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

% *Decided on: 08.12.2022*

+ **FAO (COMM) 148/2022, CM APPL. 43303/2022, CM APPL. 43304/2022 & CM APPL. 43305/2022**

MANOJ KUMAR GUPTA & ANR Appellants

Through: **Mr. Anil Kumar Singh,**
Advocate.

versus

ART AFFORDABLE HOUSING FINANCE INDIA LTD

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

NAJMI WAZIRI, J (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The present appeal impugns the order dated 29.10.2021 of the learned District Judge (Commercial Court-02), West District, Tis Hazari Courts, Delhi, in OMP (Comm) 21/2019, which rejected the appellant's objection under s.34 of the Arbitration and Conciliation Act, 1996, against the arbitral award dated 07.03.2018. The appellants say that the award as well as the impugned order has been passed without hearing them. However, it is evident from the records

that the appellants were well aware of the arbitral proceedings; they appeared and participated in the proceedings for some time but before long, they started absenting themselves from the proceeding. The impugned order has recorded their non-serious approach to the arbitral proceedings as under:

“17. Even otherwise going on the merits of the case, it is stated that the Arbitrator has proceeded the objector ex parte and did not give him hearing. It is case of the petitioner that they appeared before the Arbitrator and the arbitral proceedings reveals that the objector was accompanied by his counsel on 4.7.17 upon receipt of the notice of the Arbitrator-and they were directed to file their claim. Even on 28.4.17, the petitioner was present in person with his counsel. On 11.5.17, clerk of the counsel for petitioner was present and thereafter on 26.5.17 none appeared on their behalf. On 7.6.17, the petitioner was present and continued to appear and only on 21.7.17 he chooses not to appear and was proceeded ex parte. Thereafter ex parte evidence was led and on 31.8.17, petitioner appeared when the matter was fixed for ex parte evidence and application under Section IX Rule 9 CPC was moved by the petitioner which was allowed vide order dated 25.9.17, however cost was imposed while allowing the application but the cost was not paid nor anyone appeared and again they were proceeded ex parte and thereafter the award was passed after leading the evidence. Therefore, firstly it cannot be said that the award was passed without giving opportunity to the petitioner. It is evident from the proceeding that the petitioner was well aware of the

arbitral proceeding and had even appeared regularly for quite some time and thereafter absented.

18. Therefore, it cannot be said that there is patent illegality on the part of Arbitrator by proceeding ex parte against petitioner. The award is reasoned and based on evidence. There is no merit in the petition under Section 34 of the Arbitration & Conciliation Act. Hence, the same is also dismissed.”

2. What is evident from the above is that the appellants chose to abandon the arbitral proceedings at will and in any case they did not pursue it diligently despite having been accorded due opportunities. The costs imposed were also not paid by the appellants. In view of the above, there is no reason to interfere with the impugned order.
3. Accordingly, the appeal along with pending applications, is dismissed.

न्यायमेव जयते

NAJMI WAZIRI, J

SUDHIR KUMAR JAIN, J

DECEMBER 8, 2022