

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

WRIT PETITION NO.6661 OF 2016

M/s. Punjani Developers : **Petitioner.**
versus
M/s. Active Apparels Pvt. Ltd. : **Respondent.**

**ALONG WITH
WRIT PETITION NO.6662 OF 2016**

M/s. Punjani Developers : **Petitioner.**
versus
M/s. Panna Textile Industries Pvt. Ltd. : **Respondent.**

Mr. Amol P Mhatre for the Petitioner in both the Writ Petitions
Mr. P J Thorat i/by S K Jain & Associate for the Respondent in both the
Writ Petitions.

CORAM : R. M. SAVANT, J.
DATE : 21st APRIL 2017

P.C.

1 The above Writ Petitions take exception to the identical orders dated 13/04/2016 by which orders the Applications (Exhibits 30 and 56) filed in the respective Suits i.e. Special Civil Suit Nos.177 of 2009 and 178 of 2009 came to be partly allowed to the extent that in Application (Exhibit 30) the Defendant i.e. the Respondent herein was directed to pay license fees at the rate of Rs.50000/- per month from June 2015 to March 2016 until further orders of the Trial Court and in the second Application (Exhibit 56) the

Defendant i.e. the Respondent herein was directed to pay license fees at the rate of Rs.46,000/- per month from June 2015 to March 2016.

2 The said orders were challenged on the ground that this Court whilst the Civil Revision Applications were pending in the earlier round had fixed license fees at Rs.56180/- per month and Rs.51000/- per month respectively and therefore it is the case of the Petitioner herein that the license fees at a lower amount could not have been fixed by the Trial Court. In so far as the said Civil Revision Applications were concerned, the same came to be withdrawn by the Respondent as a result of which the interim orders stood vacated. Thereafter the Trial Court has determined the license fees pursuant to the aforesaid Applications (Exhibits 30 and 56) and fixed the license fees as mentioned herein above.

3 The Trial Court as can be seen from the impugned orders has taken into consideration the relevant facts and thereafter has fixed the license fees at the rates mentioned herein above i.e. Rs.50000/- per month and Rs.46000/- per month respectively.

4 In my view, no interference is called for with the said fixation in the above Writ Petitions. However, it was also sought to be contended on behalf of the Petitioner that the Petitioner has to pay 14% service tax on

account of the license fees and therefore seeks a direction that the said payment which is a concomitant to the directions to pay license fees be directed to be made. The learned counsel appearing on behalf of the Petitioner Shri Amol Mhatre, on instructions of the partner of the Petitioner Shri Milan Haria makes a statement that in fact the Petitioner has paid the service tax on the license fees. Statement accepted. A tabular statement to the said effect is also given to the learned counsel for the Respondent Shri P J Thorat.

5 The learned counsel appearing on behalf of the Respondent Shri P J Thorat disputes that service tax is payable on the license fees and further states that the Respondent has no objection to deposit the service tax on the license fees in the Trial Court, however, the Petitioner may not be permitted to withdraw the same. In my view, it is not possible to accept the said contention in view of the statement made by the learned counsel for the Petitioner that the service tax in fact has been paid by the Petitioner and is payable on the amount of the license fees. The Respondent would accordingly have to deposit the service tax also in the Trial Court. On such deposit being made, the Petitioner would be entitled to withdraw the same on the undertaking that the same would be remitted to the Governmental Authorities. The learned counsel for the Respondent Shri P J Thorat states that the Respondent would deposit the amount of arrears within four weeks from date. No further directions are necessary to be issued. The above Writ Petitions are accordingly disposed of.

6 Parties to act upon an ordinary copy of the instant order duly authenticated by the Court Sheristedar.

[R.M.SAVANT, J]