

In the High Court of Punjab and Haryana at Chandigarh

C.R. No. 1748 of 2018 (O&M)
Date of Decision: February 26, 2019

M/s Speedways.

... Petitioner

Versus

Kailashwati Mehra and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Akash Deswal, Advocate,
for the petitioner.

Mr. Sudeep Mahajan, Advocate,
for respondent no.1.

Mr. Veneet Sharma, Advocate,
for respondent No.2.

Amit Rawal, J. (Oral)

Present revision petition is directed against the impugned order dated 26.02.2018 passed in application under order 41 rule 5 CPC in an appeal No. 109/2018 filed under Section 96 of the CPC by the petitioner – M/s Speedways, a partnership firm against Kailashwati Mehra, respondent No.1 by arraying Shazada Nand & Sons Financiers as respondent no.2 whereby the lower appellate court imposed the condition of furnishing the security of Rs. 45 lakhs with one surety of like amount before the learned executing Court within 15 days.

Mr. Arun Jain, learned senior advocate, assisted by Mr. Akash Deswal, submitted that two appeals against the judgment and decree dated 07.12.2017 wherein the petitioner and respondent no.2 were arrayed as defendant nos. 2 and 1. In a suit preferred by the plaintiff, amount of Rs. 36 lakhs along with interest @ 9% per annum from the date of accrual till the

date of decree and 6% per annum till the realization has been granted. In the appeal preferred by defendant no.1, passed the similar order i.e. imposing condition of furnishing security of 45 lakhs and in lieu thereof defendant No.2 furnished the security, copy of which has been handed over to this court. In such circumstances, the decree under challenge cannot be executed by imposing a condition as it tantamounts to undue enrichment.

Mr. Veneet Sharma, learned counsel appearing on behalf of Shazada Nand & Sons Financiers acknowledged the factum of furnishing of security by handing over copy to this Court.

Mr. Sudeep Mahajan, learned counsel appearing on behalf of Kailashwati Mehra, on instructions from his client, acknowledged the same.

In such circumstances, keeping the question open in a situation where both the defendants had been liable to pay security, I am of the opinion that trial court ought not to have imposed such condition upon defendant no.2 once defendant no.1 has protected the interest of the plaintiff.

In view of above, the impugned order is set aside to the extent of security and is modified to the extent that petitioner is not required to furnish security. Rest of the impugned order is upheld.

In the above terms, revision petition stands disposed of.

February 26, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned	:	Yes
Whether reportable	:	No