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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION******CIVIL APPLICATION NO.1776 OF 2019******IN******WRIT PETITION NO.9581 OF 2017***

M/s. Osiris InfoTech Pvt. Ltd.

..Applicant.

V/s.

The Appellate Authority

..Respondent.

Mr.Atul Damle, Senior Advocate i/b. Tushar Sonawane for the applicant.

Ms.Prerna Gandhi i/b. DSK Legal for respondent No.2.

Mr.C.D.Mali, AGP for respondent No.3-State.

CORAM : NITIN W.SAMBRE, J.***DATE : AUGUST 9, 2019*****P.C. :-**

In Writ Petition No.9581 of 2015, the petitioner has questioned the order dated August 3, 2015 passed under section 127(1) of the Indian Electricity Act, 2003 ('the Act' for short) whereby for certain statutory non-compliance, the appeal was dismissed.

2. This Court vide order dated October 1, 2015 recorded an undertaking of the petitioner to effect that it will deposit Court fees within a period of two weeks in above

statutory appeal subject to which same was ordered to be restored.

3. As a consequences of non compliance of the order which was questioned in the appeal, the electricity supply to the petitioner was disconnected which was restored after the order passed in Writ Petition No.4827 of 2019 on April 11, 2019 as the petitioner claimed he has deposited the entire dues towards energy consumed, outstanding against him.

4. In the aforesaid background, the submissions of Mr.Damle, learned senior counsel for the petitioner are, once the entire dues are satisfied and the remedy of appeal is a statutory remedy being taken recourse to, this Court is required to extend the time as the order dated October 1, 2015 permitted the petitioner to tender the Court fees within four weeks.

5. While countering the aforesaid submissions, learned counsel for the respondents submits that the appeal, after the order dated October 1, 2015 was never restored as the Court fees was not deposited which has resulted into non-compliance of the statement / undertaking made before this Court in Writ Petition No.9581 of 2015. As such dismissal is sought.

6. Considered rival submissions.

7. This Court has dealt with equity in favour of the petitioner while passing the order dated October 1, 2015 in Writ Petition No.9581 of 2015 as the petitioner gave an impression that the Court fees will be deposited within a period of two weeks and the appeal will be worked out on merits.

8. Leave apart the payment of Court fees in spite of receipt of communication from the Electricity Inspector on April 2, 2016 for deposit of Court fees, the petitioner's electricity supply was disconnected in 2019 which was restored after the petitioner deposited the entire amount of dues payable to the respondents towards energy consumed.

9. As far as the delay of almost four years is concerned, but for the reasons of alleged communication gap which is at all not justified from record, no convincing explanation is coming forward in support of prayer for extension of time to deposit the amount of Court fees.

10. The fact remains that the petitioner had chosen to question his disconnection. However, for almost two years had not deposited the amount of Court fees.

11. Even if, as claimed by learned counsel for the

petitioner that the remedy of appeal is a statutory remedy, however, the said statutory right is subject to compliance of certain conditions which the petitioner failed to observed in spite of assurances given before this Court.

12. While allowing the writ petition, vide order dated October 1, 2015, this Court accepted the statement of the petitioner, that the Court fees will be deposited within a period of two weeks from the date of the order. The petitioner as such was required to deposit the Court fees by October 15, 2015.

13. The petitioner approached Electrical Inspector and got a letter issued on April 21, 2016 depicting the assessment of the Court fees. The said amount of Court fees was deposited by the petitioner on July 5, 2017 that too without seeking any permission or extension from this Court.

14. On one hand, the petitioner appears to have taken undue advantage of the order of this Court passed on October 1, 2015 by not clearing the electricity dues pursuant to the order which was subject matter of the appeal in question and on the other hand, once this Court has already exercised the equity jurisdiction in favour of the petitioner, for no justifiable reason is seeking extension of almost four years.

15. The fact remains that the appeal which was dismissed was never restored and if indulgence at this stage is permitted, said will amount to regularising the illegality committed by the petitioner for not honouring the commitment made before this Court. The appeal which was dismissed four years back is required to be restored if prayer of the petitioner is accepted that too for no convincing reasons.

16. In the aforesaid background, for the second time no equity deserves to be granted in favour of the petitioner. The application stands rejected.

(NITIN W.SAMBRE, J.)