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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 675/2024, CM APPL. 57876/2024
CM APPL. 61137/2024, CM APPL. 29005/2025

ESBI TRANSMISSION PVT LTDAppellant

Through: Mr. Arvind Nayyar (Senior Advocate)
with Mr. Sameer Dawar, Mr.
Vishwam Mishra, Mr. Rishabh
Tomar, Advocates.

versus

MUKESH SHARMA AND ORSRespondents

Through: Mr. K. K. Sharma, Sr. Adv, Mr. Rajiv
Bakshi, Adv, Mr. Ram Pravesh Rai,
Adv, Mr. Viral Vaibhav. Adv. for
Respondent No. 1 & 2.
Mr Siddharth Dutta, Mr. Pratyush
Singh and Mr. Kandarp Raj Dipankar,
Advocates for Intervenor/Applicant.

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+ RFA 676/2024, CM APPL. 57887/2024
CM APPL. 61138/2024, CM APPL. 37705/2025

KABIR SHANKAR BOSEAppellant

Through:

versus

MUKESH SHARMA AND ORSRespondent

Through: Mr. K. K. Sharma, Sr. Adv, Mr. Rajiv
Bakshi, Adv, Mr. Ram Pravesh Rai,
Adv, Mr. Viral Vaibhav. Adv. for
Respondent No. 1 & 2.
Mr. Sameer Dawar, Mr. Vishwam



Mishra, Mr. Rishabh Tomar,
Advocates for R-3.
Mr Siddharth Dutta, Mr. Pratyush
Singh and Mr. Kandarp Raj Dipankar,
Advocates for Intervenor/Applicant.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER
23.03.2026

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CM APPL. 47318/2025 & CM APPL. 46990/2025 in RFA 675/2024

*(under Order I Rule 10 CPC on behalf of the Applicant/Intervenor seeking
Permission to Intervene in the matter)*

1. The above two Applications under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) have been filed on behalf of the Applicant/Intervenor-Suravi Bose through Power of Attorney Abdul Rahim Khan to be impleaded as a party in the present Appeals.
2. It is submitted in the Applications that CS JD No.161/2020 titled "Mukesh Kumar and Anr. Vs. ESBI Transmission Pvt. Ltd. & Anr." had been filed by the Respondents under Order 12 Rule 6 CPC for Possession and Mesne Profits which has been decreed vide Order dated 12.09.2024 whereby ESIB Transmission Pvt. Ltd. and Kabir Shankar Bose have been directed to vacate the A-871, 1st Floor, Defence Colony, New Delhi (the Suit Property). Aggrieved by the said Judgment ESIB Transmission Pvt. Ltd. has preferred Kabir Shankar Bose have filed the RFA No.675/2024 and RFA620/2024.
3. The Applicant has submitted that ESBI Transmission, a Private Limited Company had taken the Suit premises on Lease Agreement dated 02.11.2017 at a monthly rent of Rs.1.15,000/- per month to be used for the



office and residential purpose of Kabir Shankar Bose Legal Consultant of the Company who is also the son of the Ms. Suravi Bose, the Applicant. It was claimed that interest free security deposit of Rs.1.15 lakhs was paid by ESBI Transmission Pvt. Ltd. to the Respondents. In the run up to the execution of the Lease Agreement, Respondents had indemnified that there was no mortgage charge or any other encumbrance of any nature on the Suit property. Upon the repeated requests of Respondent No.1 and persuasion to help him financially, in order to meet his debts, the Applicant Suravi Bose in her individual capacity entered into an MOU dated 09.02.2019 for purchase of the Suit property for an amount of Rs.5,35,00,000/-. The Respondents made various representations and commitments towards the sale process, which include Clearance/No Objection from IndusInd Bank execution of Power of Attorney, preparation of Agreement to Sell etc. It was also agreed that all the formalities relating to the sale of property shall be completed on or before 15.07.2019. Accordingly, a sum of Rs.1,02,00,000/- was paid to Respondent No.1 towards part sale consideration in terms of MOU. The Respondent No.1 and 2 further agreed that in case they failed to do so, the Applicant can cancel the MOU and the amount of Rs.1,02,00,000/- would be refunded. At this time the Applicant came to know about the mortgage of the property and Respondent No.1 assured that he would fully cooperate to deal with the Bank mortgage and to get the property released from the Bank lien. It was also agreed that since Respondent No.1 and 2 were engaged in the process of sale of property, no rent whatsoever, would be due and payable from ESIB under the Lease Agreement. The moment the MOU came into existence, the valid legal possession was transferred to the Applicant herein and the landlord-tenant relationship ceased to exist. It is an



admitted position, that no rent was ever demanded thereafter by Respondent No.1 and 2. The Applicant has claimed that she was duped by Respondent No.1 and 2 in paying Rs.1.02 Crores as an advance towards the purchase of the property. Despite several attempts thereafter were made by the Applicant to get back the earnest money from Respondent No.1 and 2 since she was no longer inclined to purchase the Suit property. The Applicant was thus, compelled to sent a Legal Notice to Respondent No.1 and 2 highlighting their fraud and also seeking a refund of Rs.1.02 Crores along with interest @ 18% per annum.

4. The Respondents in a haste to somehow cover up the illegal and malafide content, sent an undated frivolous Legal Notice which was contrary to facts and law and without application of mind.

5. In order to recover the money, the Applicant filed a Suit for Recovery bearing CS DJ No.124/2020 which is pending trial.

6. In the counter-blast to the Suit filed by the Applicant, the Respondent No.1 and 2 filed the Suit bearing No.CS DJ 161/2020 for Eviction against ESBI and Kabir Shankar Bose the son of the Applicant.

7. The Applicant further submitted that while the Suit property was initially mortgaged with IndusInd Bank, it was thereafter transferred to Indiabulls ARC. An Application under Section 19(1) Recovery of Debts & Bankruptcy Act, 1993 was filed for Recovery of Rs.3,36,02,490/- vide OA No.OA/549/2021. Indiabulls ARC in Order to take possession of the Suit property, filed an Application under Section 14 SARFAESI Act before learned CMM, Saket District Court, wherein vide Order dated 24.12.2022 learned CMM allowed taking of Possession on 14.01.2023. The Applicant then filed an Application under Section 17(1) of the SARFAESI Act before



DRT. At that time possession of the property was not opposed by Respondent No.1 and 2. The Indiabulls ARC in the counter-affidavit in SA 16 of 2023 of the Applicant stated that the Sale Deed was absolutely void ab initio as the Respondent No.1 had first and exclusive charge over the secured asset in question and the sale deed had been executed after the creation of the mortgage. The Applicant had moved an Application under Order 1 rule 10 CPC for impleadment in the Eviction Suit as she was in valid and legal possession of the Suit property under the MOU. However, though initially her Recovery Suit and the Eviction Suit got tagged together, but subsequently, they were de-tagged.

8. The Application under Order 1 Rule 10 CPC filed by the Applicant was dismissed by the learned District Judge, though the Order of Eviction was passed under Order 12 Rule 6 CPC. The Applicant has now filed the present Application to be impleaded as a party in the present two Appeals. It is submitted that Respondent No.1 and 2 cannot claim any equity in their favour based on the Lease Deed executed by them with ESBI as their interest in toto was handed over to the Petitioner and thus, Respondent No.1 and 2 ceased to be landlord of ESBI. The intervention of the Applicant is necessary for full and complete adjudication of the present Appeal and has sought her impleadment.

9. The Respondents in their Reply have opposed the Application and have stated that the rights, if any, of the Applicant under the MOU dated 09.02.2019 which has been rescinded by her and she has already filed the Suit for Recovery of Rs.1,02,00,000/-. Even though, this amount has been forfeited by the Respondents as is reflected from Legal Notice dated 24.01.2020.



10. The Appellant is already in arrears of rent of Rs.90 lakhs approximately. The property presently is in the possession of Kabir Shankar Bose son of the Applicant. After the termination of the Tenancy, the son has become an unauthorized and illegal occupant. The MOU has nothing to do with the illegal possession of the Suit property by the Appellant ESBI and Kabir Shankar Bose. The MOU dated 09.02.2019 would show that the Applicant has no right to take Possession of the Suit property as there is no clause in the MOU which conferred the possessory rights to the Suit property on the Applicant. Rather, the Suit premises was under the possession of her son Kabir Shankar Bose.

11. It is of no relevance that Respondent No.1 and 2 settled the matter with Indiabulls ARC by way of one time Settlement and have already paid outstanding dues. Therefore Indiabulls ARC has no right, or lien in the Suit property. At present there are no proceedings pending in the DRT.

12. The Respondent No.1 and 2 have denied that the Applicant was ever came in possession of the property under the MOU. It is asserted that she has no right, title, interest in the Suit property and is not a necessary and proper party to the present Appeals and her Applications are liable to be dismissed.

13. Learned counsel on behalf of the Respondent No.2 has further submitted that the Order of Dismissal of her Application under Order 1 Rule 10 CPC to be impleaded as party in the Civil Suit has been challenged by her in this Court through CMM which are pending.

Submissions heard and record perused.

14. It is an admitted case of the parties that ESBI Pvt. Ltd. was inducted as a tenant vide Lease Deed dated 02.11.2017 @ Rs.1.15 lakhs per month



for the residence and office of their Director Kabir Shankar Bose. The Notice of Termination of Tenancy was served by Respondent No.1 and 2 and thereafter the Possession was sought through Suit for Possession. The Application under Order 12 Rule 6 CPC filed by the Respondents in the Eviction Suit has been decreed and a Decree of Possession has been passed against the two Appellants vide Decree dated 12.09.2024 against which the present two Appeals are pending.

15. It is an undisputed case of the Appellant that an MOU dated 09.02.2019 was entered into between the Respondents and the Applicant Suravi Bose, wherein the parties had negotiated a deal for sale of the Suit property for which the sale consideration was determined as Rs.5,35,00,000/-. It was noted in the Agreement to Sell itself that the property was mortgaged with the Bank. Ms. Suravi Bose agreed to pay Rs.50 lakhs on or before 14.02.2019 and another Rs.50 lakhs should be paid as soon as possible along with the proper Agreement for Sale with terms and conditions mentioned therein after getting NOC from the Bank. All the transactions were intended to be completed on or 15.07.2019. From the terms of the MOU itself it is evident that it was an Agreement to enter into an Agreement to Sell after the mortgage against the Suit property was settled and cleared after payment of all the due charges. This MOU was only a precursor and cannot even be termed as an Agreement to Sell.

16. The second aspect which emerges is that while the Applicant has consistently agitated that she got the Possession pursuant to this MOU, but there is no clause whatsoever in this MOU or in other circumstance thereafter to show that she ever came in possession of the Suit property. In fact, it was only a pre-arrangement and not even a concluded Agreement to



Sell under which she would have asserted to have got the possession.

17. It is not disputed by her that ESBI Pvt. Ltd. was inducted as a tenant and that her son Kabir Shankar Bose the Director of the Company/Legal Consultant has been residing in the Suit premises in terms of the Rent Agreement. Kabir Shankar Bose made happen to be the son of the Applicant, but they are all independent and merely because she happens to be the mother of Kabir Shankar Bose, she cannot assert any right in the property. Pertinently, she herself has filed a Suit for Recovery of Rs.1,02,00,000/- thereby indicating that she has no interest whatsoever in the Suit property.

18. It may be noted that the Respondents have already got a Decree of Eviction against ESBI and Kabir Shankar Bose, who were admittedly the tenant in the Suit property. The Applicant was not a party to this Rent Agreement and from the admitted facts it is amply evident that she was never in possession of the Suit property. Her claim that she is in possession through her son is the most frivolous argument which anybody can take. The aforesaid facts as detailed above, clearly show that the Applicant was neither in possession either of the property nor has she got any kind of interest in the Suit property. She is neither a necessary nor a proper party to the present Appeals. In the end it may be noted that her C.M Mains to challenge the Dismissal of Order 1 Rule 10 CPC are still pending. It is an oblique way of circumventing the Order of Rejection of Application under Order 1 Rule 10 CPC in the Suits by way of these present Applications.

19. In view of the above, the above two Applications are dismissed and stands disposed of accordingly.



RFA 675/2024 & RFA 676/2024

1. Arguments concluded on behalf of learned Senior Advocates for the Appellants in both the matters.
2. List for arguments on behalf of the Respondents on 10.04.2026 on the 'Top of the Board'.

NEENA BANSAL KRISHNA, J

MARCH 23, 2026/VA