

(2018) 05 CAL CK 0039
In the Calcutta High Court
Case No : EC No.123 of 2018

CHOLAMANDALAM INVESTMENT & FINANCE CO. LTD.	APPELLANT
Vs	
RAJIB SARKAR & ORS.	RESPONDENT

Date of Decision : 08-05-2018

Acts Referred:

Indian Evidence Act, 1872 — Section 114
Arbitration and Conciliation Act, 1996 — Section 3

Citation : (2018) 05 CAL CK 0039

Hon'ble Judges : SOUMEN SEN J

Bench : Single Bench

Advocate : Shrayashee Das, Tulika Roy

Judgement

The Court : Learned counsel appearing on behalf of the award-holder has relied upon an unreported Division Bench judgment of this Court in GA No.

922 of 2017, APOT No. 89 of 2017 and EC No. 1285 of 2015 (Magma Fincorp Limited vs. Ashok Kumar & Ors.) dated 13th September, 2017,

where the Honâ??ble Division Bench had considered the aspect of service of award upon the judgmentdebtor.

In deciding the said application, the Honâ??ble division Bench has referred to Clause 9(b) of the arbitration agreement between the parties in the said

proceeding, Section 114 of the Indian Evidence Act, Section 3 of the Arbitration and Conciliation Act and Chapter VI of the Indian Post Office Act,

1898. Similar clause as that of 9(b) that was considered by the Honâ??ble Division Bench is present in the instant arbitration agreement.

The records reveal that the envelopes said to contain the award was forwarded by the Arbitral Tribunal by a letter dated 10th March, 2017. The

envelope was addressed to the respondents at the addresses mentioned in the

arbitration agreement and proper stamps were affixed thereon.

The Arbitrator has also paid postal charges by affixing prepaid adhesive postage stamps and the postal article duly put in by registered post in the

manner provided in Chapter VI of the Indian Post Office Act, 1898.

Under such circumstances, it shall be presumed that the award has been duly served upon the judgment-debtors. In view of the Honâ??ble Division

Bench judgment and having regard to the factual position as discussed above, in my view, the award-holder is able to demonstrate service of the

award upon the judgment â?"debtors.

The judgment-debtors are directed to file their individual affidavits of assets in Form no. 16A of Appendix-E of the Code of Civil Procedure within

four weeks from the date of communication of the order, failing which warrants of arrest may be issued against the judgment-debtors.

The matter is made returnable on 26th June, 2018 when the judgmentdebtor No. 1 shall be present for examination.