
(2018) 06 CAL CK 0028
In the Calcutta High Court
Case No : EC No. 202 of 2018

Magma Fincorp Limited

APPELLANT

Vs

Pioneer Construction Company & Anr.

RESPONDENT

Date of Decision : 07-06-2018

Acts Referred:

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

Citation : (2018) 06 CAL CK 0028

Hon'ble Judges : SOUMEN SEN, J

Bench : Single Bench

Advocate : Paritosh Sinha, K. K. Pandey, Shaleen Dubey, Sreyash Basu Dasgupta

Judgement

Mr. Paritosh Sinha, 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 Hon'ble Division Bench had considered the aspect of service of award upon the judgmentdebtor.

In deciding the said application, the Hon'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 Hon'ble Division Bench is present in the instant arbitration agreement. The records reveal

that the envelopes said to contain the award were forwarded by the Arbitral Tribunal by a letter dated 30th December

2017. The envelopes were 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 prepared adhesive postage stamps and the postal articles were duly put in by

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

Articles were dispatched on 13th January 2018 by registered with A.D. Under such circumstances, it shall be presumed that the award has been duly

served upon the judgment-debtors. In view of the Hon'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-debtors.

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

weeks from the date of communication of this order, failing which warrants of arrest may be issued against the judgment-debtors. The matter is made

returnable on 25th July 2018 when the judgment-debtors shall be present for examination.