

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

**WRIT PETITION NO.7176 OF 2018**

Basant Agro Tech (I) Ltd .Vs. Indravardan Shah

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

Court's or Judge's Order

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Shri Atish Kawale, Advocate for the petitioner.

Shri J.B. Gandhi, Advocate for the respondent.

**CORAM : ANIL S. KILOR, J.**

**DATED : 27/06/2023**

1. Leave to amend the title clause.
2. Amendment be carried out forthwith.
3. In this petition, the challenge is raised to the order below Exh.14 dated 03.10.2018, permitting the defendant to raise his defence.
4. This writ petition was filed on 23.04.2018 and thereafter, the objections were removed on 06.09.2018 Thereupon, notices to the respondent were issued on 24.10.2018.
5. Thus, for nine months after the impugned order was passed, the petitioner did not take steps to get the matter listed before till January, 2023. Despite the fact that notices were issued on 24.10.2018, the petitioner did not

supply copies for service to the respondent sole till January, 2023, i.e. for about two and half years.

6. Thus, the record shows that for five years after passing of impugned order, no steps were taken by the petitioner to serve the respondent. On a specific query put to the learned counsel for the petitioner about the stage of the suit, it is informed that, now the matter is fixed for evidence.

7. It is also pointed out that, in the meantime, the petitioner moved an application for amendment which came to be allowed on 03.09.2021. The amendment sought by the petitioner was in pursuance to the written statement filed by the defendant after leave to raise defence was granted to the defendant vide impugned order.

8. It is pertinent to note that, while moving application for amendment, he did not plead that the said application was moved as an abandon caution as the writ petition raising a challenge to the order dated 03.01.2018 permitting the defendant to raise defence, is pending. In fact, there is no whisper about pendency of this writ petition, in the application for amendment.

9. Therefore, the aforesaid act of the petitioner seeking amendment to the plaint in view of the defence

raised by the defendant in pursuance to the impugned order dated 03.01.2018, amounts to waiver of a right to press the challenge involved in the present writ petition. In the circumstances, I am not inclined to exercise discretion in this case under Article 226 and 227 of the Constitution of India. Accordingly, the writ petition is **dismissed**.

**JUDGE**