IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION

SUMMONS FOR JUDGEMENT NO.88 OF 2014
IN
SUMMARY SUIT NO.737 OF 2013

Axis Bank Limited .. Plaintiffs
Versus
Shreem Corporation .. Defendants

WITH

SUMMONS FOR JUDGEMENT NO.89 OF 2014
IN
SUMMARY SUIT NO.669 OF 2013
WITH
SUMMONS FOR JUDGEMENT NO.90 OF 2014
IN
SUMMARY SUIT NO.769 OF 2013
WITH
SUMMONS FOR JUDGEMENT NO.118 OF 2014
IN
SUMMARY SUIT NO.65 OF 2014
WITH
SUMMONS FOR JUDGEMENT NO.119 OF 2014
IN
SUMMARY SUIT NO.233 OF 2013
WITH
SUMMONS FOR JUDGEMENT NO.120 OF 2014
IN
SUMMARY SUIT NO.739 OF 2013
WITH
SUMMONS FOR JUDGEMENT NO.121 OF 2014
IN
SUMMARY SUIT NO.218 OF 2013
WITH
SUMMONS FOR JUDGEMENT NO.122 OF 2014
IN
SUMMARY SUIT NO.232 OF 2013

Axis Bank Limited .. Plaintiffs
Versus
Shreem Corporation .. Defendants

Mr.Janak Dwarkadas, Senior Advocate with Ankit Lohia & Aditya Parab i/b. Majmudar & Partners for plaintiffs

Mr.Vishwas R. with Shailendra Humande i/b. Balakrishna G. Tangsali for defendants.

CORAM : K.R.SHRIRAM, J.

Reserved on : 6th July 2015

Pronounced on : 27th July 2015

P.C.

1] Summons for Judgement No.89 of 2014 in Summary Suit No.669 of 2013 and Summons for Judgement No.118 of 2014 in Summary Suit No.65 of 2014 were not listed today along with the other suits. The learned Counsel for the plaintiffs and the learned Counsel appearing for the defendants in unison stated that, though these two summons for judgements were not listed, they could also be taken up for hearing and disposed. The counsel also submitted that the issue arising in all the eight suits are the same and, therefore, all the eight summons for judgements can be disposed of together by a common order.

The Counsel, therefore, argued Summary Suit No.737 of 2013 as the lead matter. A chart of the eight suits is as under:-

Suit & S.J.No.	Floor	Date of expiry of agreement	Date of notice	Security deposit amount (Rs)	Less Rent deduction	Interest claimed	Interest amount upto (date)	Amount claimed in the suit.
737 /13 & 88/2014	9	19 February 2013	14 February 2013 & 3 June 2013	13,68,10,000.00	0.00	6 May 2013	36,43,269.04 (*25 July 2013*)	14,04,53,269.04
669 /13 & 89/2014	6 & 7	1 July 2012	8 June 2012 and 3 June 2013	12,74,84,000.00	0.00	1 October 2012	77,11,908.82 (*2 April 2013*)	13,51,95,908.82
769 /13 & 90/2014	8	19 February 2013	14 February 2013 and 3 June 2013	13,68,10,000.00	0.00	6 May 2013	36,43,269.04 (*25 July 2013*)	14,04,53,269.04
65 /13 & 118/14	ground/ 1 & part of basement	2 November 2013	17 October 2013	21,39,54,070.00	50,24,364.00	8 November 2013	-----	20,89,29,706.00
233/13 & 119/14	4	22 June 2012	8 June 2012 and 3 June 2013	3,05,75,086.00	0.00	22 June 2012	17,84,382.07 (*17 December 2012*)	3,23,59,468.07
739/13 & 120/14	10	19 February 2013	14 February 2013 and 3 June 2013	13,84,51,000.00	0.00	6 May 2013	36,86,969.10 (*25 July 2013*)	14,21,37,969.10
218/14 & 121/14	2 & 3	22 June 2012	8 June 2012 and 3 June 2013	6,09,65,138.00	0.00	23 June 2012	34,58,022.58 (*12 December*	6,44,23,160.58

							2012)	
232/13 & 122/13	5	1 July 2012	8 June 2012 and 3 June 2013	3,05,75,087.00	0.00	1 July 2012	16,94,160.56 (*17 December 2012*)	3,22,69,247.56
			Total	**87,56,24,381.00**				**89,62,21,998.21**

2] The defendant is the owner of a building known as Solares "C" situated at Andheri (East), Mumbai (the building). The plaintiff and defendant entered into eight leave and licence (L & L) agreements by which part of the basement and ground floor to tenth floor of the building were licensed to the plaintiff on various dates for a period of five years. The date of the leave and license agreement, expiry, amount of deposit, interest claimed, date of notice etc. are in the chart above. As per these agreements, the license fees payable was in two blocks, first block was for three years at a fixed amount per month and the second block was for two years at an increased rate per month. In Suit No.737 of 2013, the rate for first three years was Rs.4,51,319/- per month and for fourth and fifth year it was Rs.6,56,183/- per month.

Floors	lease date for the first block	lease date for the second block	Expiry date of lease
Second, third & fourth	23/06/07	23/06/10	22/06/12
Fifth, sixth &	02/07/07	02/07/07	01/07/12

seventh			
Eighth, Ninth & tenth	20/02/08	20/02/11	19/2/13
Ground and First	03/11/08	03/11/10	02/11/13
Basement	01/04/09	01/04/12	31/03/14

3] Summary Suit No.737 of 2013 relates to 9th floor leave and licence agreement. The facts mentioned below relate to leave and licence agreement dated 20th April 2008, entered into between the plaintiff and the defendant to use the premises aggregating to 12416 sq. ft situated on 9th floor of the said building for a tenure of five years. The agreement came to be registered on 11th July 2008 whereas the plaintiff had already paid an interest free refundable security deposit of 13,68,10,000/- to the defendant. On 6th November 2008, the defendant also executed a simple mortgage deed without possession in favour of the plaintiff. The mortgage deed was entered into to secure the security deposit which has been paid in the sum of Rs.86,56,24,381/-. The mortgage deed covered the 6th, 7th, 8th, 9th and 10th floors of the building. The plaintiff prayed for and obtained leave under Order II Rule 2 of CPC so that they can file a separate action for the deed of mortgage and for the rights and claims arising out of the mortgage deed. This leave application was filed in Summary Suit No.737 of 2013, S.S.

669 of 2013, S.S. 769 of 2013, S.S.65 of 2014 and S.S. 739 of 2013.

4] The clauses from the L & L Agreement which are salient are as under:-

> *"2.1.1.4: ....The licensor further states that in the event the licensor fails to submit the said Occupation Certificate within 31.3.08 and the licensee is unable to use the said 9th floor premises then simultaneously upon the Licensee handing over absolute charge of the said premises to the licensor, the licensor will refund the entire interest free security deposit of Rs.13,68,10,000/- (Rupees Thirteen crores sixty eight lacs and ten thousand only) paid by the licensee in respect of the 9th floor premises forthwith and reimburse the licensee the actual cost of interiors/ A.C. as evidenced by the copies of contractors/ suppliers invoices and bills which the Licensee may incur ......"*

> *""3.1. In consideration of the license fees and refundable interest free security deposit specified in the schedule annexed herewith and in further consideration of the covenants hereafter contained on the part of the licensee and the licensor to be observed and performed, the licensor licenses the premises together with all the rights, easements and appurtenances belonging thereto commencing from the date and for period specified in the schedule."*

> *"3.3 It is agreed by and between the parties that the licence with respect to the said premises shall commence and the Licensee shall be entitled to take the possession of the premises and pay the licence*

fees and security deposit in the manner as detailed out in the schedule hereunder."

9. <u>TERMINATION</u>

"9.1 The Licensor and the Licensee agree that this Agreement shall be terminated on the terms and conditions contained in the schedule annexed to this Agreement."

"9.2 In cases of the security deposit being paid by the Licensee, notwithstanding anything to the contrary contained herein, on termination or earlier determination of the License in terms of this Agreement, <u>if the Licensee is ready and willing to give peaceful possession of the said premises to the Licensor but the licensor do not refund the said security deposit in full for any reason whatsoever, despite the written notice being received from the licensee,</u> then in such an event without prejudice to any other right/remedy available:-

(a) <u>The licensee shall be entitled to retain the Premises without being liable to pay the compensation effective from that date till the time the licensor refunds the said security deposit in full as per the terms of the agreement;</u>

(b) <u>The Licensor shall become liable to pay interest to the licensee on the said security deposit at the rate of 12% p.a. from the date the licensee is ready and willing to give vacant and peaceful possession of the said premises as aforesaid upto the date of the refund of the said security deposit by the licensor to the licensee together with the accrued interest for the delay.</u>"

"9.3 On the expiration or sooner, determination of the license hereby granted, the licensee shall remove itself from the premises and all its employees, servants

and all its belongings, except for such alteration as were permitted by the licensor (reasonable wear and tear and loss or damage by fire, accident, irresistible force or act of God accepted). It is agreed between the parties hereto that the said refundable security deposit and shall be repaid forthwith by the Licensor to the Licensee free from any claim and without any deduction against the Licensee upon the licensee handing over the said premises to the licensor in terms of this Agreement."

"9.4 Notwithstanding anything contained herein, it is agreement by and between the parties hereto as under:-

(A) If the licensee shall fail or neglect to vacate the said premises and to handover vacant possession thereof to the licensor in compliance and in the manner provided herein, and if the said non-compliance shall continue for a period of 90 days from the date of a written notice from the licensor to the licensee calling upon the licensee to comply with the said provision herein contained then without prejudice to the right of the licensor to lawfully evict the licensee, on expiry of 90 days of such notice;

(i) The licensee shall be liable to make payment of all the assessment and other taxes levied by the MCGM and other outgoings in respect of the said premises during the period of such wrongful occupation by the licensee

(ii) Without prejudice to sub-clauses (i) above, the licensor shall be entitled to remove the licensee's articles lying in the licensed premises after making a list thereof to a godown at the cost of the licensee. The Licensor shall not render themselves liable for any civil or criminal action by doing so. This authority is irrevocable and constitutes the basis for this agreement and the licensee shall not be entitled to

dispute or challenge or call into question the validity or reasonableness of this provision; and

(iii) Without prejudice to sub-clause (i) above, the Licensor shall have a right to prevent the Licensee their employees, members, agents and servants from entering in or upon or remaining in the licensed premises except for removing their articles, effects and belongings therefrom. In the events of licensee or any of the persons aforesaid entering upon the licensed premises in breach of the provisions of this clause, they shall be trespassers and the licensor shall have the right to take all steps to p5revent the licensee and the persons aforesaid from committing such tresspass upon the licensed premises and the licensor shall not be liable for any loss, damage or injury caused to any person or property therein while enforcing the rights under the agreement.

(B) Each of the rights stipulated in clause (A) above shall be without prejudice and independent of each other and to any other remedy as may be available to the licensor in law or otherwise."

"11.3 <u>The terms of this agreement shall not be altered or added to nor shall anything be omitted therefrom except by means of a supplementary agreement in writing duly signed by the parties hereto."</u>

"11.4 The licensor covenants that the licensor shall not object to any change in the constitution of the licensee or in case of merger, amalgamation etc."

(EMPHASIS SUPPLIED)

For the purpose of deciding the issue involved, following items of schedule contained in the agreement are also required to be quoted:

SCHEDULE

6	*Period of the license*	*Lock in period of five (5) years from the date of the commencement of this agreement.*
8	*Interest free refundable security deposit*	*Rs.13,68,10,000/- (Rupees Thirteen Crores Sixty Eight Lacs Ten Thousand only). There shall be no enhanement in interest free security deposit consequent to increase in license fees every three years in terms of this agreement. The security deposit will be paid by the licensee to the licensor on signing of leave and license agreement and completion of the terms stated in the offer letter AXISB/CO/PROJ/2356/07-08 dated 19.02.2008 of the licensee.*
9	*Date of handing over possession of the premises*	*On execution of this Agreement.*
10	*Date of commencement*	*The date of commencement of this Agreement will be the date of completion of installation of the balance two lifts of the building. Notwithstanding the fact that the said premises is handed over on the date of execution of this agreement, the license period of five years and the licence fees with respect to the said premises will commence from the date of commencement of this agreement.*
15	*Termination provisions*	*It is agreed by and between the parties that both the licensor and the licensee shall not have the right to terminate this leave and license agreement prematurely at any time during the entire license period.* *If the licensor fails, neglects or refuses to honour any of the commitments made on their part to the licensee as mentioned in this Agreement, then the licensee shall have the right to give a 90 days written notice to the licensor to rectify the breach failing which the licensee shall be entitled to terminate this license and receive back the security deposit forthwith simultaneously against vacating the said premises.* *If the licensee shall have committed a breach of any of the terms, stipulation and conditions of*

		these presents, the licensor shall give a written notice to that effect and if the licensee shall have failed for a period of 90 days from receipt of such notice to remedy any such breach, then, in such event the licensor shall be entitled to forthwith refund the said security deposit back to the licensee subject to the licensee handing over vacant possession of the premises and determine this license without prejudice to the right of the licensor to take action against the licensee in respect of any breach by the licensee of any terms stipulations and conditions herein contained.
17	*Jurisdiction of Courts*	*At Mumbai only.*

5] As the leave and licence agreement for the 2nd, 3rd and 4th floor was expiring on 22nd June 2012, and of 5th, 6th and 7th floor on 1st July 2012, the defendant by a letter dated 18th April 2012 gave a proposal to the plaintiff to extend the leave and licence agreement with regard to all the eight agreements. It was a composite proposal. Though the defendant has referred the proposal as "renewal of the lease of the premises", actually the arrangement between the parties was that of a licensor and licensee by virtue of leave and licence agreement. In the said letter the defendant has stated that it was agreeable to renew the agreement from the respective expiry dates on the terms and conditions mentioned therein and the security deposit of Rs.82,60,25,072/- (total of all the agreements) that had been paid by the plaintiffs to continue with the defendant during the extended period. The defendant wanted the agreements to be renewed for another five years with an increase of 20% over the existing license fees. This itself shows and read with the agreements that the agreements between the parties was only for five years and there was no understanding when the original agreements were entered into that the agreements would be extended for further period of five years as stated by the defendants in the affidavit in reply.

6] The plaintiff was not in any event intending to renew the license after the expiry of the respective license period and therefore, by their letter dated 8th July 2012, indicated to the defendant their intention not to renew the license for the whole building, even though, the plaintiff had called upon the defendant only to return the security deposit pertaining to 2nd, 3rd, 4th, 5th, and 6th floor. A reading of the letter makes it very clear that the plaintiff did not wish to continue to occupy any of the floors which they had taken on leave and licence agreement. This is also confirmed by the fact that the plaintiff addressed a similar letter dated 14th February 2013 for the return of security deposit of Rs.41,20,71,000/- covering 8th, 9th and 10th floor, the licence for which was expiring on

5th May 2013. That was also the understanding of the defendant, as could be seen from the letter dated 26th August 2013, where the defendant has accepted that the plaintiff would be vacating the entire building by the time each of the licence period come to an end. The said letter requires to be reproduced:-

> *"Reg: REFUND OF SECURITY DEPOSIT OF SOLARIS PREMISES AT ANDHERI (E), MUMBAI.*
>
> *We refer to our letter dated 4th August 2013 wherein we had informed you in detail that, <u>we shall be able to repay the security deposit of Rs.87,56,24,381/- to your esteemed bank on or before 18th November 2013.</u>*
>
> *After the above meeting, lot of positive developments have taken place <u>and we are confident that we shall be able to repay the deposit amount to the bank within the above assured period.</u>*
>
> *However, in the meantime, we request you to clear our arrears till date or else adjust the same against refund of deposit. <u>You may vacate our premises on 30th November 2013 (to fecilitate calculation of rent for the full month) upon refund of your deposit on that date after adjusting arrears, if any. Please work out the figures and inform us the final amount payable against deposit to you.</u>*
>
> *<u>In the meantime, we request you to please confirm that, after receipt of balance deposit amount from us, the Bank shall be handing over peaceful vacant possession of the premises leased, shall vacate its lien created over the premises mortgaged, handover all the relevant original documents deposited with it, and withdraw all</u>*

> *proceedings initiated against the company and its directors.*
>
> *Further, as we propose to convert our property presently occupied by you into a five star hotel under Marriot brand, we request you to vacate all the premises leased to your Bank, on receipt of the Security deposit as mentioned above.”* *(EMPHASIS SUPPLIED)*

Therefore, the defendant has also admitted that there was a leave and license agreement which was registered and it has received security deposit of Rs.87,56,24,381/- and that was required to be paid back when the plaintiff vacates the premises. The plaintiff was ready and willing to vacate full premises/ building as mentioned in their correspondence mentioned above.

7] As the defendant is yet to return any part of the security deposit to the plaintiff despite the willingness of the plaintiff to vacate, in terms of the clause 9.2 of the agreement, the plaintiff has been retaining the premises without paying any compensation, effective from the date of expiry of the respective agreements. Though the Counsel for the defendant argued that the notice dated 8th July 2012 related only to 2nd, 3rd, 4th, 5th, 6th and 7th floor, in my view, particularly in view of the contents of the letter dated 26th

August 2013 from the defendants to the plaintiff, the parties have understood that the plaintiffs intention to vacate would cover the entire building. This is emphasised by the letter dated 14th February 2013 from plaintiff to defendant and defendant's letter dated 26th August 2013. In any event, such a notice in any case would not be required because the agreement was only for five years and the period of five years had expired/was expiring. There is no provision in the agreement to renew the licence and on the expiry of the license period no notice is required to be given. Upon expiry of the license period, the security deposit has to be returned. In the letter dated 26th August 2013 the defendant had agreed to return the security deposit to the plaintiff. In fact, by a letter dated 3rd June 2013 in the meanwhile, the plaintiff has also written to the defendant as under:-

> *"..... we would like to inform you once again that we do not intent to renew the leave and license agreement for the premises 2nd to 10th floors for which the leave and license has expired. Further in respect of leave and license for the balance floors i.e. basement, ground and 1st floor also the Bank would not renew the leave and license agreement upon expiry of the same."*

8] The defendant has also filed an affidavit in reply of one Vijay Gupta seeking leave to defend the suit. The defence is that before the leave and license agreement was entered into, it was agreed by and between the plaintiff and defendant that the agreement will be a long term arrangement for atleast 10 years but as it was difficult to compute or protect the market trends for distant future, the agreement was entered into for a period of five years with an understanding that it will be renewed for another five years and only based on these representations made by the plaintiff, the present leave and license agreement for five years was entered into.

9] This stand of the defendant is bogus and a sham. The plaintiff is a private bank whose shares are traded in Stock Exchanges. The defendant is also a company registered under the Companies Act, 1956. Therefore, it is impossible to comprehend that such a oral understanding would have been arrived at between the parties. In fact, in the affidavit in reply, there is not even a whisper as to who agreed on behalf of the plaintiff for such an understanding. Moreover, clause 11.3 also provides that *“the terms of the agreement shall not be altered or added to nor shall anything be* *omitted therefrom except by means of a supplementary agreement in writing duly signed by the parties hereto."* If what the defendant say is correct, certainly the agreement could have even provided that if the parties are agreeable, the terms will be extended. The assertion of the defendant is also not acceptable because in the letter dated 18th April 2012 from the defendant to the plaintiff, the defendant is stating that they are agreeable to renew the terms from the expiry dates on certain terms and conditions to which the bank responded to this letter by their letter dated 8th June 2012 and 14th February 2013 indicating their intention to vacate all the premises upon expiry of the license period. This letter also does not say that this was the arrangement. Even in the letter dated 16th October 2012 (Exh.H-4) to Summary Suit No.232 of 2013), there is no mention about such an arrangement having been agreed. In fact, the defendant is suggesting that the agreement be renewed for a further period of five years on a consolidated basis and also proposed to increase the monthly rentals at approximately 18% p.a. and that agreeing to return the security deposit within three years. In response, the bank by its letter dated 25th October 2012, had made it clear that they are not inclined to consider any of the proposals made by the defendant in its letter dated 16th October 2012. Even in the letter dated 26th August 2013, the defendant is not mentioning about any such arrangement as mentioned in the affidavit. On the contrary, the defendant is wanting the plaintiff to vacate the premises by 30th November 2013 and also is agreeing to repay the security deposit of Rs.87,56,24,381 on or before 18th November 2013. Therefore, this defence cannot be accepted. In fact, in the affidavit in reply, the defendant is confessing that it has used the money in its group companies.

10] The second defence that the defendant has taken is that the plaintiff has not vacated the premises and has been using the premises without paying any compensation to the defendant. In a way, it is the case of the defendant that the plaintiff has created a farce of vacating the premises and demanded refund of security deposit when the actual fact was that the plaintiff never vacated the premises and without paying any compensation/ consideration to the defendant for the said occupation and the plaintiff is liable to pay compensation for use of the licensed premises beyond the expiry of the leave and license agreement and for which the plaintiff is liable to pay 20% more compensation than the rate agreed in the leave and licence agreement from the expiry of the same.

11] The counsel for the plaintiff states that they have vacated the building in its entirety upon expiry of the respective leave and licence agreement. There is not even a single correspondence from the defendant stating or alleging that the plaintiff has not vacated the premises and, therefore, the question of refund of security deposit does not arise and/or that they would adjust the licence fees for the period in occupation beyond five years and offering to pay the balance. The defendant is absolutely silent and even the correspondence from the defendant annexed to the pleadings is indicating to the contrary. In fact, the letter dated 26th August 2013 which is reproduced above, gives away the truth. Therefore, it was quite obvious that the defendant having used the security deposit received by investing it in its group companies, does not wish to repay the money now and is raking up baseless and sham defence to avoid payment. What stands out are the correspondence annexed to the pleadings that gives away the truth.

12] The admitted position is that the defendant has received this amount of Rs.87,56,24,381/- and the same is payable to the plaintiffs. The defence of the defendant is nothing but sham, illusionary, bogus and moonshine. The plaintiff, therefore, should be entitled to a decree. At the same time, in the interest of justice, I am inclined to grant a chance to the defendant to defend the suits and simultaneously show its bonafides subject to depositing the entire security deposit in court. Hence, the following order:-

(a) Defendant to deposit a sum of Rs.87,56,24,381/- within a period of six weeks from today with the Prothonotary & Senior Master, High Court, Bombay;

(b) Upon defendant depositing the said amount, the Prothonotary & Senior Master to invest the same in fixed deposit with a nationalised bank only, initially for a period of six months and to be renewed from time to time till final disposal of the suit;

(c) On deposit of the aforesaid amount, leave to defend granted to the defendants to defend the suit. The defendant to then file their written statement and serve a copy of the same on plaintiffs within two weeks from the date of deposit; Within two weeks thereafter, the suit to be listed for issues and in the meanwhile, parties to file their respective affidavit of documents and also complete discovery and inspection.

(d) If the amount as directed hereinabove is not deposited within the stipulated time of six weeks, the suit be placed on board for ex parte decree. Liberty to apply.

(K.R.SHRIRAM, J.)