

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (STAMP) NO.25905 OF 2015

Rati Loku Shetty.	]	... Petitioner
Versus		
Reliance Infrastructure Limited.	]	... Respondent

Mr. Pradeep Havnur for Petitioner.
 Mr. Satish Kamat for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 01, 2015

P. C. :-

1. **Not on board. Upon production, taken on board.**

2. This petition challenges order dated 03/09/2015 which is the final order of assessment under Section 126 of the Electricity Act, 2003 ('said Act'). Section 127 of the said Act reads thus :-

“127. Appeal to appellate authority.- (1) Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to [half] of the assessed amount is deposited in cash or by way

of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent. per annum compounded every six months.”

3. From the aforesaid, it is clear that the petitioner had an alternate and efficacious remedy. The submission of the learned Counsel for petitioner is that the final assessment order is patently arbitrary and in view of the law laid down by the Hon'ble Apex Court in the case of **Smt. Har Devi Asnani V/s. State of Rajasthan & Others¹**, in such a situation, the petition under Article 226 of the Constitution of India can always be entertained despite the existence of alternate and efficacious remedy.

¹ (2011) 14 SCC 160

4. In the facts and circumstances of the present case, no case of such magnitude has been made out. The issues raised in the petition, are issues which can very well be adjudicated by the appellate authority under Section 127 of the said Act. In fact, the impugned final assessment order had very specifically made reference to the remedy available to the petitioner under Section 127 (1) of the said Act and there is really no reason to exercise the extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India in the matter of this nature.

5. Accordingly, the present petition is dismissed. However, it is made clear that the dismissal of this petition is not on merits but merely on the ground that the petitioner has alternate and efficacious remedy available to her. Accordingly, if the petitioner does institute the appeal under Section 127 of the said Act, by duly complying with the provisions contained in sub-section (2) thereof as well as the other pre-condition, the appellate authority to decide the same in accordance with law and on its own merits, without being influenced by any observations made in this order.

6. The petition is accordingly dismissed.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Order.