CASE NO.:
Appeal (civil) 4553 of 2006

PETITIONER:
M.D., M/s. Hindustan Fasteners Pvt. Ltd

RESPONDENT:
Nashik Workers Union

DATE OF JUDGMENT: 19/10/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (C) No. 24626 of 2004]

S.B. SINHA, J :

Leave granted.

Interpretation of a settlement arrived at by and between the parties hereto falls for consideration in this appeal which arises out of a judgment and order dated 8.12.2000 passed by the High Court of Judicature at Bombay in First Appeal No. 521 of 1992.

Appellant herein is engaged in engineering activities. Respondent No. 1 is a trade union registered under the Trade Unions Act. Appellant was a sick unit as envisaged under the Sick Industrial Company (Special Provision) Act, 1985. A settlement was arrived at on 11.5.1990 by and between the parties hereto in regard to the demands raised on behalf of the workmen. The period covered by the settlement was 1.01.1989 to 30.12.1992. The workmen thereafter went on strike. Several demands were also raised. A second settlement was arrived on 24.5.1993. In the preamble of the said settlement, it was stated:

"\005The company has enforced lockout of its employees on and from 14.1.93 for the reasons mentioned in the company's lock out notice dated 28.12.90 and the said lockout is still continuing. In view of the long duration of the lockout and protracted court proceedings in the Industrial Court, Nashik and elsewhere the parties to the settlement felt a need to find out long term solution to the problems faced by them. The parties also sought the assistance of the Deputy Commissioner of Labour, Nashik and in view of the discussions between the parties the acceptable solution have been found by them and they have settled the entire disputes between them over the clauses of the lock-out i.e. still continuing and the Charter of Demands of the Union served on behalf of the workmen\005"

Clause 20 of the said settlement reads as under:

"That this settlement is in package deal viz-a-viz full demands raised by the Union under its charter of demands dated 1st January, 1993 and as well as elsewhere. It is expressly understood that this settlement is in full and final settlement of all the

said demands and settles all demands of the Union/ Workmen made till date of whatsoever nature. Such as of the demands as set out in the charter of demands and elsewhere, referred to hereinabove but not specifically dealt within this settlement are hereby treated as having been withdrawn and/ or not pressed by the Union and the workmen and settled the same accordingly. It is further agreed that during the currency of this settlement, the Union and the workmen shall not raise any fresh demand whatsoever, whether covered by this settlement or otherwise and whether involving financial burden or not. No other demands of whatsoever nature shall be made by the Union or the workmen either directly or indirectly. Any demand made shall have the effect of nullifying this settlement."

Paragraphs 11, 12 and 13 of Clause 23 and Clauses 27 and 28 of the said settlement read as under:

"11. The settlement shall encompass this settlement as well previous settlement dated 11.5.90 and shall constitute a whole contract between the parties. These settlements have rendered substantial benefits on the workmen and in view of the same, it is agreed between the partiers that there will be no work stoppage/ go slow during the pendency of this settlement. Any breach of this settlement shall render the above mentioned settlements as null and void.

12. The parties expressly agree that the definition of "wages" in various statutes in the industrial field will be followed by them for the purpose of their application, enforcement and implementation in any event. Payments under the terms of their settlement agreed to be made and accepted by the parties will not be affected and no further and additional claims will be made or canvassed by the workmen under these laws for increase in benefits and if made shall deem as covered and adjusted by this settlement or under the terms of this settlement.

13. Except to the extent expressly modified in this settlement, all other existing rights, and obligations and conditions of previous settlements shall continue with full force and effect during the operation of this settlement.

Clause No. 27: Bonus

Bonus for the year 1990-91, 1991-92 will be 8.33%. No bonus is due and payable for the year 1992-93 and as the workmen did not work during this period. Bonus for the year 1993-94 will be 9%. Bonus for the years 1994-95 and 1995-96 will be 10% and for the year 1997-98 will be 12%. Further, it is provided that the management on its own shall review the balance sheet and decide about the quantum of bonus payable to the workmen and in the event of any upward revision is necessitated under the provisions of Payment of Bonus Act, 1965 excess amount minus agreed

bonus shall be paid to the employee. In any circumstances the workmen will not raise any dispute about the quantum of bonus. The management decision shall be final. In case the company balance sheet shows accumulated losses in the above years, the amount paid in excess of statutory min. will be by the way of ex-gratia for the purpose of industrial peace, productivity and shop floor discipline. Bonus for the year 1990-91 will be paid in August and for the year 1991-92 will be paid in October, 1993.

Clause No. 28

That the various clauses of the agreement/ settlement form one package agreement/ settlement and none of the clauses in this agreement/ settlement in separable from the remaining clauses of the agreement/ settlement."

However, an industrial dispute was raised in the following terms:

"Whether the lock out effected by the management w.e.f. 14.1.1992 is justified? If not, what relief the workers are entitled for?

The said industrial dispute was referred to for adjudication by the appropriate government before the Industrial Court, Nashik. Appellant herein in its written statement inter alia raised the question as regards maintainability of the said reference relying on or on the basis of the said settlement dated 24.5.1993 stating:

"2. The reference is not tenable and maintainable as there was no dispute in existence after the settlement dated 24.5.1993 arrived between Nashik Workers Union and the Company, Hindustan Fasteners Pvt. Ltd., hence the reference is immature in the eyes of law\005
4. The reference is also not maintainable in view of the settlement dated 24.5.1993 as per the Clause No. 20 of the said settlement. It was full and final settlement and all the demands were settled. It was also made clear that all other demands and claims were relinquished by the workmen and the Union and as such the reference is to be rejected"

It was further stated:

"39. The Employer Company welcome any investigation that the Hon'ble Tribunal may undertake, since it would definitely conclude that the lockout was justified and its prolongation was due to the illegal tactics of the Nashik Workers Union."

A dispute, thus, existed between the parties as regards applicability of the said settlement to the reference..

The Tribunal made an award in the said reference on 19.1.2001 stating:

"19. I have gone through the said settlement but the said settlement nowhere makes any reference

regarding the wages to be paid to the workers for lock out period. But the said settlement is regarding other demands. If the issue regarding the payment of lock out period would have been discussed between the parties then, certainly the said issue could have been mentioned in the settlement. It is further the contention of the company that in view of the Clause 20 of the settlement all the demands between the parties were settled\005"

The Tribunal in its award further stated:

"20. After perusal of the Clause 20 referred above it makes clear the demand should be raised which will directly involve financial burden on the company, but it is permanent to note here that no such demand is raised by the Union, on the contrary, the present reference is referred by the Government in view of P.A.M.S. proceeding pending before the Dy. Commissioner of Labour prior to signing the said settlement. The company as well as the Second Party workers both were aware about P.A.M.S. proceedings pending before the Dy. Commissioner of Labour regarding the lock out. Therefore, they ought to have been mentioned the same in the present settlement so as to resolve the dispute. But, as the said issue is not taken into the present settlement referred above by stretch of imagination could not be said that the said issue was settled finally in view of settlement dated 24.5.1993 signed between the parties. Therefore, the contention of First Party Company that present reference is not maintainable could not be accepted. Hence, I answer the issue in the negative."

It was further found that although Appellant sought to justify the lock-out declared by it but in support of the said plea, no witness was examined on its behalf. In the aforementioned premise, by reason of the said award, the Industrial Tribunal directed:

"2. The lock out declared by the Company w.e.f. 14.1.1992 is unjustified.
3. The workers are entitled for the wages for lock out for period from 14.1.1992 to 2.6.1993.
4. The First Party Company is directed to pay the wages to the concerned workers in the period of 14.1.1992 to 2.6.1993 within two months from the date of the publication of the Award."

A writ petition was filed thereagainst. A learned Single Judge of the High Court in its judgment dated 23.04.2002 noticed the contentions of Appellant herein that when the settlement was arrived at, reference had already been made by the appropriate authority. However, it was opined that the said settlement did not contain any provision as to whether the workmen had given up their rights of wages during the period the factory was under lock-out. The writ petition was dismissed. An intra-court appeal filed thereagainst by Appellant was also dismissed by reason of the impugned judgment stating that under the aforementioned settlement the workmen had not given up their rights of wages.

Mr. Shekhar Naphade, learned senior counsel appearing on behalf of Appellant, raised a short contention in support of this appeal. It was urged

that the settlement was to be read in its entirety. So read, the learned counsel would contend, it would be apparent that all disputes and differences between the parties and all demands raised by reason of the Charter of Demands dated 1.01.1993 and all other demands having been resolved, the question of directing payment of any wages during the period for which the factory was under lock-out did not and could not arise.

Mr. Colin Gonsalves, learned senior counsel appearing on behalf of Respondent, on the other hand, would submit that the Charter of Demands was in relation to the specific issues as, for example, bonus, festival allowance, pay scale, etc.

The purport and object of a settlement arrived at by and between the management and the workmen is undisputedly required to be construed keeping in view its salutary effect. It is aimed at maintenance of industrial peace and harmony. A settlement, therefore, although is required to be read for upholding the validity thereof like any other agreement, it should be read in its entirety so as to ascertain the intention of the parties behind the same. It is true that in the said settlement, not only the Charter of Demands served on the management on or about 1.01.1993 was referred to, but the exchange of letters between the parties had also been referred to, but the intention of the parties is to be gathered having regard to the circumstances attending thereto.

There had been a lock-out and a protracted court proceeding. A long term solution was to be found out. The settlement was in relation to the purported causes of the lock-out. It was still continuing. A Charter of Demands of the Union was served on behalf of the workmen. It did not relate to wages of the workmen during the period of lock-out. Clause 20 of the said settlement must, therefore, be read keeping in view the aforementioned backdrop of events. But, before we embark upon the said question, we may notice the Charter of Demands dated 1.01.1993. The demands of workmen referred to pay scale, classification, dearness allowance, leave, various allowances including travelling allowance, washing allowance and various other allowances as specified therein e.g., uniform, festival advance, etc.

Correspondences entered into by and between the parties were in relation to the aforementioned demands. It did not speak of the claim of wages, although when the settlement was arrived at, the industrial dispute was pending.

Had, thus, the intention of the parties been to settle their disputes also in relation to legality or otherwise of the lock-out declared by the management, it was expected to have been stated so explicitly therein. It was also expected that the parties would file the said settlement before the Industrial Tribunal so that an award could be passed in terms thereof. Clause 20 of the said settlement provides for a package deal vis-a-vis all the demands raised by the Union. The package deal was in relation to the Charter of Demands dated 1.01.1993 and any other document including the letters exchanged between the parties pursuant thereto or in furtherance thereof. The subject matter of settlement was 'all demands of whatever nature' in terms whereof the workmen might not have been able to make any other demand, but, on a bare perusal of the said settlement, it is apparent that the expression which has repeatedly been used was the 'Charter of Demands'.

While keeping the industrial dispute pending, Respondents had not raised any fresh demand.

Clause 21 refers to the previous settlement also. The rights of the workmen under the existing settlement were not adversely affected. If they have worked, they would be entitled to wages. If they have reported for duties during the period of lock-out which was illegal, they were entitled to

the wages for the said period.

In furtherance of the said Charter of Demands, the parties entered into several other correspondences. In terms of the settlement, the parties settled their disputes in relation to the demands raised. The wages to be paid to the workmen which they had claimed as of right was not and could not have been the subject matter of any payment or settlement. Whereas the concept of a demand must be held to be relating to a right higher than the existing right, the workmen were entitled to raise a claim in relation to their existing right and in that view of the matter financial implication therefor cannot be a ground for refusal thereof. If a claim is to be withdrawn by reason of a settlement, the same must find a specific mention therein.

Subject, of course, to the parties acting on the settlement, the workmen had promised that they would not go for 'work stoppage' or 'go slow' but then in terms of Paragraph 12 of Clause 23 of the said settlement, it had categorically been reiterated that the expression "wages" shall be given the same meaning as obtaining in the statute. The right to enforce the claim for wages both in the first settlement as also the second settlement was, therefore, not given up. It was further stated that no additional claims would be made for increase of benefits. Paragraph 13 of Clause 23 of the said settlement also refers to existing rights and obligations subject, of course, to the modification made therein. By reason of the said settlement, the workmen surrendered their rights of bonus. We have noticed hereinbefore that the management, although questioned the legality and/ or validity of the reference, but at the same time also welcomed the same stating that thereby they had got an opportunity to establish that the lock-out declared by them was not illegal. But, then no witness was examined to prove the said fact.

The parties, therefore, made it clear that the claim of wages raised on behalf of the workmen on the premise that the lock-out was illegal was not the subject matter of the settlement. The Tribunal, in our opinion, is right in arriving at the finding that the intention of the parties must be gathered from the attending circumstances; one of them being that although the parties were aware that the industrial dispute was pending but no reference thereto was made in the settlement.

It is difficult to accept the contention of Mr. Naphade that in the facts and circumstances of this case, provisions of Section 92 of the Evidence Act would have any role to play. It is not the contention of Respondents that the settlement was not to be read as a full or final settlement between the parties but the same must be read as meaning that the settlement was only in respect of the Charter of Demands and other demands made by the Union from time to time in its various letters.

Construction of a document so as to ascertain the intention of the parties is in no way controlled by the provisions of Sections 91 or 92 of the Evidence Act. The document has to be interpreted applying the known principles of construction and/ or canons.

In fact, in the special leave petition, Appellant itself has contended:

"(VI) That because the Hon'ble High Court should have appreciated the fact that at the time of reference the contesting parties were negotiating the Settlement. So in view thereof it was the duty of the Conciliation Officer under Section 12(2) and 12(3) of the Industrial Disputes Act for bringing about a settlement of the dispute without delay and investigate the dispute and all such matters affecting the merits and the settlement thereof. Further, it is pertinent to state that the Conciliation Officer has enough powers to investigate the cause of dispute and enforce a settlement."

If that was the stand of Appellant before the Conciliation Officer, they could have asked him to close the conciliation proceedings. They did not do so.

Applying the principles of interpretation of a document and having regard to the circumstances attending thereto, we are of the opinion that the findings of the tribunal and the High Court cannot be faulted with.

For the reasons aforementioned, we do not find any merit in this appeal which is dismissed accordingly with costs. Counsel's fees assessed at Rs.10,000/-.