

(2012) 06 BOM CK 0051
In the Bombay High Court
Case No : Writ Petition No. 329 of 2012

M/s. Fomento Resorts and Hotels Ltd.	APPELLANT
Vs	
Workmen	RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 19(2), 19(6)
Transfer of Property Act, 1882 — Section 106

Citation : (2012) 5 BomCR 838 : (2012) LLR 1269

Hon'ble Judges : F. M. Reis, J

Bench : Single Bench

Advocate : J. E. Coelho Pereira, with Mr. Abhijit A. S. Dessai, for the Appellant;
Shivraj Goakar, for the Respondent

Final Decision : Dismissed

Judgement

F. M. Reis, J.—Heard Shri J. E. Coelho Pereira, learned Senior Counsel appearing for the Petitioners and Shri Shivraj Gaokar, learned Counsel appearing for the Respondents. The above Petition challenges the Order dated 13.03.2012 passed by the learned Industrial Tribunal whereby the preliminary issue raised by the Petitioners to the effect that no appropriate notice u/s 19(2) of Industrial Disputes Act, 1947, (for short "The Act"), served on the Petitioners to terminate the settlement came to be rejected.

2. Shri J. E. Coelho Pereira, learned Senior Counsel appearing for the Petitioners has assailed the impugned Order essentially on the ground that under the provisions of Section 19(2) of the Act, it is mandatory for the Respondents to serve a notice of two months in order to show their intention of terminating a settlement. Learned Senior Counsel further pointed out that the settlement arrived at between the Petitioners and the Union/Respondents, was for a period ending 31.01.2008. The learned Senior Counsel has thereafter taken me through the notice dated 01.11.2007 and pointed out that the said notice was received by

the Petitioners on 07.11.2007 and, considering the provisions of Section 19(2) of the Act, the said period elapsed on 07.01.2008 which is prior to the validity of the Agreement which was in force upto 31.01.2008. Learned Senior Counsel further pointed out that taking note of the fact that such notice is ineffective, the question of the Respondents contending that they have already shown the intention to terminate the Agreement under the provisions of Section 19(2) of the Act, would not arise. In support of his submissions, learned Senior Counsel has relied upon the Judgments of the Apex Court reported in *Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another*, and *Shukla Manseta Industries Private Ltd. Vs. The Workmen Employed under it*, employed under it. Learned Senior Counsel further pointed out that in view of the Judgment of the Apex Court relied upon by him, the learned Judge has erroneously passed the impugned Order deciding the preliminary issue against the Petitioners. Learned Senior Counsel as such pointed out that the Tribunal has no jurisdiction to proceed with the reference in view of the fact that there is no proper notice as contemplated u/s 19(2) of the Act. Learned Senior Counsel as such submits that there is a case made out by the Petitioners for interference of this Court under Article 227 of the Constitution of India to quash and set aside the impugned Order.

3. On the other hand, Shri Gaokar, learned Counsel appearing for the Respondents has supported the impugned Judgment. Learned Counsel has raised a preliminary objection to the Petition and pointed out that the impugned Order passed by the Tribunal is on a preliminary issue and it is well settled by the Apex Court that the High Court should not interfere with such Orders under Article 226 and 227 of the Constitution of India. In support of his submissions, he has relied upon the Judgment of the Apex Court reported in *Dena Bank Vs. D.V. Kundadia*, . The learned Counsel has also relied upon the Judgment of the Hon'ble Delhi High Court in CDJ 2008 DHC 2013 in the case of *Hongkong & Shanghai Banking Corporation Ltd. vs. Govt. of India*. Learned Counsel as such submits that the question of interference by this Court at this stage, would not arise. On merits, learned counsel appearing for the Respondents has pointed out that by notice dated 01.11.2007, the Respondents have only shown their intention that they do not want to continue with the Agreement from 31.01.2008. Learned Counsel further pointed out that after going through the provisions of Section 19(2) what is contemplated therein is that the Respondents only have to show the intention that they do not want to continue with the settlement on that date and it is not open to the Petitioners to contend that there is any bar to issue such notice showing their intention during the subsistence of the Agreement. Learned Counsel in support of the submission has relied upon the Judgment of the Apex Court reported in CDJ 1990 S.C. 461, in the case of *Karnani Properties Limited vs. State of West Bengal and Ors.* Learned Counsel as such submits that there is no case made out for any interference under Article 227 of the Constitution of India and, as such, the Petition deserves to be rejected.

4. I have carefully considered the submissions of the learned Senior Counsel

appearing for the Petitioners as well as the learned Counsel appearing for the Respondents and with the assistance of the learned Counsel, I have also gone through the Judgments relied upon by them. I have also gone through the records as well as the impugned Order passed by the learned Judge. On perusal of the provisions of Section 19(2) of the Act, the learned Counsel appearing for the Respondents is justified to contend that what is contemplated therein is that the party should show the intention much before the period of two months that they do not want to continue with the settlement. In the present case, it is not in dispute that the notice was given to that effect on 01.11.2007. The contention of the learned Senior Counsel appearing for the Petitioners is that taking note of the fact that the notice dated 01.11.2007 was received by the Petitioners on 07.11.2007 and in view of the provisions of Section 19(2) of the Act, which contemplated two months notice of the intention to terminate, the notice issued by the Petitioners would be effective from 07.01.2008 and, as such, is contrary to the provisions of Section 19(2) of the Act. I am afraid that I cannot accept the said contention of learned Senior Counsel appearing for the Petitioners after reading the said notice dated 01.11.2007. The said notice curls out the intention of the Respondents that they do not wish to continue with the Agreement after the date when the Agreement would expire on 31.01.2008. Under the provisions of Section 19(2) of the Act, there is no bar for any party to show their intention that they want to terminate the settlement/Agreement provided that the intention is to sever the relationship after the period of the expiry of the Agreement. In the present case, the Respondents have issued a notice and shown their clear intention that the Agreement would not continue after the period of the Agreement ending on 31.01.2008. The said letter reads thus :

We refer the subsisting settlement dated 3rd February, 2005 entered into by and between the union and the Management which is to expire on 31st January 2008. Accordingly, this notice is hereby given to you under the Industrial Disputes Act and the rules made there under that the said settlement shall stand terminated on and from 31st January, 2008 and a fresh character of demands shall be presented to you well in advance to be effective from 1st February, 2008. Kindly acknowledge receipt."

5. The Judgment of the Apex Court relied upon by the learned Senior Counsel do not support his contention to that effect. On perusal of said Judgment in the case of M/s. Shukla Manseta Industries Pvt, Ltd., vs. The Workmen employed under it (supra) at paras 21 and 22 it is stated thus :

21. We do not read the above observation as supporting the submission of Counsel that no advance notice can be given to terminate a settlement or an award provided the requisite period of two months required u/s 19(2) expires on the date of expiry of the settlement or award or thereafter. It is only if a notice u/s 19(2) or 19(6) expires within the period of operation of the award or settlement, such a notice will be invalid under the law. In that event the settlement or the award will continue to be in operation and any reference by

Government of a dispute during the period of settlement or an award without the same being terminated under the law will be invalid.

22. In the instant case the notice u/s 19(2) was given intimating the intention of the workers to terminate the award on a date when the agreed period would also expire. To repeat, there is no legal bar to give advance intimation about the intention to terminate the settlement on the expiry of the agreed period and to start negotiation for a more favourable settlement immediately thereafter. The only condition that has to be fulfilled by such a notice is that the period of two months from the date of notice must end on the expiry of the settlement and not before it. In a given case it may be even advantageous to the parties who do not want to continue the settlement to strike a new bargain without loss of time so that unnecessary bickerings and resultant industrial unrest do not take place. In an industrial matter we are not prepared to subject a notice u/s 19(2) to the irksome vagaries or tyranny of technicalities of a notice u/s 106 of the Transfer of Property Act.

6. In fact, the Judgment relied upon by the learned Counsel appearing for the Respondents clearly contemplates at para 11 thus :

In our opinion this contention does not require consideration in view of the finding recorded by the learned Judges of Division Bench of the high Court that the letter dated November 24, 1966 was a notice u/s 19(6) as well as u/s 19(2) of the Act. It has been found that the said letter of the union which was addressed to the Labour Commissioner was sent to the appellant company and that in the said letter there is a clear intimation of the intention of the employees to terminate the award and from the letter of the appellant dated February 14, 1967 it appears that the appellant had become aware of the intention of the union to terminate the award and that the order of reference was made on July 29, 1967, long after the expiry of the period of two months. It is not the requirement of Section 19(2) of the Act that there should be a formal notice terminating a settlement and notice can be inferred from the correspondence between the parties (See : The Indian Link Chain Manufacturers Ltd. Vs. Their Workmen,). In the aforesaid facts and circumstances the High Court was justified in holding that the award dated March 3, 1960 had been validly terminated before the passing of the order of reference.

7. Considering the said Judgment of the Apex Court and as the said notice itself states that the settlement would stand terminated on 31.01.2008 i.e. the date of the expiry of the settlement, I find no reason to interfere with the impugned Order. The learned Judge has not committed any jurisdictional error whilst passing the impugned Order which calls for any interference under Article 227 of the Constitution of India. Petition stands accordingly dismissed.