

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

WRIT PETITION NO.2295/2020

M/s Amar Sports, Nima Complex, Temple Bazaar, Sitabuldi, Nagpur through its
Proprietor

...Versus...

The Hon'ble Vice Chancellor, Rashtrasant Tukdoji Maharaj Nagpur University,
Nagpur and others

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

Court's or Judge's orders

Shri R.R. Srivastava, Advocate for petitioner
Shri Prashant Gode, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/08/2022

1. Heard Shri R.R. Srivastava, learned counsel for the petitioner and Shri Prashant Gode, learned counsel for the respondents.

2. The petition challenges the order dated 16/03/2020, whereby the no Written Statement (no W.S.) order dated 06/11/2019 has been set aside and the defendants have been permitted to file written statement.

3. Shri Srivastava, learned counsel for the petitioner submits that the defendants have been negligent in prosecuting the matter, as a result of which, no W.S. order came to be passed on 06/11/2019. On 20/11/2019 the affidavit in lieu of oral evidence came to be filed by the plaintiff and on 07/01/2020, the further examination-in-chief

was also recorded, on which date, the application for setting aside the written statement was filed, which has been allowed. He, therefore, submits that the impugned order, considering the delay and the attitude of the defendants, is liable to be quashed and set aside and the application be dismissed.

4. It is a trite position of law that the matters are required to be decided on merits and not in default. In the instant case, the matter is at nascent stage and even if the written statement has been permitted to be placed on record, it is permissible for the plaintiff to file an additional affidavit in lieu of oral evidence, considering the pleas which may have been raised in the written statement. Any inconvenience caused can always be compensated in terms of money.

5. In view of the above position, I do not see any reason to interfere in the impugned order. However, the defendants shall be liable to compensate the plaintiff as the wheels are being turned back and the defendants shall pay costs of Rs.25,000/- to the plaintiff. It is made clear that the proceedings shall commence forward from the stage it was on 07/01/2020. The writ petition stands dismissed.

(AVINASH G. GHAROTE, J.)