

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM SUMMARY SUIT NO. 262 OF 2018**

Sumitomo Corporation India Pvt Ltd	...Plaintiff
<i>Versus</i>	
Maharashtra Theatre Pvt Ltd	...Defendant

Mr Anand Kumar, *for the Plaintiff.*
Mr Takeshi Muto, *Director of the Plaintiff, is present.*

CORAM: G.S. PATEL, J
DATED: 13th February 2019

PC:-

1. The suit is listed for an *ex parte* decree. The suit itself was filed on 17th November 2017. A Writ of Summons and a true copy of the Plaint were served on the Defendant. There is an Affidavit of Service. This shows the original acknowledgement card in respect of the packet containing a Writ of Summons and a true copy of the Plaint that was served by registered post AD. The Defendant has, despite service, failed and neglected to enter appearance. The Plaintiff is entitled to an *ex parte* decree and a judgment in the suit as an undefended suit.

2. The Plaintiff seeks a decree against the Defendant in the amount of Rs. 1,13,29,194/- with further interest at the rate of 18% per annum. The facts, briefly, are that the Plaintiff and the Defendant entered into a leave and licence agreement for office premises for 60 months on 1st October 2007. This was renewed on 15th September 2012. The Plaintiff-Firm placed an interest-free refundable security deposit of Rs. 96,48,000/- with the Defendant. On 28th December 2015, the Plaintiff gave notice of termination of this agreement with effect from 27th July 2016. On 25th July 2016 the Plaintiff gave the Defendant notice that it had vacated the premises. A joint inspection was carried out. Through its letter dated 27th July 2016, the Plaintiff demanded a refund of the security deposit. The Defendant responded claiming a deduction of Rs. 4,83,468/- and the Plaintiff accepted this deduction. On 15th October 2016 the Defendant sent an email to the Plaintiff that it will refund the security deposit in two-three months. The Defendant failed and neglected to do so. When the Plaintiff sent a legal notice on 15th November 2016, the Defendant replied on 10th January 2017 agreeing to make a refund in the first week of March 2017. Nothing has been paid by the Defendant. There is also no response to or compliance with the Plaintiff's Advocate's final notice dated 1st November 2017. Hence, this suit.

3. A Director of the Plaintiff, Mr Takeshi Muto, is present in Court. His Affidavit of Documents and Evidence Affidavit are taken on record. There is a Compilation of Documents tendered. It is taken on record and marked Exhibit "P1" (collectively) in evidence.

4. The original documents are returned to the Plaintiff upon these being substituted with the set of authenticated photocopies.
5. The Plaintiff is entitled to a decree as prayed and the suit is accordingly decreed in terms of prayer clause (a) in the sum of Rs. 1,13,29,194/- with further interest on Rs. 91,64,542/- at the rate of 18% per annum from the date of the suit till payment or realization.
6. The suit being filed in the Commercial Division, the Plaintiff is also entitled to an order and decree of costs under the amended Section 35 of the Code of Civil Procedure 1908 (“CPC”). Having regard to these circumstances, I believe an award of costs in the amount of Rs. 3.5 lakhs will be reasonable. This decree for costs will not carry interest.
7. Should the Plaintiff apply for a refund of the court fees, which it is entitled to do in accordance with law, the decree for costs will stand reduced accordingly.
8. Drawn up decree expedited.
9. Liberty to the Plaintiff to move in execution without awaiting sealing of the decree.
10. The suit is disposed of in these terms.

(G. S. PATEL, J)