
(2016) 04 KL CK 0041

In the High Court Of Kerala

Case No : Insurance Appeal No. 64 of 2012

M/s. Tripenta Hotels (P) Ltd.

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Employees State Insurance Act, 1948 — Section 77(1 A)
Limitation Act, 1963 — Section 5

Citation : (2016) 3 CLR 710 : (2016) 3 KerLJ 1 : (2016) 3 KHC 283 : (2016) 3 LLJ 181

Hon'ble Judges : P.R. Ramachandra Menon and Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Sri. Shinu J. Pillai, Smt. S. Suja, Smt. Siby. P. Jose and Smt. Deepa Augustine, Advocates, for the Appellant; Sri. P. Sankarankutty Nair, SC, ESI Corporation, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—The basic point mooted as the Substantial Question of Law (among other questions raised) is whether the Limitation Act, particularly Section 5, is applicable to a proceeding filed before the Employees' Insurance Court (EI Court) and whether the EI Court has power to condone the delay, beyond the specified extent under the relevant provision i.e. Section 77(1A) of the Employees' State Insurance Act (ESI Act), even if the explanation offered is satisfactory.

2. The appeal has been preferred by the applicant/Management establishment, on being aggrieved of the order dated 14.02.2012 in I.C.No. 28 of 2010, whereby interference was declined and the case was dismissed as "barred by limitation", also holding that the reason was "not satisfactory". The factual position leading to the case is that, the appellant, a Company constituted under the relevant provisions of The Companies Act, 1956 was running a hotel under the name and style as "Tripenta Hotel", which was covered as a "factory" under

the ESI Act with effect from 05.02.2001, assigning the necessary code. According to the appellant, there was change of ownership and management of the Company in the year 2004 and that the new Management was ensuring due compliance with the relevant provisions of the ESI Act, effecting contribution to the extent as payable in law. While so, a notice dated 07.01.2010 was served upon the new Management by the respondent Corporation, informing that O.P.No.7364 of 2003, which was preferred by the establishment before this Court, had already been dismissed as per judgment dated 10.11.2006 and as such, the appellant was liable to pay a sum of Rs. 1,20,935/- towards the arrears of contribution for the period from 01.04.2000 to 31.03.2000 (after deducting a sum of Rs. 43450/- already deposited, pursuant to the interim order passed by this Court, as against the total claim of Rs. 1,66,385/- with interest).

3. It is borne out from the records that, pursuant to an inspection conducted in the premises on 05.06.2002, causing verification of the profit and loss account/balance sheet/pay book/ledgers etc. proceedings were issued on 31.07.2002, referring to various discrepancies/insinuation. On receipt of the said proceedings, the then Management of the appellant Company sent a reply dated 21.08.2002 and the points raised by the respondent Corporation were stated as clarified by the appellant. However, allegedly without any regard to the facts and figures, the respondent Corporation issued Form 18 notice dated 19.09.2002 demanding a total contribution of Rs. 1,66,385/- which was followed by "ad hoc assessment order" dated 30.10.2002 and Form C19 recovery authorisation dated 21.01.2003.

4. By virtue of the turn of events, the previous Management of the Company challenged the proceedings by filing O.P. 7364 of 2003 before this Court, wherein an interim order of stay was granted, subject to satisfaction of Rs.43450/-. The petitioner Company satisfied the condition and was enjoying the benefit of interim stay. Later, after the change in management effected in the year 2004, as stated already, the Original Petition came to be disposed of as "infructuous" on 10.11.2006. It was with reference to the said turn of events, that the letter dated 07.01.2010 was issued by the Corporation seeking satisfaction of the due amount. This made the appellant to feel aggrieved, who approached the Employees' Insurance Court(EI Court) by filing I.C. No.28 of 2010 challenging the proceedings, with a petition (I.A.No.70 of 2010)to condone the delay of much more than "five years".

5. The respondent Corporation filed a detailed written statement, also raising the plea of "limitation"; although no separate counter affidavit was filed in the I.A. to condone the delay. It was contended by the appellant on merit, that the amount paid to the Managing Director towards "sitting fee" was not liable to be reckoned as part of wages. Similarly, the amount spent by the Company for construction of buildings was also stated as not liable to be reckoned for the purpose of fixing contribution, adding that the maximum liability, if at all any, could only be Rs. 18555/- (on working out the contribution at the prescribed rate, treating proportionate amount of building construction expenses towards the wages, as

per existing norms, estimated for the period after the coverage). It was also pointed that there was no merit or substance in demanding contribution in respect of the period prior to the date of coverage and that the appellant ought not to have been non-suited in this regard, merely for the ground that the appellant had not appeared for personal hearing .

6. The EI Court, as per the order under challenge, held that there was inordinate delay in filing the proceedings as the time limit for filing such application under Section 77(1A) was only "three years" from the date of cause of action. Even though no separate counter affidavit was filed in the I.A. to condone the delay, the plea raised by the Corporation in its written objection as to the "bar of limitation" was also adverted to, in the light of statutory provision. The turn of events leading to filing of O.P. before this Court in the year 2003 and its dismissal (as infructuous) on 10.11.2006 were also taken note of. Thereafter, it was held in "paragraph 5" of the verdict, that the Court was not satisfied with the explanation offered by the applicant and that the applicant was bound to explain the entire period of delay, at least from 10.11.2006, the date of judgment passed by this Court in the aforesaid O.P., for which no explanation was offered at all. It was accordingly held, that the application was liable to be dismissed as time barred.

7. In paragraph 6 of the order under challenge, the EI Court observed that there was nothing in Ext.A2 judgment passed by this Court to presume that the writ petition was dismissed with liberty to the appellant to approach the EI Court for necessary relief and as such, it had to be held that the verdict passed by this Court would operate as "res judicata". It was further observed that, even if there was a direction of the High Court permitting to approach the EI Court, the application in this regard ought to have been filed within a reasonable time from 10.11.2006 (date of judgment) and never beyond three years thereafter. The EI court also observed in paragraphs 7 and 8 of the order, that despite giving several opportunities, the relevant records were not produced before the Corporation and that the party had not attended the personal hearing. It was held that, even at the time of inspection by the Inspector of the Corporation, the party had not produced the relevant records and as such, the Corporation could not be blamed for having issued the order dated 30.10.2002 under section 45A of the ESI Act. In paragraph 8, the EI Court observed that the applicant had not produced any evidence before the EI Court as well (in support of the contentions raised) and in the said circumstance, it was held that the Court was not inclined to consider the merit, if any. It was accordingly, that interference was declined and the case was dismissed as per order dated 14.02.2012, which is now under challenge in this appeal.

8. Heard the learned counsel for the appellant as well as the learned Standing Counsel for the corporation at length. Both the sides submitted detailed Notes of argument and sought to place reliance on various judicial pronouncements.

9. The crux of the submission made by the learned Counsel for the appellant is

that the EI court is a "Court" in all respects, by virtue of the scheme of the statute and is having all the trappings of a Civil Court with regard to the duties to be performed. Reference is made to Sections 74 to 83 of the ESI Act, adding that by virtue of Section 75(3), jurisdiction of the civil courts stands barred. By virtue of Section 78(4), the order passed by the EI Court is as of a decree of a Civil Court and as such, Section 5 of the Limitation Act is applicable to the EI Court, as applicable to any other court. The learned counsel also submits that there is not much substance in the contention or finding that the proceedings are barred by the principle of "res judicata", as the "lis" was not decided by this Court in the O.P., but for dismissing the same as "infructuous". Reliance is sought to be placed on AIR 2005 SC 1843(Haryana State Co.op.Land Development Bank v. Neelam) holding that, withdrawal of the case without reserving the right to approach the Labour Court will not act as "res judicata", in pursuing the appropriate/alternate remedy in terms of the statute. The learned counsel adds that by virtue of the scheme of the statute, Section 29(2) of the Limitation Act comes to the rescue of the appellant and that, in so far as the provisions of the Limitation Act have not been excluded from the special statute i.e. the ESI Act, the Limitation Act is to be held as applicable to the proceedings before the EI Court as well.

10. Mr. Sandesh Raja K., the learned standing counsel appearing for the respondent Corporation submits that the idea and understanding of the appellant with regard to the scope of Section 5 of the Limitation Act and its applicability to the proceedings before the EI Court is thoroughly wrong and misconceived. It is asserted that the Limitation Act is not applicable to the proceedings before the EI Court, as the ESI Act is a "special statute" and being a self-contained code, it confers rights upon the parties to the extent as specified in the statute, which cannot be stretched beyond the written limits. There is a specific purpose as well in stipulating the time for approaching the EI Court; beyond which it is not possible to be condoned, unless it is specifically provided. Section 29(2) of the Limitation Act is stated as not applicable to the case in hand, as there is "express exclusion" of the Limitation Act, in so far as the proceedings before the EI Court are concerned, by necessary implication, in view of the different course and procedure and the extent of rights separately mentioned for the proceedings before the EI Court and for an appeal before the High Court, in terms of Sections 77 and 82 respectively of the "Act". It is contended by the respondent Corporation that, the EI Court, though named as a "court" in the statute, is actually not a civil court to be governed by the provisions of the Limitation Act. Reliance is sought to be placed on the verdicts passed by the Apex Court and this Court in this regard.

11. The points raised as Substantial Questions of Law in the appeal are as given below:

"i) whether Employees Insurance Court is erred in dismissing the Insurance case on account of delay after admitting the case on to the files?

ii) Whether judgment of O.P.No.7364 of 2003 disposed as infructuous will operate as a res-judicata against I.C.No.28 of 2010?

iii) Whether the assessing officer erred in passing the ad-hoc assessment completely disregarding the reply letter dated 21.08.2002 rendered by the appellant?

iv) Whether assessment officer has any power to determine contribution upon the amount spend upon the building prior to the opening of the covered establishment?

v) Whether assessment officer is erred in imposing liability upon the amount paid by the company to its Managing Director towards his director remuneration/sitting fee?"

12. Coming to the maintainability of the proceedings before the EI Court in the given set of facts and circumstances , it has to be noted that the proceedings were initiated/issued by the Corporation way back in the year 2002, when the same was sought to be challenged by the Employer/Management by filing O.P. No.7364 of 2010 invoking the discretionary jurisdiction of this Court under Article 226 of the Constitution of India. The said case was dismissed as infructuous on 10.11.2006. The contention raised by the appellant that the Management of the establishment was changed in the year "2004" and hence that the appellant is entitled to pursue the matter does not impress this Court at all. By virtue of the relevant provisions of The Companies Act, 1956, "Company" is a legal entity with perpetual seal and the change in the Managing Director or such other Director/Directors is of no consequence. On receipt of the proceedings issued by the Corporation in the year 2002, it was very much open for the Company to have it challenged by filing application under Section 75 of the ESI Act, before the EI Court, as specified in the statute. Instead of doing so, a conscious decision was taken to approach this Court, in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India and this Court was persuaded to act upon the grievance. The appellant Company succeeded in the said endeavour, by getting an interim order of stay, subject to satisfaction of a portion of the liability fixed upon them. It was much thereafter, that the original petition was got dismissed as "infructuous" as per judgment dated 10.11.2006, which presumably was based on the submission made by the concerned lawyer on behalf of the appellant Company. Further, the alleged change in Management was "two years ago" in 2004, whereas the judgment was passed only in November 2006. It is also relevant to note that the Company had not chosen to file any petition for review, had it been the other way round. It was nearly "four" years after dismissal of the O.P. as infructuous, that the appellant sought to approach the EI Court (on receipt of the notice of demand referring to non satisfaction of the due amount despite dismissal of the O.P.).

13. It is true that the Apex Court has held in AIR 2005 SC 1843 (cited supra) that dismissal of the writ petition without a right to approach the Labour Court

will not bar the statutory remedy or jurisdiction of the Labour Court in accordance with law. But the said decision is not applicable to the case in hand, as the position involved therein was quite different. The workmen in the said case, who was terminated from the service years after arising the cause of action, sought to approach the High Court referring to the benefit given to some other similarly situated persons, pursuant to the adjudication before the Labour Court. About three years after filing the said writ petition, it was got withdrawn and the matter was sought to be proceeded further by way of other appropriate remedy. The Labour Court declined the relief, referring to 7 years" of delay, but the said award was set aside by the High Court in the writ petition filed by the worker. This ultimately came up for consideration before the Supreme Court. Considering the nature of contentions raised, the Apex Court observed that, even if the right to approach the Labour Court/Industrial Tribunal, i.e. the right to pursue the alternate remedy was not clearly reserved while withdrawing the writ petition preferred earlier, the same by itself could not have been taken as a bar to prevent the aggrieved party from pursuing the alternate remedy. But the very same decision is an authority to hold that such an exercise had to be pursued within "reasonable time" and as such, the finding of the Labour Court declining interference for inordinate delay was held as not liable to be interfered with. Paragraph 20 of the said verdict is relevant, which is extracted below:

"20. It is true that the Respondent had filed a writ petition within a period of three years but indisputably the same was filed only after the other workmen obtained same relief from the Labour Court in a reference made in that behalf by the State. Evidently in the writ petition she was not in a position to establish her legal right so as to obtain a writ of or in the nature of mandamus directing the Appellant herein to reinstate her in service. She was advised to withdraw the writ petition presumably because she would not have obtained any relief in the said proceeding. Even the High Court could have dismissed the writ petition on the ground of delay or could have otherwise refused to exercise its discretionary jurisdiction. The conduct of the Appellant in approaching the Labour Court after more than seven years had, therefore, been considered to be a relevant factor by the Labour Court for refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one. The Labour Court in the aforementioned situation cannot be said to have exercised its discretionary jurisdiction injudiciously, arbitrarily and capriciously warranting interference at the hands of the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution."

14. As mentioned already, in the instant case, the discretion vested on this Court was persuaded to be exercised in the Original Petition which was got admitted and an interim order of stay was obtained by the appellant Company, who was enjoying the fruits of the interim order till the matter was got dismissed as "infructuous" in the year 2006. If at all there was any deed or misdeed on the part of the former Managing Director or anybody else in this regard, it might be for the appellant Company to take appropriate proceedings against such persons,

which cannot confer a new right or cause of action to have pursued the matter further before the EI Court, after dismissal of the Original Petition as infructuous.

15. The specific case projected by the appellant is that the EI Court is a "Court" having all the trappings of the civil court and as such, the Limitation Act is applicable. It is contented that the ESI Act, though is a special enactment, Sections 5 and 14 of the Limitation Act will be pressed into service, as there is no specific exclusion of the Limitation Act in the special statute and Section 29(2) of the Limitation Act would take its place to meet the purpose. In support of the said contention, heavy reliance is sought to be placed on the decision rendered by the Apex Court in *Mukri Gopalan v. Chippilatt Puthanpurayil Aboobacker* [(1995)5 SCC 5]. The main question considered therein was whether Section 5 of the Limitation Act could be pressed into service to condone the delay in filing the appeal before the appellate authority constituted under Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965, particularly by virtue of Section 29(2) of the Limitation Act. The Apex Court held that, for applicability of Section 29(2) of the Limitation Act, 1963 and to invoke the provisions contained in Sections 4 to 24 of the Limitation Act, the following two requirements are to be satisfied:

- (i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application;
- (ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act.

Once the above two requirements are satisfied, the consequences contemplated by Section 29(2) would automatically follow, which are reproduced as given below:

- (i) In such a case Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the Schedule.
- (ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all the provisions containing Sections 4 to 24 (inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law.

The Apex Court held further that the Kerala Buildings (Lease and Rent Control) Act, 1965 being a special statute/local law prescribing the remedy by way of appeal with a period of limitation, which is different from the period specified by Schedule to the Limitation Act (as Schedule to the Limitation Act does not contemplate any period of Limitation for filing appeal under Section 18 of the Rent Control Act), Section 29(2) will be attracted, as a result of which, Section 5 can be pressed into service.

16. The scope of the said decision was subsequently considered by another co-ordinate Bench of the Supreme Court and as per the decision reported in *M.P.*

Steel Corporation v. Commissioner of Central Excise [2015 (2)KLT 996(SC)], it has been held that the ratio of the decision in Mukri Goplan's case does not square with the observation of the "three member" Bench in Consolidated Engineering Enterprises v. Prl. Secretary, Irrigation Department and others [(2008)7 SCC 169, wherein it was unequivocally held that the Limitation Act will not apply to quasi judicial bodies or Tribunals and to the said extent, Mukri Goplan's case (cited supra) was in conflict with the judgment in Consolidated Engineering Enterprises's case (cited supra), which hence is no longer a good law.

17. The respondent Corporation has placed reliance on the above two decisions- i.e. "Three Member" Bench decision in (2008)7 SCC 169 (cited supra) and the one rendered by the "two member" Bench in 2015 (2)KLT 996 (SC) (cited supra). In the former case, the award passed by the Tribunal under the Arbitration and Conciliation Act, 1996 was sought to be challenged by filing necessary proceedings before the concerned District Court in terms of Section 34 of the Arbitration and Conciliation Act, 1996. Specific period of limitation stands incorporated under Section 34(3) of the said Act, clearly stipulating that the delay could be condoned only to an extent of "thirty days", beyond the specified period of "three months" for preferring such proceedings. Even though the District Court was very much a court, which was considering the issue, it was held by the Apex Court ("Three Member" Bench) that the proviso to Section 34(3) of the Arbitration and Conciliation Act 1996, being a special legislation, excludes the applicability of the general provisions contained in Section 5 of the Limitation Act and therefore the District Court had no discretion to extend the limitation beyond 30 days set forth in the proviso to Section 34 (3) of the Arbitration and Conciliation Act, even if sufficient cause was shown. The benefit sought to be extended with reference to Section 29(2) of the Limitation Act was repelled in the said circumstance. In 2001(8) SCC 470 (Union of India v. Popular Construction Co.), sought to be relied on by the respondent Corporation, it was held that the words "but not thereafter" in the proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996 clearly amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act. The question considered therein was whether any exclusion in terms of Section 29(2) of the Limitation Act, 1963 has been expressed in Section 34 of the Arbitration and Conciliation Act, 1996. The Bench observed that, had the proviso to Section 34(3) merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act, because mere prescription of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. It was further made clear that, it was not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act and it would be sufficient if on a consideration of the language of its provision relating to limitation, the intention to exclude can be necessarily implied.

18. By virtue of the law declared by the Supreme Court in Consolidated

Engineering Enterprises v. Prl. Secretary, Irrigation Department and others [(2008) 7 SCC 169], M.P. Steel Corporation v. Commissioner of Central Excise [2015 (2) KLT 996 (SC)] and Baleshwar Dayal Jaiswal v. Bank of India and others [AIR 2015 SC 2881], this Court cannot but hold that the provisions of the Limitation Act, as such are not applicable to the proceedings before the EI Court. Then the question is only whether Section 29(2) of the Limitation Act, even if held as applicable, would save the proceedings. The said provision reads as follows:

Section 29:

".29. Savings-(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882) may for the time being extend. "

19. The contention raised by the respondent Corporation is to the effect that Section 29(2) of the Limitation Act will not get attracted, as the basic requirement [spoken to by the Supreme Court in Mukri Gopalan's case] as to the prescription of the period of limitation under the Special or local law, which should be different from the period prescribed in the schedule to the Limitation Act, is not satisfied. The time prescribed in the special enactment-ESI Act, (Section 77(1A)) is "three years", which according to the counsel for the Corporation is same as the one prescribed under the Limitation Act as well-if Article 137 is attracted. As mentioned already, there cannot be any dispute to the fact that Section 5 of the Limitation Act is a general provision with regard to the power to condone delay. When a special statute declaring the rights and liberties of the parties is introduced, it has to be governed by the provisions of the said statute. In so far as the special statute clearly specifies the time limit or the maximum extent of delay which can be condoned by the concerned authority/court, it cannot be simply given a "go bye", contrary to the intention of the law makers and the scheme of the statute.

20. In AIR 2015 SC 2881(cited supra), the Apex Court considered the scope and applicability of the Limitation Act, particularly Section 29(2), for condoning the delay in filing an appeal before the Appellate Tribunal under the SARFAESI Act. The Apex Court observed that the limitation for filing the appeal under Section 18 of the SARFAESI Act (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act) was "thirty days", as against 45 days under Section 20 of the RDB Act (Recovery of Debts Due to Banks and Financial Institutions Act) and to this extent, the legislative intent may be deliberate. But the absence of an express provision for condonation, when Section 18(2) of the SARFAESI Act expressly adopts and incorporates the provisions of the RDB Act, (which contains the provision for condonation of delay in filing of an appeal), cannot be read as excluding the power of condonation. It was accordingly held in paragraph 14 as follows:

"We are also in agreement with the principle that even though Section 5 of the Limitation Act may be impliedly inapplicable, principle of Section 14 of the Limitation Act can be held to be applicable, even if Section 29(2) of the Limitation Act does not apply, as laid down by this Court in Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and M.P. Steel Corporation v. Commissioner of Central Excise."

From the above, it is clear that the idea and understanding of the appellant as to the applicability of Section 29(2) of the Limitation Act and the reliance sought to be placed on the precedent is quite wrong and unfounded.

21. It is true that Section 29(2) of the Limitation Act says that the provisions of the Limitation Act could be made applicable to the proceedings before a court, where the special statute does not specifically exclude its application. But such exclusion can be there by necessary implication as well. In so far as the proceedings before the EI Court are concerned, by virtue of the separate scheme envisaged for initiating/commencement of a proceeding and for pursuing the right of appeal (Section 77(1A) and section 82 respectively of the Employees' State Insurance Act), the statute/law clearly holds that it has to be done within the time as specified therein. Sections 77 and 82 are extracted below, to have a comparative analysis:

Section 77:

"77. Commencement of proceedings-(1) the proceedings before an Employees' Insurance Court shall be commenced by application.

(1A) Every such application shall be made within a period of three years from the date on which the cause of action arose:

Explanation:For the purpose of this sub-section,-

(a) the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured persons claims or claim that benefit in accordance

with the regulations made in that behalf within a period twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable;

(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time; Provided that no claim shall be made by the Corporation after five years of the period to which the claim relates.

(c) the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the Corporation

Section 82:

"82. Appeal-(1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of sections 5 and 12 of the Limitation Act, 1963 (36 of 1963) shall apply to appeals under this section."

22. Coming to the right of appeal under Section 82, the law makers consciously added sub- Section (4) to Section 82, making it clear that Section 5 and Section 12 of the Limitation Act, 1963 would be applicable to such appeal. In other words, the law makers consciously avoided usage of such expression (like subsection (4) when the proceedings are to be pursued before the EI Court. This conspicuous difference in the usage of terminology in the provisions (i.e between Section 77 and Section 82) is a clear indicator as to the exclusion of the provisions of the Limitation Act, to the proceedings before the EI Court, by way of necessary implication.

23. The only explanation offered by the appellant for the inordinate delay of nearly "seven" years in approaching the EI Court, as contained in the affidavit filed in support of the application is that, the matter was being dealt with earlier, by the "then Management" and that the "present Management" was not aware of the situation. This cannot be considered as an explanation at all; for the reason mentioned already, that "Company" is a legal entity, having perpetual seal and the change in the Managing Director or other members of the Board of Directors cannot have any consequence or significance with regard to the identity

or existence of the Company. In other words, it was for the concerned Management to have enquired into all the facts and figures including the assets, liabilities and such other relevant aspects, discernible from the relevant records maintained by the Company and if no such prudent action was taken by the concerned Management on time, they cannot find fault with the "previous Management". At any rate, they cannot raise it as a ground of defence against the respondent Corporation. There is absolutely no pith or substance in such contention and the reason stated by the appellant as an "explanation" for the inordinate delay is not at all satisfactory, as already held by the EI Court in paragraph 5 of the order under challenge. It is also with reference to the explanation as not satisfactory, that the proceedings filed before the EI Court came to be dismissed, when the I.A. was dismissed as time barred.

24. In the above facts and circumstances, this Court finds that there is absolutely no merit or bonafides in this appeal.

25. Interference is declined and the appeal stands dismissed.

26. Pending applications, if any, are also dismissed.