**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 6007 of 2013 (O&M)
Date of decision: 29.05.2015

Bank of India

... Petitioner

versus

B.L. Jaitwani and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. G.S Anand, Advocate for the petitioner.

Mr. Sanjay Mittal, Advocate for respondent No. 1.

K.Kannan, J.

The plaintiff has sought in a suit for specific performance, interim prayer for injunction against the vendor or subsequent purchaser from in any manner creating fresh encumbrance and seeking for preservation of status quo. The 5th defendant in suit is a secured creditor and creditor is said to be taking action for enforcement of security interest under the SARFAESI Act. The trial Court declined the relief of injunction and in an appeal the Court has ordered status quo which has the effect of casting a fetter on the Bank from prosecuting the reliefs provided under the SARFAESI Act. The Bank is therefore aggrieved and before this Court complaining against the order of status quo.

On mere disclosure of facts I asked the counsel appearing on behalf of the respondent to support an order which is palpably wrong and untenable. This is so in view of the fact that the vendor even if he had created an encumbrances subsequent to the agreement, the plaintiff cannot obtain an agreement holder interest to exclude the enforcement of right of a secured creditor. The encumbrance created by the vendor attaches itself to the property and an agreement does not create any legal sense of interest in the property the way an encumbrance does.

Section 13 of the Specific Relief Act therefore provides that if there is any encumbrance created by the vendor which is not a part of the bargain he can only compel the vendor to discharge the encumbrance, but, cannot obtain a decree for specific relief *de hors* the encumbrance. The petitioner is also at liberty to forfeit his claim for specific performance and seek for recovery of money and damages against his vendor. In either case the interest of the secured creditor cannot be defeated.

The status quo ordered is incompetent and it is vacated restoring the order passed dismissing the application, as done by the trial Court.

The revision petition is allowed with these observations.

(K.KANNAN)
JUDGE

29.05.2015
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