

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

**SUIT NO.3469 OF 1992
WITH
NOTICE OF MOTION NO.1090 OF 2015
IN
SUIT NO.3469 OF 1992**

Union of IndiaPlaintiff

Vs.

M/s. Byramjee Jeejeebhoy Pvt. Ltd. and Ors.Defendants

Mr. S.R. Rajguru a/w. Mr. A.R. Varma, Ms. J. Panthi and Ms. Anamika Malhotra for plaintiff.

Mr. Kishore Jain i/b. Ms. Divya Jain for defendant no.1.

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

CORAM : K.R.SHRIRAM, J.

DATE : 7th JULY, 2017

PC.:

NOTICE OF MOTION NO.1090 OF 2015

1 This notice of motion is taken out by defendant no.2 to strike off certain portions in the affidavit of evidence dated 2nd January, 2015 filed by the first witness of plaintiff.

2 With the assistance of the counsel for plaintiff and counsel for defendants this court went through the affidavit of evidence of plaintiff's witness – H.K. Agarwal, Assistant Salt Commissioner, affirmed on 2nd January, 2015. Mr. Rajguru, counsel for plaintiff in fairness states that the portions bracketed in red ink in the affidavit of evidence cannot form part of the testimony of the witness and agrees that those portions, which

are in paragraphs 2,3 and 35 of the affidavit, be struck off.

Accordingly the portions are struck off and the witness has signed on the margin against the corrections.

3 Notice of motion accordingly stands disposed.

SUIT NO.3469 OF 1992

1 The Commissioner appointed vide a order dated 14th January, 2015 - Ms. Bharati Thaker to proceed to record evidence in the matter. The fees and administrative expenses of the Commissioner, typing/stenographer charges and venue charges, if any shall be shared equally between plaintiff, defendant no.1 and defendant no.2. The cost already incurred and the cost to be incurred will be costs in the suit. Parties shall, within two weeks of receiving an invoice from the Commissioner or the Stenographer, pay the amount of the invoice raised.

2 The Commissioner to endeavor to complete recording of evidence of PW-1 by 15th September, 2017. The Commissioner to fix minimum two/three dates per session for cross examination of PW-1. If the parties do not respond promptly within 48 hours of receiving a communication from the Commissioner suggesting the subsequent dates, the Commissioner to go ahead and fix the dates convenient to the Commissioner and the parties shall make themselves available at the time

and dates fixed by the Commissioner. If plaintiff or witness does not remain present, the Commissioner should close the evidence of PW-1 as not made available for cross and if defendants do not remain present to cross examine the witness, defendants' cross examination should be treated closed as no cross. Once the dates are fixed, the Commissioner not to grant adjournment on any ground whatsoever.

Liberty to apply.

(K.R. SHRIRAM, J.)