

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7338 OF 2016**

Jayesh Suresh Dhuri .. Petitioner.
Vs.
Additional Executive Engineer
MSEDCL, Flying Squad,
Thane and Ors. .. Respondents.

Mr.Kanishk Jayant for the Petitioner.
Mr.Rakesh Singh i/b M.V. Kini & Co. for the Respondent No.1.
Ms.M.S. Srivastava AGP for the Respondent No.4.

**CORAM : A.A. SAYED &
A.K. MENON, JJ.
DATED : 19TH DECEMBER, 2018**

P.C. :

1. By this Petition, the Petitioner is seeking to set aside the order dated 22nd July, 2015 passed by Respondent No.2-Superintending Engineer/Appellate Authority (Mumbai Region), Industries, Power and Labour Department and to restore the Appeal dated 11th June, 2015 filed under the Electricity Act, 2003.
2. The Appeal of the Petitioner was rejected on two grounds viz. (1) the Appeal was filed beyond a period of 30 days; and (2) non payment of Appeal fees. The Appeal was filed against the final assessment order dated 8th May, 2015 of the Respondent No.1 Additional Executive Engineer MSEDCL, Flying Squad, Thane, inter alia concluding that there was unauthorized use of electricity. The Petitioner was called upon to pay sum of Rs.6,21,540/- as per the final assessment order dated 8th May, 2015.
3. According to the Petitioner, the order dated 8th May, 2015 passed by the Respondent No.1 was received by the Petitioner on 13th May, 2015. The acknowledgment of the Petitioner on the said order dated 8th May, 2015 bears the date of 13th May, 2015 (Page 11 of the

Petition). The Petitioner thereafter deposited a sum of Rs.3,10,800/- in the office of MSEDCL on 10th June, 2015, a copy of the receipt whereof is annexed at page 12 of the Petition. On 11th June, 2015 the Petitioner paid the Appeal fees of Rs.6,215/- (instead of Rs.10,000/-) and the Appeal against the said order dated 8th May, 2015 was filed on 12th June, 2015 as evident from endorsement of clerk in the office of the Executive Engineer (Page 15 of the Petition).

4. Having regard to the fact that the order dated 8th May, 2015 was received by the Petitioner on 13th May, 2015, the Appeal ought to have been filed within 30 days thereof i.e. 12th June, 2015. The Appeal was as a matter of fact filed on the last day i.e. 12th June, 2015. The Appeal fees were paid on 11th June, 2015, a day prior to filing of the Appeal and 50% of the liability as per the order dated 8th May, 2015 was also paid on 10th June, 2015. The impugned order dated 22nd July, 2015, however, incorrectly records the date of filing of Appeal as 16th June, 2015 (instead of 12th June, 2015). In the circumstances, the impugned order cannot be sustained. Hence we pass the following order :

ORDER

- (i) The impugned order dated 22nd July, 2015 is set aside.
- (ii) The Petitioner is permitted to pay the deficit fees of Rs.3,785/- within three weeks from today. On payment of deficit fees, the Appeal shall stand restored to file and shall be heard on merits in accordance with law.
- (iii) The Petition to stand disposed of in the aforesaid terms.

(A.K. MENON,J.)

(A.A. SAYED,J.)