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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 675/2024**

ESBI TRANSMISSION PVT LTDAppellant

Through: Mr. Rajiv Nayyar, Senior Advocate
with Mr. Sameer Dawar and Mr.
Amit Mishra, Advocates.

versus

MUKESH SHARMA AND ORSRespondents

Through: Mr. K.K. Sharma, Senior Advocate
with Mr. Rajiv Bakshi, Advocate for
R-1 & R-2.
Mr. Prashant Mehta, Senior Advocate
with Mr. Chandan Deep Singh,
Advocate for R3
Ms. Manisha Agarwal, Advocate for
Survi Bose.

CORAM:
HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

% **01.10.2024**

[Physical Hearing/Hybrid Hearing (as per request)]

CAV 491/2024

1. In view of appearance of the respondents through counsel in present appeal, the caveat stands discharged.

CM APPL. 57877/2024 (exemption)

2. Allowed, subject to all just exceptions.

CM APPL. 57878/2024 (seeking extension of time in filing of court fees)

3. Learned senior counsel for appellant seeks two weeks to file the deficit court fees. Accordingly, the application is allowed granting two



weeks to the appellant to file deficit court fees.

RFA 675/2024 and CM APPL. 57876/2024 (stay)

4. Heard. Learned senior counsel for respondents no.1 & 2 as well as learned senior counsel for proforma respondent no.3 appearing on advance intimation accept notice.

5. I have heard learned counsel for all parties.

6. The appellant company has assailed order dated 12.09.2024 of the learned District Judge-04, South-East District, Saket Courts, New Delhi, whereby application of the present respondents no.1 & 2 under Order XII Rule 6 CPC was allowed and their suit for recovery of possession of the tenanted property was decreed, thereby directing the present appellant company to vacate the subject property within 15 days.

7. The jurisdiction under Order XII Rule 6 CPC was exercised by the learned Trial Court keeping in mind that the appellant had admitted *jural* relationship of tenancy between the parties, rate of rent being beyond the purview of the rent control legislation and service of quit notice.

8. The exercise of discretion under Order XII Rule 6 CPC by the trial court has been assailed by the appellant largely on the ground that such discretion ought not to have been exercised in favour of the present respondents no.1 & 2 in view of multiple intertwined litigations involving the subject property coupled with the rival pleadings.

9. Another appeal, bearing RFA No.676/2024 listed today as Fresh Matter also was filed, assailing the same order which has been assailed in the present appeal. The present appeal has been filed by a private limited company, alleged to be the tenant in the subject property while the other



appeal (RFA 676/2024) has been filed by son of one of the Directors of the present appellant, basically alleging execution of Memorandum of Understanding between his mother (*one of the Directors of the present appellant*) and the present respondents no. 1 & 2 whereby the former agreed to purchase the subject property from the latter, followed by forfeiture of the earnest money of more than Rs.1 crore. As pleaded in RFA 676/2024, on account of breaches in the said Memorandum of Understanding by the present respondents no. 1 & 2, a suit for recovery of money was filed by Ms. Survi Bose. As further pleaded in RFA 676/2024, Ms. Survi Bose also initiated criminal proceedings against the present respondents no. 1 & 2 and the said original Memorandum of Understanding was seized by the Investigating Officer of PS Gariahat, Kolkata on 28.01.2020.

10. One more aspect was agitated during the hearing today and the same relates to dismissal of application under Order I Rule 10 CPC filed on behalf of Ms. Survi Bose, mother of the present respondent no.3. Learned counsel for Ms. Survi Bose present in court today was not heard because as on date she is not a party, but learned counsel informed that she would be soon taking appropriate remedy against dismissal of that application. Contents of the said application also were read over by learned senior counsel on behalf of respondent no.3 in support of his submissions.

11. So far as the legal position is concerned, all the learned counsel are in agreement that a litigant does not have a right to judgment on admissions; and that it is the discretion of the court to write a judgment on admissions, which discretion, like any other discretion, must be exercised judiciously and not as a matter of routine.

12. In the present case, learned senior counsel for appellant company



argued at length to establish that the present respondents no.1 & 2 are trying to frustrate the proceedings under SARFAESI Act under the garb of the impugned order, despite a bar under the Act on jurisdiction of Civil Courts. Learned senior counsel for appellant argued that the present respondents no.1 & 2 are left with no right over the subject property, so exercise of discretion under Order XII Rule 6 CPC was not a judicious exercise. Learned senior counsel for appellant also took me through the lease deed dated 02.11.2017 to point out that in clause 14 thereof, it was specifically stipulated that the subject property is free from all encumbrances including mortgage, whereas on 31.01.2017 itself the subject property stood mortgaged with a bank and stands assigned to another company as on date. Learned senior counsel for appellant also took me through paragraph 4 of the plaint in which the present respondents no.1 & 2 pleaded that they had let out the subject premises to the present appellant so as to enable themselves raise money and clear the loan secured by way of mortgage of the subject property. These contradictions ought to have been tested through full dress trial according to learned senior counsel for appellant.

13. Learned senior counsel for respondent no.3 also took me through the orders of the learned trial court whereby applications under Order I Rule 10 CPC as well as under Order VII Rule 11 CPC were dismissed on the ground that the issues raised in those applications involved disputed questions of fact for which trial was required. Learned senior counsel for respondent no.3 contended that on the same date when those two orders were passed, contemplating a need for trial, the impugned order was passed writing the judgment on admissions, so it was not proper exercise of discretion by learned trial court.



14. On the other hand, learned senior counsel for respondents no.1 & 2 argued at length that this is a fit case to write judgment on admissions since the present appellant clearly admitted the *jural* relationship of tenancy between the parties, rate of rent being above Rs.3,500/- per month and the service of quit notice. In any case, according to learned senior counsel for respondents no.1 & 2, the tenancy had also expired by efflux of time, so it was a fit case to be decreed under Order XII Rule 6 CPC. Learned counsel for respondents no. 1 & 2 alleged that the appellant intends to protract these proceedings so that the interest on loan taken by respondents no. 1 & 2 keeps piling on, making it impossible for them to save their property and had the circumstances of mortgage not been there, there was no defence left with the appellant.

15. As regards stoppage of monthly rent by the present appellant, the stand taken in the other appeal RFA 676/2024 would be significant to note. In the said appeal, the present respondent no. 3 (*appellant therein*) explained that the payment of rent was stopped in terms with the Memorandum of Understanding, as earnest money of more than Rs.1 crore was paid to the respondents no. 1 & 2 towards sale consideration of the subject property and that forfeiture of the same has already been challenged.

16. It is in the backdrop of above rival pleadings of intertwined litigations and circumstances that this court has to examine as to whether exercise of discretion under Order XII Rule 6 CPC by the trial court was a judicious exercise. This examination needs detailed deliberation and arguments.

17. Therefore, operation of the impugned judgment and decree shall remain stayed till next date.



18. Copy of complete paperbook be supplied to the respondents within three days. Replies to the interim applications be filed within four weeks, to be followed by rejoinders, if any, within next two weeks.
19. The digitized record of trial court be requisitioned for the next date of hearing.
20. Relist on 06.03.2025.

GIRISH KATHPALIA, J

OCTOBER 1, 2024/ry

Click here to check corrigendum, if any