

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

CR-6006-2025 (O&M)
Reserved on : 02.09.2025
Pronounced on : 09.09.2025

Suresh KumarPetitioner

VERSUS

Kamla Devi and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Renu Dhull, Advocate for the petitioner.
(through hybrid mode).

ALKA SARIN, J.

1. Present revision petition has been filed by the petitioner under Section 115 of the Code of Civil Procedure, 1908 read with Article 227 of the Constitution of India for setting aside the impugned order dated 28.05.2025 passed by the Additional District Judge, Kaithal on an application filed by the petitioner for recalling of the award dated 02.09.2019 and the order dated 28.05.2025 whereby recovery warrants have been issued and the recovery proceedings have been directed to be pursued by the concerned authority.

2. The brief facts relevant to the present *lis* are that the petitioner herein is the registered owner of vehicle bearing registration No.HR-51X-6259 (Alto LX). The said vehicle was involved in an accident which took place on 25.10.2017 resulting in the death of one Ved Parkash. The legal representatives of Ved Parkash i.e. respondent Nos.1 to 5 herein filed MACT

No.20 of 2018 on 23.02.2018 which was allowed vide award dated 02.09.2019. An FIR was also registered in the present case being FIR No.392 under Sections 279 and 304A of the Indian Penal Code, 1860 registered at Police Station Civil Lines, Kaithal on 25.10.2017 itself i.e. the date of the accident. Aggrieved by the said award the petitioner herein has filed FAO-1404-2020 which is pending in this Court and has been directed to be heard alongwith FAO-1454-2022, which has been preferred by the claimant-respondent Nos.1 to 5. On 07.09.2022 the petitioner herein filed an application under Section 340 read with Section 195 CrPC against the claimant-respondent Nos.1 to 5. On 27.04.2023 the petitioner also filed an application under Sections 151 and 152 CPC for recalling/setting aside the impugned award dated 02.09.2019 on the grounds of fraud and misrepresentation. The said application was dismissed vide order dated 28.05.2025. Vide order dated 28.05.2025 (Annexure P8) the Executing Court also directed the concerned authority to pursue recovery proceedings. In the present petition, both the orders, one passed on an application under Section 151 CPC for recalling the award dated 02.09.2019 and the other passed by the Executing Court whereby recovery warrants have been issued and the recovery proceedings have been directed to be pursued by the concerned authority, have been challenged.

3. Learned counsel for the petitioner, who has appeared through hybrid mode, has contended that the award had been obtained by fraud and that Ved Parkash was suffering from Cancer and was in the last stage of Cancer which was concealed by the claimant-respondent Nos.1 to 5. Learned counsel for the petitioner has further contended that since the factum that Ved Parkash was suffering from Cancer was not disclosed, therefore, it is a case of fraud.

4. Heard.

5. In the present case, the award was passed on 02.09.2019 which award has been challenged by the petitioner herein by filing FAO-1404-2020 in which notice of motion has also not been issued till now. The petitioner had filed an application under Sections 151/152 CPC for recalling of the award dated 02.09.2019. Hon'ble Supreme Court in the case of **My Palace Mutually Aided Cooperative Society vs. B. Mahesh & Ors. [2022(4) RCR (Civil) 9]** has held that Section 151 CPC can only be applicable if there is no other alternate remedy available in accordance with the existing provisions of law. It has further been held that such inherent power cannot override statutory prohibitions. Their Lordships while dealing with the said proposition held as under :

“34. The High Court, relying upon the above judgments of this Court which recognizes the power to recall, seems to have lost sight of the restrictions imposed while exercising jurisdiction under Section 151 of the CPC, which were elaborately discussed by this Court in the above referred judgment about exercising of the power under Section 151 of the CPC being only in circumstances where alternate remedies do not exist.

35. Therefore, we are of the firm opinion that recalling a final decree in such circumstances cannot be countenanced under Section 151 of the CPC. The High Court erred in exercising its jurisdiction under Section 151 of the CPC, to hear and pass a detailed judgment recalling its earlier final decree dated 19.09.2013,

rather than directing the respondents to pursue the effective alternate remedies under law. Having said the above, we must clarify that we are not, in any way, doubting the proposition of law that fraud nullifies all proceedings, or that the Court has power to recall an order which was passed due to a fraud played on the Court. However, while exercising the power under Section 151 CPC for setting aside the final judgment and decree, the Division Bench should have taken into consideration the restriction which was observed by this Court in the captioned judgment. Once we have come to the irresistible conclusion that exercising power under Section 151 CPC in the facts and circumstances of the case is bad, we are not inclined to go into further issues that were extensively argued.”

6. The application filed by the petitioner was itself not maintainable under Sections 151/152 CPC as held by the Hon’ble Supreme Court in the case of **My Palace Mutually Aided Cooperative Society** (supra). The petitioner herein has already preferred FAO-1404-2020 and thereafter in 2023 had filed the present application for recalling/review of the award 02.09.2019. Since as per the judgement of the Hon’ble Supreme Court the application itself was not maintainable, this Court consciously is not touching the merits of the case. Though much has been said by the learned Additional District Judge, Kiathal regarding the conduct of the petitioner, who is also an Advocate, this Court refrains itself from commenting any further.

7. The challenge to the order dated 28.05.2025 also cannot be sustained as the only ground stated is that the award was obtained by fraud. The award till such time that it is set aside in accordance with the provisions of law, even if obtained on the basis of fraud, cannot be disregarded simply on the asking of the party. The documents which have been appended with the petition reveal the hospitalization of Ved Parkash during the period 2016-17. It is the ground raised in the petition that though Ved Parkash was stated to have died on 25.10.2017 he is shown to have remained admitted in the OPD on 15.11.2017. A perusal of the documents does not reveal any such admission in November 2017. There is an entry of 15.11.2017 under the head 'Medical Store Return' showing a deduction of Rs.28,062/-. The said entry cannot in any manner be seen as an entry qua the admission of Ved Prakash. No other argument has been raised by the learned counsel for the petitioner.

8. In view of the above, no fault can be found with both the impugned orders dated 28.05.2025 passed by the Executing Court and the same are accordingly upheld. The present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

09.09.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO