

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

**SUMMONS FOR JUDGEMENT NO.27 OF 2016
IN
SUMMARY SUIT NO.66 OF 2016**

M/s Hyundai Motor India Limited ... Plaintiff
Versus
M/s Auroma Investment And Others ... Defendants

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Mr. Dipesh Siroya for the Plaintiff.
Mr. Snehal Shah a/w Ms. Triveni Jani I/b Kanga & Co. for the Defendants.

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CORAM : S.C.GUPTE, J.

DATE : 10 JANUARY 2018

P.C. :

. Heard learned Counsel for the parties.

2 The Summary Suit is in respect of a debt arising out of a written contract. The contract was of leave and licence. The Defendants are the licensors of the premises, whilst the Plaintiff is the licensee. The leave and licence agreement between the parties has admittedly come to an end. The only dispute pertains to non payment of security deposit by the Defendants to the Plaintiff. It is the Defendants' case that the leave and licence agreement read with the supplementary agreement of security deposit makes it incumbent on the Plaintiff-licensee to hand over possession of the licensed premises to the Defendants in the same condition, in which it was given to them. It is the Defendants' case that the Plaintiff has made several unauthorised additions and alterations to the premises, all of which have

been unauthorised, since there was no permission of the Planning Authority for such additions and alterations. On the other hand, it is submitted by learned Counsel for the Plaintiff that the permission of the Planning Authority was withheld as a result of non compliance on the part of the Defendants themselves of the terms and conditions of the licence, particularly, making available documents such as the Head Lease between the owners of the property, namely, Mumbai Port Trust (MbPT), and the Head Lessee and permission of Head Lessors for subletting and change of user of the licensed premises. Similarly, it is the Defendants' case that the Plaintiff has not removed several articles belonging to the Plaintiff from the licensed premises and that is a breach of the leave and licence agreement, entitling the Defendants to withhold the security deposit. These are matters of dispute between the parties, which must be determined at the trial after recording of evidence.

3 On these pleadings and respective stands adopted by the parties, it is clear that there are triable issues raised in the suit by the Defendants against the Plaintiff, for which, the Defendants deserve an unconditional leave to defend.

4 The Summons for Judgment is, accordingly, disposed of by granting an unconditional leave to the Defendants to defend the Summary Suit. The suit will now proceed as Commercial Suit. The Defendants to file their written statement within a period of six weeks from today. The parties to also file their respective affidavits of documents within six weeks from today.

5 Place the suit for directions after eight weeks.

(S.C. GUPTE, J.)