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

+ CM(M) 1128/2016 and CM Nos. 41762-63/2016

MAGMA HOUSING FINANCE Petitioner

Through Mr.H.L.Tiku, Sr. Advocate with Mr.
Dilip Pandita and Ms.Yashmeet Kaur, Advocates.

versus

LALIT KUMAR TANDON & ANR Respondents

Through Ms. Priyanka Marwah and Mr.Mohit
Monga, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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30.11.2016

1. Counsel for the respondents were present in the morning. However, when the matter was called out, none is present for the respondents.
2. By the present petition filed under Article 227 of the Constitution, the petitioner seeks to impugn the orders dated 20.09.2016 and 18.10.2016 passed in the execution petition filed by the petitioner.
3. The basic background facts are that the respondent availed a loan from the petitioner for a sum of Rs. 12,50,000/-. On account of default, arbitration proceedings were commenced. The sole arbitrator by its order dated 16.05.2011 allowed the claim of the petitioner. The respondents have filed objections to the arbitral award under Section 34 of the Arbitration and Conciliation Act which are said to be pending before the Court of Sh.Raj Kumar, ADJ, Tis Hazari Court, Delhi. The petitioner preferred the present

execution petition seeking recovery of Rs.9,82,005/- after having adjusted the sum of Rs.10,43,000/- paid by the respondents from the decretal amount of Rs.20,35,405/-. The respondents filed an application under Order 21 Rule 26 CPC seeking stay of the execution proceedings in view of the pendency of the proceedings under Section 34 of the Arbitration Act. It is in this background that the trial court has passed the impugned orders.

4. On 20.09.2016, the trial court noted that a loan of Rs. 12.50 lacs is said to have been disbursed by the petitioner out of which Rs. 22,73,080/- has been paid by the respondents. Despite that an award has been passed in favour of the petitioner for Rs.9,82,005/-. The Trial court hence summoned the Director of the petitioner to appear in person for 18.10.2016.

5. On 18.10.2016 the Director was absent. A submission was noted of the petitioner that it seeks to withdraw the execution petition as the objections under Section 34 of the Arbitration and Conciliation Act are pending. The trial court again noted that out of the loan of Rs. 12.50 lacs, double amount of the loan disbursed has been received by the petitioner yet an award of Rs. 9,82,005/- has been passed in favour of the petitioner. It observed that it appears that the petitioner has given wrong information to the Arbitrator and it is a misuse of the process of the law as well as harassment of the respondents.

6. Learned senior counsel appearing for the petitioner reiterates that it is for the court dealing with the objections under Section 34 of the Arbitration Act to deal with the contentions of respondents regarding the validity of the award. He submits that it is not for the executing court to go behind the award and seek to adjudicate the submissions of the respondents which are in the form of objections to the award.

7. There is merit in the submissions of the petitioner. It is for the court dealing with the objections under Section 34 of the Arbitration Act to take up the challenge to the award raised by the respondents. It is not for the executing court to go behind the award and seek to test the validity and enforceability of the award. Accordingly, the impugned orders suffer from manifest error on the face of it. The same is quashed. The petitioner is allowed to withdraw the execution petition.

8. With the above directions, the present petition and all pending applications stand disposed of.

JAYANT NATH, J.

NOVEMBER 30, 2016/rb