however, move the Civil Court in which he files the requisite suit for similar interim relief against the Delhi College of Engineering and/or the University of Delhi. Even otherwise, we have little doubt that the Delhi University would not throw out the petitioner at this stage before the decision of the civil Court, if the petitioner has resort to such an action expeditiously and informs the Delhi authorities of the same.

This writ petition must, however, fail and is accordingly dismissed, but without any order as to costs.

B.R.T.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and A. N. Grover, J.

EMPLOYEES STATE INSURANCE CORPORATION,—*Appellant*

versus

M/s. SPANGLES & GLUE MANUFACTURERS AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 250 of 1963

February 2, 1967

Limitation Act (XXXVI of 1963)—S. 12—High Court Rules and Orders, Vol. V, Chapter 1-A—Rule 4—Time requisite for obtaining certified copy of the judgment appealed against—High Court Rules and Orders, Vol. V, Chapter 5-B—Rule 11—Time spent in obtaining copy under rule 11 though not permissible—Whether can be excluded—Res judicata—*Appeal referred to Division Bench for decision—Division Bench deciding the point of law involved and remanding the appeal to Single Bench for decision on other points—Letters Patent Appeal filed against the judgment of Single Judge—Point of law decided by the Division Bench—Whether operates as* res judicata *in Letters Patent Appeal.*

Held, that rule 4 contained in Chapter 1-A of Volume V of the High Court Rules and Orders makes the provisions of section 12 of the Limitation Act applicable to Letters Patent Appeals and the appellant is entitled to exclude the time requisite for obtaining a copy of the judgment appealed against whether such copy is filed or not with the appeal. Where a copy of the judgment, certified as true copy by the concerned official of the High Court, was supplied to the Regional Director, Employees State Insurance Corporation, under Rule 11 contained in Chapter 5-B of Volume V of the High Court Rules and Orders, although he was not entitled to it, the said Corporation was entitled to exclude the time spent in obtaining the same, while deciding whether the Letters Patent Appeal filed against that judgment was within time or not.

Employees State Insurance Corporation *v.* M/s. Spangles & Glue Manufacturers, etc. (Grover, J.)

Held, that where a learned Single Judge referred the appeal to a Division Bench for decision and the Division Bench, after deciding the point of law involved in the case, remanded the case to Single Bench for decision on other points and a Letters Patent Appeal was filed against the judgment of the learned Single Judge disposing of the appeal, the decision of the earlier Division Bench with regard to the point of law decided by it will operate as *res judicata* between the parties who cannot be allowed to challenge its correctness before the Bench hearing the Letters Patent Appeal on the ground that a Full Bench had, in the meanwhile, reversed the decision of the Division Bench on that point of law.

Letters Patent Appeal under clause 10 *of the Letters Patent against the judgment, dated* 20*th February,* 1963 *of the Hon'ble Mr. Justice P. D. Sharma in F.A.O.* 41 *of* 1961—*Employees State Insurance Corporation* vs. *M/s. Spangles & Glue Manufacturers, etc.*

K. L. KAPUR and V. K. SURI, ADVOCATES, for the Appellant.

A. C. HOSHIARPURI, ADVOCATE, for the Respondents.

JUDGMENT

GROVER, J.—Seven appeals under clause 10 of the Letters Patent (Letters Patent Appeals Nos. 250, 251, 252, 253, 254, 255 and 256 of 1963) shall stand disposed of by this judgment.

A preliminary objection has been raised by counsel for respondents that all these appeals are barred by limitation. The period of limitation prescribed for filing such appeals is thirty days from the date of the judgment appealed from under rule 4 contained in Chapter 1-A of Volume V of the Rules and Orders of this Court. That rule, however, provides that section 12 of the Indian Limitation Act governs an appeal under the Letters Patent and the appellant in such a case is entitled to exclude the "time requisite" for obtaining a copy of the judgment appealed against (whether such copy is filed or not) even though under the Rules of the Court no copy of the judgment is required to be filed with the memorandum of appeal. On behalf of the appellant it has been claimed that the copies were applied for, by means of a letter, dated 23rd February, 1963, by post, of the judgment in each case which had been delivered on 20th February, 1963. The copies were despatched on 15th May, 1963. The appeals were filed on 14th June, 1963. If the copies, which mean certified copies, were applied for on 23rd February, 1963, and if they were despatched on 15th May, 1963, and if that period is excluded as the

time requisite, there can be no dispute that the appeals would be within time.

Learned counsel for the respondents maintain that the copy for obtaining which the time requisite can be excluded under rule 4 in Chapter 1-A must be a copy which is obtained for the purpose of filing an appeal in accordance with the rules contained in Chapter 5-B of Volume V of the Rules and Orders. Rule 4 in that Chapter provides that every application for a copy shall contain the particulars given thereunder, one of which, namely, (f) is whether the copy is required for private or general use. The next rule 5 lays down that upon the presentation or receipt of the application for a copy, the proper officer shall do the various acts mentioned in the rule and after examining the application if it is found in proper form under the rules and practice of the Court an order will be recorded directing the copy to be delivered. If the application is not in a proper form and is one which may not properly be granted, an order will be recorded specifying the requirements to be complied with and directing its return to the applicant. Rule 6 gives the kinds of copies and scale of fees and court fees. It divides copies into three kinds. The first are attested copies for private use which do not require a court fee stamp, but cannot be used officially until the prescribed court fee has been affixed. The second are attested copies for general use on which the court fee prescribed by various Articles of the Court Fees Act must be affixed before delivery. The third kind consists of unattested copies of plaints, exhibits and depositions prepared by Court stenographers under the orders of the Presiding Judge. Rule 11 provides that copies of records required for public purposes by public officers as defined in section 2(17) of the Code of Civil Procedure of the Central or State Government in India shall be supplied free of charge provided the application for copy is endorsed by the Head of the Department concerned. There was a note which appeared below this in the following terms:—

> "For the purposes of this rule the District Magistrate will be deemed to be the Head of Department when copies of orders passed by Civil and Criminal Courts are required by prosecuting agency for the purpose of appeals and revisions."

This note has been substituted by Correction Slip No. 29, dated 30th May, 1963, but that correction slip would not be relevant for the purposes of the present appeals because the copies were despatched

on 15th May, 1963, before the substitution of the old note by the new note.

Mr. K. L. Kapur, learned counsel for the appellant, has not and indeed cannot deny that the application which was filed for copies was made with reference to rule 11 and not in accordance with rules 4, 5 and 6, in Chapter V-B. It would further appear that ordinarily when a certified copy is required for the purposes of filing an appeal, it has to be applied for and obtained on payment of proper legal fees, the relevant rules being 4 to 6 and that copies which are sought to be obtained under rule 11 free of charge are meant for the purposes mentioned in that rule, i.e., public purposes obtainable by public officers as defined in section 2(17) of the Code of Civil Procedure. The letter which was written for copies on 23rd February, 1963, was addressed to the Deputy Registrar by Shri R. K. Luthra, Regional Director of the Employees' State Insurance Corporation. This Corporation was created by the Employees' State Insurance Act, 1948 (hereinafter called the Act). The Regional Director of the Corporation cannot possibly be regarded as a public officer within the meaning of section 2(17) of the Code. The copies, therefore, as applied for under rule 11 could have been refused by the registry of this Court. That was not done and copies in fact were supplied by post as stated above.

The double-barrelled objection on behalf of the respondents is that the copies which were obtained under rule 11 could not be regarded as certified copies which would entitle the appellant Corporation to exclusion of time under rule 4 contained in Chapter 1-A and that these copies did not contain the usual endorsement about the presentation of the application and the date when they were ready or despatched from which alone the time requisite could be calculated. It is pointed out that if the copies had been applied for and obtained in accordance with the provisions of rules 4 to 6 in Chapter 5-B, proper endorsements would have appeared on them and the appellant would have been entitled to exclude the time requisite in accordance with those endorsements. Mr. Kapur has shown us the copies which were sent to the Corporation by post and although they are certified to be true copies by the proper official of this Court under seal, they do not appear to have any endorsement of the date of the application and the time when they were ready or despatched by post. Mr. Kapur has placed on record a certificate of the Superintendent Judicial of this Court that the copies in question were despatched on 14th May,

1963. Mr. Kapur has referred to the letter which the Regional Director wrote on 23rd February, 1963, asking for the copies and it has been verified from the records kept in the office of this Court that this letter was received on 25th February, 1963. From this material it is satisfactorily established that an application was made for the copies by post by means of the letter, dated 23rd February, 1963 and they were actually despatched on 14th May, 1963. It would further appear that these copies were applied for and presumably supplied under rule 11 although strictly speaking their supply free of charge under that rule could have been refused for the reasons already stated. The copies do not bear the endorsements which are found on certified copies obtained for the purpose of filing appeals to higher Courts which have to be applied for and obtained under rules 4, 5 and 6 in Chapter 5-B. The question still remains whether the copies in question which were obtained by the appellant can or cannot be regarded as certified copies.

Section 12 of the Limitation Act mentions the word "copy" and so does rule 4 in Chapter 1-A of the Rules and Orders. Order XLI, rule 36 of the Code makes it obligatory that certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense. What has, therefore, to be seen is the meaning of the word "certified Copy". According to section 76 of the Indian Evidence Act, every public officer having the custody of a public document, which any person has a right to inspect, is bound to give that person on demand a copy of it on payment of the legal fees therefor together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate has to be dated and subscribed by such officer with his name and his official title and has to be sealed, whenever such officer is authorised by law to make use of a seal, and such copies so certified are called certified copies. In *Reasat Ali Khan* v. *Mahfuz Ali Khan* (1), a Division Bench held that the word "copy as used in Order XLI and also Order XLII of the Code of Civil Procedure clearly meant copies duly certified under the provisions of the Evidence Act and thus rendered capable of production before a Court of law for examination". In my opinion, the certificate, which appears in the copies which were supplied to the Corporation, does contain a certificate and a seal of the nature required by section 76 and, therefore, these copies must be deemed to be certified copies within the meaning of that provision. If that be so, it is not possible

(1) A.I.R. 1929 Lahore 771.

to see how the appellant can be deprived of the benefit of the provision in rule 4 in Chapter 1-A by which time requisite can be excluded. If that is done, all the appeals will indisputably be within time and it would be wholly immaterial whether the copies were applied for and obtained under rule 11 in Chapter 5-B or whether the registry of this Court should have refused to send the copies since rule 11 was not applicable. No party can be made to suffer for any mistakes made by the Court or its officials and even if the copies which were despatched should not have been despatched, the appellant cannot be made to suffer for any such lapses. The fact remains that the copies which must be held to be certified copies within the meaning of section 76 of the Evidence Act were obtained by the appellant and thus the requirement of rule 4 in Chapter 1-A is fulfilled.

For the purposes of deciding other points that arise in these appeals it will be convenient to divide the appeals into two groups, the first consisting of Letters Patent Appeals Nos. 250, 251, 252 and 253 of 1963, and the second of Letters Patent Appeals 254, 255 and 256 of 1963. The facts in Letters Patent Appeal No. 250 of 1963 may be shortly stated. The Regional Director, Employees' State Insurance Corporation, filed a petition before the Employees' Insurance Court under section 75(2) of the Employees' State Insurance Act, 1948, for recovery of Rs. 2,046.62 nP. in respect of employees' contribution for the period from 1st May, 1955 to 30th September, 1959 against Ganeshbir Singh, Manager and partner of Messrs Spangles and Glue Manufacturers and the concern itself. On the pleadings four issues were framed out of which reference may be made to the following two issues:—

> "2. Whether there are sufficient reasons for not making the application within the period of limitation?
>
> 4. Whether the petitioner is entitled to recover the employees' contribution as prayed for ? If so, what amount and for what period?"

Under rule 17 of the Employees' Insurance Court Rules, 1949, every application has to be brought within twelve months from the date on which the cause of action arose or the claim became due. Since the claim was time-barred, the Corporation asked for extension of time under the provisions of rule 17. The Court declined to extend

the time on the ground that it was the duty of the employees of the Corporation to have given information about the time when twenty persons came to be employed in the respondent concern. On issue No. 4 it was found that the amount which had been claimed by the Corporation would have been payable by the respondents if the claim had been within limitation. An appeal was preferred to this Court which came up before a learned Single Judge before whom the question of the vires of rule 17 was canvassed. He referred the appeal together with other appeals which also included the appeals which have given rise to Letters Patent Appeals Nos. 251, 252 and 252 of 1963 to a Division Bench. The Division Bench consisting of Falshaw, C.J., and Harbans Singh, J., decided to dispose of only certain points of law leaving the learned Single Judge to decide the appeals in the light of the views expressed by the Bench. The Bench decision is reported as *Chanan Singh* v. *Regional Director, Employees' State Corporation* (2). The first question was whether rule 17 was *ultra vires* the powers of the State Government. This rule was held to be *intra vires* by the Bench. The next point related to the definition of the term "factory" in section 2(12) of the Act. By section 1(4) the Act had been made applicable to all factories including factories belonging to the Government other than the seasonal factories. Now, a factory has been defined in the Act to mean "any premises including the precincts thereof whereon twenty or more persons are working or were working on any day of the preceding twelve months, ...". The question which arose in the appeals before the Bench was whether the proprietor or the Manager of the concern could be included in the number of twenty mentioned in the definition for the purpose of determining whether the business fell within the definition of "factory". The view of the learned Chief Justice may be stated in his own words:—

> "In my opinion whether the employer is to be included in the twenty persons necessary to make premises a factory or not must depend on the facts of each particular case, and where, as must be the case in many small businesses which are on the border line of being factories within the meaning of the Act, the principal employer is a person who actively works on the premises in connection with the business, he must be included in the figure of twenty, but if he is the principal employer merely by being the owner or occupier of the factory and does not take any personal

(2) I.L.R. (1963) 2 Punj. 11.

active part in running the business on the spot, leaving this to a manager, he should be excluded."

The learned Single Judge then held in the appeal in question that no sufficient reason had been advanced much less proved to enable the Court to extend the period of limitation prescribed by rule 17. He found that the claim for the period from 25th December, 1958 to 31st December, 1958, was within time and he made an order awarding a decree for that amount. An appeal under clause 10 of the Letters Patent was filed against that judgment and during the pendency of the appeal a Full Bench of this Court has held in *Messrs United India Timber Works and another* v. *Employees' State Insurance Corporation* (3) that rule 17 is *ultra vires* the Act and has overruled the view expressed by the Division Bench in *Chanan Singh* v. *Regional Director, Employees' State Corporation* (2).

In the above situation the learned counsel for the appellant Corporation has claimed that the appeals should be allowed on the short ground that the Full Bench has declared rule 17 to be *ultra vires* with the result that no period of limitation could be said to have been prescribed for making a claim for the employee's contribution and since the amounts which have been determined by the Insurance Court have been found to be correct, the Corporation is entitled to a decree in each of the above four appeals. On behalf of the respondents, however, it has been contended that the decision of the Division Bench delivered in these appeals at an earlier stage has the force of *res judicata* and it is not open to the appellant to canvass or agitate the vires of rule 17. In *Satyadhyan Ghosal* v. *Smt. Deorajin Debi* (4), the landlords had obtained a decree for ejectment against tenants. Soon after the decree had been made the Calcutta Thika Tenancy Act, 1949 came into force. The tenants made an application under Order IX, rule 13 of the Code of Civil Procedure for having that decree set aside. That application was dismissed. Thereafter an application was made by the tenants under section 28 of the aforesaid Act alleging that they were Thika tenants and praying that the decree made against them he rescinded. This application was resisted by the landlords. The Munsif held that the applicants were not Thika tenants and the decree was not liable to be rescinded. The tenants moved the High Court of Calcutta under section 115 of

(3) I.L.R. (1966) 2 Punj. 291 (F.B.)=1966 P.L.R. 566.

(4) A.I.R. 1960 S.C. 941.

the Code. By the time the revision application was taken up, the Calcutta Thika Tenancy Ordinance, 1952 had come into force followed by an Amendment Act. The amendment Act *inter alia* omitted section 28 of the original Act. The High Court had to consider the effect of section 1(2) of the Amendment Act and it was held that the said Act did not affect the operation of section 28 of the original Act. The order of the Munsif was set aside and after remand the Munsif rescinded the decree. The landlords' application under section 115 of the Code against the Munsif's order was rejected by the High Court. The attempt of the landlords to raise before the High Court again the question of the applicability of section 28 was unsuccessful on the ground that the matter was *res judicata*. An appeal was then preferred by the landlords to the Supreme Court. The main argument taken before their Lordships was that section 28 of the original Act could not, after the enforcement of the Amending Act, be applied to any proceedings pending on the date of the commencement of the Ordinance. This question had been decided in another case *Mahadeolal Kanodia* v. *The Administrator General of West Bengal* (5), in which it had been held that section 28 of the original Act was not applicable. It was observed by their Lordships that when a matter whether on a question of fact or a question of law had been decided between two parties in one suit or proceeding and the decision was final, either because no appeal was taken to a higher Court or because the appeal was dismissed, or no appeal lay, neither party would be allowed in a future suit or proceedings between the same parties to canvass the matter again. The Principle of *res judicata* applied also as between two stages in the same litigation to the extent that a Court, whether the trial Court or a higher Court having at an earlier stage decided a matter in one way would not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Next the question that was posed was—

> "Does this however mean that because at an earlier stage of the litigation a Court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher Court cannot at a later stage of the same litigation consider the matter again ?"

This question was answered in the negative and it was held that an interlocutory order could be challenged in an appeal to a higher Court from the final decree or order.

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(5) A.I.R. 1960 S.C. 936.

Now, it is quite clear that the question whether rule 17 was *intra vires* had been decided by a Division Bench of this Court at an earlier stage of the same litigation and the observations of the Supreme Court would apply appositely to the extent that the parties cannot be allowed to re-agitate the matter again at a subsequent stage of the same proceedings. It is equally clear that there would be no bar to a higher Court which in the present case would be the Supreme Court considering the matter again if an appeal is taken to it, but it is not possible to see how this Bench can allow the parties to re-agitate the question of the vires of rule 17 which has been decided by a Division Bench at a previous stage of these proceedings. In *Balkishan Dass* v. *Parmeshri Dass and others* (6), a decision had been given by the High Court at an interlocutory stage that the suit could not have been brought under the provisions of section 92 of the Code of Civil Procedure. It was held that the same question could not be agitated again in appeal against the decree in the suit by virtue of the applicability of the rule or principle of ***res judicata***. The decision in *Satyadhyan Ghosal* v. *Smt. Deorajin Debi* (4) was followed and a Full Bench decision in *Laxminarayan* v. *Sultan Jehan Begum* (7) was also relied upon. In the Hyderabad case it was laid down that a final decision by a Division Bench of the High Court against an interlocutory order of the lower Court passed in a revision could not be agitated in an appeal against the decree in the same suit to another Division Bench of the High Court. Siddiqi, J., while discussing section 115 of the Code said :—

> "But, in my opinion, that section does not authorise the appellate Court to reconsider or interfere in the judgment of a Court whose orders are not liable to be treated in an appeal as orders of a Subordinate Court provided these orders are within the competence of that Court and have the character of being final and conclusive as between the parties."

In *Shyamcharan Raghubar Prasad* v. *Sheojee Bhai Jairam Chattri* (8), a similar view was expressed and it was laid down that the order passed by the High Court in revision was final as regards that Court and its correctness could not be challenged in appeal before the High Court and could only be challenged before the Supreme

(6) I.L.R. (1963) 1 Punj. 320=A.I.R. 1963 Punj. 187.
(7) A.I.R. 1951 Hyd. 132 (F.B.).
(8) A.I.R. 1964 M.P. 288.

Court in an appeal from the final decree. The Madhya Pradesh Court also followed the ratio of the decision in *Satyadhyan Ghosal* v. *Shmt. Deorajin Debi* (4), The Hyderabad and the Madhya Pradesh Courts did not agree with the contrary opinion expressed in *Pichu Ayyangar* v. *Ramanuja* (9). It is obvious that the Madras view cannot be regarded, with respect, as correct after the decision of their Lordships in *Satyadhyan Ghosal* v. *Smt. Deorajin Debi* (4).

The argument of Mr. Kapur for the appellant is that since the present Bench in sitting as an appeal Court under clause 10 of the Letters Patent the final decision being is of the learned Single Judge after the appeals had been remanded to him by the Division Bench at the previous stage the decision given about the vires of rule 17 can be re-agitated and re-examined. He has invited us to re-examine it and to follow the law laid down by the Full Bench and hold that since rule 17 is *ultra vires* the Act, no period of limitation has been provided for the claims which were made by the appellant. He has sought to rely on certain observations in *Satyadhyan Ghosal* v. *Smt. Deorajin Debi*, (4) and says that the ratio of the decision is that an order made at an interlocutory stage can be re-agitated in appeal. According to Mr. Kapur, a Division Bench when hearing an appeal under clause 10 of the Letters Patent is a higher Court and is fully competent to re-examine and even overrule the decision of this Court given at an earlier stage in the same proceedings. I find it very difficult to accede to Mr. Kapur's contention either on principle or authority. It seems to me that the analogy of a remand cannot hold good in the present case. The entire appeal had been referred to the Division Bench and whatever points the Bench decided were conclusive. Only certain points were left for decision by the learned Single Judge which were referred back to him but this could not detract from the conclusiveness of the decision of the Bench on the vires of rule 17. Moreover, on the principles laid by the Supreme Court in *Satyadhyan Ghosal's case* the previous order of the Division Bench with regard to the vires of rule 17 would not be open to challenge before us whatever the position may be in an appeal to the Supreme Court against our judgment. It may be somewhat anomalous that the pronouncement of the Full Bench in *Messrs United India Timber Works and another* v. *State Insurance Corporation* (3), cannot be followed in these cases but for the reasons which have been stated it must be held that for the purposes of the first group of appeals rule 17 is *intra vires* the Act.

(9) I.L.R. 1940 Mad. 901.

Mr. Kapur has next invoked the principles enunciated in *Lachmeshwar Prasad* v. *Keshwar Lal Chaudhuri* (10), and *Gummalapura Taggina Matada Kotturuswami* v. *Setra Veeravva,* (11). In the first case it was said that the hearing of an appeal was in the nature of re-hearing and in moulding the relief to be granted the appellate Court was entitled to take into account even facts and events which had come into existence after the decree. Consequently, the appellate Court was competent to take into account legislative changes since the decision in appeal was given and its powers were not confined only to seeing whether the lower Court's decision was correct according to the law as it stood at the time when its decision was given. In the second case *Gummalapura Taggina Matada Kotturuswami* v. *Setra Veeravva,* (11), the decision of the Federal Court was relied on and it was reiterated that an appellate Court could take into account any change in the law. A perusal of the aforesaid two decisions shows that the facts there were entirely different and distinguishable and that there is no parallel between them and the present case. There has been no legislative change and although the law declared by the Full Bench is quite different from the one laid down by the Division Bench in these cases it is not possible, for the reasons which have been stated, particularly owing to the applicability of the rule or principle of *res judicata,* to apply the law declared by the Full Bench to the first group of appeals.

Mr. Kapur has, in the alternative, sought to argue that even if rule 17 is *intra vires,* these claims were at least within time by virtue of the provision contained in section 18 of the Indian Limitation Act of 1908 which would be applicable. He agrees that he cannot invoke on the facts the benefit conferred by section 18 at least in one appeal, namely, Letters Patent Appeal, 251 of 1963, but in the other three appeals (Letters Patent Appeals Nos. 250, 252 and 253 of 1963), he maintains that section 18 was fully attracted. That section relates to the effect of fraud and provides *inter alia* that where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, the time limited for instituting a suit against the person guilty of the fraud or accessory thereto or against any person claiming through him otherwise than in good faith and for a valuable consideration shall be

(10) A.I.R. 1941 F.C. 5.
(11) A.I.R. 1959 S.C. 577.

computed from the time when the fraud first become known to the person injuriously affected thereby. The submission of Mr. Kapur may be stated thus. According to section 44 of the Act, every principal and immediate employer shall submit to the Corporation or such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf. Section 85 of the Act gives the penalties for failure to pay contribution, etc., and clause (e) relates to failure or refusal to submit any return required by the regulation or making of a false return. For the above defaults the punishment is imprisonment which may extend to three months or with fine which may extend to Rs. 500 or with both. The Act would not become applicable unless twenty persons were employed in the concern. As a duty had been cast on the persons mentioned in section 44 to make proper returns, there was deliberate failure on the part of these persons to submit the returns and give requisite information about the number of persons employed. Thus the limitation would run only from the date the Corporation learnt of the fraudulent withholding of information which was required to be supplied under section 44 of the Act.

Mr. Kapur has called attention to the facts alleged by him in the various petitions but for our purposes the facts in Letters Patent Appeal, 250 of 1963 need only be mentioned. In the application, dated 25th December, 1959, which was filed on behalf of the Corporation under section 75(2) of the Act for recovery of the employees' contribution, it was stated in paragraph 2 that Messrs Spangles & Glue Manufacturers had been a factory since 1st May, 1955 and Ganeshbir Singh by virtue of his being the Manager and partner of the factory was the principal employer as defined in sub-section (17) of section 2 of the Act. Paragraph 5 which related to the cause of action may be reproduced to the extent necessary :—

> "5(a) That the cause of action (details explained in 5(b) arose on 3rd March, 1959, when the SC-1 form, indicating the employees' position, was submitted by the employer to this office.
>
> (b) That the respondent No. 1,—*vide* his letter, dated 22nd January, 1959, asked the applicant office about the coverage of his factory.

(ii) That the applicant thereupon,—*vide* his letter, dated 7th February, 1959, requested the respondent to furnish the employment position of his factory monthwise with a view to deciding its coverage.

(iii) That the respondent in reply, submitted the monthwise employment position of his factory in the SC-1 form since 1st January, 1955.

(iv) That the applicant, deciding the coverage of the factory, allotted code No. 12-2567 to the factory and requested the respondents to pay the arrears of Employers' Special Contribution and Employees Contribution since the date they had employed 20 or more persons for the first time, as their factory was deemed to be covered since such date.

(v) That the respondents despite repeated requests and reminders have been evading the production of the records for assessment of the contributions due and thus their payments.

(g) That the provisions of the Employees' State Insurance Act, 1948, being mandatory, respondent No. 1 was required to get his factory covered under the Act immediately, just after he had employed 20 or more persons for the first time. But in spite of his employing 20 persons including the Manager since 1st May, 1955, respondent No. 1 did not intimate the applicant about the coverage of his factory before 22nd January, 1959.

* * * * * *

* * * * * *".

In paragraph 6 it was stated that if the application was barred by time limitation might be relaxed in accordance with rule 17 on the ground of sufficiency of the reasons given above. Mr. Kapur says that in paragraph 5 all the necessary facts had been stated for proving fraud and invoking the applicability of section 18 of the Limitation Act. He admits that in paragraph 6 a prayer was made for extension of time in accordance with rule 17 but that situation would only arise if section 18 was not applicable and did not cover the case. He agrees that it was not specifically stated anywhere in the application

either in paragraph 5 or paragraph 6 that the Corporation had been kept from the knowledge of the right to claim the contribution by means of fraud on the part of the respondents but as all the necessary particulars had been stated on which fraud can be found he has invited us to go into the question of fraud and determine its effect in accordance with the provisions of section 18. Order VI, rule 4 of the Code of Civil Procedure provides that in all cases in which the party pleading relies on any misrepresentation, fraud, etc., particulars shall be stated in the pleading. It is contended by Mr. Kapur that the essential particulars had all been stated and are to be found in paragraph 5 and it is wholly immaterial that an express plea of fraud was not taken. But the cause of action arose on 3rd March, 1959 because of the applicability of section 18 of the Limitation Act. Says Mr. Kapur, and rightly, that facts have to be pleaded and not the law. The extension asked for in paragraph 6 was sought only in the event of the application being barred by time which could not be if the facts which had been stated in paragraph 5 stood established and Mr. Kapur claims that they remained uncontroverted and unchallenged. Order VII, rule 6 of the Code of Civil Procedure provides that where a suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed. According to Mr. Kapur, all the necessary facts are stated in paragraph 5 for claiming such exemption. Our attention has been invited by him to two Lahore decisions in connection with the applicability of section 18 of the Limitation Act. In *Ganesha* v. *Sadiq*, (12), it was held that when a transaction of sale was fraudulently described as one conferring occupancy rights on the purchaser in order to defeat the rights of pre-emption, the limitation for pre-emption would begin to run from the date on which the pre-emptor came to know of the fraud. In *Mt. Khadim Bibi* v. *Bure Khan*, (13), a Mohamedan husband was found to have deliberately and fraudulently withheld from his wife the knowledge of divorce. It was held that since the wife did not know of her right to claim lower by reason of the fraud, time to institute suit for her dower debt would run from the date the fraud became known to her. According to Mr. Kapur, it was the duty of the respondents to comply with the provisions of the statute and give the requisite information as provided by section 44 of the Act. When that had not been done and the necessary facts which would show that the concerns in question fell within the category of a factory within the meaning of the Act had been withheld, the time to file an application for recovery of the employees'

(12) A.I.R. 1937 Lahore 97.

(13) A.I.R. 1943 Lahore 215.

contribution under the Act would run only from the time when the fraudulent withholding of information became known to the Corporation. For instance, in the case of Messrs Spangles & Glue Manufacturers twenty persons including the Manager had been employed since 1st May, 1955 but no intimation was sent to the Corporation in this behalf before 3rd March, 1959. This would attract the applicability, of section 18 and limitation would run from 3rd March, 1959 when the cause of action is stated to have arisen.

Now, so far as reliance on section 18 of the Limitation Act is concerned, it does not appear that before the Insurance Court any attempt was made to obtain the benefit of the said provision. As stated before, the Corporation asked for extension of time under the provisions of rule 17. This is so with regard to the case of Messrs Spangles & Glue Manufacturers, the facts of which have been mostly kept in view while dealing with the various points raised in these appeals. As regards Letters Patent Appeal No. 252 of 1963, the Insurance court was of the view that if rule 17 was *intra vires,* then in the circumstances of the case the Corporation was entitled to the benefit of extension of the period of limitation under rule 17. It however, held that the rule was *ultra vires.* The same view was expressed by the Insurance Court in Letters Patent Appeal No. 253 of 1963. The learned Single Judge in these appeals after the Division Bench had held that rule 17 was *intra vires* merely addressed himself to the question whether there was sufficient ground for extension of the period of limitation under that rule in each of these cases. He did not examine the applicability of section 18 of the Limitation Act or the argument which has now been addressed to us in respect of it. Ordinarily if there is no mention or discussion in the judgment of a learned Single Judge of a particular question or point, it has to be assumed that the same was not agitated or pressed before him. Mr. Kapur, however, made a categorical statement at the Bar that he had argued the question of the applicability of section 18 of the Limitation Act. fully and had even cited the two Lahore decisions before the learned Single Judge. In these circumstances we do not consider that Mr. Kapur should be debarred from raising the question of limitation which even otherwise can be raised at any stage of the proceedings. There are, however, a few hurdles in the way of the appellant Corporation obtaining a decision from us on the question of limitation. It cannot be denied that in each one of the cases in which section 18 had been relied upon, it would be necessary to go into questions of fact (a) with regard to the fraud by which the Corporation was kept from the knowledge of making an

application before the Employees' Insurance Court under section 72 (2) of the Act and (b) the point of time when the Corporation came to know of its rights to make an application. Another ancillary but material question which will arise and which will have to be determined will be whether the proprietor or the Manager of the concern could be included in the number of twenty mentioned in the definition of factory. This, as laid down by the Division Bench in the passage extracted before, would depend on the facts of each particular case. The determination of this question will have a good deal of bearing on the decision relating to the applicability of section 18 of the Limitation Act. The only appropriate Court for determination of all these matters would naturally be the Court of first instance because under section 82 of the Act an appeal lies to this Court from an order of the Employees' Insurance Court only if it involves a substantial question of law. The matters that will be decided with reference to section 18 of the Limitation Act would be mixed questions of law and fact and, therefore, the decision of the Employees' Insurance Court would be final unless its decision involves a substantial question of law. Accordingly Letters Patent Appeals 250, 252 and 253 of 1963 are allowed and the orders of the learned Single Judge are set aside. These matters shall go back to the Employees' Insurance Court for fresh decision in accordance with law and in the light of the observations made in this judgment. Parties, to appear there on 6th March, 1967. As regards Letters Patent Appeal 251 of 1963, the same is dismissed. There will be no order as to costs in all these four appeals.

In the second group of appeals, namely, Letters Patent Appeals 254, 255 and 256 of 1963, it is common ground that they stand concluded by the decision of the Full Bench in *Messrs United India Timber Works and another* v. *Employees State Insurance Corporation*, (3). There is no previous decision in these appeals of this Court of the same nature as was delivered by the Division Bench in *Chanan Singh* v. *Regional Director, Employees' State Corporation* (2). The only point which Mr. B. R. Tuli, agitated on behalf of the respondents was the preliminary objection that the appeals under clause 10 of the Letters Patent were barred. That point has been discussed fully when dealing with the preliminary objection raised in all the seven appeals. These appeals are consequently allowed and the order of the learned Single Judge is set aside and that of the Employees' Insurance Court restored. In the circumstances there will be no order as to costs.

MEHAR SINGH, C.J.—I agree.

B.R.T.