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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 628/2017

METALTECH MOTORS PVT LTD Petitioner
Through: Mr.Pranaynath Jha, Adv.

Versus

HARBIR SINGH DHILLON Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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09.10.2017

1. This petition under Article 227 of the Constitution of India impugns the order [dated 10th April, 2017 in M No.166/2017 in Ex.No.143/2012 in Suit No.439/2008 of the Court of Additional District Judge-02, West, Delhi] of dismissal of the application filed by the petitioner for restoration of Execution Petition No.143/2012 in Suit No.439/2008.

2. The learned Additional District Judge, in the impugned order, has recorded – (i) that the decree of which execution sought was dated 18th December, 2009; (ii) that the Execution petition was filed on 7th August, 2012 and notice thereof was ordered to be issued to the respondent/judgment debtor; (iii) that the notice sent to the respondent/judgment debtor was returned back with the endorsement of refusal and it was treated as proper service; (iv) however on 9th September, 2014, the counsel for the petitioner

stated that since the respondent/judgment debtor is a resident of Jalandhar, he would move an application for transfer of the execution petition to Jalandhar; (v) that thereafter several proxy counsels appeared for the petitioner and took adjournments; (vi) this process continued for two years, without any effective steps being taken; (vii) that in the circumstances, the Execution Petition, on 8th September, 2016, was dismissed for non-prosecution; (viii) the petitioner/decreed holder, after six months, of engaging new counsel, applied for restoration; (ix) that there was no plausible reason to condone the continuous negligence of the decreed holder.

3. I have enquired from the counsel for the petitioner, whether an Execution Petition can be restored.

4. The counsel for the petitioner has relied on ***Deutsche Ranco GMBH Vs. Mohan Murti*** 176 (2011) DLT 280 (DB) holding that the same is permissible in exercise of powers under Section 151 CPC. I have nevertheless enquired from the counsel for the petitioner why the petitioner cannot file a fresh execution petition.

5. The counsel for the petitioner / decreed holder states that the petitioner can file the same but will have to again explain why his earlier execution petition was not restored.

6. On enquiry, as to under which provision of law the petitioner will have the answers, the counsel for the petitioner states that though the petitioner is entitled to apply afresh for execution but since the execution petition which was filed in 2012 can also be restored, it should be restored.

7. The remedy of filing a fresh execution petition being available to petitioner, no ground for condoning the continuous negligence of the petitioner in pursuing the execution petition earlier found is made out. In this light, no error can be found in the impugned order.

8. There is thus no merit in the petition. The same is dismissed. The petitioner in accordance with law shall be entitled to apply afresh for execution.

RAJIV SAHAI ENDLAW, J.

OCTOBER 09, 2017
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