

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4856/2021

Nagpur Switchgear Pvt Ltd and others...Versus...M/s. Metro Electricals

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Tejas Dadhe, Advocate h/f Mr. V.M.Gadkari, Advocate for petitioners
Mr. Fidvi, Advocate for Respondent No.1

CORAM : AVINASH G. GHAROTE, J.

DATE : 07/12/2021

Heard Mr. Dadhe, learned counsel for the petitioner. The petition challenges the impugned order dated 03.09.2021, whereby the learned Trial Court after observing that inspite of sufficient opportunities having been granted, the affidavit in lieu of evidence was not filed by the defendant, as a result of which an order came to be passed below Exh.1 on 5.8.2021, closing the side of the defendant. An application thereafter filed for setting aside the order dated 5.8.2021 at Exh.59, came to be rejected by the impugned order, holding that inspite of sufficient opportunities, the defendant was not coming forth with the affidavit in lieu of evidence. Even the application at Exh. 59 was not accompanied by the affidavit in lieu of evidence and therefore, holding that the actions of the defendant lack bonafides, the application at Exh. 59 came to be rejected.

Mr. Dhade, learned counsel for the petitioner submits that though the defendant was granted opportunity, however, because of the Covid situation and the health ground, the affidavit could not be prepared and filed and therefore, one last opportunity be granted to the defendant to place his defence on record, otherwise, the suit would be decreed merely for the sake of asking. He further submits that to show his bonafides, the petitioner had deposited Rs. 25,000/- in pursuance to the order of this Court dated 30.11.2021. He therefore submits that the defence of the defendant cannot be shut off.

Mr. Fidvi, learned counsel for respondent/plaintiff submits that since 22.1.2020, when the plaintiff closed his side, the record would demonstrate the procrastinating attitude of the defendant in the matter which is indicated by the dates as pointed out in the submission. He therefore submits that the defendant does not deserve any indulgence by this court and therefore the impugned order ought not to be interfered with.

Having heard the learned counsel for the parties, I am of the considered opinion that an opportunity is required to be granted to the defendant to place his defence on record. Though the record demonstrates a clear case of procrastination on the part of the defendant, however, in the interest of justice, the opportunity can be

afforded, though at some costs, considering which the impugned order is hereby quashed and set aside. The defendant is permitted to file his affidavit in lieu of evidence before the learned Trial Court on or before 13.12.2021. The petitioner shall pay a costs of Rs. 25,000/-, in addition to what has already been deposited in this court in pursuance to the order dated 30.11.2021.

The amount already deposited in this Court be paid over to the respondent/plaintiff. On the additional costs being so deposited, the same should also be paid over to the plaintiff. It is made clear that in case the affidavit in lieu of evidence is not filed on or before 13.12.21, the evidence, of the defendant in that case shall stand shut off.

The petition is disposed of in above terms.

JUDGE

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