

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
BENCH AT AURANGABAD.**

**LPA ST.NO.4694 OF 2010
IN
WRIT PETITION NO.4529 OF 2008.**

Sitaram S/o Soma Jadhav ... Apellants.
And another

Versus

Shankar S/o Balwant Vanjarkhedkar
and others. ... Respondents.

Mr.H.V.Patil, advocate for the appellants.
Mr.A.D.Sugdare, advocate for Respondent No.1.
...

**CORAM : S.V.GANGAPURWALA &
V.K.JADHAV, JJ.**

Date : 10.07.2015.

PER COURT :

1. In the present appeal the appellants assail the order passed by the learned single Judge, thereby allowing the writ petition and setting aside the order passed by the Deputy Director of Land Records rejecting the application

for condonation of delay filed by the present respondents

2. Mr. Patil the learned counsel for the petitioner submits that, the Deputy Director of Education has considered the fact there is no sufficient cause spelt out in the application for condonation of delay filed by the present respondents for not preferring the appeal before the Deputy Director within the prescribed period of limitation. On 04.06.1998 the order was passed by the Superintendent of Land Records. The letter communicating the said order was issued to all the parties on 04.06.1990 itself. The present respondents had nowhere stated that they have not received the said communication. The learned counsel submits that, the presumption is that the said communication is received, having been dispatched at the correct address. The learned single Judge while allowing the writ petition filed by the respondents have not considered the said aspect. The learned counsel submits that even the Writ Petition is not tenable inasmuch as the remedy of revision under

section 257 of the Maharashtra Land Revenue Code, is permissible. The learned counsel relies on the judgment of the Apex Court in a case of **“Sadhana Lode V/s National Insurance Co. Ltd.”** reported in **2003 (3) SCC 524.**

3. Mr. Sugdare the learned counsel supports the order.

4. We have considered the submissions canvassed by the learned counsel for the respective parties. In a case of **“Sadhana Lode Vs. National Insurance Co. Ltd.”** (referred supra), the Apex Court had held that substantive remedy of appeal was available, interference under Art. 226 and 227 is not maintainable.

5. In the present case against the order impugned before the learned single Judge, the petitioners therein did not have any remedy of appeal. It was only a revisional jurisdiction which could have been exercised against the said order. It is not a case that the remedy of appeal on restricted grounds was available as was the case before the Apex Court.

6. In any case the Court was exercising the powers under Art. 227 of the Constitution of India and when the learned single Judge exercises the powers of Constitution under Art. 227 of the Constitution of India the present Letters Patent Appeal itself would not be maintainable.

7. Even otherwise we have considered the submissions canvassed by Mr. Patil the learned counsel for the appellant on merit. It is trite that whenever technical considerations and cause for substantial justice are pitted against each other, the cause for substantial justice has to be subserved. It has not been pointed out that the alleged communication in the year, 1998 of the judgment was ever served upon the present respondents. The respondents state that, the same is not served upon them. Even otherwise respondents would not gain by delay as they were assailing the judgment which had gone against them.

8. Considering all the aforesaid aspects of the matter the Letters Patent Appeal stands disposed of. No costs.

(V.K. JADHAV, J.)

(S.V. GANGAPURWALA, J.)

