

2008 Vol. 110 (8) Bom. L.R. 2880*

IN THE HIGH COURT OF BOMBAY

Employees State Insurance Corporation

v.

H. Fillunger & Co. Pvt. Ltd.

LETTERS PATENT APPEAL STAMP NO. 15833 OF 2005 IN FIRST APPEAL
NO. 696 OF 2001

DECIDED ON: 01.09.2008

Judges

B.H. Marlapalle and D.B. Bhosale JJ.

Labour and Industrial — Letters Patent Appeal — Maintainability of — Section 100A of Code of Civil Procedure, 1908 and Section 82 of the Employees State Insurance Act, 1948 — Appellant-Employees State Insurance Corporation informed Respondent-Company regarding coverage of its establishment under provisions of ESI Act — Decision of Appellant-Corporation was upheld by Employees Insurance Court — First Appeal filed by Respondent company was allowed by learned Single Judge — Hence, present Letters Patent Appeal(LPA) — Appellants submitted that the bar of entertaining the Letters Patent Appeal as provided under Section 100A as incorporated in the CPC from 1st July, 2002 will not be attracted and the Letters Patent Appeal will be maintainable — Respondent-company contended that the LPA was not maintainable and the bar provided under Section 100A of CPC shall be applicable — Whether the Letters Patent Appeal was maintainable or not in view of the amended Section 100A of CPC as brought into force from 1st July, 2002 — Held, Employees Insurance Court is presided over by Member of the Judicial Service and it is a Court — Against the Order passed by Employees Insurance Court an appeal lies before High Court Court under Section 82 of ESI Act and if it is decided by a Single Bench, Section 100A would certainly bar any further appeal before the Division Bench — In view of bar provided under Section 100A of CPC present Letters Patent Appeal cannot be entertained — Section 100A of CPC as amended with effect from 1st July, 2002 is applicable — Letters Patent Appeal not maintainable — Appeal dismissed

* MANU/MH/0775/2008

Facts

a Employees State Insurance Corporation informed Respondent regarding coverage of its establishment under provisions of ESI Act. Decision of Corporation was upheld by Employees Insurance Court. First Appeal filed by Respondent company was allowed by learned Single Judge. Hence, present Letters Patent Appeal.

b **Held**

[1] In the instant case, Employees' Insurance Court is presided over by a Member of the Judicial service within the meaning of Article 236(b) of the Constitution and while dealing with an application under Section 75 of the ESI Act, it exercises judicial powers and it is a Court. Against the Order passed by the Employees' Insurance Court, an appeal lies before this Court under Section 82 of the ESI Act and if it is decided by a Single Bench, Section 100A would certainly bar any further appeal before the Division Bench.

[p. 2890, para 10 d]

d [2] In view of the bar provided under Section 100A of CPC, this Letters Patent Appeal cannot be entertained.

[p. 2890, para 10 f]

[3] We, therefore, hold that Section 100A of the CPC as amended with effect from 1st July, 2002 is applicable in the instant case and the Letters Patent Appeal is not maintainable on this count.

[p. 2891, para 12 g]

e **Cases referred to**

Bhenoy G. Dembla and Anr. v. M/s. Prem Kutir P. Ltd. MANU/MH/0520/2003: 2003 (4) MhLJ 883; 2004 (2) BomCR 280; [2003] 117 CompCas 643 (Bom); [2003] 47 SCL 372 (Bom) (discussed) [p. 2887, para 9 g]

f *Gangwani & Co. v. Mrs. Saraswati w/o Maniram Banewar and Ors.* [2001 (3) ALL MR 370 (discussed) [p. 2890, para 12 i]

Kamal Kumar Dutta v. Ruby General Hospital Ltd. MANU/SC/8408/2006: (2006) 7 SCC 613; [2006] 134 CompCas 678 (SC); (2006) 5 CompLJ 511 (SC); JT 2006 (7) SC 333; 2006 (7) SCALE 668; [2006] 70 SCL 222 (SC) (discussed) [p. 2884, para 3 d]

g *Maharashtra Power Development Corporation Ltd. v. Dabhol Power Co. and Ors.* MANU/MH/0646/2003: AIR 2004 Bom 38; (2004) 1 BomLR 833; [2003] 117 CompCas 506 (Bom) (discussed) [p. 2887, para 9 h]

h *P.S. Sathappan (Dead) by LRs v. Andhra Bank Ltd. and Ors.* MANU/SC/0873/2004: AIR 2004 SC 5152; 2004 (5) CTC 209; JT 2004 (8) SC 464; (2005) 1 MLJ 105 (SC); RLW 2005 (1) SC 19; 2004 (8) SCALE 601; (2004) 11 SCC 672 (discussed) [p. 2884, para 2 b]

Rahul Sharad Awasthi v. Ratnakar Trimbak Pandit and Ors. MANU/MH/0239/2004: 2004 (5) BomCR 50; 2004 (4) CTC 241; 2004 (3) MhLJ 706 (discussed) [p. 2884, para 2 b]

i *State of Maharashtra v. Labour Law Practitioners' Association and Ors.* MANU/SC/0121/1998: AIR 1998 SC 1233; 1998 II AD (SC) 20; [1999 (82)

FLR 380]: (1998) 2 GLR 1079: JT 1998 (1) SC 604: (1998) I LLJ 868 SC: 1998 (1) SCALE 565: (1998) 2 SCC 688: [1998] 1 SCR 793 (discussed)	a
<i>Union of India v. Mohindra Supply Co.</i> MANU/SC/0004/1961: [1962] 3 SCR 497: AIR 1962 SC 256 (discussed)	[p. 2887, para 8 f] [p. 2884, para 5 g]
Legislations referred to	b
Bombay Industrial Relations Act, 1946	[p. 2887, para 8 c]
Code of Civil Procedure (Amendment) Act, 2002	
Section 100A	[p. 2889, para 9 c]
Code of Civil Procedure (Insertion) Act, 1976	
Section 100A	[p. 2891, para 12 e] c
Code of Civil Procedure, 1908	
Section 4	[p. 2885, para 5 a]
Section 96	[p. 2884, para 2 a]
Section 100	[p. 2891, para 12 c] d
Section 100A	[p. 2884, para 2 a]
Section 104(1)	[p. 2884, para 5 g]
Section 104(2)	[p. 2885, para 5 c]
Code of Criminal Procedure, 1973, Section 195	[p. 2886, para 7 f]
Companies Act, 1956	e
Section 10F	[p. 2888, para 9 c]
Section 397 and 398	[p. 2890, para 10 b]
Constitution of India, Article 236(b)	[p. 2887, para 8 f]
Employees' State Insurance (Amendment) Act, 2002	[p. 2884, para 4 e]
Employees' State Insurance Act, 1948	f
Section 10E, 10F	[p. 2888, para 9 e]
Section 74	[p. 2885, para 7 h]
Section 75	[p. 2883, para 1 f]
Section 75(1) and (2)	[p. 2886, para 7 a]
Section 75(3)	[p. 2886, para 7 a] g
Section 76	[p. 2886, para 7 b]
Section 77	[p. 2886, para 7 c]
Sections 78, 79 and 81	[p. 2886, para 7 d]
Section 82	[p. 2883, para 2 i] h
Section 83	[p. 2885, para 7 h]
Section 96	[p. 2884, para 2 a]
Sections 397 and 398	[p. 2888, para 9 e]
Industrial Disputes Act, 1947	[p. 2887, para 8 c]
Limitation Act, 1963, Sections 5 and 12	[p. 2887, para 7 b] i
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971	[p. 2887, para 8 c]

Vol. 110 (8)]

ESIC v. H. Fillunger & Co. Pvt. Ltd.
(B.H. Marlapalle, J.)

2883

Workmen's Compensation Act, 1923

- a* **Section 30** [p. 2890, para 11 i]
 Section 30(1) [p. 2891, para 11 a]

Subsidiary Legislations referred to

- b* Maharashtra Judicial Officers of the Courts of Enquiry, Labour Courts, Industrial
 Courts (Recruitment, Appointment and Disciplinary Action) Rules, 1999
 Rule 5 [p. 2887, para 8 c]

Counsel

- For Appellant/Petitioner/Plaintiff: M.V. Jaykar, i/b., M/s. M.V Jaykar & Co.
c For Respondent(s)/Defendant: C.R. Naidu, i/b., M/s. C.R. Naidu & Co.

Ratio Decidendi

- d* *"No Letters Patent Appeal is maintainable against the Order passed by
 Employees Insurance Court being barred under Section 100A of CPC as
 amended with effect from 1st July 2002 notwithstanding Clause 15 of Letter
 Patent Appeal Code."*

ORDER**B.H. Marlapalle, J.**

- e* 1. This Letters Patent Appeal is directed against the Order passed by the
 learned Single Judge of this Court on 22nd February, 2005 thereby allowing
 First Appeal No. 696 of 2001. In the said First Appeal filed by the present
 Respondent-company, the Judgment and Order of the Employees' Insurance Court
 at Pune rendered on 4th May, 2001 was under challenge and the learned Judge of
f the Employees' Insurance Court was pleased to dismiss Application (ESI) No. 18
 of 1993 filed under Section 75 of the Employees' State Insurance Act, 1948
 ("the ESI Act" for short). It appears that the Sub-Regional office of the Appellant
 Corporation at Pune had by its letter dated, 17th August, 1993 informed the
 company regarding the coverage of its establishment under the provisions of
g the ESI Act commencing from 27th November, 1976 and the said decision of
 the Corporation was upheld by the Employees' Insurance Court at Pune.
 When First Appeal No. 696 of 2001 was decided by the learned Single Judge of
 this Court on 22nd February, 2005, none had appeared for the Appellant- Corporation
 but the appeal was allowed on merits by a reasoned order, which is under
h challenge in this LPA.
2. We had called upon the learned Counsel for the Corporation to address us
 on the preliminary point of maintainability of this Letters Patent Appeal and
 we have heard at length the learned Counsel for the respective parties on this
 preliminary issue. Mr. Jaykar, learned Counsel for the Appellants submitted
i that the Employees' Insurance Court constituted under the ESI Act is not a
 Civil Court and, therefore, First Appeal No. 696 of 2001 filed under Section 82

26 Sept. – 2 Oct. 2008

83

of the said Act cannot be treated on par with the First Appeal filed under Section 96 of the Code of Civil Procedure and consequently the bar of entertaining the Letters Patent Appeal as provided under Section 100A as incorporated in the CPC from 1st July, 2002 will not be attracted. As per Mr. Jaykar First Appeal No. 696 of 2001 was filed under a special statute viz. the ESI Act and so long as there is no express bar from filing any further appeal under the said Act, the Letters Patent Appeal will be maintainable. In support of these submissions, he has placed reliance on the Constitution Bench decision in the case of *P.S. Sathappan (Dead) by LRs v. Andhra Bank Ltd. and Ors.*¹ [AIR 2004 SC 5152] as well as the Full Bench decision of this Court in the case of *Rahul Sharad Awasthi v. Ratnakar Trimbak Pandit and Ors.*² [2004 (5) BomCR 50].

3. Mr. Naidu, learned Counsel for the Respondent-company, on the other hand, urged before us that the LPA is not maintainable as it has been filed against an order passed on 22nd February, 2005, i.e., after 1st July, 2002 and the bar provided under Section 100A of CPC shall be applicable. As per him the Employees' Insurance Court has all the trappings of a Court and more particularly of a civil Court. He placed reliance on the decision in the case of *Kamal Kumar Dutta v. Ruby General Hospital Ltd.*³ [(2006) 7 SCC 613].

4. In the case of *Rahul Awasthi* (supra), the Full Bench of this Court did not deal with the issue of applicability of Section 100A of CPC to the Judgment and Order of a Single Judge of the High Court in exercise of the appellate jurisdiction under a special statute. The Full Bench stated in this regard as under:

We clarify that we are not concerned with the question whether Section 100A of the Code as substituted by the Amendment Act, 2002 is applicable to the appeal before the Division Bench against the Judgment and Order of a Single Judge of the High Court in exercise of Appellate jurisdiction under special statute and to that extent we do not express any opinion about the Full Bench decision of Andhra Pradesh High Court and the Division Bench decision of this Court in *Bhenoy G. Dembla...*

5. In the case of *P.S. Sathappan* (supra), the Constitution Bench (majority view) held that in view of the language of Section 104(1) of the CPC, the Letters Patent Appeal would be maintainable against the Order passed by the Single Judge of the High Court in an Appeal From Order. The Supreme Court referred to its earlier decision in the case of *Union of India v. Mohindra Supply Co.*⁴ [(1962) 3 SCR 497], wherein the following observations are made:

1 Ed.: MANU/SC/0873/2004: 2004 (5) CTC 209; JT 2004 (8) SC 464; (2005) 1 MLJ 105 (SC); RLW 2005 (1) SC 19; 2004 (8) SCALE 601; (2004) 11 SCC 672

2 Ed.: MANU/MH/0239/2004: 2004 (4) CTC 241; 2004 (3) MhLJ 706

3 Ed.: MANU/SC/8408/2006: [2006] 134 CompCas 678 (SC); (2006) 5 CompLJ 511 (SC); JT 2006 (7) SC 333; 2006 (7) SCALE 668; [2006] 70 SCL 222 (SC)

4 Ed.: MANU/SC/0004/1961: AIR 1962 SC 256

a The intention of the legislature in enacting Sub-section (1) of Section 104 is clear, the right to appeal conferred by any other law for the time being in force is expressly preserved. This intention is emphasized by Section 4 which provides that in the absence of any specific provision to the contrary, nothing in the Code is intended to limit or otherwise affect any special jurisdiction or power conferred by or under any other law for the time being in force. The right to appeal against Judgments (which did not amount to decrees) under the Letters Patent, was, therefore, not affected by Section 104(1) of the Code of Civil Procedure, 1908.

In *Sathappan's* case, their Lordships stated:

cAs seen above, Section 104(1) specifically saves a Letters Patent Appeal. Sub-clause (2) can thus only apply to such appeals as are not saved by Sub-clause (1). In other words, Sub-clause (2) of Section 104 can have no application to appeals saved by Section 104(1). Also it is well-established rule of interpretation that if one interpretation leads to a conflict whereas another interpretation leads to a harmonious reading of the Section, then an interpretation which leads to a harmonious reading must be adopted. In the guise of giving a purposive interpretation one cannot interpret a Section in a manner which would lead to a conflict between two Sub-sections of the same Section.....

e It is, therefore, clear that the decision in the case of *Sathappan* (supra) is based on the language of Section 104 of CPC and the said decision cannot be made applicable to the instant case.

6. To decide the preliminary issue, we need to deliberate on the following issues:

f (a) Whether the Letters Patent Appeal, against the Judgment in the first appeal arising from the decision of ESI Court, is maintainable in view of the amended Section 100A of CPC as brought into force from 1st July, 2002?

g (b) Whether the Letters Patent Appeal is maintainable as the ESI Act does not expressly confer and recognise such a right of appeal before the Division Bench?

(c) Whether, in view of the Scheme of Section 82 of the ESI Act, the Letters Patent Appeal is impliedly barred?

h 7. It would be appropriate to consider the scheme of Chapter VI of the ESI Act, i.e., from Section 74 to Section 83. As per Section 74, the State Government shall, by notification in the Official Gazette, constitute an Employees' Insurance Court for such local areas as may be specified in the notification. The Court shall consist of such number of Judges as the State Government may think fit. A person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court. The State Government may appoint the same Court for two or more local

i

areas or two or more Courts for the same local area and where more than one Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them. Section 75 specifies the matters to be decided by the Employees' Insurance Court. As per Sub-section (3) of Section 75, no Civil Court shall have jurisdiction to decide or deal with any question or dispute as set out in Sub-sections (1) and (2) or to adjudicate on any liability which by or under the Act is to be decided by a medical board, or by a medical appeal Tribunal or by the Employees' Insurance Court. Section 76 deals with the territorial jurisdiction of the Employees' Insurance Court and empowers the State Government to transfer any matter pending before any Employees' Insurance Court in the State to any such Court in another State with the consent of the State Government of that State and the Court to which any matter is so transferred, shall continue the proceedings as if they had been originally instituted in it. As per Section 77, the proceedings before an Employees' Insurance Court shall be commenced by an application and every such application shall be made within a period of three years from the date on which the cause of action arose. The application so presented shall be in such form and shall contain such particulars and shall be accompanied by such fees, if any, as may be prescribed by the Rules made by the State Government in consultation with the Corporation. Sections 78, 79, 81 and 82 of the ESI Act read as under:

78. Powers of Employees' Insurance Court (1) The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such Court shall be deemed to be a Civil Court within the meaning of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) The Employees' Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government.

(3) All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of the Court.

(4) An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court.

79. Appearance by legal practitioners, etc. Any application, appearance or act required to be made or done by any person to or before an Employees' Insurance Court (other than appearance of a person required for the purpose of his examination as a witness) may be made or done by a legal practitioner or by an officer or a registered trade union authorized in writing by such person or with the permission of the Court, by any other person so authorized.

- a* 81. Reference to High Court. An Employees' Insurance Court may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with such decision.
- b* 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.
- c* 8. In the State of Maharashtra, the State Government has issued notifications appointing the Industrial Courts/Tribunals established under the Industrial Disputes Act, 1947, the Bombay Industrial Relations Act, 1946 and the MRTU and PULP Act, 1971 as the Employees' Insurance Courts. As per Rule 5 of the Maharashtra Judicial Officers of the Courts of Enquiry, Labour Courts,
- d* Industrial Courts (Recruitment, Appointment and Disciplinary Action) Rules, 1999, the mode of appointment of the Member - Industrial Court shall be:
- (a) by promotion, on the recommendation of the High Court of a suitable Judge of the Labour Court who has worked for not less than five years;
- (b) by nomination, on the recommendation of the Selection Committee, of a person who is not less than 35 years of age and unless already in the Judicial service is not more than 50 years of age and has practised as an advocate in the High Court or any Courts subordinate to it, for not less than ten years;
- (c) by transfer of suitable District Judge.
- f* In short the Presiding Officers of the Industrial Court/Employees' Insurance Court are the Judicial Officers in the cadres of District Judge and undoubtedly they are members of the Judicial Service within the meaning of Article 236(b) of the Constitution as has been held by the Apex Court in the case of *State of Maharashtra v. Labour Law Practitioners' Association and Ors.*⁵ AIR 1998 SC 1233.
- g* 9. In the case of *Bhenoy G. Dembla and Anr. v. M/s. Prem Kutir P. Ltd.*⁶ 2003 (4) MhLJ 883, a Division Bench of this Court held, that no Letters Patent Appeal would lie against the decision rendered by the Single Judge in a First Appeal filed under Section 10F of the Companies Act, 1956 challenging the decision rendered by the Company Law Board. Whereas, another Division Bench of this Court, in the case of *Maharashtra Power Development Corporation Ltd. v. Dabhol Power Co. and Ors.*⁷ AIR 2004 Bombay 38 held that the Company
- h*

5 Ed.: MANU/SC/0121/1998: 1998 II AD (SC) 20: [1999 (82) FLR 380]: (1998) 2 GLR 1079: JT 1998 (1) SC 604: (1998) I LLJ 868 SC: 1998 (1) SCALE 565: (1998) 2 SCC 688: [1998] 1 SCR 793

6 Ed.: MANU/MH/0520/2003: 2004 (2) BomCR 280: [2003] 117 CompCas 643 (Bom): [2003] 47 SCL 372 (Bom)

7 Ed.: MANU/MH/0646/2003: (2004) 1 BomLR 833: [2003] 117 CompCas 506 (Bom)

Court exercising jurisdiction under Section 10F of the Companies Act, 1956 does not sit in appeal from original decree and order and, therefore, the Order passed in an appeal filed under Section 10F by the Single Judge is not a Judgment and decree within the meaning of the Civil Procedure Code. Consequently, the Letters Patent Appeal was held to be maintainable. However, the said decision has been overruled by the Supreme Court in the case of *Kamal Kumar Datta* (supra).

In para 21, 22 and 23 of its decision in *Kamal Kumar Datta's* case, the Supreme Court observed as under:

21. But after the amendment, the power which was being exercised under Sections 397 and 398 of the Act by the learned Single Judge of the High Court is being exercised by CLB under Section 10E of the Act. Appeal against the Order passed by CLB, lies to the High Court under Section 10F of the Act. Therefore, the position which was obtaining prior to the amendment in 1991 was that from any Order passed by the Single Judge exercising the power under Sections 397 and 398 of the Act, the appeal used to lie before the Division Bench of the High Court. But after the amendment, the power has been given to CLB and appeal has been provided under Section 10F of the Act. Thus, Part I-A was inserted by the amendment with effect from 1st January, 1964. But the constitution of the Company Law Board and the power to decide application under Section 397 and 398 of the Act was given to CLB with effect from 31st May, 1991 and appeal was provided under Section 10F of the Act with effect from 31st May, 1991. Therefore, on reading of Sections 10E, 10F, 397 and 398 of the Act, it becomes clear that it is a complete code that applications under Sections 397 and 398 of the Act shall be dealt with by CLB and the Order of CLB is appealable under Section 10F of the Act before the High Court. No further appeal has been provided against the Order of the learned Single Judge. Mr. Nariman, learned Senior Counsel for the Respondents submitted that an appeal is a vested right and, therefore, under Clause 15 of the Letters Patent of the Calcutta High Court, the Appellants have a statutory right to prefer appeal irrespective of the fact that no appeal has been provided against the Order of the learned Single Judge under the Act. In this connection, learned Counsel invited our attention to a decision of this Court in *Garikapatti Veeraya v. N. Subbiah Choudhry* and in that it has been pointed out that the appeal is vested right. The majority took the view that the appeal is a vested right. It was held as follows: (SCR p. 488)

...that the contention of the Applicant was well founded, that he had a vested right of appeal to the Federal Court on and from the date of the suit and the application for special leave should be allowed.

The vested right of appeal was a substantive right and, although it could be exercised only in case of an adverse decision, it was governed by the

a law prevailing at the time of commencement of the suit and comprised all successive rights of appeal from Court to Court, which really constituted one proceeding. Such a right could be taken away only by a subsequent enactment, either expressly or by necessary intendment.

b 22. So far as the general proposition of law is concerned that the appeal is a vested right there is no quarrel with the proposition but it is clarified that such right can be taken away by a subsequent enactment, either expressly or by necessary intendment. Parliament while amending Section 100A of the Code of Civil Procedure, by amending Act 22 of 2002 with effect from 1st July, 2002, took away the Letters Patent power of the High Court in the matter of appeal against an Order of the learned Single Judge to the Division Bench. Section 100A of the Code of Civil Procedure reads as follows:

d 100A. No further appeal in certain cases. Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or Order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the Judgment and decree of such Single Judge.

e 23. Therefore, where appeal has been decided from an original Order by a Single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn. The present Order which has been passed by CLB and against that an appeal has been provided before the High Court under Section 10F of the Act, that is, an appeal from the original Order.

f Then in that case no further letters patent appeal shall lie to the Division Bench of the same High Court. This amendment has taken away the power of the Letters Patent in the matter where the learned Single Judge hears an appeal from the original Order. Original Order in the present case was

g passed by CLB exercising the power under Sections 397 and 398 of the Act and appeal has been preferred under Section 10F of the Act before the High Court. The learned Single Judge having passed an Order, no further appeal will lie as Parliament in its wisdom has taken away its power. Learned Counsel for the Respondents invited our attention to a

h letter from the then Law Minister. That letter cannot override the statutory provision. When the statute is very clear, whatever statement by the Law Minister made on the floor of the House, cannot change the words and intendment which is borne out from the words. The letter of the Law Minister cannot be read to interpret the provisions of Section 100A.

i The intendment of the legislature is more than clear in the words and the same has to be given its natural meaning and cannot be subject to any statement made by the Law Minister in any communication. The words

speak for themselves. It does not require any further interpretation by any statement made in any manner. Therefore, the power of the High Court in exercising the Letters Patent in a matter where a Single Judge has decided the appeal from the original Order, has been taken away and it cannot be invoked in the present context. There are no two opinions in the matter that when CLB exercised its power under Sections 397 and 398 of the Act, it exercised its quasi-judicial power as Original Authority. It may not be a Court but it has all the trapping of a Court. Therefore, CLB while exercising its original jurisdiction under Sections 397 and 398 of the Act passed the Order and against that order appeal lies to the learned Single Judge of the High Court and thereafter no further appeal could be filed.

a

b

10. It has been held that when the Company Law Board exercised its powers under Sections 397 and 398 of the Companies Act, it exercised its quasi-judicial power as Original Authority and though it may not be a Court but it had all the trapping of a Court. Against such order, passed by the CLB, an appeal lies to the learned Single Judge of the High Court under Section 10F and thereafter no further appeal could be filed, as Parliament in its wisdom has taken away its power under Section 100A of CPC.

c

d

In the instant case, Employees' Insurance Court is presided over by a Member of the Judicial service within the meaning of Article 236(b) of the Constitution and while dealing with an application under Section 75 of the ESI Act, it exercises judicial powers and it is a Court. Against the Order passed by the Employees' Insurance Court, an appeal lies before this Court under Section 82 of the ESI Act and if it is decided by a Single Bench, Section 100A would certainly bar any further appeal before the Division Bench, notwithstanding Clause 15 of the Letters Patent Appeal Code. The law laid down in *Kamal Kumar Datta's* case (supra) is applicable to the instant case and, therefore, in view of the bar provided under Section 100A of CPC, this Letters Patent Appeal cannot be entertained. In the case of *Bhenoy Dembla* (supra), the Division Bench held—

e

f

12. The principle of law which emerges is that unless a special statute expressly confers and recognizes a right of appeal before the Division Bench against the Judgment and order of a single judge of the High Court in the exercise of the appellate jurisdiction, no such appeal would lie upon the enforcement of the amended provisions of Section 100A against a Judgment of the Single Judge rendered on and from 1st July, 2002. In other words, where the decision of the Single Judge in the exercise of the appellate jurisdiction, against an original or appellate decree is rendered on and after 1st July, 2002 no further appeal, would lie unless the special statute in question expressly recognize a further right of appeal to the Division Bench.

g

h

11. A Full Bench of this Court in the case of *Gangwani & Co. v. Mrs. Saraswati w/o Maniram Banewar and Ors.* [2001 (3) ALL MR 370] had considered the scheme of Section 30 of the Workmen's Compensation Act, 1923.

i

a The first proviso below Sub-section (1) of Section 30 of the Workmen's Compensation Act states that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and the said proviso is in para materia with Section 82(2) of the ESI Act and, therefore, it is relevant to reproduce the following observations of the Full Bench in the case of *Gangwani & Co.* (supra):

b 33. Though Section 30 of the Workmen's Compensation Act provides appeal against the Order passed by the Commissioner, however, all the Orders passed by the Commissioner are not appealable and the jurisdiction of the Appellate Court under this Section is limited one and can be exercised when there is a substantial question of law involved in the matter. The High Court will not interfere with the findings arrived at by
c the Commissioner when the same are not vitiated by substantial error of law. In this context, it appears that at the most appellate remedy provided under Section 30 of the Workmen's Compensation Act can be equated for the limited purpose with that under Section 100 of Code of Civil Procedure since in both these cases, interference by the High Court is possible only
d if there is a substantial question of law involved and not otherwise. Section 100A of the Code of Civil Procedure puts an embargo on any further appeal under Letters Patent against an appellate Judgment rendered by the Single Judge of the High Court. The object is to minimise delay and give finality to the adjudication. Section 100A is inserted by the
e Amending Act of 1976 and after enforcement of Section 100A, no appeal would be available from the Judgment, decree or order of Single Judge in second appeal. Though the decision given by the Single Judge of the High Court in appeal under Section 30 of the Workmen's Compensation Act, in the circumstances of the case, is not a Judgment as envisaged in
f Clause 15 of the Letters Patent (Bombay), however, even if we presume it to be so, even then the decision given by the Single Judge under Section 30 of the Workmen's Compensation Act will have same effect as that of the decision rendered by the Single Judge in second appeal and in view of Section 100A of the Code of Civil Procedure, Letters Patent
g Appeal against such decision of the Single Judge will not be maintainable. The view expressed by us is also consistent with the aims and objects of the Workmen's Compensation Act.

h 12. We, therefore, hold that Section 100A of the CPC as amended with effect from 1st July, 2002 is applicable in the instant case and the Letters Patent Appeal is not maintainable on this count. In addition, the observations made by the Full Bench in the case of *Gangawani & Co.* (supra) as reproduced hereinabove are also applicable in the instant case, having regards to the scheme of Section 30 of the Workmen's Compensation Act and Section 82(2)
i of the ESI Act, and on the same analogy the instant Letters Patent Appeal is not maintainable. Hence, this appeal is dismissed in limine as not maintainable.