

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 6 OF 2009
[Arising out of SLP(C)No.4855 of 2007]

STATE OF M.P.

... Appellant(s)

Versus

SANJAY KERALKAR

... Respondent(s)

ORDER

Leave granted.

Having heard learned counsel for the respective parties, we are unable to sustain the order passed by the Division Bench of the Madhya Pradesh High Court dismissing the appeal as preferred by the appellant herein on the ground that the appeal had been preferred against an order passed under Article 227 of the Constitution. We have had occasion to look into the petition which had been filed before the Single Bench of the High Court, which has been styled as writ petition under Article 226/227 of the Constitution of India. The Division Bench of the High Court appears to have not taken into consideration the fact that the petition had been styled as a writ petition under Article 226 as well and that the frame of the petition was that of a writ petition as would also be evident from the prayers made therein.

We are unable to agree with the High Court that the learned Single Judge had passed order under Article 227 of the Constitution of India and that the appeal was not maintainable.

We, accordingly, allow the appeal and remit the matter to the High Court to treat the petition as one under Article 226 of the Constitution and to dispose of W.A. 182 of 2006 in accordance with law, within two months from the date of communication of this order.

There will be no order as to costs.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

New Delhi,
January 05, 2009.]