IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 321 OF 2011
IN
WRIT PETITION NO. 1788 OF 2011
WITH
CIVIL APPLICATION (L.) NO. 384 OF 2011
WITH
LETTERS PATENT APPEAL NO. 321 OF 2011

Kalyan Dombivli Municipal Corporation & Anr. … Appellants
Vs
Nandkishor Govind Sane & Ors. … Respondents

A/w.
LETTERS PATENT APPEAL NO. 322 OF 2011
IN
WRIT PETITION NO. 1791 OF 2011
WITH
CIVIL APPLICATION (L.) NO. 385 OF 2011

Kalyan Dombivli Municipal Corporation & Anr. ...Appellants
Vs
Shakuntala Dattu Chaudhari & Ors. ..Respondents

A/w.
LETTERS PATENT APPEAL NO. 323 OF 2011
IN
WRIT PETITION NO. 1787 OF 2011
WITH
CIVIL APPLICATION (L.) NO. 386 OF 2011

Kalyan Dombivli Municipal Corporation & Anr. ...Appellants
Vs
Devram Shankar Pathare & Ors. ..Respondents

A/w.
LETTERS PATENT APPEAL NO. 324 OF 2011
IN
WRIT PETITION NO. 1789 OF 2011
WITH
CIVIL APPLICATION (L.) NO. 387 OF 2011

Kalyan Dombivli Municipal Corporation & Anr. ...Appellants
Vs
Mangal Shivaji Sonawani & Ors. ..Respondents

A/w.
LETTERS PATENT APPEAL NO. 325 OF 2011
IN
WRIT PETITION NO. 1790 OF 2011
WITH
CIVIL APPLICATION (L.) NO. 388 OF 2011

Kalyan Dombivli Municipal Corporation & Anr. ...Appellants
Vs
Dilip Vyankat More & Ors. ..Respondents

A/w.
LETTERS PATENT APPEAL NO. 326 OF 2011
IN
WRIT PETITION NO. 1793 OF 2011
WITH
CIVIL APPLICATION (L.) NO. 389 OF 2011

Kalyan Dombivli Municipal Corporation & Anr. ...Appellants
Vs
Narayan Bhiva Vyapari & Ors. ..Respondents

Mr. Sudhir Talsania, Sr. Adv a/w Mr. A. S. Rao for Appellant.
Mr. Yogendra M. Pendse for Respondent.

CORAM : G. S. KULKARNI &
AARTI SATHE, JJ.
RESERVED ON : 09 JANUARY 2026
PRONOUNCED ON : 16 JANUARY 2026

Judgment (Per G.S. Kulkarni, J.)

1. These Letters Patent Appeals challenge the judgment and order dated 18 July, 2011 passed by the learned Single Judge on a batch of Writ Petitions filed by the appellant – Kalyan Dombivli Municipal Corporation (for short "KDMC"). By the impugned judgment, the learned Single Judge while dismissing the Writ Petitions filed by the KDMC confirmed the orders dated 29 April, 2010 passed by the learned

Member, Industrial Court, Thane allowing the complaints filed by the respondent-workmen. It is thus the concurrent findings of both such forums are being assailed by the KDMC.

2. The facts lie in a narrow compass:- The respondents are the original complainants, being "workmen" (hereinafter referred to as "the complainants") employed with the KDMC. The complainants filed applications/complaints under Section 28 read with Items 5 and 9 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short **"the MRTU & PULP" Act),** seeking directions to the KDMC to implement the settlement agreement dated 3 January, 1996 arrived between the KDMC and the two Workers Unions, namely, Municipal Mazdoor Union Maharashtra and Akhil Bharatiya Safai Mazdoor Congress, and more particularly what was provided for in Clause (1) of the said settlement agreement, which primarily pertained to the implementation of the 5th Pay Commission recommendations. The relevant extract of the settlement agreement is required to be noted, which reads thus:

> (Translation of a photocopy of a Marked portion, typewritten in Marathi)
>
> **AGREEMENT**
>
> Date : 3rd January, 1996.
>
> **Agreement entered into as per Section 18(1) of the Industrial Disputes Act, 1947 and Rule 62 of the Industrial Disputes Mumbai Rules, 1947.**
>
> 1) Kalyan Municipal Corporation, Kalyan [Hereinafter, shall be referred to as Municipal Corporation]
>
> 2) A] Municipal Mazdoor Union, Maharashtra, Dhobiali, Tembhinaka, Thane.
>
> B] Akhil Bharatiya Safai Mazdoor Congress, Ashirwad, Joshi Baug, Kalyan.

(Hereinafter, shall be referred to as Labour Unions]

The Commissioner Shri T. Chandrashekhar, Deputy Commissioner Shri G. C. Mangale and the Labour Officer Shri V. N. Hanmane on behalf of the Municipal Corporation whereas Shri Madhu Joshi and Shri Charansingh Tank on behalf of the Labour Union took part in the discussions.

BACKGROUND OF THE AGREEMENT

Municipal Mazdoor Union, Maharashtra, Akhil Bharatiya Safai Mazdoor Congress had served Notice on the Municipal Corporation for going on strike on the dates 18.12.1995 and 21.12.1995 respectively for their 16 and 20 demands respectively. On the date 30.12.1995, both the Labour Unions, in order to get their demands granted, had jointly staged One Day's Symbolic Strike and had organized a March to the Municipal Corporation. The Delegation of the said March had held detailed discussion with the Commissioner of the Municipal Corporation. During the course of this discussion, the Municipal Commissioner accepted some demands of the Labour Unions and as regards other demands, assured them to hold a discussion for the same and to take a decision in respect thereof at the earliest.

In the meantime, the Assistant Labour Commissioner and Conciliation Officer, Kalyan, had called both the Parties on the date 29.12.1995 for preliminary discussion. Both the Parties met the Conciliation Officer and informed that discussion was going on between both the Parties regarding the demands of the Labourers. As the services of the Municipal Corporation come under the Emergency Services, the Conciliation Officer included the demands of the Labour Unions in the Conciliation Proceeding on the date 29.12.1995 and had fixed the hearing in respect thereof on the date 01.01.1996.

On the basis of the Discussion held between the Municipal Corporation and the Labour Unions as mentioned in the Minutes of the meeting held on the date 30.12.1995 before the Conciliation Officer, it was decided to enter into an Agreement.

The said Agreement as mentioned hereinbelow is agreed to both the Parties.

1] After receiving the recommendations of the Fifth Pay Commission appointed by the Central Government for restructuring of the pay of the Workers/employees working in Kalyan Municipal Corporation, the Municipal Corporation, by considering the said recommendations as base, shall revise the pay structure of the workers/employees working in the Municipal Corporation. However, if the Labour Unions do not agree to the said pay structure, then, Arbitrator shall be appointed therefor.

…….

15] It is decided to take decision regarding other demands of both the Labour Unions by holding discussion with them at the earliest.

[Madhu Joshi] General Secretary Municipal Mazdoor Union, Maharashtra.	[Charansingh Tank] Akhil Bhartiy Safai Mazdoor Congress.	[T. Chandrashekhar] Commissioner Kalyan Municipal Corporation, Kalyan.

Kalyan.
Date: 03.01.1996.

[Meera Khandagale]
Assistant Labour Commissioner and
Conciliation Officer, Industrial
Disputes Act, 1947,
Kalyan Dist. Thane.

(emphasis supplied)

3. In their respective complaints, the grievance of the complainants was that, in pursuance of the said settlement, the wages of the complainants were not revised in accordance with the Settlement Agreement dated 3 January, 1996. They contended that the settlement was legal, valid and subsisting, and that it had been wholly accepted by the KDMC, it was hence incumbent upon the KDMC to implement the settlement qua the complainants' demand for revision of wages, by applying the scales of the 5th Pay Commission in the manner agreed upon under the Settlement Agreement.

4. Such complaints filed before the Industrial Court were opposed by the KDMC firstly on the ground that the settlement in question was arrived between the KDMC and the two Unions, hence the settlement operated *inter se* between the said parties to the agreement and not the complainants. The next ground of KDMC's opposition was to the effect that in the intervening period, the Rajput Parity Report, the Malwankar Award and the Gawande Award had come into operation and that presently all the terms and conditions of the employment of KDMC employees were governed by the Gawande Award. Hence, the settlement dated 3 January, 1996 had become ineffective. The KDMC also raised a contention that such complaints filed

under Section 28 of the MRTU & PULP Act were not maintainable as they were barred by limitation, as the same were filed after a lapse of 12 years from the date of settlement, i.e., in the year 2008, whereas the settlement itself was dated 3 January, 1996.

5. The Industrial Court after according the parties an opportunity of leading their evidence and after being heard on their respective contentions, disposed of the complaints by its judgment and order dated 29 April, 2010 thereby directing the KDMC to implement the settlement dated 3 January, 1996. The operative part of the order passed by the Industrial Court reads thus:

> **ORDER**
>
> 1) The Complaints are hereby partly allowed.
>
> 2) By not implementing the Settlement dated 03.01.1996, the respondents have committed unfair labour practice under Item 9 of Schedule IV of the Act.
>
> 3) The respondents are hereby directed to cease and desist from the proved unfair labour practice and to take affirmative action by implementing the Settlement, dated 03.01.1996 and to pay the benefits of the Settlement to the Complainants.
>
> 4) Sixty days time from the date of the receipt of this order is granted to the respondents to implement the Order passed by this Court.
>
> 5) The parties to hear their own costs.
>
> 6) The remaining prayers of the complainants is hereby rejected.
>
> 7) The parties to bear their own costs."

6. The aforesaid order passed by the Industrial Court was assailed by the KDMC by filing the Writ Petitions in question, which came to be dismissed by the learned Single Judge by the impugned order dated 18 July, 2011.

7. The contentions urged by the KDMC before the learned Single Judge were not different from what was urged before the Industrial Court and as noted by us hereinabove. While dismissing the Writ Petitions filed by the KDMC, the learned Single Judge held against the KDMC not only on the case of the KDMC as urged relying upon sub-section (1) of Section 18 but also on the plea of limitation thereby concurring with the findings recorded by the Industrial Court that the settlement was subsisting and not implemented by the KDMC, despite the complainants having called upon it, to implement the same. The learned Single Judge observed that it to be a settled principle of law, as held by the Full Bench of this Court in the case of Regional Manager, Maharashtra State Road Transport Corporation, Nagpur and Anr. vs. Regional Secretary, Maharashtra State Transport Kamgar Sanghatana, Karanja[1] as also in Maharashtra State Road Transport Corporation, Nagpur through its Divisional Controller, Bhandara vs. Premlal s/o. Khatri Gajbhiye[2] that when a settlement is in force and remains unimplemented due to an unfair labour practice, the employees would have every right to approach the Industrial Court at any time so long as the settlement remains unimplemented. The learned Single Judge held that the KDMC's plea of applicability of Section 18(1) of the Industrial Disputes Act, 1947 (for short **"I.D. Act"**) was unacceptable, as sub-section (3)(d) of Section 18 would govern the acceptance of the complainants' plea for grant of benefits under the settlement dated 3 January 1996, for the reason that the said settlement was arrived

[1] 1984 LAB. I.C. 1721

[2] 2003 II CLR 387

during the conciliation proceedings. To fortify such conclusion, the learned Single Judge referred to the decision of this Court in **Hill Son & Dinshaw Ltd. vs. P.G. Pednekar & Ors.**[3] and the decision of the Supreme Court in **P. Virudhachalam vs. Management of Lotus Mills & Ors.**[4] and **Walchandnagar Industries Ltd. vs. Dattusingh Lalsing Pardeshi & Ors.**[5]. The relevant observations made by the learned Single Judge are required to be noted, which reads thus:

> "15. The first point raised by the Petitioner about the non maintainability of the complaint filed by the Respondent-Original Complainants is that they were not parties to the settlement dated 3rd January, 1996 and as such it is not binding on them. It is to be noted that in the Section 18 of the Industrial Dispute Act, 1947, it is specifically stated that once settlement is arrived at with the recognized Union, same is binding on the members of the said Union as well as nonmembers also.
>
> 16. This section has been analyzed by this Court in the matter of **Hill Son & Dinshaw Ltd., v/s. P. G. Pednekar & Others,** reported in 2002 (4) BCR – 541. Paragraphs 7 & 8 of the said judgment reads thus:-
>
> > "**Para – 7** A bare perusal of the above quoted section would show that whereas a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement, a settlement arrived in the course of conciliation proceeding under the Act is binding not only on the parties to the settlement but also on other persons specified in Clauses (b), (c) and (d) of subsection (3) of section 18 of the Act. Therefore, it the settlement arrived at between the employer and the workmen, otherwise than in the course of conciliation proceedings, with which we are concerned in this case, it shall be binding on the parties to the settlement. The phrase "parties to the settlement" includes both employer and an individual employee or the union representing the employees. If the settlement is between the employer and workmen it would be binding on that particular employee and the employer, if it is between a recognized union of the employees and employer, it will bind all the members of the union and the employer. That it would be binding on all the members of the union is a necessary corollary of collective bargaining in the absence of allegation of mala fides or fraud. Merely because an individual employee or some of the employees do not agree to the terms of the settlement entered into between a recognized union and the employer, he/they can not be permitted to contend that it is not binding on him/them."

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3 2002 (4) BCR 541

4 1998(2) LLJ 389

5 2005(6), BCR-733

"**Para – 8** The aims and objects of the provisions of the Industrial Disputes Act include industrial peace which is essential to the industrial development and economy of the nation. Great emphasis is, therefore, laid on the settlements as they set at rest all the disputes and controversies between the employer and the employees. In the case of [Herbertsons Limited v. The Workmen of Herbertsons Ltd. and others], 1976(4) S.C.C. 736, the Supreme Court considered the effect of the settlement arrived at by the recognized union of majority workers. It was observed by Goswami, J., speaking for the Court that when a recognized union negotiates with an employer, the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognized union, which is expected to protect the legitimate interests of labour enters into a settlement in the best interests of labour. This would be the normal rule. There may be exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements. But in the absence of such allegations a settlement in the course of collective bargaining is entitled to due weight and consideration."

17. Even in the matter of P. Virudhachalam v/s. Management of Lotus Mills & Others, reported in 1998 (2) LLJ, 389, the Apex Court held that the settlement rendered during the conciliation proceedings is binding not only on the members of the signatory union but also on workmen, whose union have participated in the proceedings, but refused to sign the settlement. Paragraph 7 read thus:

"**Para 7** The aforesaid relevant provision of the Act, therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement under Section 12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen. Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an Arbitration award, They all stand on part. It is easy to visualise that settlement contemplated by Section 12(3) necessarily means a written settlement which would be based on a written agreement where signatories to such settlement sign the agreement. Therefore, settlement under Section 12(3) during conciliation proceedings and all other settlements contemplated by Section 2(p) outside conciliation proceedings must be based on written agreements. Written agreements would become settlements contemplated by Section 2(p) read with section 12(3) of the Act when arrived at during conciliation proceedings or even outside conciliation proceedings. Thus, written agreements would become settlements after relevant procedural provisions for arriving at such settlements are followed. Thus, all settlements necessarily are based on written agreements between the parties. It is impossible to accept the submissions of learned counsel for the appellants that settlements between the parties are different from agreements between the parties. It is trite to observe that all settlements must be based on written agreements and such written agreements get embedded in settlements. But all agreements may not necessarily be settlements till the aforesaid procedure giving them status of such settlements gets followed. In other words, under the scheme of the Act, all settlements are necessarily to be treated as binding agreements between the parties but all agreements may not be settlements so as to

> have binding effect as provided under Section 18(1) or (3) if the necessary procedure for giving them such status is not followed in given cases. On the aforesaid scheme of the Act, therefore, it must be held that the settlement arrived at during conciliation proceedings on May 5, 1980 between Respondent No.1 Management on the one hand and the four out of 5 unions of workmen on the other, had a binding effect under Section 18(3) of the Act not only on the members of the signatory unions but also on the remaining workmen who were represented by the fifth union which, though having taken part in conciliation proceedings, refused to sign the settlement. It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding to even future workmen as laid down by Section 18(3) (d), it would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement 12(3) of the Act".

> 18. Even in the matter of **Walchandnagar Industries Ltd., v/s. Dattusingh Lalsing Pardeshi & Others**, reported in 2005(6), BCR733, the Division Bench of our High Court held that section 18, 25G & 2(oo), settlement is binding even on nonmember workers of the Union. Therefore, considering these two authorities and the fact that the settlement dated 3rd January, 1996 is neither set aside nor new settlement came into existence, I hold that the Respondent-Original Complainant can take benefit and file complaint under Industrial Disputes Act for implementing the settlement dated 3rd January, 1996, though they were not parties to that settlement. As the Respondent-Original Complainants are working in the said organization in which one of the recognized union entered into settlement with the Petitioner and the said settlement is still in existence, Respondent-Original Complainants have right to file dispute under the Industrial Disputes Act for implementing the said settlement. Therefore, objection raised by the Petitioner about the maintainability of the complaint filed by the Respondent-Original Complainant for not implementing the settlement dated 3rd January, 1996 on the ground that Respondents were neither parties to the settlement nor members of the Union with whom the settlement was arrived at, is not tenable."

8. It is on the aforesaid backdrop, the present Letters Patent Appeals are filed. We may observe the the Letters Patent Appeals were earlier dismissed by a co-ordinate Bench of this Court by an order dated 19 October, 2011. Against the said order, Review Petitions were filed, which came to be dismissed by an order dated 2 March, 2012. The orders dismissing the Letters Patent Appeals as well as the Review Petitions were assailed by the KDMC before the Supreme Court. The Special Leave Petitions were disposed of by an order dated 22 November, 2013, whereby the

Supreme Court directed the KDMC to approach this Court by filing Review Petitions, to be decided on their own merits. Accordingly, the Review Petitions were considered by a Division Bench of this Court and were allowed by an order dated 28 April, 2014. By a further order dated 10 August, 2015, the Letters Patent Appeals were admitted by the co-ordinate Bench of this Court.

9. We have heard Mr. Talsania, learned senior counsel, along with Mr. Rao for the appellant-KDMC and Mr. Pendse, learned counsel for the respondents-complainants.

10. Mr. Talsania, in assailing the impugned order passed by the learned Single Judge, has limited submissions. His first submission is that the settlement dated 3 January, 1996 would not confer any legal right or any benefit on the complainants for the reason that they were not parties to the settlement. In supporting such submission, the Court's attention is drawn to the provisions of sub-section (1) of Section 18 of the I. D. Act. It is submitted that in the present case, settlement (supra) was not arrived "in the course of the conciliation proceedings" and/or the settlement being otherwise than in the course of the conciliation proceedings, no plea under the said settlement could have been raised by the complainants in their respective complaints filed before the Industrial Court. To buttress such submission, Mr. Talsania has placed reliance on the decision of the Supreme Court in the case of **Bata Shoe Co. (P) Ltd vs. D. N. Ganguly & Others**[6]. Mr. Talsania would next submit that

6 AIR 1961 1158

the settlement was arrived at on 3 January, 1996 whereas the complaints in question were filed in the year 2008, hence, the complaints, filed after a delay of 12 years were barred by limitation, and hence were not maintainable. Mr.Talsania has submitted that the complaints ought to have been filed within the prescribed limitation period of 90 days as provided for in Section 28 of the MRTU & PULP Act.

11. On the other hand, Mr. Pendse, learned counsel for the complainants, in opposing the submissions as advanced by Mr. Talsania, has drawn our attention to the contents of the Settlement Agreement to submit that the settlement in question in fact was arrived, in the course of conciliation proceedings. He submits that it is not in dispute that the complainants as well as the KDMC were before the Conciliation Officer who in the course of conciliation proceedings, recorded the settlement and also signed the Settlement Agreement, thereby according his approval. It is hence his submission that the KDMC's plea that the settlement was not arrived in the course of conciliation proceeding is *ex facie* untenable. It is submitted that in any event, such contention was not raised by the KDMC in the manner as contended before the Industrial Court. Mr. Pendse further submits that after the filing of the complaints, the settlement was in fact acted upon, inasmuch as certain categories of employees, namely, Pharmacists, were granted the benefit of the settlement. According to him, this fact is relevant for both the issues raised on behalf of the KDMC. On the plea of limitation as urged by Mr. Talsania is concerned, Mr. Pendse submits that there are concurrent findings against the KDMC on such issue

that the complaints were filed well within the prescribed limitation, since the decision to give effect to the revised pay scales of the 5th Pay Commission itself was taken after the filing of the complaints before the Industrial Court. In this context, he submits that the settlement dated 3 January, 1996, at all material times, was legal, valid, subsisting and binding on the KDMC. It is his further submission that it was never the case of the KDMC that the settlement had ceased to exist. Mr. Pendse would thus urge that the appeals deserve to be dismissed.

Analysis

12. Having heard learned counsel for the parties and upon perusal of the record, it appears to be not in dispute that the complainants, at all material times, were employees of the KDMC although not being members of the signatory unions. It is also not in dispute that the Settlement Agreement dated 3 January, 1996 was arrived between the KDMC and the two Unions (supra). Further, the KDMC had not resiled from granting the benefit of the settlement to those who fell within its scope, including Pharmacists, which fact has not been disputed by Mr. Talsania on behalf of KDMC. Thus, the question before the Industrial Court as also before the learned Single Judge, which has been concurrently answered against the KDMC, was that the complainants were entitled to the benefit under the settlement. The complainants have succeeded before both such forums.

13. Having noted the rival contentions, we first advert to the question as posed by Mr. Talsania that the complaints were not maintainable considering the provisions of

of Section 18(1) of the ID Act on the ground that the settlement was not arrived in the course of conciliation proceedings. On the other hand, the contention of the respondents/complainants is otherwise relying on the provisions of sub-section 3(d) of Section 18. For convenience, the said provision, as it stood on the date of the decision of the Industrial Court dated 29 April, 2010, is required to be extracted, which reads thus:

> **Section 18 - Persons on whom settlements and awards are binding.**
>
> (1) **A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.**
>
> Provided that, where there is a recognized union for any undertaking under any law for the time being in force, than such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee) shall be arrived at between the employer and the recognized union only; and such agreement shall be binding on all persons referred to in clause (c) and clause (d) of subsection (3) of this section].
>
> (2) Subject to the provisions of sub-section *(3)*, an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.
>
> (3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on--
>
> (a) all parties to the industrial dispute;
>
> (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
>
> (c) where a party referred to in clause *(a)* or clause *(b)* is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
>
> (d) **where a party referred to in clause *(a)* or clause *(b)* is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of**

> **the dispute and all persons who subsequently become employed in that establishment or part."**
>
> (emphasis supplied)

14. It is seen that Section 18 makes a provision qua persons on whom settlements and awards are binding. Thus, when an industrial dispute is raised and is resolved by settlement or by an award, the same would accordingly stand governed by the provisions of Section 18 of the ID Act. Sub-section (1) of Section 18 contemplates that if a settlement is arrived by virtue of an agreement between the employer and the workmen, otherwise, than in the course of the conciliation proceedings, the same shall be binding on the parties to the agreement only and not otherwise. Sub-section (3)(d) creates a distinct situation whereby a settlement becomes binding on the persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute, as well as all persons who subsequently become employed in that establishment or who were part thereof, provided the settlement is arrived at in the course of conciliation proceedings. Thus, the legislative policy behind Section 18(3) is to confer an extended operation of the settlement to those who are not actual signatories to a settlement agreement, if the settlement agreement, is arrived during the course of conciliation proceedings on the principles of parity and fairness. In such event, the fact that a workman was not a member of the Union is immaterial and does not affect the binding force of the settlement on employees.

15. In **Bata Shoe Co. (P) Ltd vs. D. N. Ganguly & Others** (supra), the Supreme

Court was concerned with an issue on the competence of a reference in the context of an agreement dated 2 September, 1954, being projected as a settlement in the context of the applicability of Section 18 of the I.D. Act. Analyzing the purport of sub-section (1) and sub-section (3)(d) of Section 18, the Court explained the manner in which the settlement can be said to be a settlement in conciliation proceedings. The Supreme Court held as follows:

> 7. The question thus posed raises the question as to what is meant by the words "in the course of conciliation proceedings" appearing in Section 18 of the Act. One thing is clear that these words refer to the duration when the conciliation proceedings are pending and it may be accepted that the conciliation proceedings with respect to these dismissals, which began sometime before May 1, 1954, were certainly pending upto September 6, 1954, and may be a little later, as is clear from the two letters of the Labour Commissioner. But do these words mean that any agreement arrived at between the parties during this period would be binding under Section 18 of the Act? Or do they mean that a settlement arrived at in the course of conciliation proceedings postulates that that settlement should have been arrived at between the parties with the concurrence of the Conciliation Officer? As we read this provision we feel that the legislature when it made a settlement reached during the course of conciliation proceedings binding not only on the parties thereto but also on all present and future workmen intended that such settlement was arrived at with the assistance of the Conciliation Officer and was considered by him to be reasonable and therefore had his concurrence.
>
> 8. Reading these two provisions along with Section 18 of the Act, it seems to us clear beyond doubt that a settlement which is made binding under Section 18 on the ground that it is arrived at in the course of conciliation proceedings is a settlement arrived at with the assistance and concurrence of the Conciliation Officer, for it is the duty of the Conciliation Officer to promote a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute. It is only such a settlement which is arrived at while conciliation proceedings are pending that can be binding under Section 18."

16. The exposition of law in the aforesaid decision, in our opinion profoundly applies to the present case, as it is not the KDMC's case that it disputed the

settlement agreement or that the parties were not before the Conciliation officer, who has endorsed the settlement.

17. We may also refer to the decision of a learned Single Judge of the Calcutta High Court in **Anthony Gomes vs. State of West Bengal & Ors.**[7] on the interpretation placed on sub-section (1) and (3) of Section 18 of the I.D. Act, wherein the following observations were made:

> "5. Under Sub-sec. (1), a settlement arrived at by agreement between the employer and workmen otherwise than in the coarse of conciliation proceeding shall be binding on the parties to the agreement Under Sub-sec. (3), a settlement arrived at in the course of conciliation proceedings under the Act or an arbitration award in a case where a notification has been issued under Sub-sec. (3A) of S. 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on all persons who were employed in the establishment, or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part. …… The distinction between Sub-sec. (1) and Sub-sec. (3) of the Act is that while under Sub-sec. (1) if a settlement is arrived at by agreement between the employer and workmen otherwise than in the course of a conciliation proceeding, it shall be binding only on the parties to the agreement but under Sub-sec. (3), while such a settlement is arrived at in the course of a conciliation proceeding it will be binding upon all the workmen. The fact that the petitioner was not a member of the union is quite immaterial and does not affect the binding force of the settlement upon all employees. This view finds support from a decision of the Supreme Court in the case of Ramnagar Cane and Sugar Company, Ltd. v. Jatin Chakraborty [A.I.R. 1960 S.C. 1012]. It has been held by the Supreme Court that in order to bind the workmen, it is not necessary to show that the said workmen belonged to the union which was a party to the dispute before the conciliator and that the whole policy of S. 18 of the Act appears to give an extended operation to the settlement arrived at in the course of conciliation proceedings and that is the object with which the four categories of persons bound by such settlement are specified in Sub-sec (3) of S. 18. In a subsequent decision of the Supreme Court in the case of Bata Shoe Company (Private), Ltd. v. Ganguly (D.N.) [A.I.R. 1961 S.C. 1158] the same view has been expressed."

18. Adverting to the aforesaid clear position in law qua the applicability of either sub-section (1) or sub-section (3)(d) of Section 18, we may observe that in the

7 (1974) 2 LLJ 94

present case, the settlement dated 3 January, 1996 was arrived at, in the course of the conciliation proceedings, which is evident from the bare perusal of the Settlement Agreement (supra) which expressly refers to the conciliation proceedings before the Conciliation Officer, in which both the parties to the settlement agreement participated. There is no denial of these recitals in the settlement agreement. Furthermore, what is of most significance is that the Conciliation Officer accorded his imprimatur to the settlement agreement by endorsing his signature on the settlement agreement, as underscored by us. Thus, the legal character of the settlement in question is clearly of a settlement in the course of the conciliation proceedings. Hence, from the plain purport of the Settlement Agreement, there is no scope for the KDMC to contend that the settlement was not arrived during the course of conciliation proceedings. Per contra, sub-section (1) of Section 18 of the ID Act contemplates a settlement arrived at by an agreement between the employer and the workmen "otherwise than in the course of conciliation proceedings", which would be binding only on the parties to the agreement. This is clearly not the situation in the present case, wherein the settlement is indisputedly arising in the course of the conciliation proceedings, and to that effect not only recitals are incorporated but also the settlement agreement bears the signature of the Conciliation Officer. In such circumstances, a clear legal consequence as envisaged under sub-section (3)(d) of Section 18 necessarily follows, namely, that the settlement qua the complainants becomes binding on KDMC. We, accordingly, reject Mr. Talsania's submission of the complaints being not maintainable on the

basis of Section 18(1) of the ID Act.

19. Insofar as Mr. Talsania's contention on limitation is concerned, the same deserves to be rejected considering the clear facts, that the dispute raised by the complainants was to implement the recommendations of the 5th Pay Commission as agreed under the settlement. When such decision, in fact, was taken by the KDMC in September, 2008, i.e., after the workman/respondents lodging the complaints in question, which were filed sometime in January/February, 2008. Thus, until the KDMC implemented the recommendations of the 5th Pay Commission in the manner agreed in clause (1) of the Settlement Agreement (supra), there existed a continuing cause of action, entitling the workmen to seek enforcement thereof, as rightly held by the learned Single Judge, the complaints were filed within the prescribed period of limitation.

20. As a result of the aforesaid discussion, we find that no case is made out by the appellants to interfere with the impugned judgment and order passed by the learned Single Judge, confirming the findings of the Industrial Court on facts and law. The appeals are accordingly dismissed. No costs.

(AARTI SATHE, J.) (G. S. KULKARNI , J.)