

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

SUIT NO.3469 OF 1992

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr.S.R.Rajguru a/w Mr.A.R.Varma & Ms.Anamika Malhotra for the plaintiffs

Mr.Kishore Jain a/w Ms.Priyal Chheda i/b Ms.Shweta Jain and Mr.M.Sundar for the defendant no.1

Mr.Karl Shroff a/w Mr.Samarth Chowdhary i/b M/s.Hariani and Co. for the defendant no.2

**CORAM : K. K. TATED, J.
DATE : AUGUST 28, 2017**

P.C.:

1. Heard the learned counsel for the parties.
2. Advocate for the plaintiff submits that earlier they filed affidavit of evidence of H.K.Agarwal, Assistant Salt Commissioner duly affirmed on 2.1.2015. He submits that thereafter, the said Mr.H.K.Agarwal retired in November, 2016. Before retirement, they prepared affidavit of Mr.C.Raghu, Assistant Salt Commissioner, duly affirmed on 26.6.2015. He submits that by mistake their department forwarded original copy of affidavit in

lieu of examination in chief on behalf of plaintiffs to the Commissioner Ms.Bharati Thakkar. He submits that advocate for plaintiff had no knowledge about the filing of affidavit dated 26.6.2015 directly with the Commissioner. They learnt the same on 9.8.2017. Hence, he has filed the said affidavit dated 26.6.2015 before this court. He submits that the deponent of the said affidavit Mr.C.Raghu, Assistant Salt Commissioner is present in court. The concerned Associate administered the oath. the said affidavit is taken on record.

3. The learned counsel for the defendant no.1 and 2 submit that all these facts were not disclosed by the advocate for plaintiff to them in advance. He submits that they remained present before the Commissioner on 9.8.2017 for cross-examination. He submits that without any cross-examination they have received the bill from the Commissioner for payment of Rs.5,000/- each. He submits that because of mistake on the part of plaintiff why defendant should suffer. He submits that plaintiff should be directed to bear the entire expenses of Commissioner of 9.8.2017 and cost may be awarded to the defendants.

4. Considering these facts, plaintiff is directed to bear entire cost of Commissioner of 9.8.2017 and also to pay the sum of Rs.10,000/- each to defendant nos.1 and 2 because of their own mistake. Cost to be paid within four weeks from

today, failing which court will pass appropriate order for taking action against them.

5. At this stage, the learned counsel for the defendant nos.1 and 2 submit that they require some time to take out appropriate proceeding for deleting certain portion of the affidavit dated 26.6.2015.

6. On their request, two weeks time is granted to take out appropriate proceeding with copy to other side.

7. Matter to appear on board after 3 weeks for direction.

(K.K.TATED, J.)