

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. _____ OF 2025
[@ SLP (C) No.2025 @ SLP (C) D.No. 59467/2024]**

CHARAN SINGH

Appellant

VERSUS

RAM SAROOP

Respondent

ORDER

1. Delay condoned.
2. Leave granted.
3. The appellant as plaintiff had instituted a suit¹. The respondent, who was the defendant in the suit, filed a counter claim. *Vide* a common judgment and order dated 16th March, 2021, the trial court² dismissed the suit and allowed the counter claim.
4. Instead of filing two appeals under Section 96 of the Code of Civil Procedure, 1908³ with separate memoranda of appeal, the appellant chose to file one composite appeal⁴ challenging the common judgment and order of the trial court. The first appellate court⁵, by its judgment and order dated August 20, 2022, dismissed the appeal as not maintainable since the appellant had not filed two separate appeals.
5. This judgment and order dated 20th August, 2022 of the first appellate

1 C.S. 148 of 2019

2 Senior Civil Judge, Una, Himachal Pradesh

3 CPC

4 Civil Appeal No. 27 of 2021

5 Additional District Judge (1), Una, Himachal Pradesh

court was carried by the appellant before the High Court of Himachal Pradesh at Shimla in appeals filed under Section 100, CPC⁶ with separate memoranda of appeal. The High Court too dismissed the appeals on the same ground as assigned by the first appellate court.

6. We have heard learned counsel appearing for the respective parties and perused the impugned judgments.

7. In our considered view, reliance was rightly placed by the first appellate court on precedents to hold that a composite appeal was not maintainable in law but, at the same time, the first appellate court ought to have borne in mind that courts exist for rendering justice *albeit* in accordance with law. Once the first appellate court found, correctly, that challenge to the common judgment of the trial court dated 16th March, 2021 had been laid in a composite appeal but it is the requirement of law to file two appeals with separate memoranda of appeal, which had not been filed by the appellant, the court ought to have at least alerted the appellant by making him aware of the requirement of law and giving him the liberty to file a separate memorandum of appeal. In fact, in terms of Order XLI Rule 1 of the CPC, the appellate court has the power to even dispense with the requirement of law of filing copy of the impugned judgment twice over if it is part of the memorandum of appeal already filed. In any event, the defect was not such that it was incurable. The composite appeal was filed well within the period of limitation and, except for the fact that a separate memorandum of appeal was not filed, no other defect, far less serious defect, was shown to exist. If even after being alerted the appellant had failed to file a separate memorandum, the first appellate court would have been perfectly justified in dismissing the appeal. It is not shown to us that any such endeavour

⁶ RSA Nos. 307 and 308 of 2022

was made.

8. The first appellate court having failed to alert the appellant, we would have expected the High Court to intervene to set right the wrong by its interdiction. **Technicality of a nature such as this should not have been allowed to prevail over substantive justice.** The appellant had filed two second appeals before the High Court, meaning thereby that he had been properly advised while such advice might have been missing in the district of which the parties are residents. Unfortunately, the High Court did not address the point from the proper perspective either. While spurning the objection of learned counsel for the respondents, who has vehemently argued that there is no occasion to interfere since the appellant did not adhere to the law, we find good reason and ground to interfere.

9. For the ends of justice, we set aside the impugned second appellate judgment and decree of the High Court together with the first appellate judgment and decree. This would result in revival of the first appeal on the file of the first appellate court. We grant liberty to the appellant to file a separate memorandum of appeal, without certified copy of the impugned judgment and decree, within three weeks from date. Once it is filed, the same shall be registered without limitation being treated as a bar. Should there be a default, the appellant shall lose the benefit of this order.

10. If such memorandum is filed, the first appellate Court shall proceed to decide the appeals afresh on merits. All contentions on merit are left open to be urged and decided by the first appellate court.

11. The appeal is, accordingly, disposed of on the aforesaid terms.

12. Pending application(s), if any, stand disposed of.

.....J.
[DIPANKAR DATTA]

.....J.
[MANMOHAN]

**New Delhi;
February 03, 2025.**

ITEM NO.14

COURT NO.14

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 59467/2024

[Arising out of impugned final judgment and order dated 12-06-2024 in RSA No. 307/2022 12-06-2024 in RSA No. 308/2022 passed by the High Court of Himachal Pradesh at Shimla]

CHARAN SINGH

Petitioner(s)

VERSUS

RAM SAROOP

Respondent(s)

IA No. 25284/2025 - CONDONATION OF DELAY IN FILING

Date : 03-02-2025 This matter was called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE MANMOHAN**

**For Petitioner(s) :Mr. Sanpreet Singh Ajmani, AOR
Mr. Amit Kumar, Adv.
Mr. Digant Mishra, Adv.**

**For Respondent(s) :Ms. Charu Sharma, Adv.
Mr. Nishant Nain, Adv.
Mr. Vishal Kumar, Adv.
Mr. Mudit Talesara, Adv.
Mr. Archit Upadhayay, AOR**

**UPON hearing the counsel the Court made the following
O R D E R**

1. Delay condoned.
2. Leave granted.
3. The appeal is disposed of in terms of the signed order.
4. Pending application(s), if any, shall stand disposed of.

(JATINDER KAUR)
P.S. to REGISTRAR

(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)

[Signed order is placed on the file]