

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

135

CR-1986-2025(O&M)

Date of decision: 01.04.2025

Smt. Mala Rani

...Petitioner(s)

Vs.

Pankaj Kumari & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sumit Sinha, Advocate
for the petitioner.

NIDHI GUPTA, J.

Present petition has been filed under Article 227 of the Constitution of India for setting aside impugned judgment dated 23.01.2025 passed by Ld. District Judge, Panchkula whereby the appeal filed by petitioner under Section 96 CPC against the order dated 23.10.2024 Annexure P-3 passed by Ld. Civil Judge (Senior Division), Panchkula, dismissing the application under Order 9 rule 7 & 13 read with section 151 CPC filed by the petitioner for setting aside ex parte judgment dated 24.04.2014 Annexure P-1, was dismissed.

2. Learned counsel for the petitioner inter alia submits that the petitioner was unable to appear before the learned Courts below as both her sons had expired. As such, she was in great mental agony and unable to pursue the litigation. On a Court query, learned counsel for the petitioner



informs that the first son of the petitioner had expired on 26.07.2010; and her second son had expired on 02.03.2013. It is accordingly prayed that the present petition be allowed, and the impugned orders be set aside.

3. No other argument is made on behalf of the petitioner.

4. I have heard learned counsel for the petitioner and perused the case file in great detail.

5. I find no merit in the submissions made on behalf of the petitioner. Brief facts of the case are that respondent No.1 is the wife and respondent No.2 is the daughter of deceased Devender Kumar Ranga. The petitioner is the mother of deceased Devender Kumar Ranga. After the demise of said Devender Kumar Ranga on 26.7.2010, the said respondents had filed a petition under Section 372 of the Indian Succession Act, 1925 (hereinafter referred to as "the Act") for grant of Succession Certificate concerning the debts and service benefits of Devender Kumar Ranga. The petitioner was not made a party to the above said petition filed by the respondents under Section 372 of the Act. As such, the petitioner had filed an application seeking impleadment in the above said petition; which was allowed by the learned trial Court making the petitioner respondent No.4 in the above said proceeding.

6. However, on 11.09.2013, none had appeared on behalf of the petitioner. As such, she was proceeded against ex parte. In the meantime, vide ex parte judgment dated 24.04.2014 (Annexure P1), the



Succession Petition filed by the respondents was partly allowed and it was directed that *"...The requisite succession certificate regarding the service benefits of Sh. Devender Kumar Ranga (since deceased) be issued in favour of the petitioners. The share of the minor petitioner no. 2 would be collected by the petitioner no. 1 being her natural mother and custodian and would be invested by her in the fixed deposit, to be opened in the name of the minor petitioner, which would be released to the minor after she attains the age of maturity. However, remaining relief as sought by the petitioners regarding succession certificate qua the maturity value of the LIC policies stands declined. The requisite court fee on the amount of benefits and Indemnity Bond in the like amount be paid by the petitioners as per their proportionate share. The requisite be done on behalf of minor by the petitioner no. 1...."*

7. Almost 3 years thereafter, the petitioner filed an application dated 02.07.2016 (Annexure P2) under Order 9 Rules 7 & 13 read with Section 151 CPC for setting aside the order dated 11.09.2013 and ex parte judgment dated 24.04.2014. Perusal of Annexure P2 reveals that the petitioner had sought the setting aside of order dated 11.09.2013 and judgment dated 24.04.2014 on the ground that though the petitioner was in regular touch with her counsel, however, in 2012 her counsel was selected as Judicial Officer and petitioner was told that the matter would now be conducted by her younger brother/Aditya Yadav. Thereafter, the petitioner had even contacted Aditya Yadav. However, in the meantime, her younger son



had also passed away in an accident on 02.03.2013 due to which she went into deep shock. Despite that the petitioner made several calls to Aditya Yadav who was not responding to calls of the petitioner. Certified copy of the judgment dated 24.04.2014 was provided to the petitioner and her husband by Aditya Yadav only on 04.06.2016 whereafter the petitioner had filed the application dated 02.07.2016 (Annexure P2) under Order 9 Rules 7 & 13 read with Section 151 CPC for setting aside the order dated 11.09.2013 and ex parte judgment dated 24.04.2014.

8. The respondents contested the application filed by the petitioner by stating that the petitioner had been regularly appearing before the learned trial Court and had deliberately not appeared on 11.09.2013. On the basis of pleadings of the parties, the learned trial Court framed following issues vide order dated 04.09.2023:-

"1. Whether the ex parte order dated 11.09.2013 and the ex parte judgment and decree dated 24.04.2014 are liable to be set aside? OPA

2. Whether the application is not maintainable in the present form ? OPR.

3. Whether the applicant/respondent No. 4 has got no locus standi to file the present application? OPR

4. Whether the applicant/respondent No. 4 has concealed the true and material facts from the Court, if so, to what effect? OPR.

5. Relief."



9. The said application of the petitioner was dismissed by the learned trial Court vide order dated 23.10.2024 (Annexure P3).

10. Against the said order, the petitioner had filed appeal dated 20.11.2024 bearing no. CA/104/2024 titled as "Pankaj Kumari and Another vs. General Public and Others", under Section 96 CPC (Annexure P4). The said appeal of the petitioner was also dismissed by the learned District Judge, Panchkula vide impugned order dated 23.01.2025.

11. The only submission made on behalf of the petitioner for non-appearance on 11.09.2013 and thereafter, is that she was in deep shock due to the demise of her son on 02.03.2013. No doubt, this Court has deep sympathy for the tragedy suffered by the petitioner. However, it is the own case of the petitioner that she had been regularly appearing before the learned trial Court and had been unable to appear only on 11.09.2013. Moreover, the petitioner has admitted in her cross-examination as AW1 that her husband Partap Singh Ranga was a Practising Advocate at Rewari Court and had complete knowledge of law. The petitioner had further admitted that she was regularly in touch with her counsel at Panchkula. Even Partap Singh Ranga as AW2 had admitted that he was an Advocate by profession and was in touch with the counsel at Panchkula. Partap Singh Ranga further admitted that he had not produced any medical record of himself or his wife. He also admitted that he had received copy of judgment dated 24.04.2014 from the counsel. As such, the petitioner and her husband were well



apprised of the matter; and no ground was made out for non-appearance on 11.9.2013. Even no explanation has been given as to why application for setting aside order dated 11.09.2013 and ex parte judgment dated 24.04.2014, was filed almost 3 years on 02.07.2016.

12. Thus, keeping in view the entire facts and circumstances of the case, no ground is made out to interfere in the impugned orders. Present petition accordingly stands **dismissed**.

13. Pending application(s) if any also stand(s) disposed of.

01.04.2025
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No