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

CR-9263-2018

Date of Decision: 24.01.2019

Deutsche Bank A.G.

.....Petitioner

Vs

Pawan Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rahul Tyagi, Advocate with
Mr. Sorabh Sharma, Advocate
for the petitioner.

Mr. G.S. Randhawa, Advocate
for Mr. Nitin Jain, Advocate
for respondent No. 2.

RAJ MOHAN SINGH, J.(Oral)

An adjournment slip filed by respondent No. 2 has been strongly opposed. On 18.12.2018 at the time of notice of motion, following order was passed:-

“Learned counsel for the petitioner contends that one of the properties was mortgaged with the petitioner-Bank. Bank was impleaded as party defendant No.2 vide order dated 03.11.2018 and on the same day, status quo regarding the suit property was passed. Plaintiff is brother-in-law of defendant No. 1 and filing of the suit for permanent injunction is a collusive affair, as no suit for specific performance was filed on the basis of agreement to sell in question.

Notice of motion for 11.01.2019.

Notice re: stay as well.

Dasti also.

Photocopy of the record of the trial Court be also requisitioned.”

In a suit for permanent injunction filed by respondent No. 1, the petitioner-Bank was allowed to be impleaded as party defendant-respondent No. 2 vide order dated 03.11.2018. The order of status quo was passed on earlier occasion on 23.01.2017, vide which both the parties were directed to maintain status quo regarding the disputed land. At that time, petitioner-Bank was not a party to the lis. On impleadment of the petitioner/defendant No. 2, on 03.11.2018, application under Order 1 Rule 10 of Code of Civil Procedure (for short 'CPC') was also considered and order of status quo was passed qua the petitioner as well. The said order was allowed to be continued even on a subsequent date i.e. 28.11.2018. The suit filed by the plaintiff/respondent No. 1 was for prohibitory mandatory injunction seeking to restrain Smt. Anita from transferring and mortgaging the land on the basis of agreement to sell dated 20.06.2014.

Perusal of the record would show that against interim injunction dated 15.05.2017, defendant No. 1 filed miscellaneous appeal before the trial Court. During the course

of arguments before the trial Court, both the parties made their statement at bar that they had no objection if both the parties are directed to maintain status quo during the pendency of suit. That is how the appeal filed by defendant No. 1 was disposed of.

The petitioner is a secured creditor. The plea with regard to Section 34 of 'The Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002' (for short 'SARFAESI' act) would be taken into consideration during trial Court at appropriate stage. The order of the status quo was made operative on the day on which the petitioner was allowed to be party/defendant No. 2. The plea of collusion between Pawan Kumar and Anita would be gone into by the trial Court at the relevant stage.

Counsel for the petitioner seeks indulgence of this Court on the ground that since on 03.11.2018, two orders were passed vide which the application Under Order 1 Rule 10 of CPC filed was allowed and at the same time vide order of even date status quo was granted. Inadvertently, he has not attached the order vide which status quo was granted by the trial Court. Though he has attached subsequent order of trial Court dated 28.11.2018.

Be that as it may, after taking into consideration the

clear factual position on record, I deem it appropriate to allow the petitioner to move an appropriate application for vacation of stay before the trial Court within 1 week from today. In the event of filing such an application, trial Court shall decide the same within 7 days thereafter. This revision petition is disposed of accordingly.

January 24, 2019

Harish Kumar

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No