

CNR.NO.MHCC01-008716-2015

**IN THE BOMBAY CITY CIVIL COURT FOR GREATER MUMBAI
NOTICE OF MOTION NO. 3243 OF 2015**

IN

S.C. SUIT NO. 2722 OF 2013

Axis Bank Ltd.

.... Plaintiff

V/S.

Allen Velegaleti Franklin

.... Defendant

Advocate Smt.Mahima Sinha for the Plaintiff

Advocate Shri. Prakash Ganwani for Defendant.

Coram : Her Honour Judge
Smt. Pushpa N. Rao
Ad hoc Asstt.Judge
CR No. : 32

Dated : 9th February,2018

ORDER:-

1. Plaintiff Axis Bank Ltd taken out this Notice of Motion for judgment on admission.

2. Perused the reply of defendant. Defendant is the owner of Flat No.33, 9th floor, Jal Kiran Co-op.Hsg.Society Cuffe Parade, Colaba, Mumbai-5. He had entered leave and licence and amenity agreement with the plaintiff bank on 26/08/2008. The agreement provided that flat No.33 would be used for residential purpose by one Shri.Narendra Patra, an employee of plaintiff bank for a period of 24 months. Plaintiff would pay Rs.30,000/- per month to the defendant for the use and occupation of the premises by Shri.Narendra Patra. All averments in the motion of plaintiff are specifically denied by the defendant and prays that plaintiff is deliberately trying to take out unnecessary application

which is frivolously and unwarranted, hence be dismissed with costs.

3. Heard learned advocate Smt. Mahima Sinha for plaintiff and advocate Shri.Prakash Ganwani for defendant.

4. It is undisputed fact on record that defendant had taken Rs.70lakhs as a deposit for the leave and licence agreement for the use and occupation of flat No.33. Flat No.33 was in use and occupation of Shri.Narendra Patra. No doubt, as per clause 27(B) of the leave and licence agreement, agreement could be terminated by issuance of two months prior notice. Plaintiff bank had issued a termination notice to the defendant on 19/04/2010. Shri.Narendra Patra had vacated the flat No.33 and sent a communication to the defendant on 18/6/2010.

5. Plaintiff bank had placed on record:-

1. **Uttam Singh Duggal & Co.Ltd.versus United Bank of India and Others.(2000) 7 Supreme Court Cases 120.**
2. **SRL Limited vs.Techtrek India Limited in NM No.801/2013 in Suit No.337/2017.**

6 Defendant also placed reliance on:-

1. **Dudh Nath Pandey v.Suresh Chandra Bhattasali AIR 1986 Supreme Court 1509.**

In above citations there was clear admission of liability regarding the refund of amount but the facts in the case at hand are otherwise different. It is the specific contention in the written statement dated 24/9/2013 of the defendant vide Exh.5 that he had mailed to the plaintiff on 05/08/2010 regarding the cost of repairs amounting to Rs.38,220/- and required Shri. Narendra Patra's acceptance for

deduction from the security deposit, but neither Shri.Patra nor on behalf of the plaintiff bank replied the said e-mail but plaintiff bank insisted for refund of security deposit of Rs.70 lakhs with interest.

7. It appears from the record and it is undisputed fact that security deposit of Rs. 70Lakhs is with the defendant, but as there is no plain admission either of the parties in their pleadings the parties has to prove their case towards the claim of liability independently. There is no clear admission in respect of the entire claim made in the suit or even for the part of the claim for which the decree could be passed separately. The admission is not clear, ambiguous, indefinite and unequivocal. The issue between the parties can not be conveniently disposed of by way of motion. But the issue requires to be tried after recording the evidence of both the parties. Moreover, reliefs of judgment on admission cannot be claimed as a matter of right.

8. In view of above discussion, Plaintiff Axis bank is not entitled for judgment on admission. Hence I proceed to pass the following order:-

ORDER

Notice of Motion No. 3243/2015 is dismissed with costs

Dated : 09/02/2018

(Pushpa N. Rao)
Ad hoc Asstt.Judge
Bombay City Civil Court
Greater Mumbai

Dictation direct typed on computer : 09/02/2018
Signed by HHJ on : 09/02/2018

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”.

UPLOAD DATE AND TIME
12/02/2018 at (1.45p.m.)

NAME OF STENOGRAPHER
Mrs. J.V.Pawar

Name of the Judge (With Court room No.)	HHJ Smt.Pushpa N Rao C.R.No.32
Date of Pronouncement of JUDGMENT/ORDER	09/02/2018
JUDGMENT/ORDER signed by P.O.on	09/02/2018
JUDGMENT/ ORDER uploaded on	12/02/2018

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