

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

**CR No.7814 of 2017**

**Date of Decision: January 23, 2018**

**Sumit Kumar**

**..... Petitioner**

**Versus**

**Mohinder Singh**

**..... Respondent**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Harsh Goyal, Advocate  
for the petitioner.

Mr. K. K. Chaudhary, Advocate  
for the respondent.

**AMIT RAWAL J. (ORAL)**

The present petition has been filed against the order dated 11.09.2017 (Annexure P-9) whereby the application for recalling of the order dated 16.12.2011, vide which the execution application seeking execution of the decree amounting to Rs.8,66,867/- along with interest @ 12.5% on the principal amount of Rs.6 lacs w.e.f. 18.05.2004 till realization, has been dismissed.

Learned counsel for the petitioner submitted that the counsel for the petitioner was not aware of the dismissal of the execution application on 16.12.2011 and on acquiring the knowledge, application for restoration was moved on 06.06.2012, thus no harm would be caused to the respondent in case the execution application is restored to its original number.

Per contra, learned counsel appearing on behalf of the respondent submitted that the approach of the petitioner/decreed holder had

been very tardy and lackadasic thus was not diligent in filing the application. Execution application was rightly dismissed in default much less was also barred by limitation as the same was filed after almost seven (07) months from the date of the dismissal in default.

I have heard learned counsel for the parties and perused the paper book.

In my view the Court below ought to have adopted a pragmatic and limited approach in the matters where the execution application seeking execution of a money decree are dismissed for non prosecution. No client should be made to suffer for lapse of the counsel, if any, in view of the law laid down by the Hon'ble Supreme Court in 'Rafiq and Another vs. Munshilal and another' 1981 AIR SC 1400. The Court had taken almost five years in deciding the application for restoration. Be that as it may and without commenting further upon merits and demerits of the case, in the interest and advancement of justice, impugned orders dated 11.09.2017 and 16.12.2011 are set-aside. The execution application bearing No.326 dated 01.05.2004 is ordered to be restored to its original number. The matter is remitted to the Executing Court with a direction to decide the same afresh in accordance with law.

Revision petition stands allowed.

January 23, 2018  
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**(AMIT RAWAL)**  
**JUDGE**

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