IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17914 of 2018
With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019
In R/SPECIAL CIVIL APPLICATION NO. 17914 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**Yes**
2	To be referred to the Reporter or not ?	**Yes**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**No**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**No**

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GURUKRUPA PROCONS PVT LTD

Versus

ABHESINH NATHABHAI DAMOR & 4 other(s)

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Appearance:
MR RD DAVE(264) for the Petitioner(s) No. 1
MR.PRASHANT B SHARMA(7028) for the Respondent(s) No. 1,2,3
NOTICE SERVED for the Respondent(s) No. 4,5

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CORAM:**HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

Date : 15/02/2024

ORAL JUDGMENT

1. Petitioner Company has filed this petition seeking following reliefs:

> "12(A) This Hon'ble Court may be pleased to issue a writ of certiorari and/or a writ of mandamus and/or any other appropriate writ, order or direction, quashing and setting aside the impugned awards dated 18.07.2017 passed by the Labour Court in Reference (T) Nos.50 to 52 of 2016 (Annexure: A) and further be pleased to quash and set aside the impugned orders passed by the Labour Court in Recovery Application Nos. 105 to 107 of 2017 (Annexure: F) and consequently may also be pleased to set aside the impugned recovery notices issued by respondent No.5 – Mamlatdar, Ahmedabad (Annexure: H).
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> (B) Pending admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to stay operation, execution and implementation of the impugned awards dated 18.07.2017 passed in Reference (T) Nos. 50 to 52 of 2016 (Annexure: A) by the Labour Court."
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> (C) Pending admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to restrain the respondent No. 5-Mamlatdar, Ahmedabad from taking any coercive action again the petitioner and its property as per the impugned recovery notices issued by respondent No.5-Mamlatdar, Ahmedabad (Annexure: H)

(D) Ex-parte ad-interim relief in terms of prayer (B) and (C) above may kindly be granted.

(E) Any other and further relief as may be deemed fit and proper may be granted by this Hon'ble Court in the interest of justice."

2. This Court on 28.11.2018, while issuing **notice** granted ad-interim relief in terms of para 12(B) and (C).

3. Request in this case is made on behalf of Learned Advocate for respondent-Workmen to hear and decide civil application seeking wages under section 17B of the Industrial Disputes Act ('the Act' for short), however since the issue in the main petition lies in a narrow compass, the civil application along with main petition is taken up together for final hearing with the consent of learned advocates for both the parties.

4. Necessary facts as stated in the petition are as under:

4.1. The petitioner is a company registered under the provisions of Companies Act. Earlier the Company was registered as Arat Electro Chemicals Pvt. Ltd., and subsequently the name was changed to Gurukrupa Procons Pvt. Ltd. The change in name was effected in the records of Registrar of Companies from the year 2014-2015. It is case of the petitioner that on account of closure of the Company w.e.f.

1.10.1997, the services of all workmen including respondents (respondent Nos.1 to 3) stood terminated as per terms of settlement u/s 2(p) of the Industrial Disputes Act ("the Act" for short). The reason for closure and section 2(p) settlement was on account of change in the policy of Government wherein raw material of Zinc was declared as hazardous chemical. Relatable thereto, there was great recession in the market and on that account, the Company was compelled to close its manufacturing activity in the year 1996-1997. On account of closure, the petitioner company Arat Electro Chemicals Pvt. Ltd. (erstwhile name) entered into a settlement u/s 2(p) of the Act with Gujarat Audhyogik Kamdar Mahamandal, wherein all 92 individual workers of the Company including respondent Nos.1 to 3 had agreed to accept ex-gratia payment as per the terms and conditions of the settlement dated 24.01.2000. Accordingly, the workmen (respondent Nos.1 to 3) along with other workmen were paid closure compensation, leave encashment, gratuity etc. by account payee cheques.

4.2. Upon closure, the factory license of Arat Electro Chemicals Pvt. Ltd got cancelled. Consequently, the petitioner, made an application for cancellation of provident fund registration, ESIC registration and Central Excise Cancellation Registration. After closure of the Company and after taking

ex-gratia payment in terms of settlement dated 24.01.2000, the workmen (respondent Nos.1 to 3) raised dispute on 17.12.2015 for their termination, registered as Reference (T) No.50/2016, 51/2016 and 52/2016, before Labour Court Ahmedabad. The fact of Section 2(p) settlement was suppressed in the statement of claim. The workmen had also suppressed the fact of them having received ex-gratia payment and terminal dues. The Labour Court passed an ex-parte award dated 18.07.2017, directing reinstatement with 40% back wages. On 08.02.2018, orders in Recovery Applications No.105 to 107 of 2007 were passed. Having come to know about the orders in recovery applications, the petitioner filed restoration application, which is still pending. Aggrieved by the awards dated 18.07.2017 and orders dated 08.02.2018 passed in Recovery Applications, present petition is filed.

5. Heard Mr. R.D.Dave, learned advocate for the petitioner and Mr. Prashant Sharma, learned advocate for the respondents.

6. Mr. Dave, learned advocate for the petitioner submitted that the ex-parte awards dated 18.07.2017 in Reference (T) Nos.50 to 52 of 2016 by the Labour Court, Ahmedabad directing reinstatement of the workmen with 40% back wages are erroneous and illegal on the following grounds;

(i) The dispute was raised before the Labour Court after 19 years of termination dated 01.10.1997. As per Section 2A (3) of the Act, as amended in the year 2010, dispute if any is to be raised within three years, which in this case was not done and therefore, references were barred by limitation. In support, Learned Advocate relied upon decision of this Court dated 06.02.2020, in Special Civil Application No.3266 of 2020 with other writ petitions.

(ii) The disputes in this case were raised for the issues which were not in existence and that too after 19 years and therefore the references itself were not competent for adjudication. In view of decision of Hon'ble Supreme Court in the case of ***Prabhakar vs. Joint Director, Sericulture Department and Anr.*** reported in ***(2015) 15 SCC 1***, the reference on non-existent and stale issue is not appropriate.

(iii) There was suppression of facts by the respondents – workmen about existence of section 2(p) settlement dated 24.01.2000. Clause 49 of the settlement refers to ex-gratia payments received by all signatories through account payee cheques. This misrepresentation of facts, amounts to fraud on Tribunal, and when the case is based on falsehood, the litigant has no right to approach a Court. In support, learned Advocate relied upon decision in the case of ***Chandrasinh***

Khumansinh Bakrola vs. Ibrahim Suleman Narot in ***Letters Patent Appeal No.865 of 2023 dated 02.08.2023.***

(iv) In view of settlement under Section 2(p) of the Act, there did not exist any Industrial Dispute as defined under Section 2(k) of the Act and the settlement was binding to respondent Nos. 1 to 3 and therefore, references were not maintainable. In support of this submission, he relied upon decision of Hon'ble Supreme Court in the case of:

(a) ***Alex Joseph vs. Madhavan Nair,*** reported in ***(2005) 12 SCC 378*** and

(b) ***Ariane Orgachem Private Limited vs. Wyeth Employees Union Ors.,*** reported in ***(2015) 7 SCC 561.***

(v) In view of above facts, the applications filed under Section 17B of the Act have no merit particularly when the factory was closed in the year 1997 and, therefore, it cannot offer reinstatement to workers. Salary in lieu of employment is not possible. In support of his submission, he relied upon decision of this Court in **Civil Application No.5486 of 2003 in Letters Patent Appeal No. 933 of 1999 dated 19.08.2003**. Further, the closure is prior to the award and, therefore Section 17B has no application as held by this court, in decision dated **17.07.2008, in Letters** ***Patent Appeal No.486 of 2008***.

(vi) In view of all above grounds the references No. 50 of 2016 to 52 of 2016, deserve to be quashed and set aside. Consequently, the awards dated 18.07.2017, in the said references deserve to be quashed and set-aside. The orders in recovery applications No. 105 to 107 of 2017, dated 08.02.2018 also deserve to be quashed and set aside. Consequently, the notices issued for execution of recovery certificates may be quashed and set-aside.

7. Strenuously opposing the petition, Mr. Prashant Sharma, learned advocate for the respondents made the following submissions;

(i) The present respondents – workmen had preferred applications dated 17.02.2019 under Section 17B of the Act and the same are pending, therefore, in view of decision of the Hon'ble Supreme Court in case of ***Workmen Represented by Hindustan V.O. Corporation Limited vs. Hindustan Veg. Oils Corpn. Limited*** reported in ***(2000) 9 SCC 534***, the applications under Section 17B may be disposed of expeditiously before the principal petition. Therefore, the submissions made in relation to the merits of the petition are of no consequences.

(ii) Learned Advocate further relied upon the decision of this Court dated 17.07.2008, in the case of Iron Rolling Mills Pvt.

Ltd v/s Vinodkumar R Singh in Letters Patent Appeal No.486 of 2008, to submit that denial of 17B application would adversely affect the quality of life of the workmen and, therefore, also section 17B application may be decided first.

(iii) Similar view has been taken in the case of ***Jayantilal Shanubhai Tailor vs. Ralchem Ltd. Ankleshwar*** reported in ***2005(2) GLR 1218*** that when 17B application is allowed it is for the better life of the workmen and, therefore, 17B application is required to be decided first.

(iv) On merits, Learned Advocate for the workmen submitted that disputes were raised before the Labour Court registered as Reference (T) Nos. 50 to 52 of 2016. Several notices were issued despite which the petitioner chose not to participate in the proceedings and hence the awards were passed ex-parte. Thereafter, recovery applications Nos.105 to 107 of 2017 were filed under Section 33(C)1 of the Act where also, notices were served where again none appeared for the company. After that, an order dated 08.02.2018 was passed in the said recovery applications. After recovery applications were allowed, notices under Section 152 under Bombay Land Revenue Code (B.L.R.C) were issued. Thereafter, notices under Sections 154 and 155 of the BLRC for attachment of immovable properties of the Company were issued and served to the petitioner. Thereafter,

the present petition was filed. Thus, despite service of notices, the petitioner chose not to represent their case and now it is not open for them to challenge ex-parte award and also the orders in recovery applications.

(v) Earlier also, the petitioner preferred joint petition challenging the award of the Labour Court in two different references. The same came to be withdrawn by order dated 12.07.2016 in Special Civil Application No.1714 of 2018 and, therefore, also present petition may be dismissed with a direction to file separate petitions for each award in each reference case.

(vi) The contention of section 2(p) settlement dated 24.01.2000 is not correct because the said settlement was not produced before the Labour Court. The settlement under Section 2(p) was not in the knowledge of the present workmen. The communications referred in the settlement are not on record. Though, reference was made in section 2(p) settlement for payment of gratuity and bonus, however, the amount of gratuity or bonus has not been received by the workmen. The thumb impressions referred in the settlement were not identified. Section 2(p) settlement referred in the petition is non-est in the eyes of law, since the same was not executed in terms of provisions of Section 2(p) of the Act.

Referring to Section 2(p), Learned Advocate submitted that the workmen were never summoned by the conciliation officer or called upon to sign the settlement dated 21.04.2000. Most importantly, the workmen on 17.10.2015, filed conciliation proceedings under Section 10(1) of the Act with delay condonation applications explaining the delay of 19 years in filing the proceedings wherein notice was issued and since the petitioner company did not appear and there being failure of the conciliation proceedings, the disputes were referred before the Labour Court. The failure report was made in IDR No.261/2015 to 262/2015 and not challenged till date and therefore, present petition is not maintainable.

(vii) The references were registered as Reference (T) No.50 to 52 of 2016. Despite service of notices, no reply was filed. The stage of filing reply was closed by order dated 21.03.2016. Thereafter, after granting liberty the stage of cross-examination was closed, final arguments were concluded and the award was passed on 18.07.2017 directing reinstatement with continuity and back wages. Thereafter, recovery applications were filed and proceedings were initiated under Sections 154 and 155 of the BLRC. At that time present petition was filed, the same being belated, deserves to be dismissed.

(viii) The procedure to close down the company is prescribed

under Section 25(O) of the Act. In this case, the said procedure was not followed and therefore, the closure is illegal. Once the closure is illegal 17B application is maintainable and is to be decided first. Therefore, 17B application may be allowed during pendency of petition, directing the petitioner to pay last wages drawn.

8. Heard learned Advocates for the respective parties. It is true that the petition is filed challenging the ex-parte awards dated 18.07.2018 in Reference (T) No. 50 to 52 of 2016, granting reinstatement to the workmen with 40% back wages. Consequential, orders dated 08.02.2018 in Recovery Application Nos. 105 to 107 of 2017 are also challenged. Revisitation of the facts reveal that for the termination w.e.f 01.10.1997, the dispute was raised in the year 2015 i.e. after a delay of 19 years. In light of the aforesaid, the contentions of the respective parties are dealt with as follows:

8.1. Reference being filed beyond the period of limitation prescribed:

(a) In the decision of Hon'ble Supreme Court in the case of ***Prabhakar vs. Joint Director, Sericulture Department and Anr.*** reported in ***(2015) 15 SCC 1*** it is held as under:

> "42.3. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute cease to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred."

(b) Further, this Court in the decision dated 06.02.2020, in Special Civil Application No.3266 of 2020 upon consideration of provision of Section 2A(3), of the Act, as amended by Amendment Act 2010, in para 7 and 8 held that, ".....an

application shall be made to Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service specified in sub-section (1). This has been the base for the Court to deny the Reference ……"

(c) Therefore, the delay occasioned in raising the dispute cannot be ignored unless sufficient justification for delay has been explained by the workmen. In the present case, sufficient justification was not provided by the workmen for raising the dispute belatedly. In the opinion of this Court, merely stating that they were not aware about the settlement under Section 2(p) would not justify delay, particularly, when they are signatories to the said settlement.

8.2. Suppression on part of the Respondents:

(a) On the aspect of suppression, it is noticed that the settlement dated 24.01.2000, under Section 2(p) is placed on record along with this petition. One of the clauses of terms of the settlement refers to closure w.e.f. 01.10.1997. It also refers to the ex-gratia payment paid through account payee cheque and pendency of no dispute with the employer. Moreover, the workmen – respondent Nos. 1 to 3 were signatories to the said settlement at Sr. No.12,18 and 49

respectively. Admittedly, aspect of section 2(p) settlement was not made in the Reference Proceedings . Therefore, the submission of Learned Counsel for the Petitioner that award was passed basis suppression and mis- representation of facts amounts to playing fraud on Court merit acceptance. In relation to judgement, decree or order obtained by playing fraud, the Division Bench of this Court in the decision dated 02.08.2023, in the case of ***Chandrasinh Khumansinh Bakrola vs. Ibrahim suleman Narot Since decd. Through Heris*** **in Letters Patent Appeal No.865 of 2023**, has held as under:

> "15. The contentions of the counsel for the appellants pointing illegality in the order of the Deputy Collector are technical objections which have to be examined in the light of the finding about fraud and collusion. It is settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a decision in law. Such an order obtained by playing fraud on the Court, Tribunal or authority is a nullity and non-est in the eyes of law. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. Fraud and justice never dwell together. The principle of 'finality of litigation' cannot be stressed to the extent of absurdity that it can be utilized as engine of operation by dishonest and fraudulent litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. Property grabbers, tax evaders, bank loan dodgers and other unscrupulous persons from all walks of life find

> the Court process a convenient lever to retain the illegal means indefinitely. A person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of litigation. [Reference: A.V.Papayya Sastry (supra)]".

(b) Further, the above findings of para-8.2 (a), is supported by the decision of this Court dated 05.04.2018, in Special Civil Application No.4520 of 2017. In the petition filed by the very petitioner-company, challenging the legality and validity of the proceedings initiated by the co-workers pending at the relevant time before the Labour Court, after delay of 19 years , the same were held to be not maintainable. The Co-ordinate bench of this Court upon consideration of grounds raised by the petitioner of having signed 2(p) settlement dated 24.01.2000, receipt of all dues through account payee cheques, and delay in raising dispute, in case of co-workers, had held as under:

> "6. xxxx
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> 6.1. xxxx
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> 6.2. An attempt is made to divulge attention by referring to the document at page 103 dated 09.10.1997, in which, the same assurance has been given by the Management to pay the payment of bonus and gratuity and thereafter full and final

settlement will take place. Now these documents which are tried to be pressed into service reflect the dated 09.10.1997 and the 2P Settlement has taken place between the Management and the workers with the intervention of the respective Union is dated 24.01.2000 and in this 2P Settlement which took place in July, 2000, exgratia payment is also figuring, not only that, but there is a clear reference on page 48 that the Management has already paid gratuity with closure compensation, salary, bonus etc., and, therefore, it appears that an attempt is made to mislead the authority below and the petitioner as well. Relying upon this document, when an attempt is made that there is some justification in bringing the reference proceedings after a period of 19 years is an attempt in futility as is reflecting from the proceedings. Yet another submission is made by the respondent on the premise that the company at the relevant point of time was not closed down as has been projected, but has continued thereafter and some of the workers who have raised the industrial dispute whose reference proceedings were also entertained and one of such reference award is produced at page 86. If the facts are to be looked into of that reference, there was a scuffle

appears to have taken place somewhere in the year 1994, and in which, the workers were discontinued from the services with effect from 25.09.1994 and as such, this grievance is of September, 1994 which was later on adjudicated in the reference proceedings of 1995. May be that the award has been passed by the learned Presiding Officer, in the year 2001, but that would not be of any assistance to the respondent to take aid of this reference and to contend that any legitimate right exists in their favour. In fact, in the opinion of this Court, this circumstances which have been tried to be pressed into service is of no assistance to the respondents and when a pointed query was put to the learned advocate for the respondent whether this amount which has been mentioned in settlement is accepted by them or not, there was no answer with him and the present reference proceedings are generated with the aid and assistance of the new Union which came in existence in the year 2016 to which the respondent – workmen became the member and as such simply because another Union has raised a dispute, the binding effect of 2P Settlement cannot be ignored.

6.3. Additionally, the Court has also considered as to whether any such genuine dispute exists and for that purpose, the recent reference proceedings which have been initiated is also perused by this Court attached to page 16 of the petition compilation. A bare perusal of the cause title of this reference indicates that now the dispute is being generated and agitated by one of the 'Gujarat Kamdar Karmachari Union' and what has been challenged in this reference is discontinuance of 01.10.1997 and there is no other relief except incidental relief pursuant to such challenge of discontinuance. It is also not in dispute that right from the year 1997 settlement took place and thereafter 2(P) Settlement executed in writing which is signed by the workers. In January, 2000 till 2016, no steps have ever been taken of any nature by these respondents. The workers who are now being represented by the new Union, suddenly in the year 2016 precisely on 12.09.2016, this reference is registered. This is nothing but a clear example of abuse of process of law. Normally, the Courts are not intervening in such kind of dispute where competent forum is ceased with the matter, but in view of the fact that this is a clear example of abuse by generating the dispute which

was not in existence and the overall settlement has taken place, the amount has been paid, encash and now have come forward to squeeze the petitioner which in no circumstance can be said to be genuine and tenable reference.

6.4. The other documents which are attached to the compilation of the petition are reflecting that the petitioner establishment has been permanently closed down, finally as indicated in communication dated 04.10.2014 on page 125, but then also there was a clear assertion in 2(P) Settlement that if the establishment even after settlement continues or in future is developed, then also there is no right to insists anything by these workers who put their signatures undisputedly, and therefore, now they cannot resile from the said fact of settlement. This appears to be glaring example of abuse of process by the new Union which has now made an attempt to raise a dispute which was neither in existence and as such, the proceedings initiated in the form of Reference Nos. 530 of 2016 and Reference no. 531 of 2016 are not to be continued any further as it tantamount to be gross abuse of process of law. Accordingly, the Court is left with no other

alternative but to grant the relief as prayed for in the petition.

6.5. xxxx

6.6. xxxx

7. During the course of submission, despite the aforesaid circumstance very much noticed by learned advocate representing the Union and despite having realized that the grievances about bonus, gratuity etc., were taken care of in 2(P) settlement despite the fact that the settlement which was deduced in writing in the year 2001 was relating to a period till 1994 much prior to 2P settlement and there is a clear assertion even in the 2P Settlement which is signed by the representative of the Unions and the workers themselves, which includes payment with respect to bonus, gratuity, etc., and additional amount of exgratia payment is also received by the respondent, still an attempt is made to challenge the discontinuance of October, 1997 in September, 2016. The Union has either misguided or has made an attempt to regenerate the dispute which is no longer surviving. Thus, the Court is of the considered opinion that this kind of abuse of process deserves to be curbed.

> 8. Under the circumstances, the reference proceedings being Reference (LCA) Nos. 526/2016 to 531/2016 pending before the Labour Court, Ahmedabad are quashed and set aside hereby and the petition is allowed with costs quantified at Rs.25,000/ (Rupees Twenty Five Thousand Only) to be payable by the respondents. The said amount of Rs.25,000/ towards costs to be paid to the petitioner within a period of four weeks from the date of receipt of writ of this order."

8.3. Since, the contention of the petitioner in relation to delay in raising the disputes after a delay of 19 years and the awards being obtained by mis-representation and suppression of facts have been accepted as recorded herein above, it would not have been improper to allow the petition on these grounds alone. However, looking at the conduct of the respondents, this Court deems it fit to also render its finding on the other contentions raised by the respective parties, which are:

(I) Non-existence of dispute for raising a reference

(a) On the aspect of contention raised by the petitioner that in view of existence of settlement under Section 2(p) of the Act, there is no Industrial Dispute as defined under Section

2(k) of the Act, it is true that under Section 18 of the Industrial Disputes Act, a settlement is binding to the respondent – workman and, therefore, the reference is not maintainable. It would be apt to refer to the following judgement.

Anz Grindlays Bank Ltd. vs. Union of India and Ors. reported in ***(2005) 12 SCC 738*** and in para 11 and 12 it is held as under:

> "11. The principal issue, which requires consideration, is whether the Central Government was justified in making a reference to the Industrial Tribunal in terms set out earlier. Section 2(k) of the Act defines "industrial dispute" and it means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. The definition uses the word "dispute". The dictionary meaning of the word "dispute" is: to contend any argument; argue for or against something asserted or maintained. In Black's Law Dictionary the meaning of the word "dispute"

is: a conflict or controversy, specially one that has given rise to a particular law suit. In Advance Law Lexicon by P. Ramanatha Iyer the meaning given is: claim asserted by one party and denied by the other, be the claim false or true; the term dispute in its wider sense may mean the ranglings or quarrels between the parties, one party asserting and the other denying the liability. In Gujarat State Cooperative Land Development Bank Ltd. Vs. P.R. Mankad and others (1979) 3 SCC 123, it was held that the term dispute means a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other.

12. A plain reading of the reference made by the Central Government would show that it does not refer to any dispute or apprehended dispute between the Bank and the Federation (second respondent). It does not refer to any demand or claim made by the Federation or alleged refusal thereof by the Bank. In such circumstances, it is not possible to hold that on account of the settlement dated 18.8.1996 arrived at between the Bank and the Association (third respondent), any dispute or apprehended dispute has

> come into existence between the Bank and the Federation (second respondent). The action of the Bank in asking for a receipt from those employees, who are not members of the Association (third respondent) but wanted to avail of the benefit of the settlement, again does not give rise to any kind of dispute between the Bank and the Federation (second respondent). Thus, the reference made by the Central Government by the order dated 29.12.1997 for adjudication by the Industrial Tribunal is wholly redundant and uncalled for."

(b) After taking into consideration the definition of Industrial Disputes as defined under Section 2(k) of the Act, it is held that industrial disputes mean any dispute or difference between employers and employers, or between employers and the workmen or between workmen and workmen, which is connected with the employment or non-employment or terms of employment or with the condition of labour of any person. Once the settlement has been arrived, the reference made by the Central Government is wholly uncalled for and deserves to be set aside. Applying the same principle, this Court is of the opinion that there was settlement between the employer and the workmen and once the settlement is arrived at between the parties, cause has not arisen to raise the dispute before

the Labour Court.

(II) Non-grant of wages under Section 17B

(a) Now, in relation to the application of the workmen seeking wages under Section 17B, this court is of the opinion that when the reference itself is not maintainable on the ground of delay , no dispute surviving and on the ground of misrepresentation and suppression of facts, and when the award is quashed and set-aside, the application seeking wages under section 17B, would also be not maintainable and accordingly rejected.

(b) No contrary proof has been produced by the workmen to dislodge closure of the company. Once the company is closed admittedly, it is not possible to offer reinstatement to the workmen or the salary in lieu of employment . This Court in the case of ***Akbarkhan M Pathan v. General Manager*** in ***Civil Application No.5486 of 2003 in Letters Patent Appeal No.933 of 1999***, while deciding the application of the workmen seeking 17B wages has held as under:

> "3. In view of the fact that the undertaking is closed down by an order made under Section 25(o) of the Act, there will be no question of reinstating the applicants or paying any dues under Section 17B of the Act for the

period subsequent to such closure. Moreover, the respondent corporation was declared as a Sick Industrial Company and therefore, no coercive measures can be taken by resorting to the provisions of Section 17B of the Act.

4. In an earlier application made by one of the applicants, the Division Bench, by its order dated 23rd June, 2003, while allowing the application for interim relief as well as the application for vacating the interim relief to be withdrawn, observed that, if the Dairy will not approach the Court by way of fresh civil application for interim relief within reasonable time, then it would be open to the other side to execute the award passed in their favour.

5. In our opinion, in the present case, in view of the Undertaking having been declared sick and thereafter having been closed down, there is no scope for making any order under Section 17B of the Act. The application is, therefore, rejected, without prejudice to the applicant's other rights and remedies in respect of their dues."

(c) Therefore, in the opinion of this Court, the decision relied upon by learned advocate for the workmen of Hon'ble Supreme Court in the case of ***Mrs.Kiran Uppal Prop. M/S Clas vs Ashok Kumar & Ors.*** reported in ***(2000) 9 SCC 534*** that 17B application shall be listed and disposed of first would not be applicable in the facts of the present case. So far as the contentions raised by learned advocate for the respondent that the Company

filed this petition after issuance of notice under Sections 154 and 155 of Bombay Land Revenue Code for attachment of movable property does not merit acceptance because settlement u/s 2(p) of the Act dated 24.01.2000 refers to the closure of the company in the year 1997. Once the company is closed service of notice cannot be presumed. Another contention raised that the settlement does not refer to bonus and gratuity, is also of no consequence since the settlement refers to full and final settlement wherein the workmen had accepted ex-gratia payment on condition that no dues are outstanding with the Company. In view of the above, particularly, in view of the reference being raised after period of 19 years and by suppressing the fact of settlement u/s 2(p), this Court is of the opinion that a deliberate attempt was made on the part of the workmen to initiate the dispute by playing fraud and on misrepresentation of facts. This Court also would like to observe that the findings recorded by this court in the case of similarly situated co-workers in Special Civil Application No.4520 of 2017 are also to be reiterated that here is a case in which ex-facie an attempt of abuse of process is visible by the Court, and therefore, the Court is not in a position to not notice this conduct of the part of the respondents and remain a silent spectator. On the contrary in the

larger interest of public, and to maintain sanctity of the proceedings, such reference proceedings are held to be not tenable and deserved to be curbed at initial stage itself.

9. In view of the above, the ex-parte awards dated 18.07.2017 in Reference (T) No.50 of 2016, 51 of 2016 and 52 of 2016 is hereby quashed and set aside. Consequently, the orders dated 08.02.2018 in Recovery Applications are also quashed and set aside. Notices issued pursuant to the orders in recovery Applications are also quashed and set-aside. All consequential actions pursuant to recovery applications are quashed and set-aside.

10. With these observations, the petition is allowed. Rule is made absolute.

11. Record and Proceedings to be sent back to the concerned Court forthwith.

12. Consequentially, the Civil Application No.1 of 2019 also stands disposed of.

(MAUNA M. BHATT,J)

NAIR SMITA V.