

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5716 OF 2024

1. Pravin Gajanan Thakur
2. Smt. Rekha Gajanan Thakur
3. Sou. Anagha Ganesh Kathe
4. Sou. Sadhana Jayendra Pathare

...Petitioners

V/s.

1. Kalpana Virbhadra Raut
2. Manohar Madhukar Mhatre
3. Sou. Kalavati Prakash Gharat
4. Sub Divisional Officer Alibag
5. Additional Collector Raigad, Alibag.

...Respondents

Mr. Rohit D. Joshi *for Petitioners.*

Mrs. V.S. Nimbalkar, *AGP for Respondent / State.*

Mr. Saurabh K. Raut, *(through VC) for Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 14 February 2025.

Judgment pronounced on : 21 February 2025.

Judgment:

1. The issue of maintainability of a further appeal before the higher appellate authority against an order merely condoning the delay in filing of an appeal passed by the lower appellate authority under Section 251 of the Maharashtra Land Revenue Code, 1966 (**MLRC**) repeatedly attracts attention of this Court and there has already been sufficient jurisprudence on this issue in the form of

judgments of coordinate benches of this Court. However, it is noticed that different interpretations of those judgments are often placed in support and against the contention of maintainability of such appeals, which has necessitated the present judgment so as to avoid confusion and achieve better clarity on the issue.

2. The issue arises in the light of challenge set up by the Petitioners to the order dated 2 August 2023 passed by the Additional Collector, Raigad, holding that the appeal is not maintainable against order dated 17 May 2023 passed by the Sub-Divisional Officer, Alibag (SDO) allowing the application for condonation of delay.

3. Considering the nature of issue taken up for consideration, it is not necessary to narrate facts of the case in detail. Land bearing Gat No.248/1/C admeasuring 0.08 Hectar 60 R at village -Thal, Taluka- Alibag, District-Raigad is the subject matter of the Petition. Mutation Entry No.6866 was certified on 13 May 1960 deleting the name of Krishna Bhaskar Mhatre and entering the name of Gajanan Thakur as holder of the land. Respondent No.1 got aggrieved by the said Mutation Entry No.6866 after period of 65 long years and filed R.T.S. Appeal No.43 of 2023 before the SDO, Alibag challenging the said Mutation Entry. Alongwith the appeal, Respondent No.1 filed application for condonation of delay. SDO took up only the application for condonation of delay and issued notices to the Respondent therein (Petitioners herein). It appears that Petitioners did not appear before the SDO. After considering the submissions canvassed on behalf of the Appellant/Respondent No.1, SDO proceeded to pass order dated 17 May 2023 allowing the application for condonation of delay holding that the Appeal was

required to be decided on merits. He accordingly fixed further date of hearing in the appeal.

4. Petitioners got aggrieved by order dated 17 May 2023 passed by the SDO and filed Appeal No.294 of 2023 before the Additional Collector, Raigad. However, the Additional Collector held that the appeal was not maintainable under the provisions of Section 252 of the MLRC and appeal has accordingly been dismissed as not maintainable by order dated 2 August 2023. Petitioners are aggrieved by the order dated 2 August 2023 and have filed the present Petition.

5. Mr. Rohit Joshi, the learned counsel appearing for the Petitioners would submit that the Additional Collector has erred in dismissing the Petitioners' Appeal as not maintainable. He would submit that there is nothing in the MLRC which bars the remedy of appeal against the order of condonation of delay. That the Additional Collector has ignored the fact that the appeal has not been filed against an order passed by the lower appellate authority admitting the appeal. That the appeal was filed before the Additional Collector against the decision of the SDO condoning the delay in filing the appeal before him. He would submit that an appeal may not lie against an order of mere admission of the appeal under Section 252 of the Code, however there is no express bar in maintaining and deciding the appeal against order condoning the delay. That there is fundamental distinction between decision of the lower Appellate Authority in mere admitting the appeal and, in the decision condoning the delay in filing of the Appeal. That it is not the Legislative intent to deny remedy of Appeal against order of condonation of SDO. He would submit that condonation of delay involves adjudication of rival contentions raised by contesting parties

and that therefore the remedy of appeal must be made available to the affected party to question the decision of the lower Appellate Authority in condoning the delay. In support of his claim, he would submit that this Court has recognised this distinction and has upheld maintainability of the appeal against order of condonation of delay in ***Balwant Narayan Thale V/s. Pushplata Vasudev Patil***¹. That the same view is reiterated in ***Kanchanbai w/o Baburao Sukalkar V/s. Additional Commissioner, Aurangabad and Ors.***²

6. In his usual fairness, Mr. Joshi would invite attention of this Court on judgment rendered by this Court in ***Sadanand Tukaram Suroshe V/s. Ashok Gajanan Suroshe and Ors.***³ in which this Court has held that an order passed by the SDO admitting the appeal after condoning delay is not appealable and the only remedy available to the affected party is to file revision before the State Government. He would however submit that attention of this Court was not invited to the judgment in ***Kanchanbai w/o Baburao Sukalkar*** (supra) while rendering the judgment in ***Sadanand Tukaram Suroshe*** (supra). Mr. Joshi would submit that in subsequent decision rendered in ***Ashokrao Ganpati Ghatge and Ors. V/s. Madhavrao Ramchandra Ghatge and Ors.***⁴ this Court has held that there is no embargo created by the Court for filing of an appeal against the order condoning delay. He would submit that the judgment in ***Ashokrao Ganpati Ghatge*** (supra) has been rendered after considering the ratio of the judgment in ***Sadanand Tukaram Suroshe*** and that therefore the view taken in ***Ashokrao Ganpati Ghatge*** would ultimately prevail. He would also rely upon judgment

¹. Writ Petition No.8673 of 2016, decided on 9 January 2017.

². Writ Petition No.6966 of 2017, decided on 13 February 2019.

³. Writ Petition No.12965 of 2023, decided on 28 March 2024.

⁴. Writ Petition No.5561 of 2022, decided on 27 September 2024

of this Court in ***Ahmad Ambir Shaikh (deceased) thr. LRs. Mukhtyar Esmael Shaikh & Ors.***⁵

7. Lastly, Mr. Joshi would rely upon judgment of the Apex Court in ***National Insurance Company Limited V/s. Pranay Sethi and Others***⁶ in support of his contention that the consistent view taken by co-ordinate benches ought to have been followed by this Court in ***Sadanand Tukaram Suroshe*** (supra) so as to avoid confusion. Mr. Joshi would therefore submit that the appeal preferred by the Petitioners before Additional Collector is required to be considered and decided on merits by setting aside the order dated 2 August 2023.

8. Mr. Raut, the learned counsel appearing for Respondent No.1 would oppose the Petition submitting that the issue of non-maintainability of appeal against the order condoning the delay is well settled by judgment of this Court in ***Sadanand Tukaram Suroshe***. He would submit that the SDO has not just condoned the delay but has held that the appeal needs to be heard and decided on merits. That the SDO has fixed the next date for hearing of the appeal on merits. That Section 251 of the Code contemplates admission of appeal after condoning the delay and that there is no further or separate provision to once again decide the issue of admission of appeal. That therefore the express bar under provisions of Section 251 of the Code would apply against every order admitting the appeal by condoning the delay. That in every case where the appeal is directed to be heard on merits, the same is deemed to have been admitted thereby debarring the remedy of further appeal under Section 252 of the Code. He would therefore pray for dismissal of the Petition.

⁵. Writ Petition No.15106 of 2022, decided on 14 December 2022

⁶. 2017 16 SCC 680.

9. Ms. Nimbalkar, the learned AGP appearing for Respondents-State would also oppose the Petition submitting that the language of provision of Section 252 of the Code is clear and unequivocal and therefore Appeal is not maintainable against order admitting the appeal after condonation of delay. She would rely upon judgment of this Court in ***Ramanlal s/o. Kachardas Bakliwal and Anr. V/s. Niyaj mohammad Khan Akhil Khan and Ors.***⁷ in support of her contention that no appeal lies from an order admitting an appeal. She would also rely upon judgment of this Court in ***Vishwanath S/o Balawant Shingnapurkar V/s. Yashwant S/o Harishchandra Umale and Anr.***⁸ in support of her contention that revision is maintainable against order condoning the delay under Section 257 of the Code. She would pray for dismissal of the Petition.

10. Rival contentions of the parties now fall for my consideration.

11. As observed above, short but important issue that arises for consideration is whether an appeal is maintainable before the higher appellate authority against an order passed by the lower appellate authority merely condoning the delay in filing of the appeal. If answer to this question is in the negative, the next issue for consideration is the exact remedy available to the affected party against the order condoning the delay by the lower appellate authority.

12. As observed above, there have been series of judgments passed by the co-ordinate Benches of this Court which are often

⁷. 2004(2) ALL MR 49 (Aurangabad Bench)

⁸. Writ Petition No.5725 of 2015, decided on 1 February 2017 (Nagpur Bench)

quoted by parties, both for and against the proposition of maintainability of such appeal. There appears to be slight inconsistency in views taken by coordinate benches of this Court in various decisions rendered in the past and therefore, I have thought it appropriate to reconcile the said views so that greater clarity is achieved and confusion is avoided. Before proceeding to deal with the judgments rendered by co-ordinate Benches, it would be necessary to take a very quick stock of the relevant provisions of the MLRC.

13. Chapter 13 of MLRC deals with 'Appeals, Revision and Review'. Section 247 of MLRC is fountain source of remedy of appeal against any decision or order passed by the Revenue or Survey Officer. It provides that an appeal shall lie from every decision or order passed by Revenue or Survey Officer specified in Column I of Schedule E to the officers specified in Column 2 of that Schedule irrespective of whether such decision or order may itself have been passed on appeal from the decision or order of the officer specified in Column I of the said Schedule. Section 247 of MLRC provides thus:

247. Appeal and appellate authorities

(1) In the absence of any express provisions of the Code, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue or survey officer specified in column I of the Schedule E under this Code or any other law for the time being in force to the officer specified in column 2 of that Schedule whether or not such decision or order may itself have been passed on appeal from the decision or order of the officer specified in column I of the said Schedule:

Provided that, in no case the number of appeals shall exceed two.

(2) When on account of promotion or change of designation, an appeal against any decision or order lies under this Section to the same officer who has passed the decision or order appealed against, the appeal shall lie to such other officer competent to decide the appeal to whom it may be transferred under the provisions of this Code.

14. Schedule E to the Code enumerates the Revenue Officers in Column I and the exact appellate authorities *qua* the decision or order rendered by them in Column 2. Schedule E reads thus:

Revenue Officer		Appellate Authority
1.	All Officers in a Sub-Division, sub-ordinate to the Sub-Divisional Officer.	Sub-Divisional Officer or such Assistant or Deputy Collector as may be specified by the Collector in this behalf.
2.	Sub-Divisional Officer, Assistant or Deputy Collector.	Collector or such Assistant or Deputy Collector who may be invested with powers of the Collector by the State Government in this behalf.
3.	Collector (including the Collector of Bombay) or Assistant/Deputy Collector invested with the appellate power of the Collector.	Divisional Commissioner.
4.	A person exercising powers conferred by Section 15.	Such officer as may be specified by the State Government in this behalf.

15. Thus, the hierarchical appellate structure of Revenue and Survey Officers under the Code is such that a decision taken by any officer in a sub-division subordinate to SDO (Circle Officer or Tehsildar) is appealable before the SDO. Since the decision taken by the SDO in an appeal is also appealable under Section 247, further appeal lies to the Collector/Assistant Collector/Deputy Collector. Against a decision of the Collector appeal lies to the Divisional Commissioner. Similar are the provisions with regard to the availability of remedy of appeal against decisions/orders of Survey Officers. Proviso to Section 247 however imposes a maximum cap of two appeals in a given case.

16. Section 248 of MLRC deals with an appeal before the State Government against an order passed by the Commissioner and provides thus:-

248. Appeal when to lie to State Government.

An appeal shall lie to the State Government from any decision or order passed by a Commissioner or by a Settlement Commissioner or by a Director of Land Records, or by a Deputy Director of Land Records invested with powers of Director of Land Records except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him.

17. Section 249 of MLRC provides for remedy of appeal against a decision taken in Review or Revision and provides thus:

249. Appeal against review or revision.

(1)An order passed in review varying or reversing any order shall be appealable in the like manner as an original decision or order.

(2)An order passed in revision varying or reversing any order shall be appealable as if it were an order passed by the revisional authority in appeal.

18. Section 250 of MLRC prescribes the period of limitation for filing of appeals and provides thus:-

250. Periods within which appeals must be brought.

No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Land Records in their respective departments; nor after the expiration of ninety days in any other case. The period of sixty and ninety days shall be counted from the date on which the decision or order is received by the appellant.

In computing the above periods, the time required to obtain a copy of the decision or order appealed against shall be excluded.

19. Section 251 of MLRC confers power on the appellate authority to admit the appeal after expiry of period of limitation prescribed under Section 250 upon demonstration of sufficient cause for not presenting the appeal within time. Section 251 of the Code is a

crucial provision for determination of the issue at hand and provides thus:

251. Admission of appeal after period of limitation.

Any appeal or an application for review under this Chapter may be admitted after the period of limitation prescribed therefor when the appellant or the applicant, as the case may be, satisfies the officer or the State Government to whom or to which he appeals or applies, that he had sufficient cause for not presenting the appeal or application, as the case may be, within such period.

20. The analysis of provisions of Section 251 of the Code is done in latter part of the judgment and it would be first necessary to complete the reproduction of further provisions of MLRC relating to the remedy of appeals, review and revisions. Section 252 of MLRC bars the remedy of appeal against certain orders and provides thus:-

252. Appeal shall not be against certain orders.

No appeal shall lie from an order-

- (a) admitting an appeal or an application for review under Section 251;
- (b) rejecting an application for revision or review; or
- (c) granting or rejecting an application for stay.

21. Section 255 of MLRC deals with power of appellate authority, who can either admit the appeal or summarily reject it. Section 255 of Code provides thus:

255. Power of appellate authority

- (1) The appellate authority may either admit the appeal or, after calling for the record and giving the appellant an opportunity to be heard, may summarily reject it :

Provided that, the appellate authority shall not be bound to call for the record where the appeal is time barred or does not lie.

- (2) If the appeal is admitted, a date shall be fixed for hearing and notice thereof shall be served on the respondent.

- (3) After hearing the parties, if they appear, the appellate authority may, for reasons to be recorded in writing, either annul,

confirm, modify, or reverse the order appealed against, or may direct such further investigation to be made, or such additional evidence to be taken as it may think necessary; or may itself take such additional evidence; or may remand the case for disposal with such directions as it thinks fit.

(4) Any appeal filed before any revenue or survey officer shall be disposed of within a period of one year from the date on which such appeal is filed :

Provided that, any such appeal filed before the date of commencement of the Maharashtra Land Revenue Code (Amendment) Act, 2016 shall be disposed of within a period of one year from the date of such commencement :

Provided further that, in exceptional circumstances, for reasons to be recorded in writing, the period for disposing of any appeal may be extended further by six months by the State Government or an officer not below the rank of Collector designated in this behalf who is superior to the appellate authority :

Provided also that, where the appellate authority fails to dispose of any such proceeding within the period specified in this sub-section, the State Government alone shall be competent to grant such further extension of time for disposing of any such proceeding as it may deem fit, after recording reasons therefor in writing.

(5) If the appellate authority fails without sufficient cause, to dispose of any appeal within the period specified in sub-section (4), he shall be liable for disciplinary action in accordance with the concerned disciplinary rules applicable to him.

22. Sections 257 and 259 of MLRC are also relevant for deciding the latter part of the issue involved in the present case and the same are reproduced thus:-

257. Power of State Government and of certain revenue and survey officers to call for and examine records and proceedings of subordinate officers

(1) The State Government and any revenue or survey officer, not inferior in rank to an Assistant or Deputy Collector, or a Superintendent of Land Records, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue or survey officer, for the purpose of satisfying itself or himself, as the case may be, as the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

Provided that, no such proceedings under this sub-section or sub-section (2) shall be initiated by any revenue or survey officer after expiry of a period of five years from the date of decision or order of the subordinate officer except with the previous permission of the State Government.

(2) A Tahsildar, a Naib-Tahsildar, and a District Inspector of Land Records in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held.

(3) If in any case, it shall appear to the State Government, or to any officer referred to in sub-section (1) or sub-section (2) that any decision or order or proceedings so called for should be modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit:

Provided that, any proceeding brought before any revenue or survey officer shall be disposed of within a period of one year from the date on which such proceeding is filed:

Provided further that, any proceeding pending under this section, before any revenue or survey officer on the date of commencement of the Maharashtra Land Revenue Code (Amendment) Act, 2016, shall be disposed of within a period of one year from the date of such commencement:

Provided also that, where the revisional authority fails to dispose of any such proceeding within the period specified in this sub-section, the State Government alone shall be competent to grant such further extension of time for disposing of any such proceeding as it may deem fit, after recording reasons therefor in writing.

Provided also that, in exceptional circumstances, for reasons to be recorded in writing, the period for disposing of any such proceeding may be extended further by six months by the State Government or an officer not below the rank of Collector designated in this behalf who is superior to the revisional authority:

Provided also that, if the revisional authority fails to dispose of any such proceedings within the period specified in sub-section (3), without sufficient cause, then he shall be liable for disciplinary action in accordance with the concerned disciplinary rules applicable to him:

Provided also that, the State Government or such officer shall not vary or reverse any order affecting any question or right between private persons without having given to the parties interested notice to appear and to be heard in support of such order:

Provided also that, an Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has

been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

(4) Revision of an order issued under sub-section (1) or (2) by any officer referred to therein shall not be permissible; but it shall be lawful for the State Government alone to modify, annul or reverse any such order issued under sub-section (1) or (2).

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259. Rules as to decisions or orders expressly made final.

Whenever in this Code, it is provided that a decision or order shall be final or conclusive, such provision shall mean that no appeal lies from any such decision or order; but it shall be lawful to the State Government alone to modify, annul or reverse any such decision or order under the provisions of Section 257.

23. For deciding the issue of maintainability of appeal against an order of condonation of delay passed by the lower appellate authority, provisions of Sections 251, 252, and 255 of MLRC are most crucial. Section 252 of the Code bars appeal against an order *‘admitting an appeal or an application for review under Section 251’*. Thus, against every order passed by the lower appellate authority under Section 251 of the Code, no Appeal can be preferred.

24. As observed above, the appellate authority is vested with jurisdiction and power to admit an appeal by condoning the delay. Section 251 of MLRC uses the expression *‘Any appeal or an application for review under this Chapter may be admitted after the period of limitation prescribed therefor...’*. It is use of the words *‘admitted’* in Section 251 and *‘admitting an appeal’* under section 252 which seek to create some degree of confusion as if there is a process of ‘admission’ contemplated under Section 251. From plain language of Section 251, an appeal automatically gets admitted the moment delay in the filing the same is condoned. Every order passed under

Section 251 of MLRC would be an order either admitting an appeal after condonation of delay or dismissing the same by refusing to condone the delay. There is no dispute to the position that against an order of refusal of condonation of delay, an appeal would lie under Section 247 of the MLRC, as Section 252 does not bar such an appeal. Thus, what essentially happens under Section 251 of MLRC is either the delay is condoned or not condoned. In the former case, appeal gets registered upon condonation of delay for further process whereas the same is dismissed in the latter case. This process of registration of an appeal after condonation of delay is the concept of 'admission' under Section 251 and 252 of MLRC. Thus, every time the delay is condoned, the act of registration of appeal for further processing, which is termed in Section 251 as 'admission', would be automatic and remedy of appeal would clearly get barred under Section 252 (a) of the Code.

25. The intention of the Legislature is not to provide the remedy of appeal against the discretion exercised by the appellate authority in condoning the delay. However, where the Appellate Authority refuses to condone the delay, the remedy of appeal is provided by the Legislature.

26. The expression '*admitting an appeal*' used in Section 252(a) of the Code cannot be read in isolation for inferring that no appeal would lie against an order of mere admission of appeal. The said expression '*admitting an appeal*' must be necessarily read in conjunction with the further words '*under Section 251*'. Thus, an order passed admitting an appeal under Section 251 is not appealable. As against this, there is no bar for maintainability of appeal against order of admission of appeal under Section 255 of MLRC. The Legislature has consciously not included the order passed under

Section 255(1) of MLRC in Section 252. This would essentially mean that where there is no question of condonation of delay and where the appellate authority passes a simple order of admission of appeal under Section 255(1) of the Code, an appeal against such order would not be barred. However, against a separate and distinct category of admission of appeal upon condonation of delay under Section 251 of Code, the remedy of appeal is clearly barred under the provisions of the Code. It may well be argued that providing remedy of appeal against simple order of admission under Section 255(1) of the Code, but not providing such remedy of appeal against decision of condonation of delay under Section 251 of MLRC is absurd. However, in many cases, the appeal itself may not be maintainable at all and if the lower appellate authority decides to admit the same under Section 255 (1), aggrieved party can file further appeal under Section 247 to the higher appellate authority. However, so far as discretion exercised by the lower appellate authority in condoning the delay, the Legislature has barred the remedy of appeal. Also, the aggrieved party by order of condonation of delay is not completely remediless and a revision against such order can always be filed under Section 259 of MLRC. The legislative intention is that in every case, the discretion exercised by the appellate authority in condoning the delay should not be challenged in further appeals and must be given finality. It is in a gross case where unduly long delay is condoned without justification, that an aggrieved party can apply for revision before the State Government. Therefore, the interpretation upon conjoint reading of Sections 251, 252 and 255 that no remedy of appeal is provided against order of condonation of delay, but such remedy of appeal is provided against an order of admission of appeal does not really result in absurdity. In fact, the converse proposition would destroy the legislative objective. To illustrate, if there is delay of

15 days in filing appeal before the Additional Collector against order passed by the SDO and the Additional Collector exercises discretion and condones that delay, the aggrieved party would file appeal against exercise of such discretion before the Divisional Commissioner, which would remain pending for months, if not years, on mere question of condonation of delay. This would destroy the legislative intent of giving finality to discretion exercised by the appellate authority in condoning the delay. If the delay is gross, like in the present case, the aggrieved party can approach the State Government to challenge the order condoning the delay in revision. The objective is to limit the cases of challenge by denying the routine remedy of appeal but preserving the exceptional remedy of revision.

27. Use of the words ‘admission’ of appeal under Sections 251 and 255 seek to create some degree of confusion at the first reading. Section 251 of MLRC deals with the aspect of condonation of delay in filing the appeal and it does not deal with the concept of application of mind to the contents of appeal memo presented before the appellate authority. Therefore, the words ‘*may be admitted*’ used in Section 251 of the Code essentially refers to mere ministerial act of further processing the appeal after condoning the delay. In a given case, after performance of such ministerial act of admission of the appeal after condonation of delay, the appeal may still have to pass the muster under Section 255(1) of the Code. The power of the appellate authority of either admitting or summarily rejecting the appeal under Section 255(1) of the Code is much wider and refers to adjudicatory function of the appellate authority. Careful perusal of the manner in which Section 255(1) is couched would indicate that the appellate authority can, in a given case, merely hear the appellant and proceeded to summarily reject the appeal. In another case, appellate authority may

have a look at the contents of the appeal and if it finds that the appeal is not maintainable under the MLRC, it can reject the appeal at that stage itself. Thus, power of admission/summary rejection of the appeal under the provisions of sub-Section (1) of Section 255 of the Code amounts to adjudicatory function of the appellate authority, where it can even proceed to summarily reject the appeal after hearing the appellant or hold that the appeal is not maintainable. Therefore, the concept of '*admission*' under Section 251 of the Code cannot be confused with the one under Section 255(1).

28. In a given case, it may happen that an appeal may go through twin stages of ministerial admission as well as adjudicatory admission. To illustrate, an appellant may present an appeal after the period of limitation prescribed under Section 250 of the Code. The appellate authority, after hearing both the sides decides to condone the delay and simultaneously performs the ministerial act of admission of the appeal by registering the same for further process. As observed above, any further overt act of admission under Section 251 of the Code is not even necessary as condonation of delay automatically results in the ministerial act of admission of appeal under Section 251 of MLRC. After passing the muster of ministerial admission under Section 251 of MLRC, the appellate authority travels to the stage of Section 255(1) and would look into the contents of the appeal memo and may find that the appeal is not maintainable for any specified reason. To illustrate, an appellant may file an appeal against order passed by the SDO under the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**Tenancy Act**) before the Additional Collector, which, in law, is not maintainable. In such a case, the appellate authority (Additional Collector) can reject such appeal under the provisions of Section 255(1) of the Code without

even admitting the same. This is the adjudicatory function performed by the appellate authority under Section 255(1) of MLRC as contradistinct from mere ministerial act of admission of appeal simultaneous condonation of delay under Section 251 of MLRC. A party aggrieved by rejection of appeal under Section 255(1) is entitled to file appeal under Section 247. As observed above, in a given case, not involving delay, where Respondent is yet to appear in the appeal, the Appellate Authority can still summarily reject the appeal by calling for records of the case and after hearing the Appellant. In such a case, where the appeal is summarily rejected by not admitting the same, the appellant obviously would have a remedy of appeal under Section 247 of the Code. Similarly, in a case where appellate authority erroneously admits the appeal for e.g. against order passed under the Tenancy Act, the aggrieved respondent can file appeal before the second appellate authority against the order of admission of appeal under Section 255(1) under Section 247 of MLRC.

29. Having set out the broad propositions while answering the issue formulated for answer, it would now be necessary to have a look at the various judgments delivered by coordinate benches of this Court. Before proceeding to do so, it must be observed at the very outset that there are only two judgments as such dealing with the issue at hand and the rest are mere orders without making elaborate discussion of the statutory scheme of MLRC relating to the remedy of appeal. However, those judgments and orders are often cited in support of and against the contention of availability of remedy of appeal. It would therefore be necessary to consider, discuss and reconcile the ratio of those judgments and orders so as to achieve clarity on the subject and for avoiding confusion.

30. ***Balwant Narayan Thale*** (supra) is an Order passed by the coordinate bench of this Court (*R.M. Savant, J.*) in which this court had encountered a situation where the SDO had merely condoned the delay and the operative part of his order did not contain a direction for admission of the appeal. It was therefore held that the provision of barring an appeal under Section 252 of the Code would come into play only in the event of the appeal being admitted by the SDO. It was thus held that where the order merely condones the delay without admitting the appeal, the remedy of further appeal is not barred under Section 252. This Court went a step ahead and held that under Section 257 of the Code, even an Additional Collector could otherwise exercise power of revision against the order passed by the SDO. This Court therefore held that the Additional Collector could thus exercise appellate power under Section 252, as well as revisionary power under Section 257 against an order condoning delay passed by the SDO. The relevant findings recorded by this Court in para-3 of the order are as under:

3. The writ jurisdiction of this Court is invoked against the order dated 15.06.2016 passed by the Additional Collector, Alibag, District Raigad. By which order, the said authority has refused to entertain the Appeal on the ground that he has no such jurisdiction under Sections 247/257 having regard to Sections 251, 252 and 259 of the Maharashtra Land Revenue Code, 1966. It is required to be noted that the said Appeal was filed against the order dated 28.03.2016 passed by the Sub Divisional Officer, Alibag. By which order, the delay of about 51 years in filing the Appeal was condoned. A reading of the said order dated 28.03.2016 discloses that the Sub Divisional Officer has only condoned the delay, but the operative part of his order is bereft of any direction that the Appeal has been admitted. Having regard to Section 252 of the Maharashtra Land Revenue Code, it is only in the event of an Appeal being admitted that the prohibition to entertain an Appeal under Section 252 comes into play. In so far as Section 257 is concerned, it postulates the State Government and any Revenue or Survey Officer, not inferior in rank to an Assistant or Deputy Collector, or a Superintendent of Land Records, in their respective departments, calling for and examining the record of any inquiry or the proceedings of any subordinate Revenue or

Survey Officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. Hence the power under Section 257 is vested in the State Government or a Revenue or Survey Officer not inferior in rank to an Assistant or Deputy Collector, or the Superintendent of Land Records. In the instant case, since the order was passed by the Sub Divisional Officer, Alibag, who is obviously subordinate to the Additional Collector, the Additional Collector was well within his rights to even exercise the powers of Revision under Section 257. Hence in the instant case, for the reasons aforesaid, both the appellate power under Section 252, as there is no order admitting the Appeal passed by the Sub Divisional Officer, as also the power under Section 257 could be exercised by the Additional Collector. In view thereof, the impugned order dated 15.06.2016 passed by the Additional Collector, Alibag, District Raigad, rejecting the Application/Appeal as being not maintainable is set aside and the matter is remanded back to the Additional Collector, Alibag, District Raigad for a de-novo consideration of the RTS Appeal No.154 of 2016. The parties to appear before the Additional Collector on 24.01.2017. The Additional Collector may thereafter fix the schedule as per his convenience and dispose of the Application/Appeal latest by 31.03.2017. The parties would co-operate in such disposal of the proceedings by the Additional Collector. Needless to state that the Application/Appeal would be decided by the Additional Collector on its own merits and in accordance with law by giving proper opportunity to the parties. The Petition is allowed to the aforesaid extent, and disposed of.

31. In my view, the order passed in ***Balwant Narayan Thale*** misses a point that Section 251 of the Code does not contemplate passing of a separate order for admission of the appeal, as contradistinct from the provisions of Section 255 of the Code. It appears that attention of this Court was not invited to the provisions of Section 255(1) of MLRC. As discussed above, under Section 251, condonation of delay and consequent admission of the appeal is a composite act. The act of admission envisaged under Section 251 is a mere ministerial act of registration of appeal for further process as contradistinct from admission of the appeal under Section 255(1) after application of mind to the contents of appeal memo by the appellate authority. Therefore, the words '*admitting an appeal*' used under Section 252(a) cannot be read in isolation and must be read in

conjunction with the words ‘*under Section 251*’ and accordingly every order passed under Section 251 would get covered by Clause (a) of Section 252 and accordingly no appeal would be maintainable against any order passed under Section 251 of the Code, be it an order condoning the delay or additional ministerial act of admission of the appeal. This position is also explained in subsequent judgment of this Court in ***Sadanand Tukaram Suroshe*** (supra) which is being discussed in the latter portion of the judgment. In my view, the judgment in ***Balwant Narayan Thale*** (supra) rendered in the facts of that case, cannot be read in support of an absolute proposition of law that in every case, appeal would be maintainable against that part of order under Section 251 of the Code which condones the delay. Further observations of *R.M. Savant, J.* about maintainability of revision before the Additional Collector under Section 257 of the Code are in ignorance of the provisions of Section 259 under which only State Government can exercise revisionary powers against every order against which no appeal lies. The Order in ***Balwant Narayan Thale*** appears to have been passed without noticing the provisions of Section 255(1) and 259 of MLRC and is thus *per-incuriam*.

32) In ***Kanchanbai Baburao Sukalkar*** (supra), in a rather terse judgment, a coordinate bench of this Court (*S. P. Deshmukh J.*) has made following observations in paras-6 and 7:

6. Having regard to section 252 (a), it appears that appeal is not provided against admission of appeal or an application for review under section 251 of the MLR Code. It thus appears that appeal against decision of condonation of delay is not precluded.

7. Having regard to the provisions under the MLR Code as aforesaid, it appears that the orders rendered by the additional collector and the additional commissioner are unsustainable. The same are accordingly set aside. The appeal of the petitioner is restored with the additional collector to be proceeded with in accordance with law.

33) There is no elaborate discussion of the statutory scheme of MLRC while rendering the judgment in ***Kanchanbai Baburao Sukalkar*** and there is no reference to distinct concept of ‘admission’ of appeal under Section 255(1). Therefore, for the reasons recorded above, even this judgment cannot be read in support of absolute proposition of law that an appeal would be maintainable against decision condoning the delay. As held above, every order passed under Section 251 of the Code would be covered by Clause (a) of Section 252 and an appeal against such order is obviously barred by express provisions of Section 252.

34) In ***Ahmad Ambir Shaikh*** (supra), *Prabhudessai, J.* has held that the SDO had condoned the delay and admitted the appeal and therefore further appeal was not maintainable. In para-9 of the Order, it is held as under:

9. In the instant case, the Sub Divisional officer has condoned the delay and admitted the appeal, hence the appeal was not maintainable. The only remedy available to the Petitioner was to file revision application. The SDO being subordinate to the Addl. Collector, the Addl. Collector was competent to hear and decide the revision application. Under the circumstances, the impugned order cannot be sustained. Hence, the same is quashed and set aside. The matter is remitted to the Addl. Collector with directions to decide the appeal after hearing the respective parties.

(emphasis added)

35) One way of reading the Order in ***Ahmad Ambir Shaikh*** is to mean that no appeal is maintainable in respect of composite act of condonation of delay and admission as envisaged under Section 251 of MLRC. However, since *Prabhudessai J.* has relied on judgment in ***Balwant Narayan Thale*** it is submitted by Mr. Joshi that the correct way of reading the Order is to mean that the appeal gets barred only when the SDO admits the appeal in addition to

condonation of delay. Here again, the submission suffers from confusion as the ministerial act of 'admission' under Section 251 is confused with the adjudicatory act of 'admission' under Section 255(1) of MLRC. This aspect is already discussed above. In fact, against an order of admission of appeal under Section 255(1), the remedy of appeal is not barred under Section 252, whereas there is specific bar of remedy of appeal against the composite act of condonation of delay and admission under Section 251. The Order in ***Ahmad Ambir Shaikh*** is again passed without noticing the conceptual difference of 'admission' under Sections 251 and 255(1) of MLRC. Also, the further observations in ***Ahmad Ambir Shaikh*** that Additional Collector can exercise revisionary power against the order passed by the SDO are without noticing the provisions of Section 259 of the Code. This aspect has been dealt with in subsequent judgment in ***Sadanand Tukaram Suroshe*** in which it is held that the judgment in ***Ahmad Ambir Shaikh*** is *per-incuriam*. I am in agreement with the said view in ***Sadanand Tukaram Suroshe***.

36) ***City Technology Park Ltd. Vs. Nandu Shivaji Buchade***⁹ is yet another Order often cited in support of proposition that appeal is maintainable against SDO's order of condonation of delay. It is a short and unreasoned order of *Bhadang J*, which reads thus:

1. The challenge in this petition is to the order dated 4th March, 2017 passed by the Sub-Divisional Officer, Haveli (for short "SDO"), condoning the delay of about 7 years in filing RTS Appeal No. 233 of 2016. The only contention raised on behalf of the Petitioner is that the SDO has condoned the delay without any reasons worth the name.

2. The learned counsel for the first Respondent submits that the Petitioner has efficacious remedy against the impugned order of filing an appeal under Section 247 of the Maharashtra Land Revenue Code, 1966.

⁹ Writ Petition 9366 of 2017

3. On hearing the counsel for the parties, the Petition is disposed of granting liberty to the Petitioner to avail of the remedy of appeal under Section 247 of the Maharashtra Land Revenue Code, 1966.

The Order in ***City Technology Park Ltd.*** does not contain discussion about provisions of MLRC relating to the remedy of appeal and the same is passed on a concession made by the counsel for Respondent therein and hence cannot be relied on in support of a contention that remedy of appeal is available against SDO's order of condonation of delay.

37) Having dealt with various Orders passed by the coordinate benches of this Court, now it is time to deal with two main judgments dealing with the issue at hand, in which there is detailed discussion about the entire statutory scheme under MLRC dealing with the remedy of appeal.

38) In ***Sadanand Tukaram Suroshe, Her Ladyship Justice Sharmila Deshmukh*** formulated the following issues for consideration in para-16 of the judgment:

16. The issues which arise for consideration are:

(a) Whether the remedy of revision is available to the Petitioners against the order of the Sub Divisional Officer under Section 257 of MLRC?

(b) If the remedy of revision is available, whether the revision will lie before the Additional Collector or the State Government?

39) In ***Sadanand Tukaram Suroshe***, this Court has dealt with a situation where the SDO had condoned the delay and the appeal was listed for the purpose of hearing on merits. The issues formulated above have been answered in the light of this factual position involved in that case where the SDO had proceeded a step further after condonation of delay and had posted it for hearing on

merits. This is the identical situation in the present case. After examining the entire statutory scheme of MLRC relating to the remedy of appeal, *Deshmukh, J.* has held in paras-21,22,23,24, 25, 27, 29 and 33 as under:

21. The heading of Section 251 of the MLRC is "Admission of appeal after the period of limitation" and the Section provides that an appeal may be admitted after the period of limitation upon sufficient cause being shown. Section 252 of the MLRC provides that no appeal shall lie from an order admitting appeal under Section 251 of the MLRC. The procedure which has been prescribed under Section 251 of the MLRC for admission of an appeal after the period of limitation does not provide for any separate procedure for listing of appeal for admission after the delay has been condoned. Against the background of Sections 250 and 251 of the MLRC, if the order of SDO is examined, it is evident that vide the said order, the Appeal is admitted after condoning the delay.

22. Now, coming to the provisions of Section 255 of the MLRC, the heading of the said Section is "Power of appellate authority". The Section provides that the appellate authority may either admit the appeal or after calling for the record and giving the appellant an opportunity of being heard, may summarily reject it and if the appeal is admitted, a date shall be fixed for hearing and notice thereof shall be served on the respondent. I find considerable force in the submission of Mr. Killedar that by virtue of the delay being condoned and the appeal being admitted, the appeal was placed at the stage of Sub-Section (2) of Section 255 of the MLRC as a date was fixed for hearing on merits. The Additional Collector in revision against the order of SDO has observed that the SDO after condoning the delay has admitted the Appeal for hearing on merits.

23. As the order of SDO admits the appeal, there is statutory interdict as Section 252 of the MLRC bars filing of an appeal against an order admitting the appeal. Hence, against the order of SDO admitting the Appeal after condonation of delay, there is no remedy of 2nd appeal to the Additional Collector available to the Petitioner under Section 247 of MLRC.

24. Having held that no remedy of 2nd appeal was available as the order of SDO admitted the Appeal, the issue now to be considered is the remedy available to the Petitioner against the order of SDO condoning the delay and admitting the Appeal. The power of revision is contained in Section 257 of the MLRC which vests concurrent power of revision in the State Government and any Revenue or Survey Officer not inferior in rank to Assistant or Deputy Collector or the Superintendent of Land Records against the order of subordinate revenue or survey officer. The order of SDO being an order of subordinate revenue or survey officer, the State Government

or Assistant or Deputy Collector could have exercised powers under SubSection (1) of Section 257 of the MLRC. Sub-Section (4) of Section 257 of the MLRC when read carefully, provides that revision of the order passed under Sub-Section (1) or Sub-Section (2) of Section 257 of the MLRC by any officer referred to in the said Sub-Sections shall not be permissible and it shall be lawful only for State Government to modify, annul or reverse any such order passed under sub Section (1) or (2). To put it simply, if order is passed by any revenue or survey officer in exercise of the powers under Sub-Section (1) or Sub-Section (2) of Section 257 of the MLRC, in exercise of the revisional jurisdiction, the second revision against the said order passed by the revenue or survey officer will lie to the State Government alone.

25. In the present case, it cannot be said that the order issued by the Additional Collector was an order passed in exercise of the revisional jurisdiction under Sub-Section (1) of Section 257 of the MLRC against which second revision is permissible only to the State Government. The Additional Collector has refused to exercise the jurisdiction and the same cannot be said to be an order passed in exercise of power conferred under Sub-Section (1) of Section 257 of the MLRC.

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27. Upon conjoint reading of the provisions of Section 251, Section 252 and Section 259 of MLRC, in my view, the only remedy available to the Petitioner is the remedy of revision before the State Government against the order of the SDO admitting the Appeal after condoning the delay.

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29. In the case of ***Ahmad Ambir Shaikh*** (supra), heavily relied upon by learned counsel appearing for the Petitioner, learned Single Judge of this Court has held in the facts of that case that as the delay was condoned by the SDO and appeal was admitted, the remedy available to the Petitioner was to file a revision application. Upon a reading of the said decision, it appears that the provisions of Section 259 of the MLRC were not brought to the notice of the Court and as such learned Single Judge has considered the provisions of Section 257 of the MLRC and has held that the remedy was to file a revision before the Additional Collector. The decision was rendered without noticing the provisions of Section 259 of the MLRC, and is thus per incuriam.

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33. In the case of ***Balwant Narayan Thale v. Pushplata Vasudev Patil [W.P. No. 8673 of 2016 decided on 9 th January 2017]*** relied upon by learned Advocate Mr. Girish Agrawal, in the facts of that case, learned Single Judge had held upon the reading of the

order of SDO that the delay had been condoned however the operative part was bereft of any direction and the appeal has been admitted. In that case, learned Single Judge held that as there was no order admitting the appeal, the power under Section 257 of MLRC could be exercised. In the present case, it is the Petitioner's own case that the appeal has been admitted by SDO by placing the appeal at the stage of sub- Section (2) of Section 255 of the MLRC. The Additional Collector has also observed that the order of SDO admits the appeal after condoning the delay. That being the position, the decision in **Balwant Narayan Thale** (supra) is inapplicable to the facts of present case.

40) The above formulated questions have been answered by *Deshmukh J.* in **Sadanand Tukaram Suroshe** in para-35 as under:

35. Having regard to the conspectus of the above discussion, the issues framed for consideration are answered as under :

- (a) The order of SDO admits the Appeal after condoning the delay. Section 252 of MLRC bars filing of Appeal from an order admitting the Appeal. The only remedy available to the Petitioner is remedy of revision.
- (b) By virtue of Section 259 of MLRC, the order admitting Appeal being final as no appeal lies from such decision, the revision would lie before the State Government.

41) Thus, **Sadanand Tukaram Suroshe** is the judgment in which the provisions of Section 251 and 252 of MLRC appears to have been correctly interpreted after noticing the provisions of Section 255 and it is held that even if the appeal is admitted as a result of condonation of delay, the remedy of appeal is barred under Section 252. This Court has appreciated the position that the procedure which has been prescribed under Section 251 of the MLRC for admission of an appeal after the period of limitation does not provide for any separate procedure for listing of appeal for admission after the delay has been condoned. The judgments of coordinate benches in **Ahmad Ambir Shaikh** and **Balwant Narayan Thale** were brought to notice of this Court and have been distinguished. As observed above, the judgment in **Ahmad Ambir Shaikh** is held to be *per-incuriam* as having been rendered without noticing the provisions of Section 259 of

the Code. In my view, the same would apply even to the judgment in ***Balwant Narayan Thale*** which has also ignored the provisions of Sections 255 and 259 of the Code while holding that appeal would not be maintainable against order admitting an appeal and that the Additional Collector is the revisionary authority over the order passed by the SDO.

42) Thus, in ***Sadanand Tukaram Suroshe, Deshmukh, J.*** has held that there is no remedy of second appeal available before the Additional Collector against an order passed by the SDO admitting the appeal after condonation of delay. *Deshmukh, J.* has thus obliterated the fine distinction sought to be made in ***Balwant Narayan Thale*** and ***Kanchanbai Baburao Sukalkar*** between the concepts of ‘admission of appeal’ and ‘condonation of delay’ and has held that even if the appeal is admitted after condoning the delay and posted for hearing on merits, the remedy of further appeal would be barred under the provisions of Section 252 of the Code. This Court thereafter answered the second issue of exact forum where the remedy against the order of condonation of delay can be exercised and has held that revision under the provisions of Section 259 of the Code would lie before the State Government.

43) While the judgment of *Deshmukh, J.* in ***Sadanand Tukaram Suroshe*** sought to provide clarity on the issue of availability of remedy of appeal against the order of SDO condoning the delay, the subsequent judgment in ***Ashokrao Ganpati Ghatge*** (supra) seems to have struck a somewhat discordant note by taking a view that an order of condonation of delay does not merge into the order of admission of appeal and that there is no embargo created by MLRC for filing of an appeal against the order condoning the delay. In

Ashokrao Ganpati Ghatge His Lordship Justice R. M. Joshi, has held in paras-12, 13, 14, 15 as under:

12. Application for condonation of delay and appeal are two distinct proceedings. The question of order admitting appeal to supersede order of condonation of delay does not arise. One more aspect requires consideration is criterias for condonation of delay and admission of the appeal, which are totally different. As per the settled position of law while condoning the delay the merits of the case cannot be gone into and what is relevant is the sufficient cause being made out for not presenting the proceeding within a period of limitation. As against this, the order of admission of appeal is based upon the application of mind with regard to the merit of the appeal. **Thus for this reason also order of condonation of delay cannot be said to have merged into the order of admission of appeal. Thus having regard to the different spheres in which both orders operate, it is not possible to accept that the order of condonation of delay merges in order of admission of appeal. Consequently, even if order of condonation of delay and admission of appeal are passed by a common order for all purposes same are required to be considered as distinct. Hence, it would be open to aggrieved party to challenge order of condonation of delay independently.** Section 252 of Code reads thus :

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13. Reverting back to the fact of the case, in the instant case undeniably the order of admission of appeal has not challenged before respondent No.3. In considered view of this Court, therefore, since the order of condonation of delay is not a final order nor any appeal is denied under the Code, it would amount to rewriting of the statute which is not permissible in law. **The Judgment of the Coordinate Bench of this Court in the case of *Sadanand Tukaram Suroche* (supra) is in the peculiar facts that both order of condonation of delay and admission of appeal were challenged. Whereas in the instant case only order of condonation of delay is challenged before the respondent No.3.** In considered view of this Court, the judgment cited (supra) in the case ***Sadanand Tukaram Suroche*** (supra) will have no application to the present case. Thus it is specifically provided in the Code that no appeal would lie against the orders specified therein. With aid of Section 259, it can be said that those orders which are said to be final and conclusive, no appeal would lie against these orders too. However, except any order falls in these two categories, can not be said that such order is non appealable.

14. It is settled law that the party cannot be denied remedy unless it is specifically barred by the Statute. Considering the different consideration / nature of the application of condonation of delay and admission of the appeal, it cannot be said that order of condonation

of delay stood merged in the order of admission of appeal. These are completely two different stages and cannot be called as interim stage of same proceeding. Unless delay is condoned the Appellate Authority does not get any jurisdiction to entertain the appeal meaning thereby it is only after condonation of delay the appeal become entertainable and proceeding appeal would come into existence thereafter. **There is no embargo created by code for filing appeal against the order against the condonation of delay. Thus, to hold that order of condonation of delay is not appealable would amount to coin new provision which is absent in the code.** Thus, the said order is not covered under Section 252 of Code and therefore the Petition cannot be called upon to challenge this order only before the State Government, thereby taking away his right of filing revision/ appeal before the immediate superior authority to the authority which has passed impugned order.

15. In so far as the contention of the learned counsel for the petitioner in respect of the learned Coordinate Bench of this Court in the case of **Sadanand Tukaram Suroche** (supra) having not taken into consideration Section 259 is concerned, this Court does not agree with the said submission. Section 259 reads thus :

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With title “Rules as to decisions or orders expressly made final” provision explains that whenever in this Code it is provided that the decision or a order shall be final or conclusive, such provision shall mean that no appeal lies from any such decision or order but it shall be lawful to the State Government alone to modify or affirm or reverse any such decision or order under the provisions of Section 257. This provision, therefore, is explanatory in nature to indicate that wherever any order is declared as final, no appeal would lie against it and order against appeal does not lie, is final and conclusive. Thus this Court records full agreement with the view taken by Coordinate Bench that in case an order is made non appealable, it is final and conclusive order and resultantly revision against such order would lie before the State Government under Section 257 of Code. This however would not apply to the present case owing to the involvement of difference in facts herein.

(emphasis and underling added)

44) In my view, while rendering the decision in **Ashokrao Ganpati Ghatge**, particularly while dealing with the issue of admission of appeal, attention of this Court was not invited to the provisions of Section 255 of MLRC and the observations made in para-12 of the judgment are based on use of the words ‘*admitting the appeal*’ under Section 252(a) of the Code without noticing the fact that

there is a separate and distinct provision for admitting the appeal under Section 255 of the Code. While I am in full agreement with the view expressed by *R.M. Joshi, J.* that order of admission of an appeal is based upon application of mind with regard to the merits of the case and that usually the order of condonation of delay would not *ipso facto* merge into the order of admission of the appeal, His Lordship's attention was however not invited to the provisions of Section 255 of MLRC under which the real application of mind takes place by appellate authority while admitting the appeal. As held above, the words '*any appeal...may be admitted after the period of limitation*' used in Section 251 contemplates the ministerial act of accepting the appeal for registration after condonation of delay, as contradistinct from application of mind by the appellate authority to the contents of the appeal memo under Section 255(1) and then performing the adjudicatory function of admission of appeal. In a given case, the appellate authority can even summarily reject the appeal after calling for record and after giving the appellant an opportunity to be heard. Thus, the process of admission of the appeal after condonation of delay under Section 251 is a ministerial act of registration thereof as opposed to adjudicatory function of admission of appeal under Section 255(1) of MLRC. Therefore, what is covered by Clause-(a) of Section 252 is the ministerial act of admission of appeal by condonation of delay under Section 251 of the Act and not the exercise of adjudicatory power of admission under Section 255(1) of the Act. This fine distinction has not been noticed in the judgment in ***Ashokrao Ganpati Ghatge*** possibly on account of the fact that the provisions of Section 255(1) of the Code were not brought to the notice of this Court. As against this, *Deshmukh, J.* has considered the provisions of sub-section (2) of Section 255 in ***Sadanand Tukaram Suroshe***. On account of non-noticing of Section 255(1) of MLRC, a finding is

recorded in ***Ashokrao Ganapati Ghatge*** that there is no embargo created by the Code for filing appeal against an order of condonation of delay. It is further observed that the order of condonation of delay is not covered by Section 252 and that to hold that order of condonation of delay is not appealable, would amount to coining a new provision which is absent in the Code. It is also held that order of condonation of delay cannot be said to have merged into the order of admission of appeal. These observations appear to have been made in ***Ashokrao Ganapati Ghatge*** on an assumption that the process of admission of appeal is contemplated in Section 251 of MLRC, without noticing the provisions of Section 255, which actually contemplates the process of admission. *Joshi J.* has held that ‘*As against this, the order of admission of appeal is based upon the application of mind with regard to the merit of the appeal.*’ and while holding so, the actual reference is to the process of ‘admission’ under Section 255(1) of MLRC and not the process of admission under Section 251. This is because, simultaneous with a decision of condonation of delay, performance of mere ministerial act of admission of appeal for registration and further process under Section 251 does not involve the process of ‘*application of mind with regard to the merits of the appeal*’ as contemplated by *Joshi J.* Thus, on account of non-invitation of attention to Section 255(1) of MLRC, the stages of ‘admission’ and ‘condonation of delay’ are sought to be segregated in ***Ashokrao Ganapati Ghatge***, when in fact they are incapable of being segregated. Both the processes of ‘condonation of delay’ and ‘admission’ are fused, which is also apparent from observations of *Deshmukh J.* that ‘*The procedure which has been prescribed under Section 251 of the MLRC for admission of an appeal after the period of limitation does not provide for any separate procedure for listing of appeal for admission after the delay has been condoned.*’ Thus there

are no two separate stages of ‘condonation’ and ‘admission’ within the sphere of Section 251. The real stage of adjudicatory ‘admission’ is outside the scope of Section 251 and the same is in Section 255(1). Therefore everything done in Section 251 would be covered by Section 252(a) of MLRC. In my view, therefore the judgment in ***Ashokrao Ganpati Ghatge***, rendered without noticing the provisions of Section 255(1) of MLRC, cannot be cited in support of an absolute proposition of law that an appeal would lie under Section 247 against an order of condonation of delay.

45) The conspectus of the above discussion is that the orders/judgments in ***Balwant Narayan Thale, Kanchanbai Baburao Sukalkar, Ahmad Ambir Shaikh*** and ***Ashokrao Ganpati Ghatge*** are rendered without noticing provisions of Section 255(1) of MLRC. It is well settled principle of law that a decision or judgment would be *per-incuriam* if a provision in a statute, rule or regulation is not brought to the notice of the Court rendering the said judgment. A decision or judgment can also be *per-incuriam* if it is not possible to reconcile its ratio with that of previous judgment of co-equal or larger bench. These principles have been recognised and reiterated by the Apex Court in plethora of judgments which have been taken into consideration by Constitution Bench in ***National Insurance Company Limited*** (supra).

46) In my view, therefore the judgment of ***Deshmukh J.*** in ***Sadanand Tukaram Suroshe*** lays down correct law that an order passed by the SDO condoning the delay is not appealable before the higher appellate authority and the only remedy available to the affected party is to file revision before the State Government under Section 259.

47) From the above discussion, following principles emerge:

- (i) The words '*may be admitted*' used in Section 251 of the Code refer to mere acceptance of memo of appeal for registration after condonation of delay and does not envisage performance of any adjudicatory function of 'admission' of appeal as contemplated under sub-section (1) of Section 255.
- (ii) Under Section 255(1) of MLRC, the appellate authority performs adjudicatory function of admission or rejection of an appeal by applying its mind to the contents thereof. This is not done under Section 251 after condonation of delay.
- (iii) What is performed by the appellate authority under Section 251 of MLRC is a composite act of adjudicatory function of condonation of delay and ministerial act of acceptance of appeal memo for registration (branded as 'admission'), the two acts being inseparable for the purpose of application of Clause-(a) of Section 252.
- (iv) Therefore, clause (a) of Section 252 would apply to both adjudicatory function of condonation of delay, as well as, to the ministerial act of admission of the appeal memo for registration under Section 251 of the Code. Consequently, no appeal would lie against an order of condonation of delay passed by the appellate authority under Section 251 of the Code. However, if the appellate authority refuses to condone the delay, appeal against such order would be maintainable under Section 247.
- (v) There is no bar for filing of an appeal against an order passed by the appellate authority under Section 255(1) of the Code either admitting the appeal or summarily rejecting it.

- (vi) The only remedy available for the affected party who is aggrieved by an order of condonation of delay is to file a revision before the State Government under Section 259 of MLRC.

48) Coming back to the facts of the present case, the order passed by the SDO on 17 May 2023 has condoned the delay in filing the Appeal and fixed the date for hearing of the appeal. Considering the principles summarized above, it is not necessary to undertake the hair-splitting exercise in finding out whether the SDO has performed the twin acts of condonation of delay and ministerial function of admission of appeal for registration under Section 251 of the Code. As observed above, upon condonation of delay, performance of ministerial act of admission of appeal memo for registration is automatic, both acts being inseparable and fully covered by Clause-(a) of Section 252 of the Code. It may be that fixation of date of hearing of the appeal in the present case would mean travelling to the stage of sub-section (2) of Section 255, under which the exercise of date for fixation of hearing of the appeal is undertaken after passing the muster under sub-section (1) which is the adjudicatory stage of admission of the appeal. In the present case, Petitioners are not aggrieved by SDO's act in admitting the appeal under Section 255(1) of the Code. They are essentially aggrieved by SDO's decision of condonation of delay in filing of the appeal. As discussed above, the remedy of filing further appeal against the discretion exercised by the appellate authority in condoning the delay is expressly barred under Section 252 of the Code. The order dated 17 May 2023 passed by the SDO, to the extent it condones the delay, is not appealable under Section 247 of the Code. The Additional Collector has rightly dismissed Petitioners' appeal as not maintainable vide order dated 2 August 2023.

49) I therefore do not find any error in the order dated 2 August 2023 passed by the Additional Collector dismissing the appeal as not maintainable. There is no warrant for interference in the order passed by the Additional Collector whose decision is in consonance with the principles of law summed up above. Consequently, the petition must fail. Petitioners would however be at liberty to prefer Revision Application before the State Government under Section 259 of MLRC challenging SDO's order dated 17 May 2023. In the event, they exercise the remedy of revision before the State Government under Section 259 of the Code, time spent in prosecuting the appeal before the Additional Collector, as well as the present petition before this Court, shall be considered for condonation of delay in filing such revision.

50) With the above observations and reserving the liberty as observed above, the petition is **dismissed**. There shall be no orders as to costs. The interim order passed by this Court on 3 September 2024 staying the proceedings before the SDO shall continue to operate for a period of four weeks in order to enable the Petitioner to apply before the Hon'ble Minister for stay of the proceedings before the SDO.

[SANDEEP V. MARNE, J.]

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