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

+ O.M.P. (COMM) 158/2017

CHALUA RAJU DOLLEGOWDA & ANR. Petitioners

Through: Mr Bobby Augustine, Advocate.

versus

M/S. INDIA BULLS HOUSING FINANCE
LTD.

..... Respondent

Through: Mr Anuj Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **02.05.2017**

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996, *inter alia*, assailing the arbitral award dated 17.10.2016 (impugned award) passed by the Sole Arbitrator. It is the petitioners' case that no notice of the said proceedings were served on the petitioners and, therefore, they were unable to present their case before the sole arbitrator.

2. The learned counsel for the respondent submits that efforts to serve the petitioner were made and, therefore, in terms of Section 3 of the Arbitration and Conciliation Act, 1996 the communications sent to the petitioners must be deemed to have been served.

3. A plain reading of the impugned award indicates that although notices were sent to the petitioner on a solitary occasion, the same were received

back un-served with the report that the addressee had left the given address and no such person is residing there. The arbitrator had directed the respondents to furnish other address but no further addresses were furnished by the respondent.

4. Admittedly, no other efforts were made to serve the petitioner. This is evident from paragraph 2 of the impugned award which reads as under:-

“2. In response to the notices issued to both the parties, Advocate put in appearance on behalf of the claimant/petitioner whereas non appeared for respondent. The notices sent to the respondents, same have received back unserved with the report that the addressee left the given address and no such person is residing here, therefore not available at the given addresses. The Claimant were then directed to furnish the others available addresses if any but the same has not been furnished so far by the claimant as there is no fresh address is available with the claimant. Consequently, the Respondents were ordered to be proceeded Ex-Parte.”

5. The learned counsel for the petitioners states that the petitioners have been residing at the addresses as reflected in the memo of parties before the arbitral tribunal as well as in this petition, for past several years and it is denied that any attempt was made by the respondents to serve notices to the petitioners.

6. In view of the above, the Court is satisfied that the petitioner did not have sufficient opportunity to participate in the arbitral proceedings. Notices sent to the petitioner had been returned and, therefore, the respondent could have attempted to serve the petitioners by other modes but no such efforts were made. No endeavour was made by the respondent to serve the

petitioners on person.

7. The impugned award is, accordingly, set aside. No order as to costs.

VIBHU BAKHRU, J

MAY 02, 2017/MK