

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (LODGING) NO.1394 OF 2018

Mahalkshmi TMT Pvt. Ltd.

...Petitioner

Versus

Maharashtra State Electricity
Distribution Co. Ltd. & Ors.

...Respondents

.....

Mr. S.U. Kamdar, senior counsel with Mr. Vijay Aggarwal and Mr. Shamim Shaikh for the Petitioner.

Mr. Ashish Singh i/b. M/s. DSK Legal for the Respondent No.1.

Mr. Malcolm Desai and Mr. Abhishek Munod i/b. M/s. J. Sagar and Associates for the Respondent No.5.

**CORAM : S.C. DHARMADHIKARI AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 25th APRIL, 2018.

P.C.:-

A preliminary objection was raised to the maintainability of the Petition on the ground that against the order of the Maharashtra Electricity Regulatory Commission in Case No.159 of 2016, which is impugned in this petition, the law, namely, Electricity Act, 2003 provides for an appeal.

2. It is stated that the Appellate Tribunal has been established by the Central Government and functional at New Delhi. By Sub Section 1 of Section 111 of the Electricity Act, 2003 any person

aggrieved by an order made by the appropriate commission under this Act may prefer an appeal to the Appellate Tribunal for electricity. It is undisputed that this appropriate commission is the MERC in this case. It is further undisputed that this order was passed by this MERC in Case No.159 of 2016 at the instance of M/s. Sai Vardha Power Generation Ltd. Even if, the Petitioner before us was not a party to the proceedings before the MERC going by the language of this provision, it is accepted by the learned senior counsel for the Petitioner that an appeal at the instance of the Petitioner would lie to the Appellate Tribunal. The Petitioner therefore seeks leave to withdraw this Petition with liberty to approach the Appellate Tribunal. The only request made by Mr. Kamdar, learned senior counsel for the Petitioner is that based on this order of MERC now the Maharashtra State Electricity Distribution Company Ltd. is seeking to recover a sum of Rs.9,73,90,356/- failing which it threatens to disconnect the electricity supply. The Without Prejudice communication, copy of which is at page 89-A of the Petition issued by the Respondent No.1-Mahavitaran is relied upon in this regard.

3. Mr. Kamdar, the learned senior counsel submits that for a period of four weeks from today let no coercive steps particularly of

disconnection of electricity supply be taken and the Petitioner in the meanwhile will not only file appeal but also move an application seeking stay of disconnection.

4. In view of this statement made by Mr. Kamdar, the learned senior counsel for the Petitioner, we grant leave to withdraw the Petition with liberty to file an appeal. In the circumstances peculiar to this case, we direct that for a period of four weeks the 1st Respondent to this Petition shall not disconnect the electricity supply.

5. Let the Appellate Tribunal, if the application for stay is moved take it up forthwith and before any further proceedings are taken in the appeal, pass an order after hearing both the sides on the same within a period of four weeks from the date of its institution.

6. The Petition is dismissed as withdrawn with liberty as above.

(SMT. ANUJA PRABHUDESSAI, J.) (S.C. DHARMADHIKARI, J.)