

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

WRIT PETITION NO.1087 OF 2016

The Thane Jilha Reti Va Itar Audyogik

Utpadak Sahakari Sanstha Mydt.

Through Govardhan G Bhoir

The Vice Chairman of the Society

: Petitioner.

versus

The Additional Executive Engineer

(Assessing Officer), MSEDCL Ltd. and ors.

: Respondents.

Mr. M L Patil for the Petitioner.

Mr. Rahul Singh i/by DSK Legal for the Respondent Nos.1 and 2.

Mr. S D Rayrikar AGP for the Respondent No.4.

CORAM : R. M. SAVANT, J.

DATE : 31st January 2017

P.C.

1 The order dated 14/12/2015 passed by the Appellate Authority is taken exception to by way of the above Petition. The said Appeal was filed under Section 127(1) of the Electricity Act 2003. The said Appeal was filed against the order passed under Section 126 of the said Act. Under the said order the Petitioner was held liable to pay an amount of Rs.16,60,521/- on account of the alleged unauthorized use of the electricity for commercial purposes.

2 Pending the above Petition the Petitioner has deposited the entire amount of Rs.16,60,521/- with the MSEDCL. The Appeal has been rejected by

the impugned order on two fold grounds viz. it was filed beyond the period prescribed by Section 127(1) of the said Act and that it was not accompanied by 2% of the court fees.

3 As indicated above, the Petitioner has deposited the entire amount of Rs.16,60,521/- with the MSEDCL. This Court in the judgment reported in 2017 (1) Mah.LJ 268 in the matter of Rakhee Gupta vs State of Maharashtra has held that the provisions of Sections 5 to 24 of the Limitation Act would be applicable to an Appeal filed under Section 127 of the said Act. In view thereof and considering the fact that the Appeal which was filed by the Petitioner was belated as also considering the fact that the Petitioner has now deposited the entire amount of Rs.16,60,521/- with the MSEDCL, the impugned order is set aside. The Petitioner may re-file the Appeal with an application for condonation of delay explaining the circumstances as to how the delay was occasioned, which may include the time spent in prosecuting the above Petition. The Petitioner may also pay the required 2% court fees. If any such Appeal and Application is filed, the same to be tried on its own merits and in accordance with law. The learned counsel for the Petitioner states that the Appeal with the application for condonation of delay would be filed within a period of four weeks from date. If the Appeal with the application is filed withing the aforesaid period of four weeks, the ad-interim order would continue to operate pending consideration of the application for condonation

of delay and thereafter if delay is condoned, pending consideration of the Appeal. With the aforesaid directions, the above Writ Petition is disposed of.

[R.M.SAVANT, J]