

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

**NOTICE OF MOTION (L) NO.285 OF 2017
IN
COMMERCIAL SUIT (L) NO.284 OF 2017**

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.Darius Dalal a/w Ms.Priya Thakkar i/b M/s.Jahangir Gulabbhai & Bilimoria & Daruwalla for the plaintiff

Mr.Vishal Kanade a/w Ms.Megha Chandra, Mr.Munir Merchant, Mr.Shadab Peerzade, Mr.Harshad Kamble i/b M/s.MZM Legal for the defendant

**CORAM : K. K. TATED, J.
DATE : AUGUST 11, 2017**

P.C.:

1. Heard the learned counsel for the parties.
2. Yesterday the matter was argued by the learned Counsel for the plaintiff. Thereafter, the learned Counsel Mr.Vishal Kanade also argued the matter on behalf of defendant. During the course of argument, the learned Counsel for the defendant submits that his client Mr.Brajesh Agarwal is present in court. He submits that they are ready and willing to file an undertaking before this court

that during the pendency of the present Suit, they will change their containers and packing material so that at present there is no question of infringing the trade mark of the plaintiff. To that effect, Mr.Brajesh Agarwal, authorized representative of the defendant filed undertaking dated 11.8.2017. Paragraph 2, 3 and 4 of the said undertaking reads thus:

“2. Without prejudice to the rights and contentions of the Defendants, pending the hearing and final disposal of the above suit and only for the purpose of disposal of the present Notice of Motion (Lodg.) No.285 of 2017, the Defendants hereby undertake not to use the colour scheme, get up and scheme of arrangement in respect of articles / items / products as shown at Exhibit “J1” of the Plaint and internal Page No.9 of Affidavit in rejoinder of the Plaintiff dated 17.07.2017 in respect of their mark “Khajoor”.

3. I say that pending the disposal of the suit, the Defendants shall use the label, trade dress, logo and design at Annexure “B” annexed hereto on the container at Annexure “A” hereto.

4. I further undertake to file in this Hon'ble Court the original Board Resolution of the Defendant Company within two weeks from today thereby confirming my authority to sign the present undertaking on behalf of Defendant Company.”

3. Undertaking given by the defendant through their authorised representative Mr.Brajesh Agarwal is accepted. Same is taken on record and marked 'X' for identification.

4. The learned Counsel for the plaintiff submits

that in view of the undertaking given by the defendant, plaintiff may be permitted to withdraw the present Notice of Motion with liberty to file afresh in case the defendant takes some action to infringe their trade mark. To that effect, he has given in writing. Same is taken on record and marked 'X' for identification. Same is accepted.

5. Notice of Motion stands disposed of as withdrawn in view of the undertaking given by the defendant dated 11.8.2017.

6. Ad-interim relief granted by this court on 21.6.2017 stands vacated.

7. Court Receiver is discharged.

Parties to act on authenticated copy of this order.

(K.K.TATED, J.)