since the appeal pertains to the year 1999, the learned First Appellate Court is directed to decide the same on or before **31.07.2026**. Parties are directed to appear before the learned District Judge on **20.04.2026**. Registry is directed to send back the records forthwith.

The appeal is disposed of accordingly, so also the pending miscellaneous application(s), if any.

(Sushil Kukreja)
Judge

March 24, 2026
(V. Himalvi)