

**(2014) 05 MP CK 0009**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Appeal No. 353/2014**

Khalid Ahmed and Others

APPELLANT

Vs

Sarwar Ahmed and Another

RESPONDENT

**Date of Decision :** 16-05-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151  
Constitution of India, 1950 — Article 226, 227  
Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

**Citation :** (2014) 05 MP CK 0009

**Hon'ble Judges :** Rajendra Menon, J;A.K. Sharma, J

**Bench :** Division Bench

**Advocate :** Ashok Lalwani, Advocate for the Appellant

**Final Decision :** Dismissed

## Judgement

1. This appeal u/s 2(1) of the MP Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 (hereinafter referred to as "Adhiniyam of 2005") is filed aggrieved by order-dated 28.3.2014, passed by a learned Single Bench of this Court in Review Petition No. 130/2014.

2. Office has raised an objection with regard to maintainability of this appeal mainly on the ground that the original writ petition was a petition under Article 227 of the Constitution i.e....Writ Petition No. 20673/2013 and, therefore, a writ appeal against the order passed is not maintainable.

3. However, Shri Ashok Lalwani submitted that after the order-dated 10.2.2014 was passed by the writ court in W.P. No. 20673/2013, a review application was filed being R.P. No. 130/2014 and as the review application was dismissed on 28.3.2014, learned counsel submits that this power exercised is under Article 226 of the Constitution in view of the law laid down by the Supreme Court, in the case of Shivdeo Singh and Others Vs. State of Punjab and Others, and, therefore, against the review application, the writ appeal is maintainable.

Accordingly, learned counsel submits that the office objection is unsustainable.

4. Facts, in a nut-shell, goes to show that a writ petition was filed under Article 227 of the Constitution, whereby an application filed by the appellants/petitioners u/s 151 of the Code of Civil Procedure, in a pending suit for summoning of witnesses was dismissed by the trial court. Against the order passed by the 5th Additional District Judge, Bhopal in Civil Suit No. 510-A/2012 dismissing the application for summoning of witnesses u/s 151 CPC, a writ petition under Article 227 of the Constitution was filed. A learned Single Bench of this Court considered the petition on 10.2.2014, and by a detailed order, dismissed the petition. Against dismissal of the writ petition under Article 227 of the Constitution, an application for recall was filed, which was registered as R.P. No. 130/2014 and on 28.3.2014, this application was also dismissed as no ground for review as made out.

5. It is in the backdrop of the aforesaid that Shri Ashok Lalwani has now come out with a case that even though against the order-dated 10.2.2014, passed by the writ court in W.P. No. 20673/2013, no writ appeal was maintainable u/s 2(1) of the Adhiniyam of 2005, but in the light of the law laid down by the Supreme Court in the case of Shivdeo Singh (supra), against the order dismissing the review application a writ appeal is maintainable.

6. Under the Adhiniyam of 2005, "an appeal shall lie from a judgment or an order passed by one Judge of the High Court in exercise of its original jurisdiction under Article 226 of the Constitution to a Division Bench, comprising of Two Judges". It is clear that u/s 2(1) of the Adhiniyam of 2005, a writ appeal is only maintainable if the learned Single Judge has exercised jurisdiction under Article 226 of the Constitution. Admittedly, in the present case, in Writ Petition No. 20673/2013, the jurisdiction exercised is under Article 227 of the Constitution, as challenge was made to an interlocutory order passed by the Civil Court in a pending proceeding.

7. Recently, a Division Bench of this Court in the case of Mohd. Imran Siddique Vs. State of M.P. and Others, , has considered somewhat similar question and it has been held by the Division Bench that if the review application filed is dismissed and the original order which was under review and which is challenged in the writ appeal was against an order passed by the Single Judge under Article 226 of the Constitution, then an order passed in review is maintainable in a writ appeal. The observations made by the Division Bench in the said case read as under:

There is a preliminary objection about maintainability of a writ appeal against an order passed in a review petition. It is not necessary to go into the question about such maintainability generally. It is not disputed that a writ appeal was maintainable against the original order passed in the writ petition under Article 226 of the Constitution of India. Therefore, suffice it to say that if in review an order is passed or direction is issued, which direction was not contained in the

order under review, it would amount to a fresh writ order or direction under Article 226 of the Constitution of India, and would therefore be amenable to a writ appeal.....

8. From the aforesaid, it is clear that if against the original order passed in the writ petition some order is passed in a review, the order under review can be challenged in a writ appeal, if the original order in the writ petition was under Article 226 of the Constitution.

9. If the said principle is applied in this case, as the original order in the writ petition decided by the learned Single Judge was a petition under Article 227 of the Constitution, it has to be held that against the order passed in a review the writ appeal is not maintainable. That being the position, the arguments advanced by Shri Ashok Lalwani is wholly misconceived.

10. As far as the judgment in the case of Shivdeo Singh (supra) is concerned, in the said case the only principle laid down is that under Article 226 of the Constitution, High Court has got inherent power to review its own order. The said judgment will not help the appellants for the simple reason that even if it is assumed that the review application was dismissed exercising the power of Article 226, but in the order passed in review on 28.3.2014, no decision is taken, no finding is recorded and no principle of law is laid down which can be considered by this Court. The order-dated 28.3.2014 only says that no case is made out for review of the order passed on 10.2.2014, in Writ Petition No. 20673/2013, meaning thereby that the review order only reiterates the earlier order passed in the petition under Article 227 of the Constitution, on 10.2.2014.

11. That being the factual position, we are of the considered view that the review order passed on 28.3.2014 does not decide any question, factual or otherwise, exercising jurisdiction under Article 226 of the Constitution. It only confirms the order earlier passed on 10.2.2014, in W.P. No. 20673/2013 under Article 227 of the Constitution; and, as against the original order passed under Article 227 of the Constitution, no writ appeal is maintainable, the submissions made by Shri Ashok Lalwani are misconceived and we see no reason to interfere into the matter.

12. The appeal is wholly misconceived, it is not maintainable and is, therefore, dismissed.