

**THE MADHYA PRADESH UCHCHA NYAYALAYA  
(KHAND NYAYPEETH KO APPEAL)  
ADHINIYAM, 2005**

(Act No. 14 of 2006)

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**C O N T E N T S**

1. Short title and commencement.
2. Appeal to the Division Bench of the High Court from a Judgment or order of one Judge of the High Court made in exercise of original jurisdiction.
3. Power to make rules.
4. Repeal.

**THE MADHYA PRADESH UCHCHA NYAYALAYA  
(KHAND NYAYPEETH KO APPEAL) ADHINIYAM, 2005**

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**An Act to provide for an appeal from a judgment or order passed by one judge of the High Court in exercise of the original jurisdiction, to a Division Bench of the same High Court.**

Be it enacted by the Madhya Pradesh Legislature in the Fifty- sixth year of the Republic of India as follows:—

**1. Short title and commencement.**—(1) This Act may be called the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005.

(2) It shall be deemed to have come into force on the 1st day of July, 1981.

**2. Appeal to the Division Bench of the High Court from a judgment or order of one Judge of the High Court made in exercise of original jurisdiction.**—(1) An appeal shall lie from a Judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

(2) An appeal under sub-section (1) shall be filed within 45 days from the date of order passed by a single Judge:

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Provided that any appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that he had sufficient cause for not preferring the appeal within such period.

**Explanation.** -The fact that the petitioner was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this sub-section.

(3) An appeal under sub-section (1) shall be filed, heard and decided in accordance with the procedure as may be prescribed by the High Court.

## COMMENTARY

### SYNOPSIS

#### A. Sub-section (1) of Section 2:

1. Writ appeal against an order - Maintainability of - Full Bench decisions.
2. Some writ appeals held maintainable.
3. Some writ appeals held not maintainable.
4. Availability of Intra Court appeal and/or Right of appeal.
5. Rights of Writ Court.
6. Jurisdiction.
7. Third appeal barred.
8. New ground not allowed in writ appeal argument.

#### B. Sub-section (2) of Section 2:

1. Scope of the explanation appended to sub-section (2).
2. Meaning of word "petitioner" used in explanation attached.

#### A. Sub-section (1) of Section 2:

##### 1. Writ appeal against an order - Maintainability of - Full Bench decisions.-

(a) [per majority judgment by four Judges (S.Samvatsar J. contra)].-The maintainability of a writ appeal from an order of the learned Single Judge would depend upon many an aspect and cannot be put into a straitjacket formula. It cannot be stated with mathematical exactitude. It would depend upon the pleadings in the writ petition, nature of the order passed by the learned Single Judge, character and the contour of the order, directions issued, nomenclature given and the jurisdictional prospective in the constitutional context are to be perceived. It cannot be said in a hypertechnical manner that an order passed in a writ petition, if there is assail to the order emerging from the Inferior Tribunal or Subordinate Courts has to be treated all the time for all purposes to be under Article 227 of the Constitution of India. It would depend upon the real nature of the order passed by the learned Single Judge. To elaborate: whether the learned Single Judge has exercised his jurisdiction under Article 226 or under Article 227 or both would depend upon various aspects and many a facet as has been emphasized in the aforequoted decisions of the Apex Court. The pleadings, as has been indicated hereinabove, also

assume immense significance. It would not be an overemphasis to state that an order in a writ petition can fit into the subtle contour of Articles 226 and 227 of the Constitution in a composite manner and they can coincide, co-exist, overlap or imbricate. In this context it is apt to note that there may be cases where the learned Single Judge may feel disposed or inclined to issue a writ to do full and complete justice because it is to be borne in mind that Article 226 of the Constitution is fundamentally a repository and reservoir of justice based on equity and good conscience. It will depend upon factual matrix of each case.

In view of the aforesaid premised reasons, we are of the humble view that dismissal of an appeal from *Rama and Co. v. State of M.P.*, 2007(3) MPLJ 154 = 2007(3) MPHT 325 = 2007(II) MPJR 229 (DB), is not a binding precedent as there are earlier judgments in the field and the High Court bound to follow the earlier decisions as per the law laid down in *Union of India v. Raghubir Singh (dead) by L.Rs. etc.*, AIR 1989 SC 1933, *Indian Oil Corporation Ltd. v. Municipal Corporation*, AIR 1995 SC 1480, N.S. *Giri v. Corporation of City of Mangalore*, 1999(4) SCC 697, *Chandra Prakash v. State of U.P.*, 2002 AIR SCW 1573, *Jabalpur Bus Operators Association v. State of M.P.*, 2003(1) MPLJ 513=2003(1) MPJR 158(FB) and *S. Brahmanand v. K.R. Muthugopal (dead) and others*, 2005(12) SCC 764.

### Conclusions:

In view of our aforesaid analysis we proceed to record our conclusions in *seriatim*:-

- (i) A power to issue the writ is original and the jurisdiction exercised is original jurisdiction.
- (ii) Proceedings under Article 226 of the Constitution are in exercise of original jurisdiction of the High Court whereas the proceedings initiated under article 227 of the Constitution are supervisory in nature.
- (iii) When a writ is issued under Article 226 of the Constitution it is issued in exercise of original jurisdiction whether against a Tribunal or an Inferior Court or Administrative Authorities.
- (iv) The power exercised under Article 226 of the Constitution is in exercise of original jurisdiction and not supervisory jurisdiction.
- (v) Exercise of supervisory power and power of superintendence is not to be equated with the original or supervisory jurisdiction.
- (vi) The order passed in SLP (Civil) No. 9186/2007 is a declaration of law under Article 141 of the Constitution but the High Court is bound to follow the earlier decisions in the field regard being had to the concept of precedents as per law laid down by the Apex Court and the five Judge Bench decision in *Jabalpur Bus Operators Association v. State of M.P.*, 2003(1) MPLJ 513 = 2003(1) MPJR 158 (FB).



- (vii) The decision rendered in *Rama and Co. v. State of M.P.*, 2007(3) MPLJ 154 = 2007(3) MPHT 325 = 2007(II) MPJR 229, is binding upon the parties *inter se*.
- (viii) The decisions rendered by the Apex Court in the context of appeal under Letters Patent as regards maintainability of an appeal would govern the field pertaining to maintainability of appeal preferred under section 2 of the 2005 Adhiniyam.
- (ix) The view taken by the Full Bench in *Dr. Jaidev Siddha v. Jaiprakash Siddha*, 2007(3) MPLJ 595 (FB) = AIR 2007 MP 269 = 2007(5) MPHT 388 = 2007(2) MPJR 361 (FB) cannot be treated to have been impliedly overruled due to dismissal of the Special Leave Petition preferred against the order rendered in the case of *Rama and Co.* (supra).
- (x) The law laid down in the case of *Dr. Jaidev Siddha v. Jaiprakash Siddha*, 2007(3) MPLJ 595 (FB) = 2007(2) MPJR 361 (FB), holds the field and the principles laid down therein will have full applicability.

[**per S. Samvatsar, J.**]-The object for which the reference was made appears to be that the Division Bench could not declare a judgment rendered by the Three-Judge *as per incuriam* and, hence the matter was referred to the Larger Bench. This Court now cannot say that the judgment rendered by the Apex Court is not applicable on any reason particularly when the judgment in the SLP is the solitary judgment of the Apex Court on the provisions of the Adhiniyam. Earlier, there was no occasion for the Apex Court to examine the question of maintainability in the light of the provisions of the Adhiniyam which came into force with effect from 5th April, 2006. The Apex Court dismissed the SLP after considering the fact that the judgment of the learned Single Judge hearing writ petition against the Board of Revenue was not in original jurisdiction, hence, writ appeal is not maintainable.

So far as this Court is concerned, the view taken by the Supreme Court in SLP No. 9186/2007 is a binding precedent as the sole question before the Supreme Court in the said SLP was about the maintainability of the appeal after coming into force of Adhiniyam of 2005 and earlier the Supreme Court had no occasion to deal with such a situation. Hence, so far as this Court is concerned, said view has attained finality and cannot be reopened in view of the aforesaid decision of the Apex Court. Therefore, judgment in SLP No. 9186/2007 is a binding precedent which is to be followed by this High Court unless the view taken by the Apex Court in the said SLP is overruled. *Manoj Kumar v. Board of Revenue*, 2008(1) M.P.L.J. 152 = 2007(4) MPHT 545 = 2007(III) MPJR 328 (FB).

(b) [As decided in strength of three Judges Full Bench].-The pleadings in the writ petition, nature of the order passed by the learned single Judge, character and the contour of the order, directions issued, nomenclature given, the jurisdictional prospective in the constitutional context are to be perceived. It cannot be said in a hyper technical manner that an order passed in a writ petition, if there is assail to the order

emerging from the inferior tribunal or subordinate courts has to be treated all the time for all purposes to be under Article 227 of the Constitution of India. **Phraseology used in exercise of original jurisdiction under Article 226 of the Constitution in Section 2 of the Act cannot be given a restricted and construed meaning** because an order passed in a writ petition can tantamount to an order under Articles 226 and 227 of the Constitution of India and it would depend upon the real nature of the order passed by the learned single Judge. To elaborate: Whether the learned single Judge has exercised his jurisdiction under Article 226 or under Article 227 or both would depend upon various aspects.

As has been held in the case of *Surya Dev Rai v. Ram Chander Rai*, AIR 2003 SC 3044 **a writ of certiorari can be issued** under Article 226 of the Constitution against an order of a tribunal or an order passed by the subordinate Court. In quintessentiality, it cannot be put in a strait-jacket formula that any order of the learned single Judge that deals with an order arising from an inferior tribunal or the subordinate Court is an order under Article 227 of the Constitution of India and not an order under Article 226 of the Constitution. It would not be an overemphasis to state that an order in a writ petition can fit into the subtle contour of Articles 226 and 227 of the Constitution in a composite manner and they can coincide, co-exist, over-lap or imbricate. In this context it is apt to note that there may be cases where the learned single Judge may feel disposed or inclined to issue a writ to do full and complete justice because it is to be borne in mind that Article 226 of the Constitution is fundamentally a repository and reservoir of justice based on equity and good conscience. It will depend upon factual matrix of the case. *Dr. Jaidev Siddha v. Jaiprakash Siddha*, AIR 2007 M.P. 269 = 2007(3) MPLJ 595 = 2007(5) MPHT 388 = 2007(3) JLJ 151 = 2007(2) MPJR 361 (FB).

#### (c) **Limeline other decisions of M.P. High Court.-**

(1) Full Bench in the case of *Dr. Jaidev Siddha v. Jaiprakash Siddha*, AIR 2007 M.P. 269 = 2007(3) MPLJ 595 = 2007(5) MPHT 388 = 2007(3) JLJ 151 = 2007(2) MPJR 361 (FB), hold, that the law laid down in the cases of *Lakhan Lal Sonkar v. Gun Carriage Factory*, 2007 (1) MPHT 335 (DB); *State of M.P. v. M.S. Wakankar*, 2007(1) MPLJ 99; and *Smt. Shiva Dubey (Jhira) v. Sumit Ranjan Dubey*, 2006(4) MPHT 420 (DB) are the law lay down the law correctly being in consonance and accord of the decisions of the Apex Court.

(2) Full Bench in the case of *Dr. Jaidev Siddha v. Jaiprakash Siddha*, AIR 2007 M.P. 269 = 2007(3) MPLJ 595 = 2007(5) MPHT 388 = 2007(3) JLJ 151 = 2007(2) MPJR 361 (FB), has overruled the judgment of Division Bench of M.P. High Court in the case of *M/s. Rama and Co. v. State of M.P.*, 2007(3) MPLJ 154 = 2007(3) MPHT 325 = 2007(3) JLJ 220 = 2007(2) MPJR 229 (DB) and held that even if the Single Judge hearing a petition under Article 226 of the Constitution against the order passed by the Court or Tribunal, a writ appeal lies. Before the Full Bench could deliver the aforesaid judgment, the judgment of Division Bench in the *Rama and Co.* (supra) was challenged before the Supreme Court in SLP



(C) No.9186/07. Said SLP was dismissed by the Apex Court by holding that no appeal lies before the Division Bench if a writ petition is filed before the High Court against the order of Board of Revenue as the order is not an original order.

(d) **Proviso of S.2(1) -Maintainability of bar against an Interlocutory order** [As decided in strength of three Judges Full Bench].-The proviso stipulates that no appeal would lie against an interlocutory order. But an eloquent and pregnant one, when an interlocutory order has the semblance of final order or affect the rights of the parties, it can be treated as an order for all practical purposes. The said exception cannot be treated in absolute terms to nullify the enactment. Therefore, the order has to be a final order by way of final disposal. It cannot be regarded as the correct interpretation of the proviso in entirety, for a writ Court can issue directions or pass orders in its inherent jurisdiction which can assume the colour of finality and, at an interim stage, can vitally affect the rights of the parties or destroy the rights or create a situation by which the relegation to the original stage would become impossible.

#### Conclusions in seriatim:

- (i) The proviso to Section 2(1) of M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 does not create an absolute bar to prefer an appeal to the Division Bench.
- (ii) An appeal can be preferred against an order regard being had to the nature, tenor, effect and impact of the order passed by the learned single Judge.
- (iii) It should be borne in mind that instances given in referred several decisions in this case are not exhaustive but illustrative in nature, because various kinds/categories of orders may be passed in exercise of jurisdiction under Article 226 of the Constitution of India.
- (iv) The facts in each case, the nature and the character of the order are to be scrutinised to appreciate the trappings of the same. *Arvind Kumar Jain v. State of Madhya Pradesh*, AIR 2007 M.P. 276 = 2007(3) MPLJ 565 = 2007(3) MPHT 376 = 2007(3) JLJ 187 = 2007(3) MPJR 4 (FB).

#### 2. Some writ appeals held maintainable.-

[1] **Appeal against an interlocutory order.**-Impugned order is having semblance of final order and have affected the rights of the appellant. Hence, the instant appeal is maintainable. *Arvind Kumar Jain v. State of M.P.*, AIR 2007 M.P. 276 = 2007(3) MPLJ 565 Relied on. *Municipal Corporation, Gwalior v. Leela Ram & Ors.*, AIR 2010 MP 219 = 2010(4) MPLJ 110.

[2] **Appeal against the order of Single Judge made in exercise of original jurisdiction.**-LPA refused High Court on the grounds that the order was passed in exercise of power of superintendence under Art. 227 of the Constitution of India therefore LPA is not maintainable & the Apex Court's earlier order only waived the limitation. Held, that, High

Court was not justified in holding that Apex Court's earlier order only waived the limitation for filing a LPA. The High Court was directed to dispose of the LPA on merits if it was otherwise free from defect. On that score alone the High Court's order is unsustainable. In addition, the High Court seems to have gone by the nomenclature i.e. the description given in the writ petition to be one under Art.227 of the Constitution. The High Court did not consider the nature of the controversy and the prayer involved in the Writ Petition. The prayer was to quash the order of assessment passed by the Asst. Commissioner. Commercial Tax levying purchase as well as Entry Tax. The High Court was not justified in holding that the Letters Patent Appeal was not maintainable. *M.M.T.C. Ltd. v. Commissioner of Commercial Tax*, 2009(2) MPLJ 227 (SC)(FB).

[3] **Error of law.**-An error of law made by a Tribunal can be corrected by the High Court under Article 226 of the Constitution. Writ petition was filed not only under Article 227 but also under Art.226 of the Constitution therefore the order passed by the single Judge is the order under Article 226 of the Constitution and an appeal against the order was available to the Division Bench under the Act of 2005. *Ramanuj Tiwari v. M.P. State Co-operative Tribunal*, 2008 RN 175.

#### 3. Some writ appeals held not maintainable.-

[1] **Appeal against the judgment and decree passed by Single Judge in appellate jurisdiction.**-No provision has been made in the M.P. Act No. 14 of 2006 for filing a writ appeal against the judgment and decree passed by the Single Judge in appellate jurisdiction. *Laxminarayan v. Shivlal Gujar*, 2010(1) MPLJ 186 = ILR 2009 MP 2503.

[2] **Refilling of the writ appeal to challenge the same order.**-Appellants sought to challenge the same order dated 15-11-2006 dismissing the writ petition No.4641/06 and which was assailed in previous writ appeal No.718/06 and got it dismissed as withdrawn and seeking reference to a larger bench. Held, the present writ appeal is not maintainable and filing of present writ appeal is an abuse of the process of the Court and we decline to entertain the writ appeal. On perusal of the pleadings and other orders, by refilling of the writ appeal, High Court is inclined to think a deliberate, adroit and ingenious attempt has been made to create a different kind of impression. The appellants have chosen their own facts and put forth them before the Court. Once they had filed the writ appeal, they could have got it adjudicated. They chose not to do so and filed an application in writing and withdrew the same by stating that after the deposit of the amount due, the appeal had been rendered infructuous. High Court would have been under obligation to answer the reference if the Court had been convinced that the writ appeal was maintainable and further that the reference at the instance of the appellants deserved to be answered but as the factual matrix would exposit, the writ appeal was dismissed as withdrawn. While dismissing previous writ appeal as withdrawn High Court granted liberty to approach other forum or seek remedy as permissible in law. The liberty was not taken to file writ appeal. To approach other forum would not mean to file another writ appeal.



challenging the same order and seek reference to a larger Bench by incorporation of such a prayer in the relief clause. *Great Galleon Ltd. v. Union of India*, 2009(2) MPLJ 609 (FB).

**4. Availability of Intra Court appeal and/or Right of appeal.** It is provided in S.2(1) that an appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Art. 226 of the Constitution to a Division Bench comprising two judges of same High Court. Thus, an Intra Court appeal was all though available only against a judgment and order passed by one Judge of the High Court in exercise of its original jurisdiction under Art. 226 of the Constitution and not against any judgment or order passed under Art. 226 of the Constitution as such. The legislative intent behind Clause 10 of the Letters Patent and Section 2 of the Adhiniyam of 2005 was that if a single Judge of the High Court hears a matter and passes an order, the litigant must have a right of appeal to a Division Bench of the High Court. The right of appeal, therefore, was not available in every writ petition was heard and decided by one judge of the High Court. *Priyank Chansoria v. High Court of M.P.*, 2009(4) MPLJ 586 (DB).

**5. Rights of Writ Court.** Writ Court can curtail the relief and that would not tantamount to interfering in the question jurisdictional fact which is based on ample evidence or material fact. *General Manager, Bank Note Press, Dewas v. Bank Note Press Office Staff Asso. Dewas*, 2008(4) MPLJ 424 (DB).

**6. Jurisdiction.** A larger Bench has jurisdiction to reconsider the entire matter afresh and redetermine the issue involved in the light of the provisions of the Act, Rules and Regulations. *Pabitra Mohan Dash v. State of Orissa*, (2001) 2 SCC 480 Relied on. *Great Galleon Ltd. v. Union of India*, 2009(2) MPLJ 609 (FB).

**7. Third appeal barred.** Third appeal against the judgment and decree of learned Single Judge of High Court is concerned, the same stand barred under S.100A of the Civil Procedure Code with effect from 1-2-1977 and does not stand revived under Section 4(1) of the Adhiniyam, 2005. *Ratanlal v. Purshottam*, 2006(4) MPLJ 620 (FB).

**8. New ground not allowed in writ appeal argument.** In argument a new ground raised by the learned counsel for the appellant which was not taken in the writ petition as well as in appeal, therefore it was held, when the ground was not raised before the Writ Court, it would not be proper for this Court in the Intra Court appeal to examine the question afresh. *Azmer Singh v. Board of Revenue*, 2007(4) MPLJ 277 = 2008 RN 21 = 2007(4) MPHT 256 (DB).

B. Sub-section (2) of Section 2:

**1. Scope of the explanation appended to sub-section (2).** In absence of any vagueness in the main section the ambit of the explanation cannot be understood to mean that the same is in the clarificatory nature so as to make it inconsistent with the dominant object which it seems to be and when in the main section word 'sufficient cause' has been used then the explanation would not control or restrict the meaning of the

phrase 'sufficient cause' as used in the main provision. The appended explanation is only to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful. An explanation cannot, however, take away a statutory right with which any person under statute has been clothed nor can set at naught working of an Act by causing hindrance by its interpretation. Held, that, the explanation, which has been attached has to be understood to provide the additional support to the dominant object of the Act for giving a meaningful purpose and also to avoid the creation of any obstacle to the statutory right of an appellant given under the statute. *Dr. Hari Singh Gaur Vishwavidyalaya, Sagar (M.P.) v. Rajeshwar Yadav*, 2008(4) MPLJ 274.

**2. Meaning of word "petitioner" used in explanation attached.** The word 'petitioner' though is used in the explanation but it does not mean that petitioner who files a writ petition in fact the word 'petitioner' is to be understood with reference to the context of sub-section (2) of Section 2 of the Adhiniyam, 2005 to mean and to be understood as a party who files the Writ Appeal and not the Original Petition. *Dr. Hari Singh Gaur Vishwavidyalaya, Sagar (M.P.) v. Rajeshwar Yadav*, 2008(4) MPLJ 274.

**3. Power to make rules.** (1) The High Court may, from time to time, make rules for carrying out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the procedure of filing, hearing and disposal of appeal under sub-section (3) of Section 2.

**4. Repeal.** (1) The Madhya Pradesh Uchcha Nyayalaya (Letters Patent Appeals Samapti) Adhiniyam, 1981 (No. 29 of 1981) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under or in pursuance of the said Act and which has attained the finality shall not be reopened in any court of law.

## COMMENTARY

**1. Third appeal barred.** Third appeal against the judgment and decree of learned Single Judge of High Court is concerned, the same stand barred under S.100A of the Civil Procedure Code with effect from 1-2-1977 and does not stand revived under Section 4(1) of the Adhiniyam, 2005. *Ratanlal v. Purshottam*, 2006(4) MPLJ 620 (FB).

**2. By repealing provision Clause 10 of Letters Patent not revived.** (i) Where an Act is passed repealing a repealing enactment, it shall not be considered as reviving any enactment previously repealed unless words are added reviving the enactment. (ii) The general rule of construction in relation to repeal of a repealing Act and observed that the repeal of a repealing Act does not revive anything repealed thereby unless a different intention in the repealing statute expressly or implicitly appears.



Held, in the absence of any express or implicit provision in the 2005 Adhiniyam providing for appeal from a judgment, decree or order passed by learned Single Judge under Section 96 of the CPC to a Division Bench by virtue of the repeal of the M.P. Uchcha Nyayalaya (Letters Patent Appeals Samapti) Adhiniyam, 1981 under Section 4 of the 2005 Adhiniyam, appeal under Clause 10 of the Letters Patent from a judgment and decree passed by learned Single Judge in exercise of appellate jurisdiction under Section 96 of the Code of Civil Procedure are not revived. *Smt. Shashibai v. Smt Revabai*, 2008(1) MPLJ 92 = 2007(4) MPHT 467(FB).

## THE HIGH COURT OF MADHYA PRADESH CASE FLOW MANAGEMENT RULES, 2006

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