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

**CR No.4160 of 2016(O&M)
Date of Decision: 14.05.2018**

Harjot Kaur

.....Petitioner

Vs

Iqbal Singh Sidhu

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Nitin Jain, Advocate
for the petitioner.

Mr. Harsh Aggarwal, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

On 04.07.2016, the following order was passed by this Court:-

“Counsel for the petitioner inter alia contends that Calcutta High Court in Premraj Mundra Vs. Md. Maneck Gazi and others, AIR 1951 (Calcutta) 156 has laid down certain guiding principles for exercising jurisdiction under Order 38 Rule 5 of the Code of Civil Procedure (in short ‘CPC’). The said judgment finds reference in the judgment of Hon’ble the Supreme Court of India M/s Raman Tech & Process Engg. Co. & another vs. M/s Solanki Traders, 2008 (1) R.C.R. (Civil) 195, wherein the Court has held that power under Order 38 Rule 5 CPC is a drastic and extraordinary power and should not be exercised mechanically or merely for the asking.

It is further submitted that there is no material on

record to prima facie support contention of the respondent/plaintiff that the petitioner/defendant wanted to alienate her land with an intention to delay or defeat the respondent's/plaintiff's claim particularly in the circumstances that the petitioner/defendant made a statement before the trial Court that she will not alienate the land in question during pendency of suit. It is further argued that the petitioner is ready to file an undertaking before this Court that she will not alienate land owned by her without seeking permission of the Court in which the suit for recovery is pending.

Notice of motion for 16.09.2016.

In the meantime, operation of the impugned order shall remain stayed. However, the petitioner shall not alienate the land sought to be attached u/o 38 Rule 5 CPC."

Today learned counsel for the petitioner shows his readiness and willingness to file an undertaking before the Trial Court that the petitioner will not alienate the subject matter of the application under Order 38 Rule 5 CPC.

In view of the aforesaid statement, let the petitioner file an undertaking before the Trial Court within two weeks from today.

In the event of filing such an undertaking the Trial Court shall record and restrain the petitioner from alienating the suit property during the pendency of the suit. However, liberty would be granted to the petitioner to move an application in case of any contingency. In case such an application is filed, the same shall be dealt with by the Trial

Court in accordance in law, of course, by issuing prior notice to the respondent.

For the reasons recorded herein above, the impugned order is set aside. The revision petition is disposed of accordingly.

In case, the undertaking is not filed within the time prescribed, this revision petition would deem to be dismissed.

14th May, 2018

shabha

(RAJ MOHAN SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	Yes
<i>Whether reportable</i>	Yes/No