*JPP*

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***
***CIVIL APPELLATE SIDE JURISDICTION***

*WRIT PETITION NO. 6602 OF 2015*
*with*
*WRIT PETITION NO. 8006 OF 2015*

M/s. Joy Frozen Foods Pvt. Ltd. … Petitioner.

V/s.

Mr. Vikas Madangopal Tulsiram & Anr. ... Respondents.

Mr. V.V. Ugle for the Petitioner in both Petitions.
Mr. Kunal Bhange for Respondents 1 to 3 in both Petitions.

***CORAM : N.M. Jamdar, J.***

***21 November, 2016.***

***<u>Oral Order</u>*** **:-**

Heard the learned Counsel for the parties. By consent of parties taken up for final disposal forthwith. The Respondents waives service.

2. The Petitioner has challenged the order passed by the Appellate Bench of Small Causes Court, Mumbai dated 17 April 2015 below Exhibit 28, rejecting the application taken out by the

Petitioner for directions to the Respondents to pay the service tax in respect of the compensation fixed.

3. The Petitioner - landlord of the premises , instituted a suit bearing No. 29/40 of 2006. The suit was decreed. Thereafter, the Respondents filed an Appeal bearing No. 6 of 2013 in the Appellate Bench of the Small Causes Court. At the time of grant of stay to the execution of the decree, the Appellate Bench directed the Respondents to pay Rs.66,000/- per month from 1 June 2003 as compensation. An application was filed by the Petitioner contending that with effect from 1 July 2007 service tax have been imposed in respect of the properties rented and the Respondents be directed to pay the said service tax at the rate of 12.36% on the amount of compensation. This application has been rejected by the impugned order.

4. Heard the learned Counsel for the parties. The Appellate Bench has followed the position of law laid down by this Court as regard liability of a party to pay the service tax as per the conditions of the agreement between the parties. The Appellate Bench has come to the conclusion that there was no such agreement, the application deserves to be rejected. The Appellate Bench has not considered the position of law that grant of compensation pending an appeal and as a condition of interim relief is an equitable arrangement. When such

arrangement was arrived at, the service tax was not imposed. Therefore, when the amount of Rs.66,000/- was fixed, this aspect of the matter was not and could not have been taken into consideration. It is by way of subsequent event that an amount of service tax has come into the picture. Therefore, the question would be of variation of the amount of compensation, if any. In view of the subsequent events, instead of looked into the matter in that point of view, the learned Appellate Bench has considered whether there was any agreement to pay the service tax which in my opinion was not a relevant criteria. In the facts of the present case, whether the landlord is liable to pay the service tax on the compensation received would be one of the criteria while fixing the quantum of the compensation.

5. Therefore, the impugned order cannot be sustained and is accordingly quashed and set aside. Liberty to the Petitioner to file an application for modification of the compensation in respect of the petitioner's claim of payment of the service tax. The application so made will be considered by the Appellate Bench on its own merits determining the issue whether on compensation fixed the service tax is payable and if it is found to be payable, then the Appellate Bench will accordingly make suitable modification in the compensation so awarded. If the Petitioner makes an application within period of four weeks from today, the Appellate Bench will make an endeavour

to dispose of the same within twelve weeks thereafter. Contentions of the parties in the above aspect are kept open. The Writ Petitions are accordingly disposed of.

***(N.M. Jamdar, J.)***