IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR No.500 of 2017.
Date of Decision: 16.03.2017.

M/s Karna Soap Industry ....Petitioner.

VERSUS

M/s Mahabir Techno Limited and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. A.S. Virk, Advocate for the petitioner.

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SNEH PRASHAR, J.

Petitioner-plaintiff M/s Karna Soap Industry, through its Proprietor Shri Davinder Chawla, filed a suit for permanent injunction alleging that defendants-respndents No.1 to 3 are owners of a factory, godown and machinery situated on G.T. Road, Umri, District Kurukshetra, which they have given on lease to the plaintiff firm for a period of three years w.e.f. 01.03.2015 to 28.02.2018 by executing a written lease deed. A prayer was made to restrain said defendants-respondents No.1 to 3 from interfering in the functioning and possession of the plaintiff firm.

Knowing about pendency of the suit, respondent No.4-Union Bank of India (for short, 'the Bank') filed an application invoking the provisions of Order I Rule 10 of the Code of Civil Procedure (for short, 'CPC') for being impleaded as party to the suit on the ground that the suit had been filed by the plaintiff firm in collusion with defendants-respondents

No.1 to 3 with a motive to avoid recovery process initiated by the Bank to recover the amount outstanding against defendants-respondents No.1 to 3 by way of sale of the mortgaged property. Defendant-respondent No.1 firm was said to have taken a loan facility to the extent of Rs.34 crores from the Bank by mortgaging the property in question. Since a huge amount was due in the loan account of the defendant-respondent No.1, the Bank had started recovery process under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act of 2002') and had issued a notice under Section 13(2) of the Act of 2002. Process for taking possession of the mortgaged properties for auction under Section 13(4) of the Act of 2002 had also been started.

The petitioner-plaintiff as well as respondents-defendants No.1 to 3 opposed the application filed by the Bank by filing separate written reply.

Considering the submissions made by learned counsel for the parties, learned Civil Judge allowed the application.

Feeling aggrieved by the impugned order dated 15.10.2016 passed by learned Civil Judge (Junior Division), Kurukshetra, the petitioner preferred the instant civil revision.

The submissions made by Mr. A.S. Virk, learned counsel for the petitioner have been considered.

Learned counsel for the petitioner contends that a simplicitor suit for permanent injunction has been filed by the petitioner praying to restrain the defendants-respondents No.1 to 3 from interfering in the functioning and possession of the petitioner firm on the suit property. No relief is being claimed by the petitioner against the Bank (respondent No.4) and therefore, the Bank is neither necessary nor proper party to the suit and learned trial Court has erred in allowing the application of the Bank. The judgment passed in the suit as per law will not be binding on the Bank. To support his argument, learned counsel relies upon ***Kashmir Singh vs. Devinder Pal and another,1993(1) LJR 9.***

The contention of learned counsel for the petitioner is completely devoid of merit. The facts of **Kashmir Singh**'s case (supra) were different. In the case in hand, there is no denial of the fact either by the petitioner-plaintiff or by defendants-respondents No.1 to 3 that the said defendants are debtors of the Bank as they had taken a loan facility to the extent of Rs.34 Crores from the Bank and had committed default in repayment of the same, consequent to which huge amount is outstanding in their loan account. Process for recovery of the due amount has been started by the Bank under Section 13 of the Act of 2002. The facts noticed by learned trial Court and the reasons given for allowing the application of the Bank are as under:-

> *"After initiating the proceedings under SARFAESI Act, when they went to auction the property it came into their knowledge that there is interim stay granted by the Court in favour of plaintiff against the defendant in relation with Solvent Plant. The said plant is mortgaged with the Bank as it is clear from the securities described in the documents placed on file by the applicant. The property upon which the present Solvent Plant is standing is also mortgaged with the Bank as it is clearly written that factory land and buildings are mortgaged with the Bank (details of security mentioned in para no. 2 of the application). Thus, it can be easily said that this Solvent Plant falls in the definition of building and is part and parcel of the securities. The stand of the defendants that solvent plant had been installed and started from the own funds of the company and not from any loan from UBI/applicant also seems not conceivable as they have written a letter to Bank official for seeking permission for leasing of Solvent Plant. Besides this, at this stage prima facie it seems to this Court that there is a collusion between the plaintiff and*

defendants and the Solvent Plant is also mortgaged with the Bank, and no such documents produced in the Court for proving it otherwise. The defendants had taken such a huge loan amount from the Bank and this amount is related to public and defendant can not be allowed to defeat the right of the applicant Bank for recovery of the loan amount. The adinterim stay order which is passed by the Court is definitely going to affect the rights of the Bank as there whole recovery process is stopped. Thus, the Court is of the view that they should be impleaded in this present suit with the defendants to bring the real picture before the Court and to help the Court for proper adjudication of the case. In their absence from the proceedings, the court will not be able to decide the matter properly. Hence this application in hand is hereby allowed."

Learned counsel for the petitioner failed to demonstrate any illegality or perversity in the order passed by learned trial Court. When it has been noticed by learned trial Court that prima facie there appears to be a collusion between the plaintiff (petitioner) and defendants (respondents No.1 to 3) and that the property on which solvent plant is in existence is also mortgaged with the Bank, impleading of the Bank as party to the suit is necessary for proper and complete adjudication of the case.

There being no merit in the petition, it is dismissed.

(SNEH PRASHAR)
JUDGE

16.03.2017.
jitender sharma

Whether speaking/ reasoned	:	**Yes/ No**
Whether Reportable	:	**Yes/ No**